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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

Article 12(1)

මගේ අංකය }
எனது இல. }
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

දිනය } 22-2-2018
திகதி }
Date }

Complainant : Ms. P. Selvarathinam
 Sellathurai Road
 Periyaneelavanai – 02.

Respondents :

01. Mr. Nalaka de Silva, DIG
 Director
 Terrorist Investigation Division, Colombo 01.
02. The Divisional Secretary
 Divisional Secretariat
 Kalmunai – Muslim Division, Kalmunai.
03. The Provincial Land Commissioner
 Provincial Land Department, Trincomalee.
04. Secretary
 Ministry of Law & Order and Southern Development
 14th Floor, "Suhurupaya",
 Sri Subhuthipura Road, Battaramulla.

Complaint No : HRC/KL/33/13/I

Complaint

The complainant, Mrs. Periyathamby Selvarathinam of Sellathurai Road, Periyaneelavanai – 01 has lodged this complaint at the Human Rights Commission, Regional Office, Kalmunai on 09th April 2013, complaining that three of her houses were forcibly seized and occupied by officers of the Terrorist Investigation Division (herein after called as TID) in March 2013.

The Complainant also said that she is in possession of a Swarnaboomi Deed registered as AM/GR/5570. She had obtained the deed from the Government of Sri Lanka through her LDO

ප්‍රධාන කාර්යාලය பிரதான அலுவலகம் Head Office	14, ආර්. ඒ. ඩී මෙල් මාවත, කොළඹ - 04. 14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04. 14, R. A. De Mel Mawatha, Colombo - 04.	සභාපති தவிசாளர் Chairperson	011-2505451	ෆැක්ස් தொலைநகல் Fax	011-2505541/74	විද්‍යුත් තැපෑල மின்னஞ்சல் e-mail	sechrc@sltnet.lk
දුරකථන தொலைபேசி Telephone	94 -11- 2505580/81/82	ලේකම් செயலாளர் Secretary	011-2505521	කණ්ඩායම් தூரித அழைப்பு Hotline	011-2505575 1996	වෙබ් இணையம் Web	www.hrcsl.lk

permit bearing number LDO/KL/60. The complainant requested this Commission to evict the TID which illegally occupying her private property and restore her to possession of the property.

Investigation and Inquiries held by Regional Office of HRCSL, Kalmunai

The Regional office conducted a field investigation at the said premises of the complainant on 04th September 2013 and 18th November 2015, and visited the Divisional Secretariat, Kalmunai Muslim Division to collect some pertinent documents. An inquiry was also held on 01st December 2015 with the participation of all relevant parties in this regard, especially Mr. K.M. Premathilake, SI – TID, Colombo and Mr. U.R.B. Udakumbura OIC, TD, Kalmunai and Mr. R.A.U. Priyantha of TID Kalmunai.

According to the report of Regional Coordinator of HRCSL, Kalmunai, the Complainant further stated at the inquiry that the said property was not used by any terrorist organization but had been forcibly occupied by the TMVP earlier.

At the inquiry held on 01st December 2015 Mr. K.M. Premathilake, SI, TID, Colombo stated that a report submitted by the TID to His Excellency The President based on the investigations, revealed that Mr. Amaladas, son-in-law of the Complainant was involved with a terrorist organization and the particular property and land was developed by the LTTE and used for their illegal activities in the area. The TID had through the IGP caused confiscation of the land and property by His Excellency the President in terms of the provisions of Regulation 7(1) of the Prevention of Terrorism (proscription on the LTTE) Regulations No: 1/2011 in Gazette Extraordinary bearing No: 1721/02 Section 7(1), dated 29th August 2011, and had ordered the Divisional Secretary, Kalmunai Muslim Division to transfer the said property to Sri Lanka Police Department.

In the same report it is observed that the Divisional Secretary had pointed out at the inquiry that there had not been a transfer of title to the Terrorist Investigation Department and therefore the ownership is still vested in the Complainant.

The Regional Coordinator of HRCSL, Kalmunai further stated in his report to the Head Office, HRCSL, that he held a round of discussions with the Divisional Secretary, and respective Grama Niladhari, Kalmunai Tamil Division on the 02nd December 2015. The Divisional Secretary claimed that the said land and property was neither purchased nor developed by any terrorist organization. The three constructions located in the said land were constructed by the CIS International Non-Governmental Organization in collaboration with the Kalmunai Tamil Divisional Secretariat under the Tsunami Relief Programme.

The Commission again called for a report from the Secretary – Ministry of Defence on 29th November 2016 and from the Secretary – Ministry of Law and Order on 19th January 2017 and 13th March 2017 with all relevant documents especially mentioning the purported order of forfeiture of the property owned by the complainant. However the Commission did not receive such copy of order and the Commission decided to summon all parties for the inquiry.

Accordingly the inquiry was held on 20th June 2017.

The Complainant Mrs. Periyathambi Selvarathinam and Respondents, Mr. Nalaka de Silva, DIG, TID, Mr. M.A.M. Nawaz, SP, Director – TID and Mr. D.M.N. Dissanayake of Ministry of Law & Order and several others participated.

The Complainant further reiterated at the inquiry, this land was granted to her by the then President in 1990 and she has been living in the land for 50 years with her 5 children, of whom three are females. She has no other property or land other than this land. She had never indulged in any terrorist activities and if Jesudas Amaladas son-in-law of the Complainant was involved in any criminal activities, the TID should have acted against him according to law.

The complainant also said that the husband of her daughter Mrs. Freda Dushyanthi, worked with Sri Lanka Police Department (No: 20957 – RPC) at Vavuniya Asikkulam and was shot dead while on duty.

Director – TID, Mr. M.A.M. Nawas said that this land and property was used and developed by the LTTE and after they had confirmed the same through investigation, the TID made arrangement to forfeit this land and property as per the Gazette extraordinary No: 1721/2 dated 29th August 2011 and accordingly this land was confiscated and handed over to Police Department on 28th December 2012 by the Secretary, Ministry of Defence.

The representative of the Secretary, Ministry of Law and Order and Southern Development also said at the inquiry that after the facts of the land being used and developed by the LTTE was revealed, the particular land in issue was confiscated and handed over to the Police Department. Also the representative of Secretary, Ministry of Law & Order and Southern Development forwarded copies of some documents dated 10th October 2012 and 12th December 2012 which are written by Additional Secretary, Police and Civil Defence addressed to Secretary Ministry of Defence and signed by His Excellency the President (in office at that time) forfeiting the particular land and property under the powers given to His Excellency as per the Gazette extraordinary bearing number 1721/02 and dated 29th August 2011.

At this juncture it is important to consider the provisions of Regulation 7(1) of the aforesaid Regulations published in the Gazette Extra Ordinary of the Democratic Socialist Republic of Sri Lanka bearing number 1721/2, Monday August 29th, 2011, which reads as follows:

"7(1) where the President is satisfied after such inquiry as he thinks fit, that any person has custody of any moneys securities or credits which are being used or intended to be used for the purpose of the prescribed organization the President may, by order in writing declare that such moneys, securities and credits as are in the custody of any such person or any moneys, securities and credits which may come into his custody after making of such order and any other movable or immovable property belonging to such organization, shall be forfeited to the state".

According to Regulation 7(1), His Excellency the President has power to forfeit any movable or immovable property which are being used or are intended to be used, for the purpose of the proscribed organization.

In this instant case, the Complainant received ownership of the land in issue by Swarnaboomi deed awarded to her by the President registered as AM/GR/5570 after being a LDO permit holder bearing number LDO/K1/60.

It is appropriate at this stage to consider the recent decision of the Supreme Court in SCFR application No: 15/2010 decided by Justice B.P. Aluvihare, PC, J and agreed to by the Honorable Chief Justice Priyasath Dep, PC, and Justice Anil Gooneratne in somewhat similar circumstances.

In that case SC FR 15/2015 the Petitioner claimed that, the order of the forfeiture in terms of Regulation 7(1) of the Emergency (Proscription of Liberation Tiger of Tamil Elam) Regulation 2009 was made without considering the relevant material, in violation of the rules of natural justice and that the said order of forfeiture is unreasonable and unfair, and petitioners are seeking by way of relief and order from the court a declaration that the said order made by His Excellency the President in his capacity as the Minister of Defence was null and void and of no force in law.

In this case too we have to verify whether the TID had gone through the necessary process of Investigation to ascertain whether the complainant of this case had any involvement in terrorist activity or whether the premises was developed by the LTTE.

In that case, the Additional Secretary (Police) who had sought permission from the Secretary, Defence to request His Excellency the President to authorize the forfeiture of property in terms of Regulation 7(1), asserted that the IGP had confirmed that the Centre for Health Care was being run with a funding from the LTTE. The representative of the Petitioner had given the

premises on lease to an organization named Centre for Health Care which is alleged to have been a front organization for the LTTE.

Accordingly the Defence Secretary on the same document had made an endorsement addressed to His Excellency seeking authorization for the forfeiture and His Excellency the President had made an endorsement "approved" and had placed the signature.

In that case the Regulation which prevailed at that time, namely of regulation 7(1) of the Emergency (proscription of LTTE) Regulations, published in the Gazette dated 07th January 2009 bearing No: 1583/2 powers vested with the Minister of Defence the power to forfeit to the state any other movable or immovable property belonging to such organization after such inquiry, as Minister thinks fit.

Justice Aluvihare, PC decided the decision to forfeit the property was arbitrary and unreasonable and the forfeiture illegal, as claimed by the petitioner, since the Minister (who was the President) had not complied with the principles of natural justice.

Justice Aluvihare held that before an order for forfeiture can be made, it is imperative to establish that the property concerned should belong to a proscribed organization.

In the instant case in terms of Section 7(1) of Gazette extraordinary bearing No: 1721/2, and dated 29th August 2011 the power is vested with His Excellency the President if he is satisfied of the same after such inquiry "as he thinks fit". Although the earlier regulation vested the power with the Minister of Defence the present applicable Regulation vests the power with the President. However the Commission is of the view that under the present applicable Regulation too the President is required to hold an inquiry, prior to making an order of forfeiture.

The question arises at this juncture is whether such inquiry had been held before the President made the order to forfeit the land and property of the complainant in order to ascertain whether the property belonged to the LTTE or was used by the LTTE.

In the present instance it is clear that the former President held no inquiry as required by Regulation 7(1) and did not consider that the ownership of the land and property was with the Complainant, against whom there was no material of collaborating with the LTTE.

Justice Aluvihare, PC further pointed out in SCFR 15/2010 that the Respondent, have failed to establish any nexus between the Centre for Health Care and the Petitioner nor was there

material to say that the acquisition of the property had been financed by the LTTE. Here too the TID has not established any nexus between the LTTE and the complainant.

Even if Jesudas Amaladas the son-in-law of the Complainant had any involvement with the LTTE it is not fair and just to punish the Complainant for her son-in-law's activities. The properties on the said premises were erected by CTS International non-governmental organization in collaboration with Kalmunai Tamil Divisional Secretariat under the Tsunami Relief Programme, and there is no evidence of a nexus with the LTTE.

It is obvious that in the above circumstances that the TID had failed to place the factual situation before the President and there was a duty on the TID and the Ministry of Defence to appraise His Excellency of the President of the full facts of the matter.

Considering all the circumstances, I am of the view that forfeiture of the complainant's land and property by His Excellency the President under power vested with him by Regulation 7(1) aforesaid has not been made after a proper inquiry into the matter required by Regulation 7(1) and therefore the fundamental rights of the complainant as guaranteed by Article 12(1) of the Constitution has been infringed by the State.

Recommendations :

In considering the complaint of the complainant it is clear that the forfeiture of the Land and property of the complainant by former President is not in accordance with the provision of Section 7(1) of Gazette extraordinary No: 1721/2 Monday August 29, 2011.

The Human Rights Commission recommends the 1st to 4th Respondents as well as the Secretary to His Excellency the President of the aforesaid findings of the HRCSL.

The Human Rights Commission recommends to 1st to 4th Respondents as well as Secretary to His Excellency the President that the order of forfeiture made by His Excellency the former President should be revoked and the property restored to the Complainant, forthwith. The Commission recommends a sum of Rs. 300,000/- as compensation and costs be paid to the Complainant by the State.


Commissioner
Human Rights Commission of Sri Lanka.
M/A

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.


Commissioner
Human Rights Commission of Sri Lanka.