

Legitimate Expectation

Case No. CA 1013/2005

Murugayyah Sambamoorthy (Petitioner) v. M. Vamadevan, Secretary, Ministry of Estate Housing, Infrastructure and Community Development; and 2 others (Respondents)

Mr. Sambamoorthy attended a meeting convened by the President's office through the above Ministry on March 12, 2001 along with over 4,000 other tea plantation workers. These workers had been selected beforehand to receive government "self help" assistance to build permanent houses in order to raise the living conditions of tea plantation workers, who are among the poorest people in Sri Lanka. At this meeting each of the workers received Bank Savings Account Pass Books recording that Rs. 30,000 (Sri Lankan rupees) had been individually deposited in their name at the local branch of the Peoples Bank. These pass books also contained an endorsement stating the funds could only be withdrawn with the permission of the Ministry. Mr. Sambamoorthy and the other workers were informed by Ministry officials at the meeting that this endorsement would only ensure the proper use of the government assistance and that the full Rs. 30,000 would be readily available to them if they undertook to construct permanent housing.

In reliance on the availability of this government assistance, Mr. Sambamoorthy began construction of a permanent house on a small plot of land granted to him by the tea estate, where he had previously constructed a temporary shed for his family. After purchasing the requisite supplies and laboring on the construction, Mr. Sambamoorthy sought to withdraw Rs. 10,000 from his savings account at the Peoples Bank on August 24, 2004. A bank teller consulted with the branch manager and returned the withdrawal slip to Mr. Sambamoorthy with the instruction that he should seek Ministry approval for the withdrawal. Immediately Mr. Sambamoorthy wrote to the Ministry explaining that the bank had declined his withdrawal and pleading for the Ministry grant its approval. The Ministry replied by mail confirming that the financial assistance remained available and stating that the withdrawal of funds from the saving account would be permitted upon documentation of membership in a community construction cooperative, possession of a available plot of land, and the progress of construction. Mr. Sambamoorthy responded with the requested documentation and again plead for approval of the withdrawal, noting with urgency that his family was without housing as his temporary shed had been damaged by a mudslide due to recent heavy rain. Inexplicably the Ministry wrote back on May 26, 2005 with one sentence "This scheme is not under implementation." The Ministry offered no explanation.

Mr. Sambamoorthy contacted the Home for Human Rights (HHR) for assistance and the Legal Desk undertook pro bono legal representation on his behalf. Mr. Sambamoorthy filed a petition with the Court of Appeals for writs of certiorari and mandamus on June 20, 2005 to compel the Ministry to release the Rs. 30,000 for the completion of his home's construction. The petition argued the Ministry's denial was arbitrary and unfair due to Mr. Sambamoorthy's "legitimate expectation" that the funds could be withdrawn for the construction of a permanent home.

Documents filed with the Court of Appeals by the Ministry showed the prior sitting President authorized the “self help” scheme, allocated Rs. 125 million for the Ministry’s budget, and these funds had in fact been deposited into individual savings accounts at the Peoples Bank. However, between the first and second letters writing by Mr. Sambamoorthy to the Ministry, the subsequent President decided on November 11, 2004 to reallocate the funds for other “self help” schemes in the form of government loans rather than grants. Acting on this directive the Ministry requested the Peoples Bank to close the personal savings accounts and remit the entire Rs. 125 million back to the Treasury. This request was carried out with no authorization sought from the individual account holders and without any notice to the plantation workers either before or after the decision to revoke the previously granted assistance.

The High Court issued its final judgment in favor of Mr. Sambamoorthy on December 13, 2007 and carefully detailed each element of the case upholding a legitimate expectation. In laying the legal groundwork, the Court found no evidence to support any contention that the Rs. 30,000 should be construed only as a loan and to the contrary found that written communications indicate that the past President, as head of the Ministry, intended the assistance to be an outright grant for the construction of permanent housing. The Court went on to explain that a “legitimate expectation” requires actual reliance on the part of a petitioner. In this regard the Court found that Mr. Sambamoorthy had clearly relied on the promised assistance by beginning construction on a permanent house and had also relied on his specific right to the money deposited into his personal savings account by the Ministry. Therefore, while the Ministry may decide to change its “self help” policies, the Court held that “by implementing the new scheme the entitlements of the persons who fall under the earlier scheme will not get wiped out.” (p. 10)

The Court found that Mr. Sambamoorthy had met all the established preconditions for being entitled to the house assistance and noted that because the funds for the housing assistance had already been deposited into personal saving accounts, “therefore the Respondents cannot remit that money to another fund or project.” (p. 14) Based on these findings and initial conclusions the Court held that Mr. Sambamoorthy “has a vested right in the said sum [Rs. 30,000] deposited in his Account therefore he has a right to withdraw the said some [sic] of money in his Savings Account based on substantive legitimate expectation.” (p. 16) Furthermore the Court held that the Ministry officials as “public bodies performing public functions, using public funds have a public duty to grant permission to withdraw the said sum as the Petitioner has fulfilled the necessary requirement stipulated by the Respondents.” (p. 16) The Court therefore quashed the decision to end implementation of the 2001 “self help” housing scheme and ordered the Ministry to grant permission for Mr. Sambamoorthy to withdraw the monies deposited in his Peoples Bank savings account.