

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC  
OF SRI LANKA**

In the matter of an Application for  
Writs in the nature of Certiorari and  
Mandamus under Article 140 of the  
Constitution of the Republic of Sri  
Lanka.

1. M.A.Appuhamy of No. 691/6, William  
Gopallawa Mawatha, Kandy.  
And Seven (07) others.

**Petitioner**

C.A. Writ Application No: 335/2008

Vs

1. Dr. Lalithasiri Gunaruwan,  
General Manager, Department of  
Railway, D.R.Wijewardena Mawatha,  
Railway Head Quarters, P.O.Box 355,  
Colombo 10.  
And five (05) others

**Respondents.**

<b><u>BEFORE</u></b>	:	<b>S. SRISKANDARAJAH, J (P/CA)</b>
<b><u>COUNSEL</u></b>	:	Rohan Sahabandu, for the Petitioner Janak de Silva S. S.C, for the 1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , 5 <sup>th</sup> and 6 <sup>th</sup> Respondents Kumar Dunusinghe for the 4 <sup>th</sup> Respondent.

Argued on : 18.03.2011

Decided on : 16.01.2012

**S.Sriskandarajah.J,**

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> Petitioners' father according to these Petitioners lost his land in Getamba Kandy in or about 1986 for the construction of William Gopallawa Mawatha. These Petitioners had not stated whether the land that they claim that had been taken over for the construction of the road was owned by them or they were in occupation of the said land without any right. If they were the owners they would have got compensation when the said land was acquired for the construction of William Gopallawa Mawatha Kandy. They claim now as they were displaced from their land due to this road construction they were given a land admittedly by the Petitioners a railway reservation. They also admit that the authorities concerned, when they gave this land to them, did not give any document of title or a demarcated areas of the railway reservation but the Petitioners had only a verbal assurance that their possession will be legalised. The Petitioners submitted that the Kandy Municipal Council and the Urban Development Authority had taken steps to grant lease hold rights to the Petitioners but no lease have been granted to the Petitioners.

The land is admittedly a railway reservation and it is claimed by the Railway Department for the purpose of expanding the railway net work by laying a double line. Even if it is a private land the state could acquire the land for a public purpose. In this case the land belongs to the Railway Department and the land is required for a legitimate public purpose and on the other hand the Petitioners do not have any right to the said land other than the improvements made to the said land. These improvements were made on their own risk without any documents conveying rights to the said land.

The 1<sup>st</sup> Respondent had sent notice to quit on 06.03.2008 to all the Petitioners and had ordered the Petitioners to vacate the said land on or before 07.04.2007. The Petitioners claim that the said notices are arbitrary, capricious malicious and having no regard to the promises and undertakings given. The 1<sup>st</sup> Respondent denied giving any undertaking or promise given to the Petitioners.

State Land (Recovery of Possession) Act in Section 3 provides as follows:

3. (1) Where a competent authority is of the opinion,

(a) that any land is State land; and

(b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.

(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1).

The 'unauthorized possession or occupation' is defined in section 18 of the said Act as amended by Act No. 29 of 1983 as follows:

"Unauthorized possession or occupation" except possession or occupation upon a valid permit or other written authority of the State granted in

accordance with any written law, and includes possession or occupation by encroachment upon state land.

Section 3 of the said Act provides that the competent authority may serve a quit notice if he is of opinion that the land is a state land and the person is in unauthorized possession or occupation of such land. The opinion of the competent authority could be challenged only by proving that he is in possession or occupation of the said land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. The burden of establishing this fact is on the person who claims that he is in occupation upon a valid permit or other written authority as provided by Section 101 of the Evidence Ordinance. But in this case the Petitioners had admitted that the said land is a state land and they did not have any written authority. In *Muhandiram v Chairman Janatha Estate Development Board* [1992] 1 Sri.L.R110 the Court of Appeal took the view that even in an inquiry in the Magistrate court to eject a person after the issue of a notice to quit the burden is on the person who claims that he has a valid permit or written authority.

The only defense an occupier of a state land could take is that he has a valid permit or a written authority of the state for him to be in occupation. As the Petitioners had not submitted any written authority to support a claim that they are in authorized occupation they cannot challenge the opinion formed by the competent authority.

In *Ihalapathirana v Bulankulame, Director- General, U.D.A* [1988] 1 Sri.L.R416 S.N.Silva J held:

"Counsel for the petitioner challenged the validity of quit notice on the single ground (the other grounds stated in the petition were not urged) that the machinery of the State Lands (Recovery of Possession) Act cannot be invoked against the petitioner because he 'is in occupation of the Rest House on the basis of a contract entered into with the U.D.A. Counsel submitted that' the contract has to be enforced in the ordinary Civil Court, and that the action

of the respondent in resorting to the machinery of the State Lands (Recovery Possession) Act is an abuse of process.

.....  
 .....

The phrase 'unauthorised possession or occupation' is defined in section 18 of the Act as amended by Act No. 29 of 1983 to mean the following

"every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon State Land."

This definition is couched in wide terms so that, in every situation where a person is in possession or occupation of State Land, the possession or occupation is considered as unauthorized unless such possession or occupation is warranted by a permit or other written authority granted in accordance with any written law. Therefore, I am unable to accept the contention of the Counsel for the Petitioner that a land which is the subject matter of an agreement in the nature of the document marked 'P1' comes outside the perspective of the State Lands (Recovery of Possession) Act.

The rights and liabilities under the agreement could be the subject matter of a civil action instituted by either the U.D.A. or the petitioner. The mere fact that such a civil action is possible does not have the effect of placing the land described in the notice marked 'P3', outside the purview of the State Lands (Recovery of Possession) Act. Indeed, in all instances where a person is in unauthorised occupation or possession of State Land such person could be ejected from the land in an appropriate civil action. The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action."

In this case the Petitioners are admittedly in unauthorised occupation of a state land therefore they cannot challenge a quit notice issued by a competent authority to recover possession of a state land. Hence I dismiss this application without costs.

President of the Court of Appeal