

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

In the matter of an application Under
and in terms of Article 140 of the
Constitution for a Mandate in the nature
of a Writ of Certiorari.

1. Rural Resorts Limited,
No.3, R.A. de Mel Mawatha,
Colombo 05.
2. Subramaniam Thianamany,
Director,
Rural Resorts Limited,
198, Riverdale Road,
Kandy.

PETITIONERS

Vs.

C.A. Application No:270/2010

Mr.N.W. Yapa
Divisional Secretary,
Divisional Secretariat
Tangalle.

RESPONDENT

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Faisz Musthapa PC with Faizer Marker,
for the Petitioners,
Anusha Samaranayake SSC
for the Respondents.

Argued on : 17.01.2012

Decided on : 15.05.2012

S.Sriskandarajah.J,

The 1st Petitioner is a company registered under the Companies Act No.17 of 1982 and the 2nd Petitioner is the Managing Director of the 1st Petitioner Company. The Petitioner submitted that the 1st Petitioner Company is engaged in the business of coconut plantation. The land in dispute is Lot No.72 in Plan No FVP 315. The Petitioner claims that he has obtained the said land by a Deed of Transfer bearing Nos.494, 495, 496 and 497 dated 23rd September 1994, attested by Gratien E. Perera, Notary Public of Colombo, the said land containing in extent of 4 acres 2 roods and 12 perches. The Petitioner submitted that the Petitioner Company has expended large sums of money in developing and planting coconuts on the said land. On 11/03/2010, the 1st Petitioner Company had received a notice from the Respondent, acting under Section 3 of the State Land (Recovery of Possession) Act requesting the Petitioners to vacate from the said land on or before 12th of April 2010. The Petitioner also submitted that one Chandini Jayashantha was the caretaker of the said property at the time of the serving of the said notice, but he is no longer the caretaker of the said property. The Petitioners' position is that the said land was occupied by the Petitioners for a long time and the Petitioners have been in undisturbed and uninterrupted possession. In these circumstances the Respondent has acted without jurisdiction to recourse to the provisions of the State Lands (Recovery of Possession) Act. The Petitioners contended that if there is a title dispute, that should have been resolved by recourse to a civil remedy and, therefore, the issue of the said quit notice under the State Lands (Recovery of Possession) Act is ultra vires and hence it should be quashed by of a Writ of Certiorari.

The Respondent submitted that Lot 72I, as depicted in Plan No FVP315 is a State land as depicted in the tenement list, and this has been confirmed by a recent survey of Lot 72H and 72I conducted by the Survey Department on 7th June 2010 and depicted in tracing bearing No.H/TNG/2010/145. Accordingly the Petitioners are in unlawful occupation of Lot 72I. In view of this observation, the Respondent Divisional Secretary, has formed an opinion that the said land is a State land.

Under the State Land Recovery of Possession Act, if the Competent Authority forms an opinion that the said land is a State land, the Competent Authority could take steps under the said law to take possession of the said land by issuing a quit notice. If the Petitioners are in possession of the said land with legal authority, they could submit those documents when an action in the Magistrates Court is filed to take possession of the said land under the law. On the material submitted by the Petitioners and the Respondents, the Respondent has acted within his legal authority to issue the said quit notice. Under these circumstances the Petitioners cannot invoke the jurisdiction of this Court by way of Writ of Certiorari to quash the said quit notice and therefore this Court dismissed this application without cost.

President Court of Appeal