

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

In the matter of an Application for A  
Writ of Certiorari and Prohibition under  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

**C.A. (Writ) Appln.  
No. 193/2009.**

1. Herbert S. Jayasuriya,
2. Irshad N. Othman,
3. S. Markandu,

All members of the Committee of  
Management of the Dehiwela Mount  
Lavinia Cosmopolitan Sports Club of  
No.29, Frazer Avenue, Dehiwela.

**Petitioners.**

Vs.

H. Sumanapala,  
Commissioner of Local Government,  
(Western Province),  
Independence Square,  
Colombo-7.

**Respondent.**

**Before : S. Sriskandarajah, J (P/CA) &  
H.N.J. Perera, J.**

**Counsel : Jacob Joseph appears for the Petitioners.  
Anusha Samaranayake, S.S.C., for the Respondents.**

**Argued on : 26.08.2011.**

**Judgment on: 28.10.2011.**

**H.N.J. Perera, J.**

The Petitioners filed this application seeking a Writ of Certiorari to quash the notice dated 26.02.2009 sent by the Respondent to the Petitioners under the State lands (Recovery of Possession ) Act No. 7 of 1979. The petitioners also seek a Writ of Prohibition prohibiting Respondent from taking any further steps under the State lands (Recovery of Possession) Act No. 7 of 1979 to evict the Petitioner's club from the premises set out in the notice dated 26.02.2009 sent by the Respondent to the Petitioners. The Respondent is the Commissioner of Local government (Western Province ) attached to the Department of Local Government (Western province).

The Petitioners are the Members of the Committee of Management and the President, Secretary and Threasurer respectively of the Dehiwela Mt. Lavinia Cosmopolitan Sports Club which is a unincorporated Association and has been in occupation for more than 80 years in the premises which is morefully described in the schedule to the petition. In paragraphs 5 and 6 of the petition, the petitioners

claim that the said Club has been a leading and popular Tennis club in Sri Lanka and was established over 80 years ago in the year 1929 and the club has a large Membership comprising constituents of Dehiwela Mt. Lavinia electorate and the said club is affiliated to Sri Lanka Tennis Association and the all Island open ranking Tennis tournament of the Sri Lanka Tennis Association commences every year on this Tennis Court maintained by the said Club. In paragraph 12 of the petition the petitioners further state that the said Club has spent Millions of Rupees over period of time in constructing and maintaining on the said property Tennis Courts, boundary walls, fencing and building to provide recreational facilities to his members and their guests. In paragraphs 13, 14 of the petition, the petitioner state that on or about 14.11.2000 the then Mayor of the Council sent a letter dated 14.11.2000 and threatened to take possession of the property from the club within 2 weeks from the date of the letter, and the club filed a Writ Application No. C.A. 1431/2000 to quash the said notice sent by the then Mayor to prevent illegal take over of the property from the club and the said application was dismissed by the Court on the ground that the letter dated 14.11.2000 sent by the then Mayor through an Attorney-at-Law did not have the legal sanctity

flowing from the statutory authority to evict the petitioners club from the said premises and that therefore a Writ would not lie against such letter. In paragraph 15 and 16 of the petition, the petitioners further state that they also filed an action in the District Court of Mt. Lavinia Case No. 1389/2000L and sought a declaratory and injunctive relief against the then Mayor to vindicate their rights on the said land and premises and that too was dismissed on a preliminary issue of law of not giving 30 days notice to the Municipal Council prior to filing the said action. The Petitioners state that the Respondent has now sought to send the purported notice marked "A" annexed to the petition under the State Lands (Recovery of Possession ) Act No. 7 of 1979 and has requested the petitioners club to leave the premises which they have been occupying for more than 80 years.

It is the position of the petitioners that the decision taken by the Respondent identifying the property as set out in the said schedule to the notice marked "A" as state land contrary to law and that the Respondent cannot act under the provisions of the State Land (Recovery of Possession) Act No. 07 of 1979 in evicting the Petitioners club which has been in occupation for more than 80 years

on the land in question and further state that in any event that the Respondent has no authority to serve the purported notice marked "A" under the provisions of State Lands (Recovery of Possession) Act No. 7 of 1979 to evict the petitioners club and the notice served by the Respondent is a nullity. In paragraph 21 of the petition the petitioners state that the purported notice marked "A" contained reference to a private survey plan made in November 2008 and that there is no Survey General's plan referred to in the purported notice sent by the Respondent to show the land in question is a State Land to seek recovery under the State Lands (Recovery of Possession) Act No. 7 of 1979.

The Respondent in paragraph 8 of his objections, whilst denying the averments containing in paragraph 21 of the Petition states that Plan 2592 dated 22.11.2008 referred to in the notice marked "A" is based on two other plans referred to bearing Nos. (P P 17544 and P P 359141 and that the original acquisition had been affected in accordance with Plan 359141 dated 14.3.1924 prepared under plan of the Survey General. Further the Respondent whilst denying the averments in paragraphs 22 to 25 of the petition states

that the land in question is State Land which comes under the control of the Dehiwela Mt. Lavinia Municipal Council and that the petitioner is in unauthorized occupation of the said land which is required by the Dehiwala - Mt. Lavinia Municipal Council for Development activities and that the Respondent is the authority competent to issue a notice to the Petitioners to quit the land in question in terms of the State Lands (Recovery of Possession) of Act No. 7 of 1979. Although in the petition several questions of law had been raised, at the hearing of this application, Learned Counsel for the Petitioners confined his submissions to only one question of law namely whether the Respondent in this case has any authority to serve the purported notice marked "A" under the provisions of the State Lands (Recovery of Possession ) Act No. 7 of 1979. It was contended on behalf of the Petitioners that the said notice marked "A" has not been issued by the proper authority, that the said notice has been sent by the Commissioner of Local Government and that the Provincial Council does not have power or authority to issue the said quit notice. The Petitioners do not challenge the said quit notice marked "A" or any other grounds. The Petitioners' contention is that the Respondent who has issued the said notice has no power or authority

to issue the said notice to the Petitioners and therefore the said notice marked "A" is a nullity. The said quit notice marked "A" has been sent by H. Sumanapala, Commissioner of Local Government Western Province Colombo 7. It is the contention of the Respondent that the land in question is a State land which comes under the control of Dehiwala - Mt. Lavinia Municipal Council. In paragraph 9 of the objections the Respondent states that the said land was originally acquired under the provisions of the Small Town Sanitary Ordinance 1892 by a vesting order made under the hands of the Governor of Ceylon marked and annexed 1R1 and upon the establishment of the Dehiwala - Mt. Lavinia Urban Council in 1940, the said ordinance was repeated and the property acquired within its administration area was transferred to the Urban Council in accordance with the provisions of the Urban council's Ordinance No. 61 of 1979 and further upon the establishment of the Dehiewala - Mt. Lavinia Municipal council in 1959. The said Council succeeded to property in question in terms of the Municipal Council Ordinance No. 29 of 1970 as amended and therefore the Respondent has the authority to issue the said notice to the Petitioners to quit the land in question in terms of the State Land of (Recovery of Possession ) Act No. 7 of 1979 as

amended. Learned Counsel for the Respondent submitted that in view of the provisions of the Provincial Councils ( Consequential Provisions ) Act No. 12 of 1989, the Respondent has the power and Authority to issue the quit notice marked “A” to the petition. Section 21 (b) of the said Act is as follows:-

“Where any power or function is conferred on, or assigned to a Minister to a public officer, as the case may be, by any written law made prior to November 14<sup>th</sup> 1987 on any matter set out in list 1 of the Ninth schedule such power or function may

(a).....

(b) if such power or function is conferred on, or assigned to, a public officer, be exercised or discharged, in relation to a province and unless the context otherwise requires, by the officer of the Provincial public service holding an office corresponding to the office held by such public officer; and accordingly, references in every such written law to a public officer shall be deemed to include a reference to the officer of the Provincial Public Service who holds an office corresponding to the office held by such public officer.



Therefore this Court is of the view that the Respondent is the authority competent to issue the said notice to the Petitioners to quit the said land in question in terms of the State Land (Recovery of Possession) of Act No. 7 of 1979, and that the Petitioners do not disclose any valid ground upon which the quit notice could be challenged and the said quit notice marked "A" is valid and lawful and has been issued in conformity with the provisions of the relevant law and the Petitioners are not entitled to the relief prayed for. This Court finds no merit in the application filed by the petitioners and accordingly dismisses the same with costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

**S. Sriskandarajah, J.(P/C.A)**

I agree.

PRESIDENT OF THE COURT OF APPEAL

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