

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

In the matter of an application for Writs of
Certiorari and Prohibition under and in
terms of Article 140 of the Constitution.

Daluwatta Patabendige Gunasena,
Daluwattagedera,
Kalugalahena, Deniyaya.

PETITIONER

C.A. Application No. 433/2009 (Writ)

Vs.

1. Manoj Jayanetti,
Competent Authority,
Ministry of Plantation,
No. 55/75,
Vauxhall Lane, Colombo-02.
2. D.A. Ekanayake,
The Divisional Secretary,
Divisional Secretariat, Kotapola.
3. The Chairman,
State Plantations Corporation,
No.55/75, Vauxhall Lane,
Colombo-02.
4. Mathurata Plantations Ltd,
2nd Floor, Unity Plaza Building,
Galle Road, Colombo-04.

5. The Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: Anil Gooneratne J. &

H. N. J. Perera J.

COUNSEL: Razik Zarook P.C., with Rohana Deshapriya & Chanakya Liyanage for
the Petitioner

F. Jameel DSG for the 2nd, 3rd and 5th Respondents.

D. Peiris for the 1st and 4th Respondents.

ARGUED ON: 14.03.2013

JUDGEMNT ON: 11.06.2013

GOONERATNE J.

The Petitioner to this application has sought a writ of certiorari
to quash the quit notice issued under the State Lands Recovery of Possession

Act marked P1 and the decision reflected in letters marked P1a to P1c. A writ of prohibition is sought to prohibit the 1st respondent from taking possession of the land depicted in the petition. It is the case of the petitioner that he was the occupier and owner of the land described as lot 86-C5 called "Waneidalahetihena". Petitioner also contends that his father owned and possessed the above land in dispute since 1943 and had been in uninterrupted possession. Notice dated 08.02.2008 (received on 10.02.2008) had been served by the 1st respondent purporting to be the Competent Authority under the State Lands Recovery of Possession Act intimating to the petitioner to hand over vacant possession of the land in dispute before 08.03.2008 (P1)

The date of notice P1 is 08.02.2008, and the date to handover possession as in P1 more particularly (¶) of P1 is 08.03.2008. Petitioner also plead that subsequent to the date in P1 two cases were filed against the petitioner in the District Court of Morawaka bearing Nos. 11567/Land for a declaration of title/ejectment and case No. 102/L for the same relief as in the other case. Whilst the above two land cases were pending petitioner was noticed (P4) to

appear in the Magistrate's Court of Morawaka in respect to an application made by the 1st respondent. The Magistrate had on 26.05.2009 made order evicting the petitioner (P7) from the land in question.

It is disclosed by the petitioner that he filed a revision application seeking to revise the above order of eviction made by the Magistrate on 26.05.2009 to the High Court but the High Court had dismissed the revision application (P9). It is also stated that the learned Magistrate made order against the petitioner to hand over possession of the land in question on or before 22.06.2009 (P10)

The learned President's counsel for the petitioner in his oral as well as in the written submissions raised the following points and invited this Court to grant the relief prayed for in the petition.

- 1) The Notice under section 3(1) of the State Land Recovery of Possession Act is bad in law as it did not stipulate the mandatory 30 days notice as required by law.

- 2) The Competent Authority has not given the proper authority to issue the said notice (marked P1) and to file the case No. 7138 in the Magistrate Court of Morawaka.
- 3) The Delegation of Authority to the 1st Respondent is bad in law and in violation of the Principle, delegatus non potest delegare.
- 4) The 1st respondent cannot file the said case as it has not been proved that it is a state land and the title to the said land is to be decided in the District Court of Morawaka in cases No. 11557/Land and No. 102/Land
- 5) The 1st respondent cannot move to eject the Petitioner from the said land by seeking refuge under the said State Land Recovery of Possession Act as the Petitioner has been in the continuous possession of the said land and had duly paid the rentals while making bonafide improvements such as tea plantations.

As regards the time limit in the notice to quit P1, dated 08.02.2008, the petitioner was required to hand over possession by 08.03.2008 and the petitioner argues that he was given only 28 days to quit. This according to the petitioner contravenes the required 30 days in terms of sec. 3(1) of the

Act. Petitioner argues that the date specified in the notice shall be a date not less than 30 days.

The other argument of the petitioner is as regards the authority of the 1st respondent to issue P1, and act as competent authority in terms of the statute. Letters P1a to P1c do not contain a general or special authorization as required by the Act. It is the position of the petitioner that delegation of authority to the 1st respondent is bad in law.

We had the benefit of hearing the submission of learned counsel for the 1st and 4th respondents and the learned Deputy Solicitor General for the other respondents, on each and every point urged on behalf of the petitioner. At the outset itself and wish to observe that the position demonstrated and emphasized on behalf of the respondents fortify my view that the writs sought by the petitioner cannot be granted by this Court.

Though the relevant section of the act specify a 30 day requirement to be included in the quit notice and gives a mandatory flavor it cannot on one

hand prejudice the petitioner if he had like in the case in hand sufficient or more time than the 30 day requirement specified therein, when the application proper was filed in the Magistrate's court and as such it cannot vitiate the notice. It is contended on behalf of the respondent that the notice is directory and not mandatory, and there is no prejudice caused to the petitioner and as such there is substantial compliance, Court should not invalidate such a quit notice. In Gunaratne (Alexis auction rooms) Vs Abeysinghe 88(1) SLR 255. This point had been dealt with, and this Court sees no legal basis to retract from the said dicta. Even the learned Magistrate in his order dated 26.05.2009 considered the above authority and had very carefully analyzed all the facts and made order accordingly. Further in the proceedings before us, Petitioner does not seek to set aside the Magistrate's order. As such it remains valid for all purposes in law and the High Court affirmed such order.

We cannot see any merit in the arguments urged on behalf of the Petitioner. However on the question of delegation we find a valid delegation in terms of the Act. The principal Act namely the State Lands Recovery of Possession Act

was as amended by Act No. 58 of 1981 and Sec. 5h of same is wide enough to include under the definition "competent authority" an officer generally or specially authorized by a corporate body, where such land is vested or owned or under the control of such corporate body. Therefore we see no basis to or set aside letters p1a to p1c and they are in order and validly executed for the purposes of the above statute.

Another point had been urged by the petitioner on very flimsy grounds. i.e land in dispute is not a state land and title of the land in dispute is to be decided in two other cases filed in the District Court of Morawaka.

The scheme of the State Lands Recovery of Possession Act mainly is in one hand urgency to recover possession and the other is to evict persons in unauthorized possession of State Land. Very stringent provisions are included and that is so to give effect to the intention of the legislature. There is no doubt a burden cast on the occupier to prove occupancy by way of a permit or on written authority.

Sec. 9 (1) of the act states that the person on whom summons have been served.... Shall not be entitled to contest any of the matters set out in sec. 5 except that such person may establish that he is in possession or in occupation of the land upon a valid permit or other written authority of the state granted in accordance with any other written law and that such authority or permit is in force and not revoked.

Therefore it means the occupier can only produce a permit or written authority to remain in possession. Vide *Nirmal Paper Converters Ltd vs SLPA* 1993 (1) SLR 218; *Keenigama Vs Dixon* 2001 June BASL newsletter. The onus is on the person summoned. *Muhandiram Vs JEDB* 1992 (1) SLR 210. The written authority granted by the state is the deciding factor to remain in possession. There is no question of calling upon the competent authority to prove that the land is state land. Competent Authority merely should be of the opinion that the person concerned is in unauthorized possession of state land. *Farook Vs Gunawardena, G.A.Ampara* 1980 (2) SLR 243 held that sec. 9(2) is to the effect that the Magistrate cannot call for any evidence from the competent authority to prove state title. This decided case also deals with alternate remedy by referring to sec. 12 of the Act. Sec. 12 provides an

aggrieved party to institute action against the state to vindicate title. Statute provides a special remedy.

In order to have some completeness to this application, I would also refer to sec. 18 of the Act as amended by Act No. 29 of 1983.... 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 other written law,, and includes possession or occupation by encroachment upon state land.

Per S.N.Silva, J in Thalpathirana Vs Bulankulame. “ 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.”

The petitioner is also guilty of laches. There is an unexplained delay. Quit notice served on 10.02.2008. By sub para 'b','c','c' (repeated) & 'd' of the

prayer to the petition, the petitioner seeks a Writ of Certiorari. The letters referred to 'b','c','c'(repeated)& 'd' above are dated Oct & Nov 2007. Petition filed on 06.07.2009. An unexplained delay is very apparent. Delay defeats equity.... 78 NLR 510,514. As such on this ground alone this application need to be rejected.

In the above circumstances, this is a futile and a vexations application. There is no merit at all. Magistrate's order is not challenged before this Court. The High Court refused and rejected the petitioner's application to revise the Magistrate's order. Nor has the petitioner sought to vindicate title in terms of sec. 12 of the Act. We dismiss this application with costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

H. N. J. Perera J.

I agree.

~~JUDGE OF THE COURT OF APPEAL~~

Kpm/-