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

In the matter of an application for a mandate in the nature of a Writ of Certiorari under and in terms of article 140 of the Constitution

C.A. 427/2005 (Writ)

1. W.H. M. Gunaratne,
   251/1, Dharmapala Mawatha,
   Colombo-07.

   And 4 others

PETITIONERS

Vs.

1. Land Reform Commission,
   C 82, Gregory's Road,
   Colombo-07.

   And another.

RESPONDENTS

Nilini Wanigaratne

27/1, Gothatuwa,

Angoda.

INTERVENIENT-PETITIONER

BEFORE: Anil Gooneratne, J &
H.N.J. Perera, J

COUNSEL: Faiz Musthapa PC with Ms. Faiza Marker for the Petitioner.
Ranjan Suwandaratne with Athula Perera for the 1st and 2nd respondents.

ARGUED ON: 18.02.2013

WRITTEN SUBMISSIONS TENDEREDON: 10.05.2013 (Petitioner)

DECIDED ON: 27.06.2013

GOONERATNE J.

The Petitioners to this application have sought a writ of certiorari to quash the quit notices issued in terms of the State Lands Recovery of Possession Act, marked P11, P12 & P13 (all dated 13.01.2005) The journal entry of 10.05.2005 indicates that an interim order as per sub paragraphs 'c', 'd' & 'f' of

the prayer to the petition had been issued until the final determination of this application. In the petition it is pleaded that the 1st petitioner along with 5 others are the lawful co-owners of the property called ' Allington Estate", by virtue of an order/decree in DC. Ratnapura Case No. 9152/l (P1 of 02.12.92- photo copy). Deed P1A (another photo copy) has also been produced which is a deed of declaration, attested on 06.04.1984. It is also pleaded that the 1st petitioner with other petitioners entered into a lease agreement with the 2nd petitioner to lease the above estate by indenture of lease P2 of 21.09.93 for a period of 25 years. It is further pleaded that the 2nd petitioner had been in possession of the estate from 1985, and had cultivated the estate.

The body of the petition refers to one Wanigaratne, who the petitioners claim was a intervenient party in the above DC. Ratnapura 9152/L case, who was refused intervention. (No order of Court produced) It is further pleaded that the abovenamed Wanigaratne filed an application for leave to appeal against the order of dismissal or refusal as above but the said Wanigaratne was refused leave. (No order produced) Much has been pleaded in the petition of the petitioners about the abovenamed Wanigaratne and an attempt to obtain a Writ of Mandamus (P4) compelling the 1st respondent. Land

Reform Commission to make a statutory determination to the portion which Wanigaratne could retain from the above estates. The Petitioners, may be for a full disclosure produced affidavit P5 of the 1st respondent, may be in a way to establish that the 1st respondent has no mandate to make a statutory determination . By P6 the Petitioners plead that the said Wanigaratne withdrew the application. In the course of the hearing of this application the learned President's Counsel for the Petitioners invited and drew the attention of this Court to the contents of P6. Another document produced by the petitioner is document P7 to convey the possession to the 2nd petitioner. It is also pleaded that the 2nd petitioner had spent a large sum of money to develop the estate in question.

It is the case of the petitioners that the Chairman of the 1st respondent Commission by P8, and by notice as pleaded in para 16/17 of the petition issued notice to quit on the 1st and 2nd petitioners under the State Lands (Recovery of Possession) Act. It is also stated that on the 3rd occasion also quit notices marked P11,P12 and P13 had been issued on the 1st -4th petitioners.

It is pleaded that the notices P11,P12 & P13 are illegal & null & void for the following reasons.

(a) there is no basis on which the 2nd respondent could have reasonably formed the opinion that the said land was vested in or owned by or under the control of the 1st respondent and as such the said notice has been issued without jurisdiction;.

b) decision in pursuance of which, the said purported notices to quit had been issued, is unsupported by evidence and the 2nd respdoentn could not have reasonably formed an opinion that the said land is a State land;

c) the then Chairman of the 1st respondent had, in his affidavit filed in case C.A. 366/91, affirmed that the said estate which is the subject matter of this application is not vested in the 1st respondent and as such the 1st respondent is stopped from forming or contending otherwise and therefore the said notices are null and void;

d) the title of the 1st petitioner and other co-owners to the said estate and any dispute over their title thereto had been adjudicated by a competent civil court, namely, the District of Ratnapura in case bearing No. 9152/L and as such the said decision has been made totally without jurisdiction;

e) the 1st petitioner and the other co-owners are the lawful owners of the said estate for over 35 years whilst the 2nd petitioner has been in uninterrupted and undisturbed possession thereof for over 20 years;

f) the 1st respondent has acted without jurisdiction in as much as recourse could not have been had to the provisions of the State Lands (Recovery of Possession) Act in view of eh petitioners' long and uninterrupted and undisturbed possession and/or title to the said estate;

The submissions by learned President's counsel for petitioners more or less is an attempt to fortify the matters referred to in the petition dated 15.3.2005 and the counter affidavit of 29.12.2005. Learned President's counsel for petitioner contends that the above quit notices are issued ultra vires the provisions of the State Lands (Recovery of Possession) Act. It is argued that the land in dispute is not State land and there is no material for the respondent to have formed an opinion that the petitioners are in unauthorized possession in terms of Sec. 3 of the said Act. He also argues that the notices are issued for a collateral purpose to place the abovenamed Wanigaratne in possession and title of the land need to be resolved by recourse to a Court of competent jurisdiction and not by resorting to the provisions of the State Lands (Recovery of Possession) Act.

The Petitioner seems to rely mainly on the contents of P1 a decree of court, to establish that the 1st Petitioner along with 5 others are co-owners. This court observes that P1 is only a photo copy of a document (not certified) and no other connected documents as pleadings, evidence etc. are annexed, to P1. The other item of evidence is the deed of declaration. (photo copy). There is a disclosure of the original owner one Abdulla Ismail, who as stated by either party

had an agreement to sell the estate in question to W.S.S. Jayawardena and (father of 2nd Petitioner – a lessee) and one Wanigaratne acting as nominee for 5 others. There had been no formal conveyance of the estate in dispute since Abdulla died prior to execution of any deed of transfer, but consideration according to the Petitioners had been paid. It is the position of the Petitioners that the 1st Respondent Commission acted on the basis of Abdulla divesting himself of the property. (relied on paragraph 15 vi of the objections of 1st Respondent). In the written submissions itself it is stated by the Petitioners that the only matter in dispute is between the co-owners and Wanigaratne and as to whether Wanigaratne has a share in the estate.

This court observes that so much of disputed facts are pleaded regarding the ownership of the estate in question. There appears to be no consistency on the title aspect at all. What is important, is to understand whether any meaningful progressive steps were to be taken by the authorities concerned under the provisions of the Land Reform Law, and the Provisions of the State Lands Recovery of Possessions Act, and whether a case has been really made out in the manner pleaded by the Petitioners to enable this court to exercise the writ

jurisdiction? We have given our careful consideration to both written/oral submissions made on behalf of the Petitioners.

Let us now look at the position of the Land Reform Commission who is bound in law to strictly adhere to the provisions of the Land Reform Law. In the objections and affidavit of the 1st Respondent Commission, at the outset the following matters of law are pleaded:

(a) The application is misconceived in law.
(b) That necessary parties are not before Your Lordships' Court.
(c) The petitioners have misrepresented and or suppressed material facts.
(d) That the application of the 2nd, 3rd and 4th Petitioners are contrary to the Rules of Court.
(e) The petitioners have not tendered all the necessary documents to Court, and without tendering same is moving Your Lordships to accept the bare statements, which are not substantiated by the documents referred to by the petitioners.
(f) As the matter is one of contract, no writ lies in the circumstances pleaded, the question involved is a question of title and in such circumstances writ does not lie.

It is pleaded inter alia that the 1st & 2nd Respondents was not a party to the case referred to and relied upon by the Petitioners (vide P1). Respondents also state deed P1A is a self serving document. Respondents are also not a party to the

deed of lease P2. It is also stated that the Land Reform Commission never came to a conclusion that the Petitioners are the owners of the land in dispute. The 1st Respondent also state that Petitioners have suppressed material facts. It is also pleaded that the 1st Respondent Commission has authority to issue notices under Section 3 of the State Lands (Recovery of Possession) Act. as the property in dispute belongs to the 1st Respondents and vested with the Land Reform Commission.

We have considered the case of the Petitioners and the Land Reform Commission. As observed there is a dispute as regards the title of the property in dispute. This court cannot proceed to adjudicate on same. All that need to be decided by a court of competent jurisdiction. We are inclined to accept the version of the 1st & 2nd Respondents to this application. The documents tendered by the Petitioners to prove some form of title does not appear to be conclusive, and seems to be vague and self serving. The Land Reform Commission should be left alone to proceed according to law. Instead interested parties have obstructed the due performance of statutory functions and duties. The required survey to be carried out in terms of the Land Reform Law had been obstructed and prevented

by the Petitioners and the other interested parties. The law should never lend any support to that kind of acts .

By the R1 document the original owner made his declaration under the land Reform Law. Extent of the land 262 acres 3 rood 6 perches. In the declaration R1, the declarent states property had been sold to W.S.S. Jayawardena and Don William Wanigaratne. However no proper acceptable transfer deed had been produced, and that the excuse for that being the original declarent died. However from 25.5.1966 (cage 9 of R1) nothing meaningful had been done to execute a proper deed. The Petitioners no doubt attempt to explain such inability. In these circumstances it was incumbent upon the Commission to call upon the above named Jayawardena and Wanigaratne to submit declarations and it was sent to the LRC by R2 & R3. At this point this court observes and take a more serious view as regards the material contained in paragraph 15 of the objections of the 1st & 2nd Respondents and the corresponding affidavit. We need not reproduce the said averments in paragraph 15, but wish to state that same are relevant and acceptable in deciding the question whether a writ should be issued or not. This court cannot arrive at a conclusion on isolated statements

referred to by the Petitioner. i.e State Counsel (P6) informing that land was not vested in LRC and on incorrect interpretation on document P5.

Court observes that Petitioners cannot assume to be co-owner when they themselves have doubts about title to the property in dispute. As such it is perfectly in order for the Land Reform Commission to proceed to evict un-authorizing persons in occupation of state land since by operation of law vesting of excess land above the ceiling as per the Land Reform Law is permitted. In terms of the above law the LRC is empowered to take various steps to achieve its objectives. The Petitioner cannot invoke the writ jurisdiction of this court with uncertainty of their own title. I specifically reject the contention of the Petitioners that notices issued under the State Land Recovery of Possession Act was done for a collateral purposes in the absence of cogent reasons and material to support that view.

We have also found on a perusal of the material before this court that there had been an attempt to deny and prohibit the Surveyor from performing his duties (paragraph 15 vii of objection). The scheme of the statute makes it clear that the survey plan would be essential in the process of making a statutory determination. This is a grave public/ Administration inconvenience

caused to LRC. The term 'public inconvenience" cannot be given a precise meaning. The Land Reform Commission in performing its usual statutory duties had been prevented and obstructed in performing such duties. Even if a court finds that notices have not been validly issued the administrative inconvenience caused to the Commission is much greater. It has led to an administrative inconvenience which led the Commission to halt due performance of statutory duties mainly due to the acts of the Petitioners and those interested in the subject matter of the case.

Another ground to refuse a writ is bad motives of the Petitioner. "I should not use my discretionary powers in favour of the Petitioner in this instance because I am not convinced of the propriety of his motives (1937) 39 NLR 186, 191 per Soertiz J.

The scheme of the State Lands Recovery of Possession Act is mainly on one hand urgency to recover possession and the other to evict persons in unauthorized possession of state land. That seems to be the intention of the legislature. No doubt a heavy burden is cast on the occupier to prove occupancy by way of a permit or written authority. (vide Section 9(1)). 1993(1) SLR 218; Keenigama Vs. Dixon 2001 June BASL News letter. The onus is on the person

summoned 1992(1) SLR 210. There is no question of calling upon the Competent Authority to prove that the land is state land. The Competent Authority merely should be of opinion that persons are in unauthorized possession 1980(2) SLR 243. In any event Section 12 of the Act provides an alternative remedy. An aggrieved party can institute action against the state and vindicate title.

In the case in hand there is a serious doubtful title dispute and how the petitioners allege title is doubtful based on documents which are incomplete, lacking in authenticity, self serving documents etc. No formal execution of deed from original owner from 1966 onwards. This court observes that very basic disputed facts are disclosed to court. Therefore review procedure would not be well suited for the determination of disputed facts. Public Interest Law Foundation Vs. Central Environmental Authority & Another 2001(3) SLR 330; Thajudeen Vs. SriLanka Tea Board 1981 (20 SLR 471.

In the District Court case (9152/2) the Land Reform Commission or the original owner Ismail were not parties. In this application, the so called co-owners and Wanigaratne are also not parties. In all the above facts and circumstances it is clear that the Land Reform Commission had power and authority to invoke the provisions of the State Land Recovery of Possession Act, to

achieve the objectives of the Land Reform Law, and recover possession of land vested by operation of law in the Land Reform Commission. This is not a fit application to invoke the writ jurisdiction of this court, especially where title disputes are apparent. Court cannot proceed to grant relief on bare assertions which are not substantiated by legally acceptable documentation. As such we refuse the application of the Petitioners with costs.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

H. N. J. Perera J.

I agree.

JUDGE OF THE COURT OF APPEAL