

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

Ms. Jessie Augustine Bandara  
Mahagastotte Division,  
Pedro Estate,  
Nuwara Eliya.

**PETITIONER**

C.A 675/2010 (Writ)

Vs.

J.M.C. Priyadharshani  
Competent Authority,  
Plantation Management Monitoring  
Division, Ministry of Plantation  
Industries, No. 55/75, Vauxhall Lane,  
Colombo 2.

**RESPONDENT**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** P. Peramunagama for the Petitioner  
Manohara Silva P.C. with Chamith Galhena for the Respondent

**ARGUED ON:** 04.12.2013

**DECIDED ON:** 13.05.2014

**GOONERATNE J.**

The Petitioner seeks a Writ of Certiorari to quash the quit notice marked X1 issued in terms of State lands (Recovery of Possession) Act. It is pleaded, that the Petitioner was in possession and occupation of the land described in paragraph 2 of the petition of the Petitioner. It was submitted that the Petitioner's husband was in the employment of the Land Reform Commission as a field officer from about 1983 and occupied the bungalow situated within the land described in paragraph 2 of the petition, and the Kelani Valley Plantation Limited was incorporated by Act No. 23 of 1987 and her husband continued to work under the management of Kelani Valley Plantation until 1993, till he retired. Letter X2 is annexed to the petition regarding extension of service.

On or about 2.12.1996 quit notice was served bearing the same date on the Petitioner's husband. He had filed a Writ Application No. 5/98 for a Writ of Certiorari and a writ was issued by the High Court of the Central Province. Documents X3 & X4 are submitted without the order of the High Court. This order has not been produced even with the counter objections of the

petitioner. The Respondent in their objections have urged that the Petitioner has suppressed this fact by not annexing the purported order of the High Court. Petitioner also state that Manager of the Pedro Estate filed action in the District Court of Nuwara Eliya. In the District Court of Nuwara Eliya on or about 4.1.2000 and withdrew the action (X5). Petitioner's husband had also made an application to the Sri Lanka State Plantation Corporation for a land for Housing and the Corporation considered his application. (X5 pg. 12, 14 & 15). Since the demise of Petitioner's husband, the Petitioner had made representations to obtain the land and the Land Reform Commission is making arrangements to sell a piece of land (vide paragraph 8 and the correspondence marked therein).

The Petitioner complaint connecting the quit notice had been incorporated in detail in paragraphs 9, 10 & 11 of the petition and for better clarity of the Petitioner's case, the said paragraphs are incorporated in this judgment.

1. The Petitioner states that the Respondent above named by letter dated 13.05.2010 written with instruction of the superintendent of Pedro Estate Mahgastotte Division addressed to the Petitioner's deceased husband Batuwatta Brahmanage Bandara informed of the alleged wrongful occupation for which the Petitioner replied by letter dated 22.05.2010 sent through her Attorney-at-Law, but the Respondent without any inquiry has

issued the said Quit Notice marked X1 perhaps acting in collusion with the Superintendent of Pedro Estate Mahagastotte Division under section 3 of the State Land (Recovery of Possession) Act No. 7 of 1979 as amended requiring the Petitioner to vacate the said portion of land and deliver vacant possession of the said portion of land to Mr. Deenadayalu Ramakrishna the Deputy General Manager of Pedro Estate Nuwara Eliya on or before 15.10.2010 on the ground that the Petitioner is in unauthorized occupation of the land described in the said "Quit Notice" marked X1 and annexed hereto.

2. The petitioner states that the Petitioner is in lawful possession and occupation of the land and premises set out in paragraph 2 above inclusive of the land set out in the schedule to the Quit Notice pending sale of the said property to the Petitioner by the Land Reform Commission.
3. The Petitioner states that the said land set out in the said Quit Notice marked X1 being part of the land to be sold by the Land Reform Commission to the Petitioner as set out above is now cannot be treated as a "State Land" and/or Respondent is not the "Competent Authority" within the meaning of the State Land (Recovery of Possession) Act No. 7 of 1979 as amended and hence the Quit Notice marked X1 is bad in law.

The Respondents have pleaded that the necessary parties are not added and as such the Petitioner's application is misconceived for the following reasons:

- (a) Subject matter of the application had been vested in the Sri Lanka State Plantations Corporation by the Land Reform Commission as per Section 27 A(1) of the Land Reform

Law (R1). Thereafter the land in question had been leased to Kelani Valley Plantation PLC (R2).

- (b) The Land Reform Commission cannot transfer the land in dispute to the Petitioner, without the Minister concerned revoking the vesting order in terms of Section 27 A(4) of the Land Reform Law.
- (c) The vesting has not been revoked and the land remains the land vested in the Sri Lanka State Plantation Corporation.

The Respondent is the Competent Authority of land vested in the Sri Lanka State Plantations Corporation (R3). Respondent denies the legality of the steps taken by the Land Reform Commission, to alienate the subject matter of land vested in the State Plantations Corporation, to the Petitioner. Petitioner's husband had no valid licence to occupy the land in question. As such Petitioner's possession is unlawful.

I have considered the facts and circumstances of this application.

Petitioner's application to this court is misconceived on one hand (as pleaded by Respondents) and on the other hand, Petitioner had also failed to produce the order of the High Court, referred to above. A party applying for a prerogative writ is under a duty to the court to disclose all material facts. So rigorous is the necessity for a full and truthful disclosure of all material facts that the courts will not go into the merits of the application, but will dismiss it without further examination. *Alphonso Vs. Appuhamy Vs. Hettiaratchchi* (1973) 77 NLR 131, 136.

This court need to focus only on the quit notice and its validity. Mere attempt to demonstrate in the written submissions as to how title was acquired by producing a deed is not a matter for this court to consider in the context and circumstances of this writ application. When the Petitioner seems to be very sure or concerned and confident as regards the identity of the land in dispute, he could pursue that course of action, but as far as this writ application is concerned the Petitioner's application is without merit. I am very much impressed and inclined to accept each and every position taken up by the Respondents in their objections, I am aware that the Supreme Court restricted and interpreted the powers given to the state to resort to this procedure in Senanayake Vs. Dumunupola (1982) 2 SLR 621. Thereafter the law was amended and the opinion of the Competent Authority in the notice, that the land was State Land could not be questioned, by the 1985 amendment to the State Land Recovery of Possession Act. The possession which is termed unauthorized possession or occupation contemplates limited defences. The occupier in terms of the law can only produce a permit or written authority to remain in possession 1993(1) SLR 218; the onus is on the person asserting but he must be aware when to do it and where to do it.

In all the above circumstances of this application I am not impressed by the submissions of learned counsel for Appellant. There is no merit in this application. As such the application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL