

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

Edman Don Siyambalapatiya  
No. 523/49, Suwasetha Weda Medura  
2<sup>nd</sup> Stage, Anuradhapura.

C.A 43/2009 (Writ)

**And now known as**

Anuradhapura Buddawansa Thero  
Sri Sunandarama Piriven Viharaya  
Madagama, Gampaha.

**PETITIONER**

Vs.

1. Gamaarachchige Baby Nona Samarasekera
2. Duwage Somalatha
3. Duwage Nissanka Perera

**All of No. 445/1, Maithreepala Senanayake  
Mawatha, Anuradhapura.**

4. The Divisional Secretary  
Divisional Secretariat  
Nuwaragama Palath East  
Anuradhapura/
5. Provincial Land Commissioner  
Office of the Provincial Land Commissioner  
Anuradhapura.

6. The Land Commissioner  
Gregory's Road,  
Colombo 7.

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Deepali Wijesundera J.

**COUNSEL:** S.N. Vijithsing for the Petitioner  
Dr. Sunil Cooray P.C. for 1<sup>st</sup> – 3<sup>rd</sup> Respondents  
Sobitha Rajakaruna D.S.G for 4<sup>th</sup> – 6<sup>th</sup> Respondents

**ARGUED ON:** 06.03.2014

**DECIDED ON:** 10.07.2014

**GOONERATNE J.**

The Petitioner who is now known as Anuradhapura Buddhawansa Thero has sought a Writ of Certiorari to quash the decision of the 4<sup>th</sup> Respondent marked and produced as Y5 dated 9.6.2008, and a Writ of

Mandamus on the 4<sup>th</sup> Respondent to hold a proper inquiry. In the body of the petition and as submitted to this court by learned counsel for the Petitioner, action was instituted in the District Court of Anuradhapura by the Petitioner seeking a declaration of title to the land described in para 5 of the petition as 521/120 Maithripala Senanayake Mawatha on the basis that the land in dispute was given to him by the state (it appears that the Petitioner has not made the official Respondents in this application parties in the D.C case). In this application the Petitioner does not seem to have annexed the documents required to be annexed as per rules of court.

The Petitioner without annexing proper acceptable documents plead, that in the District Court plaint, land in dispute described therein was given to the Petitioner by writing of 15.5.1990 in lieu of industrial land described as 562/133. Petitioner claims to have obtained a development permit from the Urban Council, Anuradhapura. The father of 1<sup>st</sup> to 3<sup>rd</sup> Respondents illegally entered the land and disputed Petitioner's rights. On that basis Petitioner had prayed for a declaration of title. In the Petition of Petitioner (unnecessarily prolix) had pleaded the position of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents in the District Court case. It is

also stated in para 8 of the petition that land No. 521/120 as described above is granted in lieu of land 562/133. (no acceptable documents submitted to prove same) and authority given for 562/133 cancelled (T2) As such Petitioner handed over 562/133 and the Land Commissioner gave the land in dispute (Y3). Inter alia it is pleaded that the District Court delivered judgment in favour of the Petitioner. Although it was an action for a declaration of title in the District Court judgment delivered as above gave only lease hold rights to the Petitioner.

The Substituted Respondent appealed from the District Court judgment to the Court of Appeal and the Court of Appeal held in favour of 1<sup>st</sup> – 3<sup>rd</sup> Respondents. Petitioner appealed to the Supreme Court and in the Supreme Court parties agreed (other than the official Respondents who were never made parties to any suit filed by the Petitioner from the District Court, Court of Appeal and the Supreme Court) to refer the matter to the Divisional Secretary of Anuradhapura according to the order of 31.6.2007 (X & X5).

Thereafter only the complaint of the Petitioner surfaced against the Divisional Secretary. As pleaded in paras 19 -23 of the petition it is urged.

- (1) On 22.8.2007 the Petitioner called upon the office of the Divisional Secretary with documentations, evidence and witnesses. But the Divisional Secretary only requested to hand over the documents. (Petitioner had only 11 documents on that date 1<sup>st</sup> – 3<sup>rd</sup> Respondents did not hand over any documents).
- (2) No further inquiry or query for a long period.
- (3) No proper inquiry held (Y3)
- (4) Since about 1 ½ years lapsed a motion filed in the District Court and the District Judge directed the Divisional Secretary to take steps as per Supreme Court Order.
- (5) Without a proper inquiry the Divisional Secretary made a declaration (Y5) of 9.6.2005.
- (6) Order challenged by Petitioner as in para 23 of the Petition. It is also pleaded that the declaration of the Divisional Secretary is null and void as per para 26 of the petition.

The 1<sup>st</sup> – 3<sup>rd</sup> Respondents in their objections take the following position. I will initially refer to certain disputed facts highlighted by the said Respondents.

- (a) The original debt in the District Court case along with these Respondents possessed the subject matter from 1958, onwards. Petitioner attempted to dispute their possession in 1999.
- (b) Petitioner is making false statements. No dispensary built by the Petitioner.
- (c) Petitioner as well as the other Respondents appeared before the 4<sup>th</sup> Respondent for an inquiry on the date mentioned by Petitioner. The 4<sup>th</sup> Respondent inquired into the

matter and perused all documents. Inquiry held for about 1 ½ hours. Both parties handed over documents to Divisional Secretary.

(d) Petitioner is misleading court with false statements as in para 19 of the petition.

These Respondents further plead the following, and urge that the Writ application should be dismissed in limine.

- (a) There was no statutory duty cast upon the 4<sup>th</sup> Respondent Divisional Secretary and hence there exists no statutory flavor visible in the decision of the Divisional Secretary which would warrant a writ to be issued quashing the decision of the 4<sup>th</sup> Respondent and compelling the 4<sup>th</sup> Respondent to hold a proper inquiry;
- (b) The Petitioner have failed to file originals or certified copies in regards to several of the documents produced.
- (c) The Petitioner have failed to aver exceptional circumstances which would warrant the exercise of the writ jurisdiction.
- (d) The application of the Petitioner is belated and the reasons given by the Petitioner for the delay is not genuine and furthermore unacceptable and hence should not be entertained.
- (e) The Petitioner has also suppressed or misrepresented facts.
- (f) The Petitioner's application is vexatious and/or misconceived in law

Having perused the objections of the 4<sup>th</sup> – 6<sup>th</sup> Respondents the following important positions are noted.

- (a) The documents marked as 'Y1' is not in the file of the 4<sup>th</sup> Respondent
- (b) The contents in the said document marked as 'Y1' is contradictory and the format of the insertion of the date, the address of the Petitioner more specifically the signature of the Petitioner in the said documents marked as 'Y1' is very much different to the contents, the format of the insertion of the date and the address of the Petitioner and the

signature of the Petitioner contained in the three letters submitted by the Petitioner in the years 1973, 1975 and 1976 and therefore the said document marked as 'Y1' is an incorrect and false documents.

(c) The 5<sup>th</sup> Respondent does not maintain any file relating to this matter.

It is also pleaded that document Y2 is not in the file of the 4<sup>th</sup> Respondent. As above (re – Y1) Respondent plead that Y2 is an incorrect false document. Further the 5<sup>th</sup> Respondent doe not maintain a file relating to this matter. R4, R5 & R6 produced, accordingly. There is also no proof to show that the Petitioner developed the land concerned.

Even as regards document Y3B these Respondents reject that document, on the basis of it being false.

This court observes that the manner in which documents are produced along with the petition by the Petitioner had been done in a haphazard manner. By producing X5 the Petitioner attempt to cover the entirety of the documents produced and expect the court to dissect and identify documents. (it is not properly produced and marked) Above all the official Respondents reject some of the documents produced by the Petitioner who relies on same, to be false, misleading documents. This court has been invited to certain areas of the dispute and the Respondents argue same to be disputed question. This court does not wish to inquire into all those disputed

questions. Review procedure is not well suited to meet such positions. On this ground alone this application is rejected. Only if major facts are not in dispute and the legal result of the facts are not subject to controversy. Vide Thajudeen Vs. Sri Lanka Tea Board and Another (1981) 2 SLR 471 (P1 also see S.C. Appeal 59/2008).

This court is satisfied that the 4<sup>th</sup> Respondent held a proper inquiry on 22.8.2007, where all parties were afforded an opportunity to present documents, and all of them handed over photocopies of all sets of documents to the 4<sup>th</sup> Respondent. All parties willingly signed a register (R7). I reject the contention of the Petitioner that no proper inquiry was held. Nor does this court wish to interfere with report Y5 which comprehensively deal with the problem. I do accept the position that the land in dispute is state land and absolutely vested in the state. The Petitioner or the 1<sup>st</sup> – 3<sup>rd</sup> Respondents were never issued with permits/grants for same. However 1<sup>st</sup> – 3<sup>rd</sup> Respondents are in occupation of same. Petitioner is not given any authority by the official Respondents to occupy the subject matter of this application. In the District Court case which ultimately went up to the Supreme Court, the official Respondents were never made parties at any stage. Further the Supreme Court has not set aside the judgment of the Court of Appeal.



The Petitioner's application is vexatious and misconceived in law. 4<sup>th</sup> Respondent had acted bona fide at all times. There is a grave misrepresentation of facts by the Petitioner. i.e tending false and unacceptable documents. I am fully convinced of the argument of learned Deputy Solicitor General that the Petitioner has abused the judicial process by resorting to the writ jurisdiction of this court. It is noted that the appeal procedure from the District Court to the Supreme Court gave the Petitioner a right to enjoy the appeal process, prescribed by law. The Supreme Court did not proceed to set aside the judgment of the Court of Appeal. Petitioner had based on an order of the Supreme Court which did not pronounce a final judgment, took advantage of the procedure to file a Writ Application with false misleading documents and statements. Our attention is drawn to the following decided case. The Merchant Bank of Sri Lanka Vs. Jatila Punyasiri Wijewardena and Others S.C. Appeal 81/2010; decided on 15.2.2012.

..... This would give the party in such circumstances two opportunities of review of the preliminary Judgment when the clear intention of the legislature is that there should be only an appeal to the Supreme Court from any judgment or order of the High Court in the exercise of Civil Jurisdiction in terms of section 5(1) and 5(2).

In all the above facts and circumstances we proceed to dismiss this application with costs.

Application dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL