

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

1. L.C. Prasanna Perera  
Chandana Concrete Works  
Industrial Estate  
2<sup>nd</sup> Mile Post, Passara Road  
Badulla

2. P.H. A. Jagath Shantha Wijepala  
Amtron Marketing Services  
Industrial Estate  
2<sup>nd</sup> Mile Post, Passara Road  
Badulla

**Petitioners**

**C.A. (Writ) Application No.649/09**

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**Vs.**

1. University of Uva Wellessa  
2<sup>nd</sup> Mile Post, Passara Road  
Badulla

2. University Grants Commission  
Ward Place  
Colombo 7

3. Secretary  
Ministry of Higher Education  
18, Ward Place  
Colombo 7

4. Secretary  
Ministry of Industrial Development  
570, 73/1, Galle Road  
Colombo 03

5. District Secretary (Badulla)  
District Secretariat  
Badulla

**Respondents**

**BEFORE** : **K.T.CHITRASIRI, J.**  
**L.T.B.DEHIDENIYA J.**

**COUNSEL** : N. Mahendra for the Petitioners  
F. Jameel, Deputy Solicitor General for the Respondents

**ARGUED ON** : 01.04.2015

**DECIDED ON** : 19. 05. 2015

**CHITRASIRI, J.**

At the outset, it must be noted that on 13.03.2015, Counsel for all the parties in both applications bearing Nos. C.A.649/2009 and C.A.650/2009 agreed to have both cases taken up for argument together. They further agreed to have one judgment for both the matters since the facts and circumstances in both cases are identical. Therefore, the parties in the cases bearing Nos. C.A.649/2009 and C.A.650/2009 are to bind by this judgment and to accept this as the judgment in both the applications. Accordingly, the Registrar of this Court is directed to file a copy of this judgment into the dockets of each case mentioned above.

Upon a policy decision been taken by the Government in the month of July 1999, an open invitation had been extended to prospective investors to establish industries in a location within the District of Badulla. The suggestion was to commence industries within the available State Land covering an area in extent of 23 acres. It was later known as "KARMANTHAPURAYA". The two petitioners in

these two cases also have made applications to have two blocks of land with the idea of commencing their respective industries on that land. Thereafter, 1<sup>st</sup> petitioner was selected to have his industry in lots 630,632 and 635 whilst the 2<sup>nd</sup> petitioner was selected to have his industry in lot 639, depicted in Plan bearing No.80 in the tracing 38 (supplement 42) prepared upon the District Surveys of the Badulla District. [P3 and P3A annexed to the petition] Documents marked 1P2, 2P2, 1P5, 2P5, 1P15, 2P15, 1P16, 2P16 and 1P12 & 2P12 show that the Government has decided to hand over possession of the respective lands referred to in those documents on a fifty year lease to the two petitioners. Subsequently, they commenced their industries on the land that were to be given to them on a fifty year lease.

However, by Memorandum No.2004/ED/He/45 dated 28.10.2004; Cabinet has subsequently decided to establish the Uva University of Sri Lanka at a location that falls within the aforesaid "KARMANTHAPURAYA". Accordingly, by letter dated 01.03.2005, the Secretary, Ministry of Education was empowered to take over possession of the land where the University was to establish. Lands occupied by the two petitioners also fell within the land proposed to have the University.

Some of the industrialists who were affected by the said decision of the Cabinet received compensation and left the premises allocated to them. Indeed, the two petitioners, on a temporary basis, also were given two different blocks. Accordingly, they vacated the lands they were occupying earlier and shifted to

different locations. The petitioners were given compensation as well for the shifting of their businesses.

However, the lands so set apart for the use of the petitioners also fell within the land proposed for the establishment of the University. As such, the respondents have taken steps to recover possession of those lands from the two petitioners under the provisions contained in the State Lands (Recovery of Possession) Act No.7 of 1979. It is the cause for the petitioners to come before this Court seeking for a mandate in the nature of writs of certiorari, prohibition and mandamus.

Two petitioners in their petition dated 29.09.2009 sought inter alia for Writs of Certiorari, Prohibition and Mandamus issued on the respective respondents. In that application, they moved to have the decisions that were taken to evict the petitioners from the place they are now in occupation, quashed. Petitioners also sought to prevent the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents from taking steps under the State Lands (Recovery of Possession) Act No.7 of 1979 or any other means to eject the petitioners from their respective allotments. They also have prayed to have a long term lease for a period of fifty years enabling them to continue with their possession. The respondents in their objections having stated the reasons as to why the petitioners should hand over possession of the respective lands to the University have moved that the two petitions be dismissed.

Petitioners in the two applications were directed to leave the premises in dispute by sending them the notices dated 25.08.2009 under and in terms of the

provisions contained in the State Lands (Recovery of Possession) Act No.7 of 1979 which were given the marking 1P14 and 2P14. The said notices had been sent in terms of Section 3 of the aforesaid State Lands (Recovery of Possession) Act, informing them to hand over possession of the lands referred to in the schedule to the said notice on or before 30.09.2009 to the Competent Authority namely, Malinie Peiris, the Secretary, Ministry of Higher Education. However, on 29.09.2009 they have come to this Court seeking to quash the decision referred to in those two notices and to prevent the respondents proceeding further in accordance with the provisions contained in the State Lands (Recovery of Possession) Act No.7 of 1979.

Learned Counsel for the petitioners submitted that it is unlawful to evict the petitioners from the premises in dispute since they both have written authority to be in occupation of that land. Accordingly, they contended that the petitioners are entitled to be in possession of the lands in question in terms of Section 9(1) of the State Lands (Recovery of Possession) Act. Said Section 9(1) of the Act No.7 of 1979 reads thus:

*“9. (1) At such inquiry the person on whom summons under Section 6 has been served shall not be entitled to contest any of the matters stated in the application under Section 5 **except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.**”*

(emphasis added)

Admittedly, the lands subjected to in this case belong to the State. Then the issue is to determine whether the petitioners do possess a valid permit or any other written authority granted by the State for them to continue with their possession claiming the cover under the aforesaid Section 9. If they are in a position to do so, then they cannot be evicted in terms of the aforesaid Act No.7 of 1979. This position of law had been recognized in many decisions including that of **Arivindakumar v. Alwis and others (2007) 1 SLR 317** and **Muhandiram v. Chairman, No.111 Janatha Estate Development Board (1992) 1 SLR 110.**

Accordingly, it is necessary to ascertain whether the petitioners were able to establish that they have a valid permit or written authority issued by the State to remain in possession of the lands that they are in occupation. The documents marked 1P2, 2P2, 1P5, 2P5, 1P15, 2P15, 1P16, 2P16 and 1P12, 2P12 are the documents filed, in order to support the position of the petitioners. Those documents show that the Government has decided to hand over possession of the lands referred to therein to the two petitioners on a fifty year lease. The first two letters to that effect are the letters marked 1P2 and 2P2 which are dated 08.08.2003. Pursuant to those letters been received, the two petitioners have come into possession of the respective lands and have commenced their respective businesses thereon. In the letter marked 1P5 dated 30.03.2004, it is stated that a block land in extent of three roods have been allocated to the 1<sup>st</sup> petitioner and by the letter marked 2P5 dated 15.03,2004, another block of land in extent of two roods have been allocated to the 2<sup>nd</sup> petitioner. By the letter marked P15, the

Divisional Secretary of Badulla had requested them to furnish more documents to proceed with the matter. It may have been to obtain the consent of the Commissioner of Lands for the purpose of executing the leases in favour of the petitioners. Even the letter dated 06.07.2004 marked P16, show that the Divisional Secretary has recommended to have lease agreements executed. Therefore, it is seen that the two petitioners have been in occupation of the respective lands on the strength of those letters. However, it is important to note that no formal lease agreements had been entered into by the parties at any stage.

As mentioned hereinbefore, in the latter part of the year 2004, a Cabinet Memorandum dated 28.10.2004 had been presented to the Cabinet in order to establish a university. The suggestion therein was to obtain land in the District of Badulla for that purpose. The lands so identified included the lands occupied by the two petitioners. The aforesaid Cabinet Memorandums are marked as 1R1A & 1R2A and filed with the objections of the respondents. Accordingly, the Cabinet by the decision dated 02.11.2004 has given approval to establish a new university as suggested by those two memorandums and the said decision is marked as 1R2B filed with the objections of the respondents.

The persons, including the petitioners who were occupying the lands on which the University was to establish have made representations to the authorities concerned indicating the difficulties that they were to face in the event a university is established within the premises that they are in occupation. Accordingly, a Committee had been set up to look into the grievances of the persons who were in

occupation of the lands. Report submitted by that Committee is marked as 1R11 filed with the objections.

In that report, it is stated that the occupants were not having any permits issued by the Government. Also, it is stated that another Committee have been appointed to determine the amount of compensation that were to be paid to the occupants. In that report, it is also stated that some of the Industrialists have vacated the premises by then while a few of them did not agree to vacate. Those who did not agree were temporarily re-located within the Uva Wellessa University premises itself in 2005 at the university expense. The two petitioners fell within the latter. Accordingly, they have even accepted compensation for re-location.

Then the question is whether the documents marked 1P2, 2P2, 1P5, 2P5, 1P15, 2P15, and 1P16, 2P16 could be construed as written authority issued by the State in favour of the petitioners to occupy the respective lands despite the change of the policy of the Government to have a University established on that land. Learned Counsel for the petitioners in support of his contention has referred to the decision in the case of **Multinational Property Development Ltd. v. Urban Development Authority. [1996 (2) S.L.R. page 51]** In that case, it was held that though a substantive change in the policy cannot be avoided, such a new policy is to be complied with, ensuring the individual's right to be heard that they expected legitimately based on promises made by public bodies. Therefore, the issue in that case was to ensure the right to be heard when there had been changes in the policy of the Government. In this instance, no such issue has come up. Indeed,



the Government had set up a committee to look into the grievances of the parties who were affected by the change of the Government policy. Admittedly, the petitioners have made use of the benefits they obtained from the outcome of the reports prepared by those committees by having received compensation for relocation. Therefore, the above decision referred to by the learned Counsel for the petitioners cannot be applicable to the case at hand since there had not been an allegation as to violation of natural justice in this instance.

However, in deciding this issue, it is important to consider the conduct of the petitioners from the time the decision was made to have a new university. Admittedly, the petitioners have shifted to another location from the place where they were doing their businesses. In doing so, they have obtained compensation as well. By looking at the report of the meeting held on 29.09.2009 by the Committee headed by the Vice Chancellor of Uva Wellessa University which is the document marked 1R11, it is apparent that the petitioners have been re-located only on a temporary basis until they themselves find alternative accommodation. The petitioners were fully aware of those circumstances.

All those matters show that the petitioners have always been agreeable to leave the premises enabling the university to commence its activities. Furthermore, the fact remains that the authorities have not entered into any formal lease agreement at any stage. Therefore, it is clear that the petitioners themselves were under the impression that the documents on which they rely would not help to constitute it as written authority issued by the State for them to be in possession of the lands in question. In other words, the conduct of the petitioners and the

other circumstances show that the contents of the documents relied upon by the petitioners do not help petitioners to establish that they possess a valid permit or written authority issued by the State to be in occupation of the lands in question. Hence, it is clear that the two petitioners are not in a position to claim the benefit under Section 9(1) of the State Lands (Recovery of Possession) Act.

It is also necessary to mention that the notices sent under Section 3 of the State Lands (Recovery of Possession) Act were not in respect of the premises that had been originally occupied by the two petitioners. By the time this petition was filed, the two petitioners have shifted from those places where they were occupying originally to other premises. Therefore, the relief prayed for in the petition as it stands now, cannot be granted to the petitioners since the lands referred to in the said notices are different to the lands to which the two petitioners claim that they have written authority to occupy.

For the aforesaid reasons, I am not inclined to grant the reliefs as prayed for in the petition. Accordingly, this petition is dismissed without costs.

*Application dismissed.*

JUDGE OF THE COURT OF APPEAL

**L.T.B.DEHIDENIYA J.**

I agree

JUDGE OF THE COURT OF APPEAL