

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

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

**C.A. (Writ) Application  
No.236/2012**

1. M.N.R. Exports (Pvt) Ltd.  
Pudukudiruppu, Kalpitiya
2. M.H.M. Nazeer,  
Chairman and Managing  
Director  
M.N.R. Exports (Pvt) Ltd.  
Pudukudiruppu, Kalpitiya

**Petitioners**

Vs.

Mr. K.P. Rangana Perera,  
Divisional Secretary,  
Divisional Secretariat, Kalpitiya.

**Respondent**

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

**COUNSEL** : Faisz Musthapha P.C. for the Petitioners.  
F. Jameel S.D.S.G. for the Respondent.

**ARGUED ON** : 29.09.2015

**DECIDED ON** : 13.10.2015

L.T.B.Dehiddeniya J.

This is an application for a mandate in the nature of a writ of *certiorari* to quash a quit notice issued by the Respondent under State Land (Recovery of Possession) Act No. 07 of 1979 (as amended). (Hereinafter referred to as the Act) The 1<sup>st</sup> Petitioner is a company duly registered under the Companies Act and the 2<sup>nd</sup> Respondent is the Chairmen and the Managing Director of the said company. The Petitioners say that the 1<sup>st</sup> Petitioner became the owner of the property described in the petition by deed of transfer marked P3. The Petitioners further aver that their predecessors in title became the owners of the land since 1947. The plan is marked and produced as P4. They further aver that the 1<sup>st</sup> Petitioner was paying rates to the Pradeshiya Sabha.

The Petitioners' contention is that there is no reason for the Respondent to form an opinion that the land is a state land. Therefore, the quit notice issued under the Act has been issued without jurisdiction.

Petitioners further aver, among other thing, that the predecessors in title owned this land for more than 33  $\frac{1}{3}$  years and acquired prescriptive title to the land.

The Respondent's position is that the quit notice was issued under the Act, to evict the Petitioner, from a state land, where he was in unauthorized occupation. In proof, he has tendered the tracing and the tenement list prepared on behalf of the Surveyor General marked R 3 which shows that the land depicted in the quit notice is a state land.

The Petitioners in paragraph 16 of the petition states why the quit notice is illegal, null and void and of no force or avail in law and is liable to be quashed. In sub paragraph 'c' they say that the land depicted in the

quit notice had been owned by the Petitioners' predecessors in title for over 33  $\frac{1}{3}$  years and that they have acquired prescriptive title to the land.

There is no evidence to show that the land depicted in the quit notice is the same land that is claimed by the Petitioners as a private land which is shown in the plan marked P4. The Surveyor General's tracing is not superimposed on P4. The boundaries defer. Therefore, without having proper and admissible evidence, the Petitioners cannot be heard to say it is the same land.

The ownership alone will not give any prescriptive title to a land. He has to be in possession too. Sub paragraph 'c' does not speak anything on possession.

The possession has to be proved by parol evidence if there is no conclusive documentary proof. It has been held in C.R. Panadura 14635. Gren (1873) C.R.1 (Hussain case law vol. 19 page 492) that, "*in absence of conclusive documentary proof, a title to a land claimed by Crown cannot be established by a private party without parol evidence of possession and occupation.*" As I have pointed earlier, there is no conclusive documentary proof on identity of the land had been tendered by the Petitioners.

Under these circumstances, the Petitioners' claim that the land depicted in the quit notice is a private land or that they have acquired the prescriptive title to the land is a disputed fact which has to be established in competent Civil Court. In the case of Writ C.A. 1299/87 CA minutes 11.06.95, S.N. Silva J. (P.CA) (as he was then) held that "*..... any dispute as to the title should be resolved in an action that may be filed as provided in section 12 of the Act.*"

The Petitioners' main argument is that there is no reason for the Respondent to form an opinion that it is a state land. The plan marked R3

is prepared on behalf of the Surveyor General by his officers and signed by his officers. Section 21 of the Surveys Act No.17 of 2002 provides that a plan prepared and signed by Surveyor General or his officers on his behalf to be taken to be prima facie proof of the facts stated therein. The section reads thus;

*21. Any cadastral map, plan or any other plan or map prepared in accordance with the provisions of this act or any written law purported to be signed by the surveyor general or officer acting on his behalf and offered in evidence in any suit shall be received in evidence and shall be taken to be prima facie proof of the facts stated there in and shall not be necessary to prove that it was in fact signed by the surveyor General or an officer acting on his behalf, nor that it was made by his authority, nor that the same is accurate until the evidence to the contrary shall have first been given.*

The plan marked R3 was prepared on behalf of Surveyor General and signed by its officers. The plan shows that the land depicted in the quit notice is a state land and the Petitioners are in unauthorized occupation. The Respondent has adequately identified that the land depicted in the quit notice as a state land. Therefore, the Petitioners' contention that the Respondent has no reason to form the opinion that the land depicted in the quit notice is a state land: is not tenable.

A specific remedy in a specific forum is provided under section 12 of the Act for those who claim that the land is private land owned by him. He can vindicate his rights in the District Court.

In the case of Farook v. Gunawardane Govt. Agent Ampara [1980] 2 Sri L R 243 at 247 Abdul Carder J. held that "*I am of the opinion that the Act expressly precludes the need for a inquiry by the competent*

*authority before he forms the opinion that any land is state land.” In the case of 1399/12 (supra) held that “If a person is not entitled to a hearing before the competent authority ipso facto he would not be entitled a hearing before a Court exercising writ jurisdiction. A remedy has to be sought by the aggrieved party, within the scheme of the Act.”*

Under these circumstances, the application is dismissed.

Judge of the Court of Appeal

**K.T.Chitrasiri J.**

I agree.

Judge of the Court of Appeal