

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

**C.A.Writ Application 12/2012**

In the matter of an application under and in terms of Article 140 of the Constitution of the Republic for mandates in the nature of a Writs of Certiorari and Prohibition.

Thilina Nilupul Gunarathne De Silva,  
Unanthanne Niwasa, Maligathenne,  
Haragama, Gurudeniya.

**Petitioner**

**Vs.**

1. National Live Stock Development Board,  
P.O.Box 1748, No.40, Nawala Road,  
Narahenpita, Colombo 05.
2. Lt.Col. R.M.B. Ellegala, Chairman,  
P.O.Box 1748, No.40, Nawala Road,  
Narahenpita, Colombo 05.
3. I.B.W.L. Gunawardhane,  
Manager Haragama Farm,  
National Live Stock Development Board,  
Haragama, Gurudeniya.

**Respondents.**

**Before** : K.T. Chitrasiri J.  
: L.T.B. Dehideniya J.

**Counsel** :J.C.Weliamuna with Senura Abeywardhane for the Petitioner.  
:Dr. Sunil Cooray with Sudarshani Cooray for the 1<sup>st</sup> to 3<sup>rd</sup>  
Respondent.

**Argued on** : 10.07.2015

**Written Submissions of the Respondent on** : 15.09.2015

**Written Submissions of the Appellant on** : 22.09.2015

**Decided on** : 14.10.2015

**L.T.B. Dehideniya J.**

This is an application for a mandate in the nature of a writ of certiorari to quash a quit notice issued under State Land (Recovery of Possession) Act No.07 of 1979 (as amended). (Hereinafter referred to as the Act) The Petitioner has entered in to an agreement with the 1<sup>st</sup> Respondent Board for granite mining for 15 years in a block of land situated within the Haragama farm of the 1<sup>st</sup> Respondent. The Petitioner states that he, after obtaining permission from relevant authorities and spending a large sum of money, commenced the granite mining. He says that he continued paying annual rentals to the 1<sup>st</sup> Respondent. After few years, before completing 15 years, the 2<sup>nd</sup> Respondent has asked the Petitioner to vacate the premises and hand over the possession of the quarry to the 3<sup>rd</sup> Respondent. After certain negotiations, the 2<sup>nd</sup> Respondent has issued a quit notice under the Act. Petitioner's contention is that he is in

authorized occupation on the strength of the agreement and therefore a quit notice cannot be issued against him.

The Respondents' position is that the land where the mining is done is a state land and therefore under the State Land Ordinance only the President can grant a long term lease. The lease agreement entered in to with the Petitioner is bad in law. They further argue that the lease agreement is not a Notarialy executed document and therefore is not enforceable and is not valid in law. The Respondents' contention is that the Petitioner is in unauthorized occupation.

The Petitioner came in to the occupation of this land on the strength of the agreement entered in to by the parties is an admitted fact. The Petitioner describes this agreement as a commercial agreement and the Respondents' argument is that it is a lease agreement. The agreement is marked as P1a. The Respondents leased out a block of land to the Petitioner to extract granite form the rock situated in the land for 15 years. The Petitioner has agreed to pay an annual rental to the Respondent. Therefore this is a lease agreement in relation to an immovable property.

The lease agreement says that the land owned by the 1<sup>st</sup> Respondent. In the objections they say that they have come to know that it is a state land. The Petitioner does not contest the fact that it is a state land. The land was handed over to the 1<sup>st</sup> Respondent by the State for the purpose of breeding cattle. Under this situation, the 1<sup>st</sup> Respondent has no authority to lease out a portion of the state land for granite mining. On the other hand only the President of the country can grant a state land on a long term lease. The lease agreement marked P1a is not a valid agreement.

On the other hand, if the land belongs to the 1<sup>st</sup> Respondent, section 2 of the Prevention of Frauds Ordinance comes in to play. The lease

agreement marked P1a is only an informal agreement and not attested by a Notary Public, as prescribed by law. Therefore, the lease agreement is not valid in law and cannot be enforced.

Under section 3 of the Act, the competent authority can issue a quit notice only if he is of the opinion that the person to be evicted is in unauthorized occupation. The section reads thus;

3. (1) *Where a competent authority is of the opinion*

*(a) that any land is State land; and*

*(b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or*

.....

The Petitioner came in to the occupation of this land on the strength of the lease agreement, with permission of the 3<sup>rd</sup> Respondent, the manager of the Haragama farm. Accordingly, he is not a trespasser. But the agreement itself is bad in law. Therefore, even if he is not a trespasser, he cannot be considered as an authorized occupier, but only a licensee. Once the 1<sup>st</sup> Respondent realized that the agreement is bad in law and they have no authority to enter into such an agreement, they have canceled the license and asked the Petitioner to vacate the premises. The 1<sup>st</sup> Respondent Board has informed the Petitioner by letter marked P 9 that the agreement is bad in law and he has been requested to handover the possession to the 3<sup>rd</sup> Respondent. From that point onwards the Petitioner becomes an unlawful occupier. In such an instance, the state can utilize the provisions of the State Land (Recovery of Possession) Act to regain the possession of the state land.

Ihalapathirana v. Bulankulame, Director-General, U.D.A. [1988]1 Sri L R 416 is a case where the Petitioner was appointed as Manager of the Chilaw Rest House by the U.D.A. under section 5 of the Rest House Act. The Petitioner had to make a monthly payment to the U.D.A. as agreed, but failed to continue the payments regularly. Even after several reminders he could not make the payments as agreed. The U.D.A. canceled the agreement and resorted to the provisions of the State Land (Recovery of Possession) Act and issued a quit notice. The Court held that;

*Land vested in the U.D.A is state land. A Rest House is state property. Possession of it 'without a permit or other written authority' is unauthorized possession. The State Lands (Recovery of Possession) Act can be used to secure eviction without recourse to a civil action.*

In the case before us also the land is a state land. The license given to the Petitioner to occupy the same is canceled. The Petitioner is in occupation without any valid permit or written authority of the State granted in accordance with any written law. As such, the provisions of the Act can be used to secure the eviction.

The unauthorized possession or occupation is interpreted in the Act as follows;

*"unauthorized possession or occupation" except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon state land.*

The lease agreement marked P1a cannot be considered as a written authority of the State granted in accordance with any written law. It is

really a document not in accordance with any written law. Therefore the Petitioner cannot claim that he is in occupation upon a written authority.

For the foregoing reasons, I dismiss this application.

Judge of the Court of Appeal

**K.T.Chitrasiri J.**

I agree.

Judge of the Court of Appeal