

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

In the matter of an application for a Writ
of Prohibition in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Kelani Valley Plantation PLC.

400, Deans Road,

Colombo 10.

PETITIONER

C.A.(Writ) Application No. 657/2011

Vs

1. Janatha Estate Development Board
No. 55/75, Vauxhall Lane,
Colombo 02.
2. Sri Lanka State Plantations
Corporation
No. 28, Mudalige Mawatha,
Colombo 01.
3. Land Reform Commission
No. C/82,
Hector Kobbekaduwa Mawatha,
Colombo 07.
4. Hon. The Attorney General
Attorney General'S Department
Colombo 12.

RESPONDENTS

BEFORE : Deepali Wijesundera J.

COUNSEL : Thisya Weragoda for the Petitioner
S.S. Sahabandu PC for the 3rd
Respondent.
Farzana Jameel DSG for the 1st, 2nd
and 4th Respondents.

ARGUED ON : 21st November, 2014

DECIDED ON : 03rd June, 2016

Deepali Wijesundera J.

The petitioner has filed this application seeking a writ of Prohibition to restrain the third respondent from issuing permits or executing any deeds or agreements in respect of the lands and estates in respect of properties relating to Lease Agreements marked as **3 (a) to 3 (t) and A4 (a) to A4 (h)** and also for writ of Prohibition to restrain the third respondent from interfering in any manner whatsoever with the lawful possession and occupation of the agricultural lands and estate referred to in Lease Agreements marked **A3 (a) to A3 (t) and A4 (a) to A4 (h)**.

The third respondent filed their objections to the petitioner's application while the first, second and fourth respondents informed court that they will not be objecting to the petitioner's application but will only assist court.

The learned counsel for the petitioner argued that the Minister of Land and Agriculture by gazettes no. 150/12 dated 24/07/1981, 183/10 dated 12/03/1982, no. 216/11 dated 28/10/1982, no. 321/8 dated 31/10/1984, no. 344/5 dated 09/04/1985, no. 815/10 dated 21/04/1994 published under sec. 27A of the Land Reforms Law No. 1 of 1972 as amended vested the said lands described in the schedule unto the first respondent. (documents marked **A2 (a) to A2 (f)**). The same Minister by Gazettes Extradictory No. 150/12 dated 24/07/1981, no. 815/10 dated 21/04/1994 vested the lands described in the schedule under the above section unto the second respondent. (documents marked **A2 (a) to A2 (f)**). The petitioner stated by publication of the above gazettes notification under sec. 27 A (1) the third respondent ceased to be the owner of the said lands and the first and second respondents became the absolute owners of the said lands. Thereafter the first and second respondents executed lease agreements marked as **A3 (a) to (h) and A4 (a) to (g)** in favour of the petitioner in respect of the said lands.

The petitioner stated that although the petitioner was granted the right to enjoy the said land the third respondent who no longer had any rights illegally and unlawfully issued permits to various third parties.

The petitioner further stated that the fourth respondent has provided a legal opinion to the Ministry of Plantation Industries that under sec. 27 A (1) of *the Land Reforms Commission Law* an order made has the effect of vesting in the relevant institution such title in the land that was held by the third respondent

and that despite such an opinion the third respondent continued to engage in illegal and unlawful acts which caused grave prejudice to the rights of the petitioner.

The petitioner cited the judgments in **Ashokan vs commissioner of National Housing (2003)3 SLR 179**, **Biso Manika vs Cyril Alwis (1982) 1 SLR 368** and stated that nothing flows from the purported acts of the third respondent to alienate property vested in the first and second respondents and leased to the petitioner.

The petitioner submitted that the Minister in Charge is only permitted to exercise his power within *sec. 27 A (4) of the Land Reforms Law* only where any term or condition relating to consideration of the vesting of the land is not complied with, and that the petitioner had enjoyed uninterrupted possession of the land referred to in A3 and A4. And the petitioner further stated that the petitioner had a legitimate expectation to the estates leased to the petitioner and that the land will not be re-vested, and cited the judgment in **Multinational property Development vs Urban Development Authority (1996) 2 SLR 31** and **Mahilar and Commissioner National Housing and another 2000 ALR 19**.

The learned counsel for the third respondent submitted that the lands in issue have not been properly identified by proper plans and the extent of the lands are not specifically described.

The third respondent stated that a land dispute cannot be decided on a writ application and that a writ application must be based on certain facts and that a writ does not lie in the instant application, and cited the judgment in **Thajudeen vs Sri Lanka Tea Board and another 1981 1 SLR Vol II 471**. The facts of the instant application is different.

The respondents further submitted that a writ will not lie when there is an alternative remedy available which is a District Court action. The respondents stated that the lease agreements entered into between the first and second respondents and petitioner are not valid agreements since the lands have not been identified by a valid plan.

The respondents further stated that all the necessary parties are not before court.

Sec. 27 A (1) (2) and (3) reads thus;

(1). At the request of the Commission, the Minister may, where he considers it necessary in the Interest of the Commission to do so, subject to sections 22,23 and 42H, by Order published in the Gazette, vest, in any State Corporation specified in the Order, with effect from a date specified in that Order, any agricultural land or estate land or any portion of the land vested in the Commission under this

Law, and described in the Order, subject to such terms and conditions relating to consideration for the vesting of that land in such Corporation as may be agreed upon between the Commission and such Corporation.

(2). An Order under subsection (1) shall have the effect of vesting in such State Corporation specified in the Order such right, title and interest to the agricultural land or estate land or portion thereof described in that Order, as was held by the Commission on the day immediately preceding the date on which the Order takes effect.

(3). Where any agricultural land or estate land or any portion thereof is vested in a State Corporation by an Order made under subsection (1), all the rights and liabilities of the Commission under any contract or agreement, express or implied, which relate to such agricultural land or estate land or portion thereof, and which subsist on the day immediately prior to the date of such vesting, shall become the rights and liabilities of such State Corporation.

Under the above sections of the said Act the lands have been vested in Petitioners, the only way the third respondent can have legal title to the said lands is if the Minister in charge revokes the lands vested under sec. 27 A (1) by acting under sec. 27 A (4) of the Land Reform Law.

Sec. 27 A (4) reads thus;

(4). Where any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any such State Corporation by an Order under subsection (1) is not complied with, the Minister may by Order published in the Gazette, revoke the Order under subsection (1) relating to that land and thereupon that land shall revert in the Commission.

The minister in charge is only permitted to exercise his powers only where any term or condition relating to consideration of the vesting of the land is complied with. In the instant case the land was vested with the petitioner under sec. 27 A (1) therefore the third respondent can not make any claim to the said land which is now vested with the petitioner. The third respondent not being the Legal owner in terms of sec. 27 A (2) of the said act can not alienate any property to a third party.

The third respondent argued that there is an alternative remedy available to the petitioner which is to seek a decree from the District Court. On the facts and documents available to this court I can not see an alternative remedy in the District Court. The third respondent after the land was vested in the first and second respondents by the Minister under *sec. 27 A (1)* ceased to be the owner of the said lands therefore the third respondent had no legal right to alienate blocks of land to third parties. In such an instance the remedy available to the petitioner is a writ application.

The third respondent also stated that the lands have not been identified and that a writ can not be issued without identifying the land. This is incorrect all the lease agreements marked and produced have specifically stated what the land is in their respective schedules.

The fourth respondent Attorney General has provided a legal opinion to the first respondent that the legal effect of an order made under *sec. 27 A (1)* of the said act has the effect of vesting the relevant corporation such title in the land that was held by the third respondent prior to such order being made. The said title vested with the corporation in this instance the first and second respondents have subsequently been leased to the petitioner. The petitioner is a body corporated under the name Kelani Valley Plantation Limited in terms of the Corporation Act.

The petitioner entered into the lease agreements marked **A3 and A4** on the strength of the order made by the Minister in charge in the Gazette marked **A2** vesting the ownership of the said lands on the first and second respondent corporations thus legitimate expectations have been borne in the petitioner that the land will not be re-vested.

For the afore stated reasons I decide to allow the petitioner's application as prayed for in prayer (b) and (c) of the petition. The petitioner's application is allowed.

JUDGE OF THE COURT OF APPEAL