

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

In the matter of an application in the nature of Writ of *Certiorari* and writ of *Prohibition* under article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Case No: CA (Writ)

Application CA 70/2015

Kelani Valley Plantation PLC.,  
(Formerly Kelani Valley Plantations  
Limited)  
400, Deans Road,  
Colombo 10.

**Petitioner**

**Vs.**

1. Nimal G. Punchihewa  
Chairman  
Land Reform Commission  
No: C82, Hector Kobbekaduwa Mawatha,  
Colombo

**Respondent**

S. Thambugala  
Chairman  
Land Reform Commission  
C82, Gregorys Road  
Colombo 7.

**Substituted -Respondent**

**BEFORE** : Vijith K. Malalgoda PC. J (P/CA) &  
S. Thurairaja, PC. J.

**COUNSEL** : N. Jayanthan for the Petitioner.  
S.S. Sahabandu PC for the 1<sup>st</sup> Respondent.

**Argued on** : 15.11.2016

**Written Submissions** : 10.01.2017

**Decided on** : 17<sup>th</sup> February 2017

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## **ORDER**

**S. Thurairaja PC, J.**

The petitioner above named in his petition seeking a writ of certiorari quashing the Notice to quit dated 22.07.2014 and to quash all proceedings at the magistrate's court of Nuwara-Eliya; Case No. 53335.

Further the petitioner prays to grant and issue a mandate in the nature of a writ of prohibition, prohibiting the respondent from acting upon the said Notice to Quit dated 22.07.2014, marked D above, and/or from making or proceeding with any action under the state lands(recovery of possession) act and prohibiting the respondent and its servants and agents from proceeding with the application made to the Nuwara-Eliya magistrates court in Case No. 53335 or initiating any such application for ejection of the petitioner from the scrubs division of Pedro Estate or from any part thereof.

Background of the case according to the petitioner is,

that 'Pedro Estate' situated in Nuwara-Eliya, which became vested in the land reform commission in 1975 under the provisions of the land reform law, was processed controlled and managed by Sri Lanka state plantations corporation (SLSPC) until the said corporation handed over possession of the same to the petitioner on 18.06.1992 pending execution of a formal lease.

By order dates 18<sup>th</sup> April 1994, made on the request of land reform commission under section 27A(1) of the land reform law and published in the Gazette Extra Ordinary No.815/10 dated 21<sup>st</sup> April 1994, the minister of forestry irrigation and Mahaweli Development vested 123 estates in the Sri Lanka state plantations corporation. Pedro Estate is one of them.

The Sri Lanka state plantations corporation, during the period of its management of estates vested in the land reform commission, converted several independent estates such as Naseby Estate and Scrubs Estate into mere divisions of Pedro Estate and when the possession of Pedro Estate was handed over to the petitioner on 18<sup>th</sup> June 1992 the possession of all the said divisions along with the assets staff and labour was formally handed over to the petitioner and thereafter the formal lease was executed in respect of the said Pedro Estate with specific reference to the individual Divisions.

By indenture of Lease bearing No.448 dated 30<sup>th</sup> April 1996 and attested C.J. Fernando, Notary Public, the Sri Lanka state plantation corporation granted a lease of the said 'Pedro Estate' to the petitioner for a period of 53 years from the 18<sup>th</sup> of June 1992 to the 17<sup>th</sup> of June 2045.

The said 'Pedro Estate' consists of several divisions, one of which is a division called 'Scrubs Division', in extent 164 acres. The petitioner states 'Pedro estate' (including Scrubs Division) since 18.06.1992 pending the execution of the lease deed marked C on 30.04.1996. The land reform commission (LRC) is now neither the owner of the scrubs division of the Pedro Estate nor is it in control of the said division.

The respondent acted as the competent authority and in terms of Section 3 of the State Lands (Recovery of Possession) issued Notice to Quit demanding. Mr Arnold Harridge, manager of Pedro Estate, to quit on or before 30<sup>th</sup> August 2014 and deliver possession to him or Mr Lal Sumanasena, Director of Nuwara-Eliya district Land Rehabilitation.

The petitioner submits that the respondent has no authority to issue the said Notice to Quit because he has no ownership and it is vested with the Sri Lanka State Plantation Corporation.

The respondent submits that the land in question was vested in the land Reform Commission by operation of Land Reform Law. It was managed by SLSPC. The ownership always remained with the LRC.

The petitioner submits that the land was acquired under Land Reform Law and vested with the Law Reforms Commission. Since the said Commission could not manage, it was given to Sri Lanka State Plantation Corporation. Considering all lands were given to companies to manage (including the petitioner) the Land Reform Act was amended and Section 27A was brought in. that section reads as follows:

*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.*

*(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.*

Petitioner submits that Land Reform Commission seized to be the owner of the land as in the above amendment. Hence the respondent has no authority to issue a notice to quit. Issuance of the said notice is Ultra vires which is a subject matter for this court to issue a Writ of Certiorari.

The respondent in his objections submits that the LRC is the owner and they are not aware of the transaction between Sri Lanka State Plantation Corporation and the petitioner further the land identified in the said gazette is not the land in issue.

In addition to the above the respondent submits that they are not bound by the lease agreement entered between SLSPC and the petitioner.

Now I peruse the said gazette in question. The extra ordinary gazette number 815/10 dated 21<sup>st</sup> April 1994, it was issued by the Minister of Forestry, Irrigation and Mahaweli Development. The order of the minister states as follows:

*"pursuant to a request of a land reform commission, having considered it necessary in the interest of the commission to do so, Agricultural lands and estate lands specified in the schedule, hereto are hereby vested under section 27A read with sections 22,23 and 42H of the Land Reform Law, Number 1 of 1972, as amended by Law No. 39 of 1975, Act no. 14 of 1981, Act no. 39 of 1981, Act no. 14 of 1986 and Act no. 1986 in the Sri Lanka State Plantation Corporation established, under the State Plantations Corporation Act, no. 4 of 1958.*

*The said plantation corporation is bound to pay to the land reform commission, the nominal value of the land referred to in schedule."*

In the Schedule under serial number 38 the name of the agricultural land was identified as Pedro situated in the administrative district of Nuwara Eliya in the extent of 358 hectares and the nominal value stated there is Rs. 6,302,900.00.

The plain reading of the gazette makes one to understand that the said minister had made order to transfer the said land to SLSPC on the request of LRC. Further the nominal value also stated there, which brings us to a conclusion that it's not only the management is transferred but also the control of property also being transferred.

The SLSPC leased the said Pedro estate to the petitioner by deed of lease executed and the period of lease is from June 1992 to June 2045. The schedule describes the land, accordingly it was 357.69 hectares or A; 884, R; 0 and P; 25.5. the fourth item in the schedule says scrub division and the estate is 66.4 hectares or A; 164, R; 2, P; 16.

With the available material submitted by the petitioner and the respondent, we are unable to determine the exact identity of the land hence the court concludes that the respondent is not in a position to identify the land they claim, that they are the owners, further the court is favourable of the claim of the petitioner that the said land is clearly defined in the gazette and the deed of lease above mentioned.

With the available facts before this court it is revealed that the Minister in charge of Land Reform Commission had given the property to the SLSPC under section 27A of the Land Reform Law and in turn the SLSPC which is a government entity had entered into a valid lease agreement with the petitioner. On this background LRC bypassing the SLSPC and dealing with the petitioner is inappropriate.

I wish to place on record of two similar attempts on the Petitioner on previous occasions and the two decisions made by this court in case number CA Writ Application 323/06 and CA Writ 647/2011 where the respondent is different from the present respondent.

Further the petitioner has a reasonable expectation to stay in the said land till June 2045. Under these circumstances the respondent issuing a quit notice on the petitioner is unacceptable.

Considering all circumstances the court concludes that the issuance of quit notice is ultra vires, hence the court issues a Writ of Certiorari quashing the said Notice to Quit.

**Application allowed with cost.**

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC. J. (P/CA)**

I agree.

**PRESIDENT OF THE COURT OF APPEAL**