

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

Ratnayake Mudiyansele Unapana
Siyatu Koswatte,
No. 55,
Lunuwatte.
Petitioner

CASE NO: CA/445/2015/WRIT

Vs.

1. G. Vijitha Nanda Kumar,
Acting Commissioner General of
Land Title Settlement and
Commissioner of Land Title
Settlement,
"Mihikatha Medura",
Rajamalwatta Road,
Battaramulla.
2. P.M.H. Priyadharsani,
Assistant Land Title Settlement
Officer,
Land Title Settlement,
Rajamalwatta Road,
Battaramulla.
3. J.M. Chamila Indika Jayasinghe,
Divisional Secretary,
Uva Paranagama,
Lunuwatta.

4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Daya Guruge for the Petitioner.
Susantha Balapatabendi, S.D.S.G., for the
Respondents.

Written Submissions:

by the Petitioner on 20.07.2018

by the Respondents on 29.08.2018

Decided on: 04.09.2018

Samayawardhena, J.

The petitioner filed this application seeking to quash the Settlement Order made in favour of the Crown under section 5(5) of the Land Settlement Ordinance, No. 20 of 1931, as amended (hereinafter "the Ordinance"), and published in terms of section 8 of the Ordinance in the Government Gazette No. 9247 of 17.03.1944 in respect of Lot No. 77 of Village Plan No. 429; and to issue a writ of mandamus against the 1st and 2nd respondents to conduct a fresh inquiry and settle the said Lot in favour of the petitioner.

The petitioner admits that the Settlement Notice in terms of section 4 of the Ordinance was published in the Gazette No. 8257 of 20.11.1936. The petitioner further states that the Settlement Inquiry in terms of section 5 of the Ordinance was held, and his father participated in the inquiry with an Attorney-at-Law and

produced the father's Deed marked P1. This Deed has been executed on 14.12.1936, that is, after the Settlement Notice was published. By this Deed, the petitioner's father has purchased undivided rights of four lands including the land in respect of which Settlement Order was made, which is *Pattiyakumbura*.

If the petitioner's father participated in the Settlement Inquiry with an Attorney-at-Law and his claim was rejected and settled the land in favour of the Crown, the petitioner's father was not without a remedy. He, in terms of section 24 of the Ordinance, ought to have filed an action in the District Court within one year from the publication of the Settlement Order to vindicate his rights. This has not been done.

It may be recalled that Settlement Order was published as far back as in 1944, and the petitioner as the son of the claimant, after more than 60 years in 2015 cannot challenge the said Order by way of a writ application. The petitioner's first relief for writ of certiorari shall in my view necessarily fail.

On what basis does the petitioner challenge the Settlement Order? He says that his father by Deed marked P2 executed on 16.09.1984 sold his undivided rights to him. This is on the purported premise that what was transferred by Deed P2 was the father's undivided rights in respect of the land known as *Pattiyakumbura*, the land in respect of which Settlement Order was made.

Firstly, the land which has been transferred by Deed P2 is not *Pattiyakumbura* but a different land known as *Gaalpattiyewatta* and therefore the petitioner gets no rights by Deed P2 to the land in respect of which Settlement Order was made.

Secondly, even if it were *Pattiyakumbura* (which is definitely not so), the father could not by Deed P2 have transferred it to the petitioner as his rights on *Pattiyakumbura* were wiped out by the subsequent Settlement Order in favour of the Crown. The petitioner has no *locus standi* to file this application.

It is elementary that the petitioner must show that he has a legal right to the performance of a legal duty by the respondents against whom mandamus is sought. Mandamus is not intended to create a right but to restore a party who has been denied his legal right. (*Mageswaran v. University Grants Commission*¹, *Perera v. National Housing Development Authority*², *Wannigama v. Incorporated Council of Legal Education*³, *Janak Housing (Pvt) Ltd v. UDA*⁴, *Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd*⁵) No such legal right on the part of the petitioner with a corresponding legal duty on the part of the 1st and 2nd respondents to hold a fresh inquiry has been shown to exist by the petitioner. The petitioner's second relief for writ of mandamus shall also fail.

Application of the petitioner is dismissed but without costs.

Judge of the Court of Appeal

¹ [2003] 2 Sri LR 282

² [2001] 2 Sri LR 50

³ [2007] 2 Sri LR 281

⁴ [2008] 2 Sri LR 302

⁵ [2005] 1 Sri LR 89