

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

1. Mrs. A.M.M.K. Moragalla,
2. Siransi Leela Naotunna,
3. C.E.B.M.R. Suranganee Dilrukshi
Gunaratna (nee Delwita)
4. Niranjali Delwita,
5. Roshan Piyadarshana Delwita
6. Kisagothami De Silva (nee Delwita)
(3rd, 4th, 5th and 6th Petitioners
appearing by their Attorney,
Kusumanjali Delwita-7th
Respondent)
7. Kusumanjali Delwita,
All of 82/12E,
3rd Baptist Lane,
Baddegama,
Pitakotte.
Petitioners

CASE NO: CA/76/2016/WRIT

Vs.

1. The Land Reform Commission,
2. Sumanatissa Thambugala,
Chairman,
3. R.P. Rajapaksha,
Commissioner General of Lands,

4. M.A.S. Weerasinghe,
Commissioner General of Agrarian
Development,
5. R.A. Wijethunga,
Director General of Agrarian
Development,
6. Montague Sarath Chandra,
Member,
7. Hema Darmawardane,
Member,
8. K.D.R. Olga,
Member,
All of
C82,
Hector Kobbekaduwa Mawatha,
Colombo 7.
9. Manohari Sunilkanthi Madugalle
(Deceased),
(Presently her interests are looked
after by 10th and 11th
Respondents)
10. Chula Madugalle,
185/1/A,
Epitamulla Road,
Kotte.
11. Mahen Susantha Madugalle,
168/16,
Siripura Gardens,
Rajamaha Vihara Mawatha,
Kotte.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Chula Bandara for the Petitioners.

Dr. Sunil Cooray for the 1st and 2nd Respondents.

H. Withanachchi for the 10th Respondent.

Argued on: 23.05.2018

Written Submissions:

By the Petitioner on 20.07.2018

By the 10th Respondent on 03.08.2018

By the 1st and 2nd Respondents on 13.08.2018

Decided on: 06.09.2018

Samayawardhena, J.

Brenda Halangoda (nee Delwita) passed away leaving a Last Will (which was later proved and admitted to Probate) whereby she bequeathed all her immovable properties to her sister Mildred Madugalle (nee Delwita) and brother Victor Delwita subject to the life interest of her husband Harry Halangoda.

Both Mildred Madugalle (nee Delwita) and Victor Delwita are now deceased, and the widower of the 1st petitioner and the 2nd-7th petitioners are the children of the latter, and the 9th-11th respondents are those of the former.

Harry Halangoda, before his death, being the life interest holder of his deceased wife's properties, is reported to have made a (purported) Statutory Declaration in terms of section 18 of the Land Reform Law, No.1 of 1972, as amended. Notwithstanding the fact that there is no dispute about making such Declaration, no copy of the said Statutory Declaration has been tendered to Court

for the Court to understand what Harry Halangoda has in fact declared in it.

The petitioners by producing P2 dated 18.03.2009 and P3 dated 13.07.2009 state that they "*appealed to the Land Reform Commission claiming their due shares of the land*" and the Commission recognised their rights by P4 dated 08.03.2012.

The petitioners produce documents P6-P10 to say that the 1st respondent, the Land Reform Commission, agreed to give alternative lands.

The Land Reform Commission has made a Statutory Determination and the same has been published in terms of section 19 of the Land Reform Law, in the Gazette marked P5 dated 16.10.2012.

It is noteworthy that all those letters referred to earlier marked P2, P3, and also P4, P6, P7, P8, P9 have been exchanged before the Statutory Determination P5 was published. However, in terms of section 20 of the Land Reform Law, Statutory Determination shall come into effect on the date of the publication of it in the Gazette. I must also add that there is no document before this Court to ascertain when the Statutory Determination was made. Statutory Determination refers to one land and those letters refer to different lands.

It shall also be mentioned that all the letters P4, P6, P7, P8, P9 sent by the Land Reform Commission have been addressed to the 10th respondent. P10 which is dated subsequent to the Statutory Determination is also addressed to the same respondent. The 10th respondent does not support the petitioners' application. She seeks the dismissal of it.

As the matter was getting delayed, the petitioners have filed a writ application (CA/WRIT/194/2014) seeking a writ of mandamus compelling the 1st and 2nd respondents to allocate their due share of the land, which is 25 acres. This 25 acre land is not the land or portion of it as described in the Statutory Determination published in the Gazette P5. Thereafter that writ application has been withdrawn upon realisation during the course of the proceedings that the earlier Determination contained in Gazette P5 has subsequently been cancelled by Gazette marked 1R3 dated 09.07.2014.

It is against this backdrop, the petitioners have filed this application seeking mandates to quash the Gazette Notification marked 1R3 by way of writ of certiorari; and to compel the respondents to act according to the Gazette Notification marked P5 by way of writ of mandamus.

Learned counsel for the petitioners at page 9 of his written submissions states that from the submission made by learned counsel for the Land Reform Commission at the stage of argument, following are the three questions to be decided by this Court.

1. Was the Declaration made under section 18 of the Land Reform Law by Harry Halangoda contrary to section 3(4) of the said Law as he was not the owner?
2. Was the Gazette 1R3 cancelling the previous Gazette P5 legal?
3. Did the petitioners have *locus standi* to present this application and to seek relief as prayed for in the petition?

Learned counsel for the petitioners concedes that it is the owner of the agricultural land who can make a Statutory Declaration, and quotes section 3(4) of the Law which defines the word "owner", in support of his argument that Harry Halangoda was entitled to make the said Statutory Declaration.

Section 3(4) of the Land Reform Law reads as follows:

For the purpose of subsection (1)

- a) where any land is subject to a mortgage, lease, usufruct or life interest, the mortgagor, the lessor or the person in whom the title to the land subject to the usufruct or life interest is; and*
- b) where any land is held on a permit or a grant issued under the Land Development Ordinance, the permit-holder or the alienee on such grant,*
- c) where any land is owned by a trustee under a private trust for the benefit of any other person, the private trust;*
shall be deemed to be the owner of such agricultural land:

Immediately after quoting the said section, learned counsel correctly states that "*the section 3(4)(a) of the Land Reform Law clearly states that where any land is subject to a life interest, the person in whom the title to the land subject to the life interest shall be deemed to be the owner of such agricultural land*" and thereafter, surprisingly, states that "*So there was no illegality irregularity in the declaration made under section 18 of the Land Reform Law made by Harry Halangoda as the life interest holder of his wife's properties.*" If Harry Halangoda was the life interest holder who could only enjoy the land during his lifetime without ownership, he could not have made the Statutory Declaration in terms of section 3(4)(a) and only the person or persons in whom title to the land resided could make that Declaration.

Hence the Declaration which Harry Halangoda is said to have made has no force or avail in law and therefore void *ab initio*. The Statutory Determination made earlier on that void Declaration on misapprehension of the law could in my view be formerly cancelled when the Land Reform Commission later realised it.

Section 18 of the Interpretation Ordinance, No. 21 of 1901, as amended, reads as follows:

Where any enactment, whether passed before or after the commencement of this Ordinance, confers power on any authority to issue any proclamation, or make any order or notification, any proclamation, order, or notification so issued or made may be at any time amended, varied, rescinded, or revoked by the same authority and in the same manner, and subject to the like consent and conditions, if any, by or in which or subject to which such proclamation, order, or notification may be issued or made.

Learned counsel for the petitioners at pages 12-13 of the written submissions quoting section 18 of the Interpretation Ordinance states that "*although in section 18 of the Interpretation Ordinance gives the right to revoke/cancel a previous decision, it does not mean that such authority could use the provisions contained in the said section 18 without following the procedural requirements*", i.e. without giving an opportunity to the petitioners to show cause why the earlier Gazette P5 should not be cancelled.

Notwithstanding there is some force in that argument, as the petitioners got the opportunity to express their grievances through these proceedings and as this Court is satisfied that the Land Reform Commission had a valid legal basis to cancel the earlier

Determination made upon misapprehension of the law, I am not inclined to hold with the petitioners to quash the later Gazette 1R3 allowing to perpetuate the illegality with the blessings of Court until the Land Reform Commission comes to the same conclusion for the second time upon a formal inquiry. Court need not in my view make orders for the sake of making orders.

The final point raised by learned counsel for the petitioners was based on legitimate expectation. As I have already stated, almost all the documents which the petitioners rely on relate to the period anterior to the publication of the Statutory Determination; and the alternative lands referred to therein are unrelated to the land referred to in the Declaration or Determination; and those letters are addressed to the 10th respondent who in her objection seeks to dismiss the application of the petitioners. Hence, legitimate expectation is hard to establish. The Statutory Determination, which is void *ab initio*, cannot form the foundation for legitimate expectation. Legitimate expectation cannot be founded upon illegality or nullity.

Application of the petitioners is dismissed but without costs.

Judge of the Court of Appeal