

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

R. Ramani Siriwardhana,
No. 702/1,
Church Road,
Hingurakgoda.
Petitioner

CASE NO: CA/304/2016/WRIT

Vs.

1. R.M.D.P. Pushpakumari,
Divisional Secretary,
Divisional Secretary's Office,
Hingurakgoda.
2. Commissioner General of Land,
Land Commissioner General's
Department,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.
3. W.W.A. Chandra,
Land Commissioner
(Development),
Land Commissioner General's
Department,
No. 1200/6,

Rajamalwatta Road,
Battaramulla.

4. Alahakoon,
Senior Superintendent of Survey,
District Survey Office,
Polonnaruwa.
5. Secretary,
Pradesheeya Sadha,
Hingurakgoda.
6. Dr. Suranga Hewawitharana,
Medical Officer of Health,
MOH Office,
Hingurakgoda.
7. Hon. Magistrate,
Magistrate's Court,
Hingurakgoda.
8. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Sagara Kariyawasam for the Petitioner.

Maithree Jayasinghe, S.C., for the Respondents.

Argued &

Decided on: 26.10.2018

Samayawardhena, J.

The Petitioner filed this application seeking a mandate in the nature of a writ of certiorari to quash the decision of the 1st Respondent Divisional Secretary to proceed under the provisions of the State Lands Recovery of Possession Act, No. 7 of 1979, as amended, without holding a proper inquiry (by the Land Commissioner as per P18) and/or to quash the Quit Notice served on the Petitioner under the said Act.

Only the 1st and the 4th Respondents have filed objections to this application.

The Petitioner does not dispute that the land in question depicted as P7A in Plan marked P7 made in the year 2000 is a State land. Among other documents, by P8, which is admitted by the 1st Respondent in his objections, it is clear that the Petitioner and his predecessor (her mother) have been in possession of that portion of land since 1968 (or at least since 1987). By document marked X tendered with the counter affidavit of the Petitioner, the 3rd Respondent Land Commissioner admits that the house standing on that land (vide P2) is about 15 years old by the year 2016.

It is the position of the Petitioner that on the day the land was surveyed in 2004 by the Government Surveyor in order to issue Permits to the occupants, she was not present, but immediately thereafter, *inter alia*, by P11 and P13 informed that fact to the Surveyor and the 1st Respondent.

When facts remained as such, the Petitioner has received the above-mentioned Quit Notice dated 27.04.2016. This has been followed by institution of the Magistrate's Court proceedings against the Petitioner.

Thereafter the Petitioner had complained to the 3rd Respondent Land Commissioner with the Quit Notice in hand seeking redress. Having given a hearing to her grievances, the 3rd Respondent by P18 has directed the 1st Respondent to suspend the legal proceedings initiated against the Petitioner and called for the Reports from the 4th and 6th Respondents with the recommendations of the 1st Respondent to make a final determination by her (the Land Commissioner). This direction has not been complied with by the 1st Respondent.

It is thereafter the Petitioner has filed this application before this Court seeking the above-mentioned relief against the 1st Respondent.

The learned State Counsel for the Respondents admits that the 3rd Respondent Land Commissioner is the proper authority to make decisions under the State Lands Ordinance, No. 8 of 1947, as amended. There is no complaint that the Land Commissioner acted *ultra vires* when sending P18 to the 1st Respondent.

The Petitioner does not ask this Court to direct the Respondents to issue a Permit in her name in respect of this portion of land. All what the Petitioner seeks is to allow the Land Commissioner to hold an inquiry with the participation of the Petitioner and make a determination before sending the Quit Notice. To put differently, to compel the Divisional Secretary to comply with the

direction given by the Land Commissioner by P18. Having regard to the facts and circumstances of this case, I am convinced that the Petitioner is entitled to that relief.

In my view, the learned State Counsel should have at the very beginning agreed to it. Instead of doing it, the learned State Counsel (no doubt with the best of intentions) has got another survey done (before objections were filed) and thereafter has decided to file objections as according to the learned Counsel the Petitioner's request is unreasonable. That is not what the Petitioner expects and not what the law expects. Who shall assess the reasonableness or unreasonableness of the Petitioner's claim to continue to stay in the land? With respect, not the learned State Counsel, but the Land Commissioner.

The new documents including the new Plan and the Report thereto tendered with the objections of the 4th Respondent have been prepared after the institution of the action by the 4th Respondent (at the behest of the learned State Counsel). The rights of parties shall be determined at the institution of the action. In comparison with the old Plan P7, learned counsel for the Petitioner submits that the new Plan and the Report are biased and particularly prepared to defeat the application of the Petitioner.

Taking all the circumstances into account, I issue the writ of certiorari against the 1st Respondent as prayed for in paragraph (b) of the prayer to the amended petition. The Quit Notice marked P17A is quashed. Let the Land Commissioner hold the

inquiry as contemplated in P18 and make a determination in accordance with the law. I make no order as to costs.

Judge of the Court of Appeal