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

In the matter of an application for an order in the nature of Writ of *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

C. A. WRIT/32/2014

1. Dissanayake Mudiyansalage Wijesuriya Bandara

2. Samarakoon Mudiyanselage Bandara Menike

Both of Nuwarakade, Meegahakiwula

PETITIONERS

VS

1. Divisional Secretary, Divisional Secretariat Office, Meegahakiwula

2. Attorney General, Attorney General's Department Colombo 12

RESPONDENTS

BEFORE : **M. M. A. GAFFOOR, J.**

COUNSEL : Dr. Sunil Cooray for the Petitioners
U. P. Senasinghe, SC for the Respondents

WRITTEN SUBMISSIONS TENDERED ON : 31.08.2018 & 09.05.2017 (by the Petitioners)

04.06.2017 (by the Respondents)

DECIDED ON : **14.12.2018**

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M. M. A. GAFFOOR, J.

The Petitioners have made this application seeking an order in the nature of a writ of *Certiorari* to quash the quit notice marked "H" dated 28.04.2011 (it has been issued on the 2nd Petitioner) on which the 1st Respondent had made an application to the Magistrate's Court of Badulla under State Lands (Recovery of Possession) Act No. 07 of 1979 as amended (the object of the said Act being to make provision for recovery of possession of state lands from persons in unauthorized possession of occupation thereof) to evict the Petitioners from the land in respect of which the said quit notice was issued is described in the schedule thereto, and is said to be a portion of lot 321 in Final Village Plan No. 613. And the Petitioners also seeking an interim order staying the execution of the ejectment order dated 10.01.2012 issued in Case bearing No. 33752 in the Magistrate's Court of Badulla.

The Petitioners in their Petition of appeal dated 04.02.2014 stated that as the 2nd Petitioner did not comply with the quit notice, the 1st Respondent instituted an action in the Magistrate's Court of Badulla (Case bearing No. 33752) against the 2nd Petitioner praying for the ejectment from land described in the schedule to the quite notice.

The 2nd Petitioner further stated that she was appeared in the said case and showed cause why she should not be ejected; and she averred that the land in dispute called "Pihillewatta" alias "Pihillegedara" as depicted in Lot 1-12 in Plan No. 3921 originally possessed by one D. M. Dingiri Banda and from 1988 it was possessed by one Kiri Banda who is the father of the 1st Petitioner and the husband of the 2nd Petitioner. The Petitioners further stated that during the period of 1988 to 1989 a portion in to the said land situated towards its Western boundary, where a tea kiosk was locate (the kiosk had originally run by said Dingiri Banda and after, Kiri Banda), was taken for the purpose of widening the road. At that time a boutique room belonging to Meegahakiula Pradeshiya Shabawa was given to the said Kiri Banda in lieu of the said tea kiosk.

The Petitioners also stated that whilst the said Kiri Banda was in possession of the said land as aforesaid, in or about December 1990 some 8 persons entered the said land and put up temporary boutique rooms by dispossessing said Kiri Banda from the said land and thereupon the said Kiri Banda instituted possessory action No. 394/L in the District Court of Badulla against the said persons (trespassers) and succeeded in his action as the District Court ordered to restore the said Kiri Banda in possession of the said land by the judgment dated 14.06.2001.

The Petitioners further stated that during the pendency of the said possessory action, said Kiri Banda died leaving his rights to said land in dispute to the Petitioners who continued to possess and enjoy the said (remaining portion of) land "Pihiliwatta" alias "Pihillegederawatta" (as depicted in Lot 1 to 12 in Plan No. 3921). The 2nd Petitioner by Deed of Gift bearing No. 7328 dated 21.04.2011 (marked as "F") has gifted her rights of the said land to her son. Thus, the Petitioners stated that at all times material to the present

application, the petitioners together with their predecessors have been in the possession of the said land for well over 70 years.

With regard to the quit notice from the 1st Respondent, the Petitioners stated that upon being summoned by the Magistrate's Court of Badulla, the 2nd Petitioner appeared and showed cause in writing (marked as "I") stating *inter alia* that the 1st Respondent had wrongfully and unlawfully made the said application under the State Lands (Recovery of Possession) Act and claimed that she had right to possess and occupy the said land on the basis of her aforesaid rights of the said land. She also stated that, she later came to know that the 1st Respondent had disclosed for the first time to the Magistrate's Court that the land in dispute had been acquired by the State under the order published in gazette dated 31.08.1996 under Land Acquisition Act, No. 9 of 1950 and the 1st Respondent had further stated in the said submissions that boutique room No. 9 belonging to Meegahakiwula Predheshiya Shabawa had been given to the husband of the 2nd Petitioner as compensation for acquiring the said land and that the said Kiri Banda had accepted the said compensation and therefore, no lawful right had been left over to the 2nd Petitioner to make any claim for the said land. Further the Petitioners stated that she had no opportunity to counter to the submissions made by the 1st Respondent. However, the learned Magistrate of Badulla by his order dated 10.01.2012 (marked "L") allowed the application of the 1st Respondent directing the 2nd Petitioner and her dependents in occupation of the said land to be ejected forthwith from the said land.

In this application, the Petitioners averred that no compensation whatever had been paid by the state in respect of the portion of said land which they have been uninterruptedly possessing and occupying for a long period over 70 years, though the 1st Respondent had submitted to Magistrate's Court in his (written) submissions that compensation had been paid to the said Kiri Banda,

therefore, the Petitioners' position is that the claim of the 1st Respondent regard to the compensation is totally incorrect, misleading and false.

In contrast, the Respondents submitted that the said land in dispute had been acquired by the Sate under Section 38(a) of Land Acquisition Act, by following the regular procedure for acquisition stipulated in said Act. To show these proper procedures, the Respondents had marked and annexed some documents (documents marked as "1R1" to "1R5", "1R5(a)" and "1R6" to "1R9").

After careful perusal of the above marked documents, it is clear that the Respondents had duly followed the proper legal procedures on showing a public purpose for acquisition, estimated value of the land, communication letter of public purpose to the original owners, consent letters to the acquisition subject to the payment of compensation and public notice under the Section 7 of the Acquisition Act.

In this case, the Respondents' main argument was that the said Kiri Banda was never the owner of the relevant land in dispute. They strongly stated that after taken the necessary arrangements for acquisition, an inquiry under Section 9 of the Land Acquisition Act was held by the predecessor in office of the 1st Respondent (Divisional Secretary), and a decision in respect of the claims was made under Section 10(1) (a). Prior to proceeding to publish the vesting order - 1R1, an award of compensation under Section 17 of Land Acquisition Act was also made awarding compensation to the three Claimants mentioned in Section 7 notice as decided by the Divisional Secretary after the aforesaid inquiry into the claims (these notices are marked as 1R6 and 1R7). They further stated that during these processes, the said Kiri Banda was in possession of this land as a tenant of the aforesaid claimants and was running a small scale temporary tea boutique thereon. Therefore, the said Kiri Banda

as a tenant running a business on this land, in lieu for the loss of his business due to the acquisition of this land by the State was allocated and handed over a shop in the newly constructed public market complex in 1986 which was duly accepted by the said Dingiri Banda who was the original owner of the said land and the tea kiosk. To prove this important fact, the Respondents have annexed two certified copies of the letter reflecting the decision to allocate and hand over a shop to the tenant are marked respectively as 1R8 and 1R9.

Therefore, the Respondents took up a position that subsequent to the acquisition, the petitioners' claiming to be heirs of Kiri Banda re-entered the land and was trying to gain the possession of the relevant land. Thus, the 1st Respondent took steps to evict the instant petitioners from the land in dispute by resorting to the provisions of the State Lands (Recovery of Possession) Act. The Respondents' above position strongly emphasized in their written submission as follows:

> "…the lawful owners of the relevant land had given their consent to the said acquisition and invariably, the names of the said claimants have been clearly indicated in 1R5, 1R5(a)."
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> "…if the said Kiri Banda had even a remotest interest to the title of the relevant land, his name would have been definitely indicated in the aforementioned 1R5 & 1R5(a). Because any reasonably prudent person would have promptly taken steps to put forth any potential claim in order to be recompensed for their property, especially, since the acquisition process is subject to such extensive notification regime to make aware any person having any degree of interest in the relevant lands." *(Page 5 of the Respondents' written submission dated 04.06.2017)*

Further, the Petitioners in their submission highlighted that the said Kiri Banda had been recognized as the lawful owner by the judgment of the District Court of Badulla in case No. 394/L. To counter this assertion, State Counsel for the Respondents' has argued that primarily, perusal of the plaint and the prayer in the said case No. 394/L clearly reveals that it was a possessory action to restore Kiri Banda to his possession in respect of the subject land; also the said Kiri Banda did not pray for a declaration that he is the lawful owner and especially, the said judgment reveals clearly that the Court never recognized or declared the said Kiri Banda as the lawful owner, rather, it merely said that the said Kiri Banda had enjoyed long term possession of the land and thus it is ordered that he be resorted to his possession (*vide page 26 of the said judgment*). Therefore, the Respondents strongly submitted that the said Kiri Banda never had ownership in respect of the land subject to the instant writ application.

In addition to these averments and arguments, Counsel for the Petitioners had brought an important contention that the land in dispute having been allegedly vested in the Sate on being acquired to the State under the Land Acquisition Act, contained in the same Act, and not under the provisions contained in a different Act which is the State Lands (Recovery of Possession) Act. With the reference of this Court's decision in **EDWIN VS TILLAKARATNE** [(2001) 3 SLR 34] he further argued that the 1st Respondent did not have any power to take steps under the State Lands (Recovery of Possession) Act, in view of the existence of Section 42 of the Land Acquisition Act.

The excerpts of the mentioned crucial decision in *Edwin* case as follows:

> *"It is manifest that the procedure adopted by the 1st respondent in seeking to evict the petitioner in pursuance of the provisions of the State Lands (Recovery of Possession) Act, No. 7 of 1979 is*

misconceived. I think Section 42(1) of the Land Acquisition Act no. 9 of 1950 (as amended) caters to a situation such as this we have met with in this case…" (Emphasized added, page at 33)

"But, when the statutory scheme embodied in the relevant Act (Land Acquisition Act) itself provides a procedure for ejectment or remedy, it must, in the generality of cases, be taken to exclude any other procedure or remedy. One has to follow the procedure given in the Land Acquisition Act itself to remove the petitioner, more so as the petitioner is not a person who was in unauthorized occupation but, as explained above,, clearly "a person interested" within the meaning of section 7 of the said Act, This is a case where the right to eject the petitioner existed solely by virtue of the Land Acquisition Act and where the state acquired ownership also by virtue of that Act. And as such, rights as had vested in the state by virtue of the acquisition under the relevant stature can be enforced only in the way contemplated and authorized by the same statute. The right (of ownership) and remedy (procedure in ejectment) - after the state had acquired the land - are both given by the same Act, so to speak, uno flatu (in one breath), and one cannot be dissociated or disentangled from the other."(Page at 39)

Therefore, Counsel for the Petitioners submitted that where special rights are created by a statute and that same statute provides the special machinery for the enforcement of those rights, it is not lawful to resort to any other procedure for the enforcement of those rights.

However, I do not think the above decision relied upon by the Petitioners could be equated to the case in hand, and the decision in the case of **EDWIN**

VS. TILLEKARATNE (supra) could be read subject to the relevant facts of the instant case.

In *Edwin* case, the petitioner was a lessee or a tenant under the person from whom the land was acquired in 1972 under the Land Acquisition Act and he was still in occupation of the land in dispute where proceedings of acquisition process had not been completed. During the pendency of the acquisition process, the respondent brought action to evict the petitioner under the State Lands (Recovery of Possession) Act; therefore, it is clear in this case that the said petitioner was in a danger that he could be evicted without being compensated according to the Land Acquisition Act, thus, the Court of Appeal opinioned that if the respondent permitted to evict the petitioner under State Lands (Recovery of Possession) Act, his rights would be deprived or denied from receiving the compensation. Therefore, Court was not allowed the respondent to act under State Lands (Recovery of Possession) Act.

The following excerpt of the decision is important:

> ***"…If the petitioner is permitted to be ejected by invoking the State Lands (Recovery of Possession) Act - he would be deprived of or denied the compensation to which he is entitled as matter of law or of right - since there is no sanction or provision for the payment of compensation (in case he is found to be entitled to such compensation after inquiry) under the Act in terms of which the quit notice, sought to be quashed on this application, had been issued by the 1st respondent…"*** *(Vide page 37 of the judgment)*

Further, learned State Counsel for the Respondent also in answering the above alleged argument of the Petitioners, he stated that Section 42 of the

Land Acquisition Act makes it amply clear that the provision therein have to be resorted to only if there is resistance to taking of the possession and he further stated that there was no resistances whatsoever either from the lawful owners or the said Kiri Banda for the State to take possession of the instant land. I incline to agree with this submission.

Furthermore, I wish say that the Writ Order is a matter of *ex debito justitia* from this Court.

In **JAYAWEERA VS. ASSISTANT COMMISSIONER OF AGRARIAN SERVICES RATNAPURA AND ANOTHER**, [(1996) 2 SLR 70], the Court of Appeal held that:

> *"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."*

In **COLLETTES LTD. VS. COMMISSIONER OF LABOUR AND OTHERS**, [(1989) 2 SLR 06], the Court held that:

> *"It is essential, that when a party invokes the writ jurisdiction or applies for an injunction, all facts must be clearly, fairly and fully pleaded before the court so that the court would be made aware of all the relevant matters."*

In the Case of **MENDIS VS. LAND REFORM COMMISSION AND OTHERS**, [S.C. Appeal No. 90/2009, S.C Minutes dated 12.02.2016], Gooneratne, J. held that:

> *"Even if such grounds to issue a Writ of Certiorari and Mandamus could be established, court has also to consider whether the Petitioners-Petitioners are disentitled to the relief prayed for even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative writs if it could be established and Petitioners are guilty of/and or disentitled to the remedy, based on (a) Laches/undue delay (b) Willful suppression/misrepresentation of material facts (c) Acquiescence (d) Grave public/administrative inconvenience (e) Futility (f) Availability of alternative remedy (g) Locus standi."* *(Page at 12)*

In the circumstances, I am of the opinion that the Petitioners have no valid ground in seeking the reliefs prayed for in this writ application.

Therefore, I dismiss the application and the interim order without Costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL