

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

1. Kurukulasooriya Patricia
Iranganie Fernando,
Madhu Junction,
Madu Road.
 2. Warnakula Patabendige Aruna
Pradeep Perera,
Madhu Junction,
Madu Road.
- Petitioners

CASE NO: CA/WRIT/326/2015

Vs.

Francis Sandira Sathiyasothi,
Divisional Secretary,
Divisional Secretariat,
Madhu.
And 6 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena with Chamara
Nanayakkarawasam for the Petitioner.
Manohara Jayasinghe, S.S.C., for the
Respondents.

Decided on: 13.03.2019

Samayawardhena, J.

The petitioners, mother and son respectively, filed this application seeking (a) to quash by way of writ of certiorari the Quit Notice served on the 1st petitioner under the State Lands (Recovery of Possession) Act to evict the 1st petitioner from the land described in the said Quit Notice and the Magistrate's Court proceedings initiated thereon; (b) to prohibit the respondents by way of writ of prohibition from taking any steps under the said Law to evict her from the land until a Land Kachcheri is held; and (c) to direct the 1st respondent, Divisional Secretary of Madhu, by way of writ of mandamus, to hold a Land Kachcheri in respect of this land.

Notwithstanding the petition is running into 37 pages with 99 paragraphs (except the prayer), and 50 documents annexed, the matter to be decided is very simple. I make use of this opportunity to make the general observation that pleadings shall be presented to Court without prolixity for otherwise Court will not be able to see the wood for the trees.

The petitioners admit that the land described in the Quit Notice is a State Land. That is why they want this Court to compel the Divisional Secretary of Madhu to hold a Land Kachcheri and to take steps to convey the land to the petitioners by way of a Grant.

The 1st petitioner in paragraph 20 of the petition admits that by Permit dated 25.01.1983 marked P9 issued under the Land Development Ordinance, the 1st petitioner got the land identified as LDO 24 Madhu Road, about 1 Acre in extent, which is the

adjoining premises to the one described in the Quit Notice. She is admittedly in possession of that Lot—LDO 24 Madhu Road. If she says that she has not been placed in full possession of that Lot, the learned Senior State Counsel for the 1st respondent was prepared to put her in full possession of that Lot. But she did not accept that offer for obvious reasons.

The parcel of land described in the Quit Notice in extent about 1 Acre, according to paragraph 51 of the petition, lies to the West of her Permit land—LDO 24 of Madhu Road.

It is her contention that they possessed that land with a successful business of a bakery and eatery for a long time until they were forced to flee due to LTTE problems.

In paragraph 45 of the petition she says that, after the civil war was over, when she returned to Madhu Road in June 2010 under the Government sponsored resettlement scheme to settle the internally displaced persons, she found that the said parcel of land which is now in dispute was being possessed by two former LTTE activists. In paragraph 57 she says, up to date, those two former LTTE activists are in possession of that land.

Writ is a discretionary remedy. The 1st petitioner has been given a parcel of land about 1 Acre in extent along Madhu Road by way of a Permit issued under the Land Development Ordinance. Now she wants the adjoining land also about 1 Acre in extent along Madhu Road. These are commonly known as business premises due to famous Madhu Church being close by.

This Court cannot by way of mandamus force the 1st respondent to hold a Land Kachcheri in respect of this land (and consider the application of the 1st respondent favourably). Land Kachcheris are conducted according to established procedures with strict guidelines to follow—vide *inter alia* R3-R5. They cannot be held in an ad hoc manner. Court cannot supervise the Land Kachcheris.

The allegation of the learned counsel for the petitioners that the land described in the Quit Notice is not identifiable is beside the point as the petitioner herself admits that the said State land lies to the West of her Permit Land—LDO 24. So long as her Permit land is secured, she does not need to worry about other State lands.

In paragraph 91 of the petition the learned counsel for the petitioners states that the affidavit filed before the Magistrate's Court is defective for the reason that, in the jurat, there is no mention whether the facts were affirmed to or sworn. At the beginning of the affidavit it is stated that the 1st respondent affirms to the facts therein. Hence there is no necessity repeat it in the jurat—vide *De Silva v. L.B. Finance Ltd. [1993] 1 Sri LR 371*.

I see no reason to quash the Quit Notice and Magistrate's Court proceedings initiated thereon.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal