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

In the matter of an application for a writ in the nature of Writ Certiorari and Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Rajapaksha Pathiranage Namal Kumara
No. 30/1/3, "Namal Sevana",
Naranampitiya, Mulatiyana.

Petitioner

Case No: CA (Writ) 240/2017

Vs.

Susantha Attanayake
Divisional Secretary,
Mulatiyana, Divisional Secretariat,
Mulatiyana.

Respondent

Before: Janak De Silva J.

Counsel:

Ranjan Suwandaratna P.C. with Anil Rajakaruna and Y.P. Matugama for the Petitioner

Nuwan Pieris State Counsel for the Respondent

Written Submissions tendered on:

Petitioner on 21.01.2019

Respondent on 08.11.2018

Argued on: 06.03.2019

Decided on: 04.04.2019

Janak De Silva J.

The Petitioner is seeking a writ of certiorari quashing the quit notice dated 28.02.2017 marked A3 and the application no. 14619 filed by the Respondent in the Magistrate Court of Deyinadara marked A1 and A2 dated 30th March 2017.

The case of the Petitioner is that he is the owner of the land forming the subject matter of the quit notice marked A3 issued under the State Lands (Recovery of Possession) Act as amended (Act) and that it is not state land within the meaning of the Act. Accordingly, it is his position that the Respondent acted ultra vires in issuing the quit notice dated 28.02.2017 marked A3 and filing the application no. 14619 in the Magistrate Court Deyinadara marked A1 and A2 dated 30th March 2017.

The Respondent on the other hand contends that the land in dispute is state land within the meaning of the Act and as such recourse can be had to the Act to evict the Petitioner. It is his position that the said land is vested in the Land Reform Commission. In terms of Section 18 of

the Act land vested in or owned by or under the control of the Land Reform Commission established by the Land Reform Law, No.1 of 1972 is state land within the meaning of the Act.

In terms of Section 9(1) of the Act, at an inquiry held under Section 8 of the Act the person who has been summoned in terms of section 6 of the Act can only establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. He cannot contest any of the matters stated in the application made under section 5 of the Act. One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority State land. This fact cannot be contested by the person summoned.

However, this prohibition applies only to the proceedings before the Magistrates Court under the Act. It is thus possible, at least in theory, to contest the opinion of the competent authority before another forum. However, the important question is whether it is possible to do so in writ proceedings.

This question is of great significance given the facts of the instant case. The Petitioner claims ownership to the land in dispute based on two deeds marked A10 and A11 where the land is described as lot E shown in plan no. 02 dated 20.07.1907 containing in extent A.04 R.01 P. 15 whereas the quit notice marked A3 describes the land as lot A of F.V.P. 92. Assuming that the Petitioner has good and valid title to the land described in A10 and A11 it is important to ascertain whether the land described in those deeds A10 and A11 is the same or part of the land included in lot A of F.V.P. 92. Parties are at variance on this and hence it is a disputed question of fact.

Article 140 of the Constitution mandates that this Court must exercise the writ jurisdiction conferred thereby "according to law". This phrase has consistently been interpreted by our courts as meaning English Common law.

Administrative Law by H. W. R. Wade and C. E. Forsyth, (9th Ed. at page 260) reads as follows:

> "Although the contrast between questions which do and do not go to jurisdiction was in principle clear-cut, it was softened by the court's unwillingness to enter upon disputed questions of fact in proceedings for judicial review. Evidence of facts is normally given on affidavit: and although the rules of court made provision for cross examination, interrogatories, and discovery of documents, and for the trial of issues of fact, the court did not often order them. The procedure was well adapted for trying disputed facts. If the inferior tribunal had it self-tried them, 'the court will not interfere except upon very strong grounds. There has to be a clear excess of jurisdiction' without the trial of disputed facts de novo. The questions of law and questions of facts were therefore to be distinguished, as was explained by Devilin J. (R. v Fulham etc. Rent Tribunal exp. Zerek).
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> Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there. But where the dispute turns to a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere. Lord Wilberforce (R v Home Secretary exp Zamir) similarly described the position of the court, which hears applications for judicial review:
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> It considers the case on affidavit evidence, as to which cross examination, though allowable does not take place in practice. It is, as this case will exemplify, not in a position to find out the truth between conflicting statements.
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> In case of conflict of evidence, the court will not interfere in the decision, where there is evidence to justify a reasonable tribunal reaching the same conclusion."

Our courts have consistently held that it will not exercise writ jurisdiction where the facts are in dispute [*Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri.L.R. 471]. The Supreme Court has in *Dr. Puvanendran and another v. Premasiri and two others* [(2009) 2 Sri.L.R. 107] [2009 BLR 65] held that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.

The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.

In fact, in *Wijenayake and others v. Minister of Public Administration* [(2011) 2 Sri.L.R. 247] where the facts are somewhat similar to the instant case, this Court held that the material furnished suggest that a title/boundary dispute is agitated before the Kurunegala District Court and as such finality (subject to appeal) of title and boundary of the land in dispute lies in the action filed in the District Court of Kurunegala and that these are all disputed facts which cannot be decided in a writ court.

Accordingly, I hold that on the facts of the instant case it is not a fit and proper case to exercise writ jurisdiction in relation to the quit notice marked A3.

The Petitioner has also sought a writ of certiorari to quash the application no. 14619 filed by the Respondent in the Magistrate Court of Deyinadara marked A1 and A2 dated 30th March 2017. In *Dayananda v. Thalwatte* [(2001) 2 Sri.L.R. 73] this Court held that the institution of proceedings in the Magistrates Court in terms of a quit notice is not a determination affecting legal rights warranting the issuance of a Writ of Certiorari. Hence that part of the application must also fail.

For the foregoing reasons the application of the Petitioner is dismissed with costs.

Earlier, a stay order was issued *ex parte* by this Court and conveyed to the Magistrate, Magistrate's Court, Deiyandara. Accordingly, the Registrar is directed to send a certified copy of this judgment to the Magistrate, Magistrate Court of Deiyandara.

Judge of the Court of Appeal