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

In the matter of an Application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Certiorari and Mandamus

CA (Writ) Application No. 421/2013

B.T.M.R.P. Maddegama
No. 116/A, Ganegama, Pelmadulla.

PETITIONER

Vs.

1. Land Reform Commission,
   No. C. 82, Gregory's Avenue,Colombo 7.

2. Sampath Subasingharachchi,
   Chairman,
   Land Reform Commission,
   No. C. 82, Gregory's Avenue,Colombo 7.

3. Oman Ekanayake
4. Ruwan Ekanayake
5. Stephan Ekanayake
6. Sumana Ekanayake
7. Dharma Ekanayake
   All of whom at Malwatta, Godakawela.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: Thisath Wijayagunewardena with Janaka Balasuriya for the Petitioner

S.S.Sahabandu, P.C with Udayanthi Rajapakse for the 1st and 2nd Respondents

Shihan Wijayagunewardena for the 3rd and 5th Respondents

Written Submissions: Tendered on behalf of the Petitioner on 30th August 2018 and 9th January 2019

Tendered on behalf of the 1st and 2nd Respondents on 18th September 2018

Tendered on behalf of the 3rd and 5th Respondents on 20th September 2018

Decided on: 7th May 2019

Arjuna Obeyesekere, J

When this matter was taken up for argument on 19th July 2018, the learned Counsel for all parties moved that this Court pronounce judgment on the written submissions that would be tendered by the parties.

The issue that arises for determination in this application is the procedure that should be followed by the 1st Respondent, the Land Reform Commission where there are competing claims for ownership of lands in declarations made to the Land Reform Commission. A determination of this issue requires this Court to

engage in a discussion on several sections of the Land Reform Law, No. 1 of 1972, as amended and in particular on the procedure set out in Section 4 of the said Law.

The Land Reform Law No. 1 of 1972 (the Law) is the first law enacted under the Constitution of 1972 by the National State Assembly of the Republic of Sri Lanka, and came into operation on 26th August 1972. In its long title, the said Law was stated to be a "Law to establish a Land Reform Commission, to fix a ceiling on the extent of agricultural land that may be owned by persons, to provide for the vesting of lands owned in excess of such ceiling in the Land Reform Commission and for such land to be held by the former owners on a statutory lease from the Commission, to prescribe the purposes and the manner of disposition by the Commission of agricultural lands vested in the Commission so as to increase productivity and employment, to provide for the payment of compensation to persons deprived of their lands under this Law and for matters connected therewith or incidental thereto."

Section 3 of the Law reads as follows:

> "On and after the date of commencement of this Law the maximum extent of agricultural land which may be owned by any person, in this Law referred to as the "ceiling", shall
>
> (a) if such land consists exclusively of paddy land, be twenty-five acres; or

(b) if such land does not consist exclusively of paddy land, be fifty acres, so however that the total extent of any paddy land, if any, comprised in such fifty acres shall not exceed the ceiling on paddy land specified in paragraph (a).

In terms of Section 2 of the Law, the Land Reform Commission has been established with the object of ensuring that no person shall own agricultural land in excess of the said ceiling, and to take over agricultural land owned by any person in excess of the ceiling and to utilize such land in a manner which will result in an increase in its productivity and in the employment generated from such land.

In terms of Section 3(2), "any agricultural land owned by any person in excess of the ceiling on the date of commencement of this Law shall as from that date be deemed to vest in the Commission, and be deemed to be held by such person under a statutory lease from the Commission."

The requirement for a person who holds agricultural land over and above the ceiling to declare such agricultural land is provided for in Section 18(1) of the Law, which reads as follows:

"The Commission may, by Order published in the Gazette ...., direct that every person who becomes the statutory lessee of any agricultural land shall, within a month from the date of the publication of the Order, or of becoming a statutory lessee under this Law make a declaration, in this Law referred to

as a "statutory declaration", in the prescribed form of the total extent of the agricultural land so held by him on such lease.

Section 19 of the Law contains the provisions that shall apply upon the receipt by the Land Reform Commission of a statutory declaration made under section 18:

"(a) The Commission shall, as soon as practicable, make a determination, in this Law referred to as a "statutory determination", specifying the portion or portions of the agricultural land owned by the statutory lessee which he shall be allowed to retain. In making such determination the Commission shall take into consideration the preference or preferences, if any, expressed by such lessee in the declaration as to the portion or portions of such land that he may be allowed to retain.

(b) The Commission shall publish the statutory determination in the Gazette and shall also send a copy thereof to such lessee by registered letter through the post. Such determination shall be final and conclusive, and shall not be called in question in any court, whether by way of writ or otherwise."

A detailed structure of the Law has been set out by the Supreme Court in **Jinawathie and others vs Emalin Perera**[1].

[1] 1986 (2) Sri LR 121.

The Petitioner claims that he is a co-owner of lands situated within the Malwatte nindagama, Ratnapura. The pedigree relating to the said land and the manner in which the Petitioner and his predecessors in title have derived ownership to the said land have been set out in paragraph 6 of the petition. The Petitioner claims further that his predecessors in title have been in uninterrupted and undisturbed possession of the said nindagama for a period of over 300 years. The Petitioner has stated that the title of the said declarants to the said nindagama have been upheld by the District Court of Ratnapura in Case Nos. 185 and 1175, as evidenced by the Decrees in the said cases, annexed to the petition marked '**X6(iv)**' and '**X6(vii)**', respectively.

The Petitioner states that in 1974, his predecessors in title had made two statutory declarations bearing Nos. R/175 and R/176 in terms of the Land Reform Law in respect of several lands including the said Malwatte nindagama. The Petitioner states that even though the 1st Respondent had issued the Statutory Determinations in terms of Section 19(2) of the Law to the said predecessors in respect of other lands, the said nindagama had not formed part of the said Statutory Determinations.[2]

The Petitioner states that one Hatanaarchchi Mohottalage Mudiyanse, who is the predecessor in title of the 3rd – 7th Respondents too had made a statutory declaration bearing No. R/106 under the Land Reform Law in respect of the said nindagama. The 3rd – 7th Respondents have set out in their Statement of Objections, their chain of title to the said nindagama. The 3rd – 7th Respondents

[2] Copies of the said determinations have been annexed to the petition marked 'X1' - 'X4'.

too have claimed that their chain of title has been proved in District Court of Embilipitiya Case No. 9409/L,[3] which has been disputed by the Petitioner and, in District Court of Embilipitiya Case No. 8289/L,[4] where on appeal, a re-trial has been ordered. This Court observes that the title pleaded by the Petitioner as well as the title of the 3rd – 7th Respondents originate from the same source, namely a sannasa issued in around 1683 by King Rajasinghe II to Makandure Dharmalankara Seneviratne Panditha Mudaliyar.

Thus, with two parties making separate statutory declarations in respect of the same land, the provisions of Section 4 of the Law would have to be followed by the Land Reform Commission. Section 4 is re-produced below:

> "(1) Where there is a dispute between parties as to the ownership of any agricultural land which is subject to the ceiling the Commission may, after such inquiry as it may deem fit, make an interim order declaring one of such parties to be entitled to the possession of such agricultural land. Every interim order shall be published in the Gazette and shall come into force on the date of such publication.
>
> (2) Within two weeks of the publication of the interim order in the Gazette the Commission of its own motion or any of the parties to the dispute referred to in subsection (1) may refer such dispute to a court of competent jurisdiction for final adjudication.

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[3] Copy of the judgment has been marked as 'R4b'.
[4] Copy of the judgment has been marked as 'R5b'.

(3) Till the final order is made by a court on such reference, the interim order shall be valid and effectual and shall not be called in question in any court by way of writ or otherwise. So long and for so long only as the interim order is in force the person declared by such interim order to be entitled to possess the agricultural land shall be deemed for the purpose of section 3 to be the owner of such agricultural land.

(4) As long as the interim order is in force the Commission shall not alienate the agricultural land to which the interim order relates:

Provided, however, that, where no reference has been made under subsection (2), the interim order made under subsection (1) shall have the effect of a final order under subsection (3).

This Court is of the view that Section 4 of the Law does not confer power on the Land Reform Commission to make a final determination with regard to the ownership of the land in dispute.[5] The legislature has quite correctly conferred that power on a Court of competent jurisdiction, subject to the proviso to Section 4(4). Thus, when there are two competing claims to what appears to be the same land, it is mandatory that the Land Reform Commission conducts an inquiry it may deem fit. This Court is also of the view that the Land Reform Commission must, considering the facts and circumstances of each case, make an interim order, in order to give effect to the intention of the legislature that all disputes with regard to ownership must be determined by a Court of competent jurisdiction.

[5] The 1st Respondent has quite correctly admitted in paragraph 1 of its written submissions that it does not have the expertise to determine questions of ownership.

The Petitioner states that the Land Reform Commission, instead of holding an inquiry in terms of Section 4(1), had made a statutory determination in favour of Hatanaarchchi Mohottalage Mudiyanse. The said determination has been published in the Extraordinary Gazette Notification No. 527/13 dated 14th October 1988, annexed to the petition marked '**X7**'. The Petitioner states that pursuant to objections raised by the Petitioner's father that a determination could not have been made under Section 19 of the Law when there was a dispute to the title, the Land Reform Commission, acting on the advice of the Hon. Attorney General, had cancelled the said determination '**X7**'. The notice cancelling '**X7**' had been published in Extraordinary Gazette Notification No. 1181/19 dated 25th April 2001 and has been annexed to the petition marked '**X8**'.[6]

The Petitioner has annexed to the petition marked '**X9**', a letter dated 4th April 2001 sent by the 1st Respondent to a predecessor in title informing him of such cancellation. '**X9**' reads as follows:

> "මල්වත්ත නින්දගමෙන් ර/106 ප්‍රකාශයට සිය ව්‍යවස්ථාපිත නිශ්චය සඳහා ඉඩම් ලබා දෙමින් මෙම කොමිෂන් සභාව විසින් ප්‍රසිද්ධියට පත් කරන ලද ඉහත අංක හා දින දරන අති විශේෂ ගැසට් පත්‍රය ගරු නීතිපති තුමාගේ උපදෙස් මත අවලංගු කිරීමටත් එසේ අවලංගු කළ පසු පනතේ 4 (1) වගන්තිය යටතේ සියලු පාර්ශවයන් කැඳවා පරීක්ෂණයක් කර ඉදිරී කටයුතු කිරීමටත් 2000-12-29 දින පැවති කොමිෂන් සභාව විසින් තීරණය කරන ලද බව කරුණාවෙන් දන්වම්."

It is apparent from '**X9**' that the reason for the cancellation of the said determination '**X7**' is the failure of the Land Reform Commission to conduct an inquiry under Section 4(1).

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[6] The cancellation of 'X7' had not been challenged by the 3rd – 7th Respondents.

According to a letter dated 3rd August 2001 annexed to the petition marked '**X10**', the Petitioner's predecessor in title had been requested by the 1st Respondent to participate at an inquiry that is scheduled to be held under Section 4 of the Law for the following purpose - "මල්වත්තේ නින්දගම නැමති ඉඩමේ ඔබගේ ව්‍යවස්ථාපිත නිශ්චයන් වෙන් කිරීම සඳහා ඉදිරි කටයුතු කිරීම වෙනුවෙන්".

The Petitioner claims that even though he participated at the said inquiry which had been held over several years, the Land Reform Commission failed to inform him of the outcome of the said inquiry, although he had sent several reminders. The Petitioner states that 12 years later, in 2013, the Land Reform Commission, without informing the Petitioner of the outcome of the inquiry that was conducted in terms of Section 4(1) of the Law, published the following notice in Extraordinary Gazette No. 1812/3 dated 27th May 2013, annexed to the petition marked '**X28**':

"19 වගන්තිය යටතේ පළ වූ ව්‍යවස්ථාපිත නිශ්චය අංක 4324 නැවත වලංගු කිරීම

අංක 527/13 හා 1988 ඔක්තොබර් මස 14 වැනි දින දරන ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ අති විශේෂ ගැසට් පත්‍රයේ ගොඩවෙල, මල්වත්තේ පදිංචි හටන්අච්චි මොහොට්ටාලලාගේ මුදියන්සේ මහතාගේ විශේෂ අංක ර/106 දරන ප්‍රකාශනයට අදාලව අංක 4324 යටතේ පළ වූ ව්‍යවස්ථාපිත නිශ්චය අවලංගු කරන ලද අංක 1181/19 හා 2001 අප්‍රේල් මස 25 වැනි දින දරන අති විශේෂ ගැසට් පත්‍රය මෙයින් අවලංගු කරනු ලැබේ.

අංක 1181/19 - 2001 අප්‍රේල් මස 25 වැනි දිනැති අති විශේෂ ගැසට් පත්‍රය අවලංගු කිරීම තුළින් නැවත අංක 527/13 හා 1988 ඔක්තොබර් මස 14 වැනි දින දරන අති විශෙෂ

ගැසට් පත්‍රයේ ව්‍යවස්ථාපිත නිශ්චයඅංක 4324 යටතේ පළ වූ ව්‍යවස්ථාපිත නිශ්චය වලංගු බවට මෙයින් ප්‍රකාශ කරමි. "

Being dissatisfied with the said decision, the Petitioner invoked the Writ jurisdiction of this Court, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the decision of the 1st Respondent to cancel the Gazette Notification marked '**X8**';

b) A Writ of Certiorari to quash the said Gazette Notification marked '**X28**';

c) A Writ of Mandamus to compel the 1st Respondent to make an interim order under Section 4(1) of the Law and/or to hold a fresh inquiry into the said dispute between the Petitioner and the 3rd – 7th Respondents.

Before considering the legality of '**X28**', there are two important matters that this Court would like to refer to.

The first is that the cancellation by the 1st Respondent of the statutory determination '**X7**' by way of the notification '**X8**' was an admission on the part of the 1st Respondent that it cannot issue a Statutory Determination in respect of a land where there is a dispute relating to its ownership. In fact, in its Statement of Objections, the 1st Respondent has admitted that Hatanaarchchi Mohottalage Mudiyanse made Statutory Declaration No. R/106 in respect of the land referred

to by the Petitioner,[7] that the Petitioner's predecessors too made a declaration in respect of portions of the said land,[8] and that there is therefore a land dispute.[9] In this factual background, this Court is of the view that it was mandatory upon the Land Reform Commission to make an interim order as provided for by Section 4(1) of the Law, thereby enabling the parties to refer the dispute relating to ownership to a Court of competent jurisdiction.

The second matter is that the 1st Respondent, by issuing the letter '**X9**' has admitted that it is under a statutory obligation to conduct an inquiry in terms of Section 4(1) of the Law. It is not in dispute that an inquiry was in fact held between the parties relating to the said dispute.[10]

The effect of '**X28**' is that the statutory declaration of the 3rd – 7th Respondents has been accepted and the statutory determination '**X7**' has been restored. This Court is of the view that, as admitted by the Land Reform Commission itself,[11] the Land Reform Commission did not have the power to issue the statutory determination '**X7**' in the first instance, in view of the competing claims to the ownership of the said land and due to the failure to have an inquiry. Thus, on the face of it, '**X28**' is illegal, as there still exists a dispute with regard to ownership of the said land, which needs to be resolved and therefore, a Statutory Determination could not have been made.

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[7] Paragraph 12.
[8] Paragraph 13.
[9] Paragraph 13.
[10] Paragraph 17 of the Statement of Objections of the Land Reform Commission.
[11] Paragraphs 12 and 13 of the Statement of Objections.

The decision in '**X28**' to accept the statutory declaration of the predecessors of the 3rd – 7th Respondents gives rise to several issues. The Land Reform Commission is required in terms of Section 4(1) of the Law to inquire into the competing claims in a manner "as it may deem fit". Thus, while the manner in which the inquiry is to be conducted has been left to the discretion of the 1st Respondent, this Court is of the view that the 1st Respondent must afford the parties a proper hearing and thereafter inform its decision to the parties at the end of the inquiry. It is not in dispute that the Land Reform Commission did not conclude the inquiry. It is not in dispute that the Land Reform Commission failed to inform its decision to the Petitioner or the 3rd – 7th Respondents. Furthermore, it is not in dispute that the Land Reform Commission failed to provide any reasons for its decision encapsulated in '**X28**'.

Given the consequences of accepting a statutory declaration of one party and making a statutory determination in terms of the said declaration, especially in view of the fact that such decision affects the property rights of one party, this Court is of the view that the 1st Respondent was required to provide reasons for its decision, which the Land Reform Commission has failed to do.

The Land Reform Commission has not even stated to this Court, in its Statement of Objections the outcome of the inquiry that it conducted from 2001 or the reasons that led to the publication of '**X28**'. It is thus clear that the 1st Respondent has failed to give reasons for its decision in '**X28**', not only to the Petitioner but even to this Court.

The duty to give reasons for a decision has been exhaustively dealt with by the Supreme Court in **Hapuarachchi and others v. Commissioner of Elections and another**[12] where it was held as follows:

> "Accordingly, an analysis of the attitude of the Courts since the beginning of the 20th century clearly indicates that despite the fact that there is no general duty to give reasons for administrative decisions, the Courts have regarded the issue in question as a matter affecting the concept of procedural fairness. Reasons for an administrative decision are essential to correct any errors and thereby to ensure that a person, who had suffered due to an unfair decision, is treated according to the standard of fairness. In such a situation without a statement from the person, who gave the impugned decision or the order, the decision process would be flawed and the decision would create doubts in the minds of the aggrieved person as well of the others, who would try to assess the validity of the decision. Considering the present process in procedural fairness vis-a-vis, right of the people, there is no doubt that a statement of reasons for an administrative decision is a necessary requirement."

In **Wijepala v Jayawardene**[13] Mark Fernando, J considered the necessity to give reasons, at least to this Court, and held as follows:

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[12] 2009 (1) Sri L.R. 1.

[13] (S.C. (Application) No. 89/95 – S.C. Minutes of 30.06.1995; referred to in Deepthi Kumara Gunaratne and others vs Dayananda Dissanayake, Commissioner of Elections and another; SC (FR) 56/2008; SC Minutes of 19th March 2009.

"Although openness in administration makes it desirable that reasons be given for decisions of this kind, in this case I do not have to decide whether the failure to do so vitiated the decision. However, when this Court is requested to review such a decision, if the petitioner succeeds in making out a prima facie case, then the failure to give reasons becomes crucial. If reasons are not disclosed, the inference may have to be drawn that this is because in fact there were no reasons -and so also, if reasons are suggested, they were in fact not the reasons, which actually influenced the decision in the first place"

The same view was taken by the Supreme Court in **Karunadasa vs Unique Gem Stones Limited**[14] where Mark Fernando, J held as follows:

"To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a **reasoned** consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd respondent's failure to produce the 3rd respondent's recommendation thus justified the conclusion that there **were** no valid reasons, and that Natural Justice had not been observed."

[14] 1997 (1) Sri L.R. 256

If this Court applies the test laid down in **Hapuarachchi's** case, '**X28**' is liable to be quashed by a Writ of Certiorari due to the failure on the part of the Land Reform Commission to give reasons for its decision. If this Court were to apply the more lenient test laid down in **Karunadasa's** case, which this Court is willing to do, then the Land Reform Commission was under a duty to submit to this Court the material that it relied upon when it came to the conclusion that '**X7**' must be restored and that '**X8**' must be cancelled. The Land Reform Commission has failed in this respect too, which renders its decision in '**X28**' liable to be quashed by a Writ of Certiorari.

In **Administrative Law** by Wade, it has been stated as follows:[15]

> "The inquiries which matter most in administrative law are those which are required by statute before the minister may lawfully make some order. If some part of the statutory procedure has not been properly followed, or there has been a breach of natural justice, there will have been no valid inquiry and any order made in consequence, if challenged within any statutory time limit, can be quashed by the court. Legal irregularity here has a clear legal result."

It is indeed a matter of regret that a statutory authority in whom all agricultural land in excess of the ceiling stipulated in the Law was vested by statute, and in whom responsibility of a very high magnitude was bestowed by the Legislature,

[15] 11th Edition; page 796.

has chosen to act in such an irresponsible manner by publishing '**X28**'. State authorities must understand that wide powers have been bestowed on them in the public interest and that they are required to act in the best interests of the public, which unfortunately the 1st Respondent has not done.

In the above circumstances, this Court takes the view that the 1st Respondent acted outside the ambit of Section 4 of the Law when it restored the statutory determination in respect of the statutory declaration No. R/106. The said decision is therefore illegal and liable to be quashed by a Writ of Certiorari. This Court also takes the view that the 1st Respondent is guilty of procedural impropriety owing to the failure by the Land Reform Commission to give reasons for its decision and for that reason too, the aforementioned decision is liable to be quashed.

Taking into consideration all of the circumstances of this case, this Court issues a Writ of Certiorari to quash the decision of the 1st Respondent to cancel the said Gazette Notification '**X8**' and a Writ of Certiorari to quash the notification '**X28**'. This Court also issues a Writ of Mandamus directing the 1st Respondent to hear the parties as it may deem fit and to conclude the inquiry it commenced in 2001 under Section 4(1) of the Law and to make an interim order in terms of the law, together with reasons for such interim order, within 3 months from the date of this judgment. This Court makes no order with regard to costs.

Judge of the Court of Appeal