

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

In the matter of an Application for Orders in the nature of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A (Writ) Application No: 119/2013

Don William Warnaguptha Rajapakse,
No. 226, Dalupitiya Road,
Wattala.

PETITIONER

Vs.

1. K.P. Rangana Fernando,
Former Divisional Secretary of Kalpitiya,
C/o. Divisional Secretary,
Divisional Secretariat, Kalpitiya.
- 1A. Chathuraka Jayasinghe,
Former Divisional Secretary of Kalpitiya,
C/o. Divisional Secretary,
Divisional Secretariat, Kalpitiya.
- 1B. N.M. Nandana Somathilake,
Divisional Secretary
Divisional Secretariat,
Kalpitiya.
2. S.M.W. Fernando,
Former Surveyor-General,

- 2A. K. Thavalingam,
Former Surveyor-General,
- 2B. P.M.P. Udayakantha,
Surveyor-General,
Surveyor-General's Office,

All of Survey Department of Sri Lanka,
P.O. Box 506, No. 150, Kirula Road,
Narahenpita, Colombo 5.

3. K.T.C. Grero,
Senior Superintendent of Surveys,
Senior Superintendent of Survey's
Office, Puttalam.
4. W.S.A. Fonseka,
Superintendent of Surveys,
Superintendent of Survey's Office,
Puttalam.
5. M.R.J.N. Fernando,
Government Surveyor,
Survey Department of Sri Lanka,
No. 150, Kirula Road, Colombo 5.
6. A.R.M. Musadique,
Former Grama Niladhari of
No. 628/A, Kandakuliya, Kalpitiya,
C/o. Grama Niladhari,
No. 629/A, Kandakuliya, Kalpitiya,
- 6A. Sajeevani Maheshwaran,
Grama Niladhari
No. 629/A, Kandakuliya, Kalpitiya,

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: Shyamal Collure with A.P.Jayaweera and P.S.Amerasinghe for the
Petitioner

Ms. Maithri Amarasinghe Jayathilake, State Counsel for the
Respondents

Argued on: 25th October 2018

Written Submissions: Tendered on behalf of the Petitioner on 8th March
2019

Tendered on behalf of the Respondents on 15th
February 2019

Decided on: 9th May 2019

Arjuna Obeyesekere, J

The Petitioner states that by virtue of Deed of Transfer bearing No. 33452 dated 21st April 2011, annexed to the petition marked 'P1', he purchased the land named 'Echchan Kattu Thotem' situated in Kandakuliya, Kalpitiya. The purchase consideration has been given as Rs. 200,000. The said land, containing in extent 2A 1R 23P is depicted as Lot 1 in Plan No. 1700 dated 3rd June 2009, annexed to the petition marked 'P2'. The Petitioner states that to the best of his knowledge, the said land had been part of a larger land containing 7 acres in extent, which is duly registered at the Land and District Registrar's Office in Puttalam. An extract from the relevant folio has been annexed to the petition marked 'P5'.

The Petitioner has submitted with his petition, copies of Deed No. 12225 dated 12th March 2010¹ and Deed No. 4684 dated 10th November 2009² by which his predecessors in title had acquired ownership of the said land. The Petitioner states that the said land is bound on the North and the East by a path leading from the sea shore to the main road and on the South and West by land claimed by villagers.

The Petitioner claims that in December 2011, a notice has been exhibited on the said land, claiming it to be State land and accordingly requiring him to quit the said land. The 1st Respondent, the Divisional Secretary of Kalpitiya had subsequently instituted action in the Magistrate's Court of Puttalam,³ under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended (the Act) to have the Petitioner ejected from the said land. However, this action had been dismissed by the learned Magistrate on the basis that the quit notice issued on the Petitioner did not contain a date and therefore Court is unable to ascertain if the Petitioner had been given 30 days notice in terms of the Act.⁴

The Petitioner had thereafter been served with another quit notice dated 11th December 2012, issued in terms of Section 3 of the said Act, requesting the Petitioner and his dependants to deliver vacant possession of the land referred to in the said notice within the time stipulated therein. A copy of the said quit notice has been annexed to the petition marked '**P14**'. As the Petitioner did not comply with the said quit notice, the 1st Respondent had instituted action

¹ Annexed to the petition marked 'P3'.

² Annexed to the petition marked 'P4'.

³ Case No. 59038/12/P.

⁴ The case record including a copy of the Order dated 20th June 2012 has been annexed to the petition marked 'P12a'.

once again in the Magistrate's Court of Puttalam on 12th June 2013 under the provisions of the Act seeking to eject the Petitioner from the said land.⁵

The Petitioner thereafter filed this application, seeking *inter alia* the following relief:

1. A Writ of Certiorari to quash the quit notice issued by the 1st Respondent annexed to the petition marked 'P14' under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, seeking to eject the Petitioner from the land referred to in the said quit notice.
2. A Writ of Prohibition, prohibiting the 1st Respondent from initiating or instituting action under the State Lands (Recovery of Possession) Act in respect of the land described in the quit notice.

It is the contention of the learned Counsel for the Petitioner that the 1st Respondent has instituted action against him in the Magistrate's Court even after he showed cause in the previous proceedings by submitting all the relevant documents to establish his title to the property in dispute. However, this Court, having examined the Order of the learned Magistrate⁶ observes that no such determination has been made by the learned Magistrate as to the establishment of title by the Petitioner and that the application has been dismissed due to the failure by the 1st Respondent to stipulate the date on the quit notice.

⁵ Case No. 49495.

⁶ *Supra*.

The primary contention of the Petitioner however is that the land in question is a private land and therefore, the issuance of the quit notice 'P14' is bad in law.

Prior to considering the legality of 'P14', it would be appropriate at this stage for this Court to lay down the structure of the Act. In terms of Section 3 of the Act, where the Competent Authority⁷ is of the opinion that any land is State land and that any person is in unauthorised possession or occupation of such land, he may issue a quit notice to the person in possession of the property identified in the said notice, requiring such person to vacate the said land with his dependants, if any, and deliver vacant possession of such land, on a date not less than thirty days from the date of the issue of the said quit notice. In terms of Section 3(1A) of the Act, 'no person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1)'.

In the event the person in possession fails to vacate such land and deliver vacant possession, the Competent Authority shall be entitled in terms of Section 5 of the Act to file an application for ejectment in the Magistrate's Court. The learned Magistrate is thereafter required to issue summons in terms of Section 6 of the Act to the person named in the said application to appear and to show cause as to why he should not be ejected from the land as prayed for in the application for ejectment. The scope of the Inquiry that has to be held by the learned Magistrate and the defences that could be taken up by a person against whom an application has been filed for ejectment have been set out in Section 9 of the Act, which reads as follows:

⁷ In this application, the Competent Authority would be the 1st Respondent.

"(1) At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may 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.

(2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5."

A very strict regime has therefore been put in place by the legislature as "the clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action".⁸

The Respondents have explained in their Statement of Objections the basis on which the 1st Respondent formed the opinion that the said land is State land. The first report in this regard, produced by the 1st Respondent marked '1R1' had been submitted by the Grama Niladhari of the area in July 2011 wherein he had identified this land as follows: "මෙම ඉඩම මුහුදු ගොඩවීමෙන් සැදුණු ප්‍රදේශය තුළ පිහිටා ඇත."

According to the 2nd Respondent, the Surveyor General, the Survey Department has surveyed the whole island in several sections and is in

⁸ Ihalapathirana vs Bulankulame, Director-General, U.D.A. 1988 (1) Sri LR 416 at 420.

possession of all the survey plans. A copy of the Plan relating to the Puttalam district has been produced by the 5th Respondent marked '5R3'. In August 2011, the 1st Respondent had made a request to survey the land in dispute.⁹ As the said land had not been surveyed prior to this request, the 5th Respondent who is a surveyor attached to the Survey Department together with the 6th Respondent had carried out a survey of the said land on 9th November 2011. The 5th Respondent has explained in his affidavit the manner in which the survey was carried out. He states that he had initially re-opened the boundaries based on the plans previously prepared for Puttalam and surveyed the said land, by 'fixing' it with all plans connected with the previous plans relating to the Puttalam district. Having done so, he had determined that the said land falls within an area which had not been surveyed prior to that. The 5th Respondent had stated that the said land was part of the sea which has over a period time been filled with sand, thus forming a land mass. He has stated further that the said land, which had been described in the previous plans as an 'open waste land' belongs to the State. The plan prepared by the 5th Respondent has been produced marked '5R5'.

This Court must observe at this stage that in terms of Section 21 of the Survey Act No. 17 of 2002, "Any cadastral map, plan, or any other plan or map prepared in accordance with the provisions of this Act or any written law, purported to be signed by the surveyor general or officer acting on his behalf and offered in evidence in any suit shall be received in evidence, and shall be taken to be prima facie proof of the facts stated therein."

⁹ A copy of the said request has been produced marked '5R4'.

This Court is of the view that the 1st Respondent had cogent material in the form of a Surveyor General's plan that the said land was State land. In these circumstances, this Court is of the view that the opinion formed by the Divisional Secretary that the said land is State land is reasonable and is a decision that a reasonable man would have arrived at, on the strength of the Surveyor General's plan. Hence, this Court does not see any merit in the argument of the Petitioner.

This Court is further of the view that the Competent Authority is only required to form an opinion that the impugned land is State land and that the possession is unauthorised. The Competent Authority is not required in terms of the Act to carry out an inquiry on the title, as long as he has cogent material to form an opinion that the land is State land.

This position has been clearly laid down in **Farook v. Gunewardena, Government Agent, Ampara**¹⁰ where it was held as follows:

“Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land.”

¹⁰ 1980 2 Sri L.R. 243.

The question of title cannot be adjudicated by a Writ Court, as it involves disputed questions of fact, which could only be resolved by oral testimony of witnesses. The power of this Court to issue Writs when the facts are in dispute was considered in the case of Thajudeen v. Sri Lanka Tea Board and Another.¹¹ In this case, it was held that where the major facts are in dispute, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that Court would be better able to judge which version is correct, and that a writ will not issue in such circumstances.

This Court is of the view that the question of the Petitioner's title is a matter for the Petitioner to establish in a civil court. As submitted by the learned State Counsel, this position is fortified by Section 12 of the Act, which provides for title to a land to be vindicated by any person who has been ejected. In fact, in addition to vindicating title, in terms of Section 13 of the Act, a person could also obtain compensation for any damages sustained by being compelled to deliver up possession. The availability of an alternative remedy will always be a valid consideration when considering an application for judicial review. It is the view of this Court that as the Petitioner's claim is on the basis of a deed of transfer, the remedy provided in Section 12 will be the most appropriate, suitable and effective remedy for the Petitioner.

There is one other matter that this Court must advert to. Even though the Petitioner had sought a Writ of Prohibition 'prohibiting the 1st Respondent

¹¹ 1981 2 Sri L.R. 471. See the judgment in Dr. Puvanendran and another v. Premasiri and two others [(2009) 2 Sri.L.R. 107] and Rajapaksha Pathiranaage Namal Kumara vs Attanayake, Divisional Secretary of Mulatiyana [CA (Writ) Application No. 240/2017; CA Minutes of 4th April 2019].

from initiating or instituting action under the State Lands (Recovery of Possession) Act in respect of the land described in the quit notice', by the time this application was filed, proceedings had in fact been instituted before the Magistrate's Court of Puttalam. Therefore, the necessity for this Court to consider the issuance of the Writ of Prohibition does not arise.

The Petitioner has informed this Court in his Counter Affidavit as well as when this matter was taken up for argument on 25th October 2018 that the learned Magistrate has made an order on 5th May 2014, ejecting the Petitioner from the said land in question. Thus, even if the issuance of the quit notice 'P14' was bad in law, issuing a Writ of Certiorari to quash 'P14' would be futile and an exercise in vain.

In the said circumstances, this Court is of the view that the decision of the 1st Respondent to issue the quit notice is neither illegal nor irrational and therefore is of the view that the Petitioner is not entitled to a Writ of Certiorari to quash 'P14', or to the Writ of Prohibition prayed for. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal