

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

In the matter of an application under article 140 of the constitution of the Democratic Socialist Republic of Sri Lanka to obtain a Writ in the nature of Writ of Certiorari.

1. Best Life Plantation Private Limited.
No: 343, Horana Road,
Panadura.
2. Merignage Daminda Upali Fernando,
Managing Director,
Best Life Plantation Private Limited
No: 343, Horana Road,
Alubomulla
Panadura.

Petitioners.

Court of Appeal Application Vs.

No: C.A (Writ) 152/2019

1. Land Reform Commission,
No: 475, Kaduwela Road,
Battaramulla.
2. Sampath Subadingha Arachchi
Former Chairman,
Land Reform Commission,
No: 475, Kaduwela Road,
Battaramulla.
3. Sirimewan Dias,
Chairman,
Land Reform Commission,
No: 475, Kaduwela Road,
Battaramulla.
4. Loku Hennadige Asika Priyangani
No: 57/A,
Gurupokuna,
Hunugama.

5. Edirisuriya Kattadi Arachchige Upul
No: 57/A
Gurupokuna,
Hunugama

Respondents.

C.A Writ 152/2019.

BEFORE : **Hon. Justice Janak De Silva**
Hon. Justice N. Bandula Karunaratna

COUNSEL : Ranjan Suwandarathna PC with Y.P. Mathugama and
Ineka Hendawitharana for the Petitioners.

Thisath Wijayagunawardana PC with Sonal Imbulamure
instructed by Mallowaraarachchi Associates for the 1st
and 3rd Respondents

A.G Vidanapathirana for the 4th and 5th Respondents.

Supported &
Decided on : **13.06.2019**

Hon. Justice Janak De Silva.

Learned President's Counsel for the Petitioners heard in support.

He submits that he is affected by the quit notice marked A21 and the subsequent proceedings instituted in the Magistrate's Court of Angunukola Palassa by A22. He submits that the petitioners have lawful title to the land in dispute in terms of deeds marked A4, A5, A6 and A9 and therefore the Land Reform Commission could not have proceeded under the State Lands Recovery of

Possession Act to recover the possession of the land in dispute. It is further submitted that the land belonging into the Land Reform Commission is reflected in final village plan 325 whereas the land which is in dispute falls within final village plan 326.

Learned President's Counsel for the 1st and 3rd Respondents draws attention to the deed marked A4 by which part of the land in dispute had been transferred to one Waidyasiri by Punchiappu and the said deed refers to a land situated in East Giruwa Paththuwa. He accordingly submits that the balance portion of the said land which the petitioners alleged devolved on the descendants of Punchiappu and reflected in Deed of Gift A4 and A5 and on the Petitioner by A9 is contradictory in as much A4 refers to land situated at South Giruwa Paththuwa.

On a perusal of these deeds it is clear that the pedigree which began in relation to a land in East Giruwa Paththuwa has been changed in 2014 to a land in South Giruwa Paththuwa.

The learned President's Counsel for the Petitioner also relies on document marked A16 (i) to show that the land belonging to the Petitioners is situated within final village plan 326 where as the land belonging to the Land Reform Commission is within final village plan 325. However the said document has not

been certified by a licensed surveyor and in term of Section 13 of Survey Act of No: 17 of 2002 this court cannot take cognizance of this document as evidence.

Further, in Dayananda Vs. Thalwatta 2001 2 SLR 72 this Court has held that the institution of proceedings in the Magistrate's Court in terms of quit notice is not a determination affecting legal rights warranting the issuance of a writ of certiorari. It was open for the petitioners to seek to quash the quit notice by way of certiorari when the determination was made by the competent authority or to move in revision at the conclusion of the Magistrate's findings.

For the foregoing reasons Court is of the view that this is not a fit matter for notice. Accordingly, notice is refused. No order for cost.

JUDGE OF THE COURT OF APPEAL.

N. BANDULA KARUNARATHNA, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

Vkg/-