

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.

Hettiarachchige Wijenayake,
No. 33, Gampola Road,
Pupuressa.

Petitioner

Case No. C. A. (Writ) Application 70/2017 Vs.

1. K.A.K. Ranjith Dharmapala,
The Commissioner of Title Settlement,
The Department of Title Settlement,
No. 1200/6, Mihikatha Medura,
Rajamalwaththa Road,
Battaramulla.
2. The Registrar General of Title,
Registrar-General's Department,
Colombo.
3. The Registrar of Title,
Title Registry,
Gampola.

4. S.B.U. Fernando,
No. 339, Peradeniya Road,
Kandy.
5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Janak De Silva J.

Priyantha Fernando J.

Counsel:

D.A. Warnakulasuriya for the Petitioner

Ganga Wakishta Arachchi SSC for the 1st to 3rd and 5th Respondents

L. Fernando for the 4th Respondent

Written Submissions tendered on:

Petitioner on 17.12.2018

1st to 3rd and 5th Respondents on 14.01.2019

Argued on: 29.03.2019

Decided on: 21.06.2019

Janak De Silva J.

The Petitioner is seeking two writs of certiorari to quash the title registration certificate bearing number Kandy/0019500 (P10) and the declaration made under section 14 of the Title Registration Act No. 21 of 1998 (Act) published in the Gazette (P19).

The Petitioner claims that he is the owner of the land morefully described in the first schedule to the petition by virtue of deed no. 10392 attested by Sujatha Alwis Wanigasekera, Notary Public. It is further stated that his predecessor in title Punam Christombuge Shanthi Hewa Jayasuriya became owner of the said land by virtue of deed no. 3007 attested by D.B. Samaratunga, Notary Public.

The Petitioner states that the 4th Respondent had instituted action against him in D.C. Gampola Case No. 3722/10 seeking a declaration of title and ejectment of the Petitioner from the said land. The 4th Respondent thereafter filed an amended plaint dated 14.06.2011 (P9) to which was annexed the First-Class Title Registration Certificate (P10) covering the land in dispute and the Petitioner submits that it is then that he became aware that a title registration certificate has been issued under the Act in favour of the 4th Respondent.

The Petitioner contends that when the title registration process was on and a meeting held at the Subramanium Aramaya in Pupuressa for the collection of data he had submitted the relevant deeds and the land registry extracts to the officials but thereafter he was not informed of any inquiry or investigation. He claims that the documents P10 and P14 have been issued in violations of the provisions of the Act and in particularly without giving the Petitioner any hearing.

The 1st to 3rd Respondents in their objections claim that these documents were issued after following the legal procedure set out in the Act and in particular after the holding of a section 13 investigation under the Act.

Registration of Title Act No. 21 of 1998

The Act provides for the investigation and registration of title to land parcels. The registration of title to every land parcel under the Act must be in accordance with the cadastral map prepared for that purpose (Section 10). The Surveyor General must prepare and issue certified copies of cadastral maps to the Commissioner of Title Settlement (Section 11). The Commissioner of Title Settlement must on receipt of such certified copies of cadastral maps publish a Notice in the Gazette, calling for any claimants to the land parcel specified in such Notice to submit their claims to him within a prescribed period from the date of publication of such Notice (Section 12). Upon receiving any claims an investigation must be conducted in order to determine the genuineness or otherwise of claims made in response to a Notice under section 12 (Section 13). It is only thereafter that a declaration can be made in terms of section 14 of the Act.

Although the 1st to 3rd Respondents claim that an investigation in terms of section 13 of the Act was conducted no evidence of such inquiry has been annexed to their objections. In fact, their objections are limited to the mere averments made in the affidavit. No investigation notes of the investigation held under section 13 of the Act has been filed. Not even the gazette notification required to be published by Section 12 of the Act has been filed. Accordingly, this Court is of the view that the 1st to 3rd Respondents have failed to follow the mandatory procedure set out in the Act before issuing the documents P10 and P19.

The procedural steps set out in the Act prior to issuing a title registration certificate gives effect to the *audi alteram partem* rule so as to ensure that all affected parties have a fair hearing before a decision is taken on the issuance of a title registration certificate. It is also a condition precedent to the exercise of power by the Commissioner of Title Settlement. Accordingly, the failure to follow the procedure set out in sections 10, 11, 12 and 13 of the Act amounts to both illegality and procedural impropriety.

The 1st to 3rd Respondents have raised the question of delay on the part of the Petitioner to come to Court. Court has concluded on the available material that the 1st to 3rd Respondents did not follow the procedure in the Act. As soon as the Petitioner became aware of the impugned orders, he moved the District Court. There an objection was taken by the State that the application was

out of time which was upheld by the learned judge. The Petitioner thereafter invoked the jurisdiction of this Court. Hence, I am of the view that there is no undue delay on the part of the Petitioner.

Accordingly, Court issues a writ of certiorari quashing the title registration certificate bearing no. Kandy/0019500 marked P10 and a writ of certiorari quashing the declaration P19 published in the Gazette Extraordinary bearing number 1636/5 dated 11.01.2010 in relation to the land 0.0118 hectares in extent.

Court further directs the Commissioner of Title Settlement to take steps expeditiously in terms of the Act to publish a notice under section 12 of the Act and to take further steps according to law to issue a title registration certificate to the land in dispute. Notice of such publication to be given to both the Petitioner and 4th Respondent.

The 1st Respondent to pay a sum of Rs. 25,000/= as costs of this application to the Petitioner.

Judge of the Court of Appeal

Priyantha Fernando J.

I agree.

Judge of the Court of Appeal