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

In the matter of an application for mandates in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Eco Life (Private) Limited
No. 870/3, Negombo Road, Mabola, Wattala.

Petitioner

Case No. C. A. (Writ) Application 256/2014 Vs.

1. K. P. Rangana Fernando
   Divisional Secretary, Kalpitiya.

2. Hon. Attorney General
   Attorney General's Department, Colombo 12.

Respondents

Before: Janak De Silva J.

K. Priyantha Fernando J.

Counsel:

Rohan Sahabandu P.C. with Hasitha Amerasinghe for the Petitioner

Manohara Jayasinghe SSC for the Respondents

Written Submissions tendered on:

Petitioner on 23.11.2018

Respondents on 24.12.2018

Argued on: 13.06.2019

Decided on: 18.10.2019

Janak De Silva J.

The Petitioner was served with a quit notice by the 1st Respondent dated 23.08.2011 (P1) under the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (Act). The extent set out therein is 1.5029 Hectares. Upon receipt of the quit notice the Petitioner informed the 1st Respondent that the land possessed by the Petitioner is different to the land referred to in the quit notice.

However, the 1st Respondent took further steps under the Act resulting in the learned Magistrate of Puttalam ordering the eviction of the Petitioner who then moved in revision to the Provincial High Court holden in Puttalam. The Petitioner withdrew this application reserving the right to make an application in revision to the proper court apparently in view of the judgment of the Supreme Court in *Solaimuttu Rasu v. The Superintendent of Stafford Estate and Two Others* [S.C. Appeal No. 21/2013].

The Petitioner thereafter filed this application on 01.08.2014 seeking the following relief:

(a) Writ of Certiorari quashing the quit notice issued in terms of section 5 of the Act;

(b) Writ of Prohibition prohibiting the 1st Respondent from taking any further steps under the Act;

(c) Writ of Certiorari quashing the purported decision that the land in question is state land;

(d) Writ of Mandamus directing the 1st Respondent not to interfere with Petitioners' lawful possession of the land in question.

The Petitioner seeks to assail the quit notice on the following grounds:

(i) The land in issue is private land

(ii) The 1st Respondent has only relied on a letter written by the District Surveyors Officer in forming his opinion

(iii) Petitioner was not given a hearing before the issue of the quit notice

Identity of Land

The long title to the main Act states that it is intended to make provisions for the "Recovery of possession of State land from persons in unauthorized or unlawful occupation thereof". The main Act did not have a definition of what was meant by "unauthorized possession or occupation". It is in this context that the decision in Senanayake *v. Damunupola* [(1982) 2 Sri.L.R. 621] was made.

After the decision in Senanayake *v. Damunupola* (supra) the main Act was amended by State Lands (Recovery of Possession) (Amendment) Act No. 29 of 1983. One of the amendments was to include a new definition of the word " unauthorized possession or occupation" to mean "except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law and includes possession or occupation by encroachment upon state land". In *Shiyam v. Officer-in-Charge, Narcotics Bureau and another* [(2006) 2 Sri. L.R. 156] the Supreme Court held that in case of doubt, it is competent to look at Parliamentary debates on Acts to ascertain the intention of the law.

The Hon. Minister of Land, Land Development and Mahaweli Development during the second reading of the State Lands (Recovery of Possession) (Amendment) Bill [Parliamentary Debates, Volume 24 at pages 1504-5], which was subsequently passed as State Lands (Recovery of Possession) Act No. 29 of 1983, specifically stated that the amendment is been moved due to the decision of the Supreme Court in *Senanayake v. Damunupola* (supra) which made it difficult to recover land belonging to the State and that recourse to existing law to recover possession of state land was time consuming. Clearly, the intention of the amendment was to provide a swift and effective procedure by which the State can recover possession of state land instead of existing procedures.

The legislative language will be interpreted on the assumption that the legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in the legislative language a change was intended in legislative result [N.S. Bindra's Interpretation of Statutes; 10th ed., page 235]. Therefore, I am of the view that the *ratio decidendi* in *Senanayake v. Damunupola* (supra) is no longer valid.

A competent authority can have recourse to the Act to evict any person who is in unauthorized possession or occupation of state land including possession or occupation by encroachment upon state land. Any possession or occupation without "a valid permit or other written authority of the State granted in accordance with any written law" is unauthorized possession.

A 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 and the submission of the learned President's Counsel for the Petitioner that the land in issue is private land is a matter to be decided by a District Court in an action filed under section 12 of the Act. In an action filed under section 12 of the Act the owner of the land in dispute can get a declaration against the State that he is the owner of the said land [*Sumanawathie v. Hon. Attorney-General and Others* (C.A. 994/2000(F), C.A.M. 05.09.2019].

Hence, a dispute on the identity of the land cannot arise for consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the party summoned is in relation to the state land described in the application. Where it is not, the Magistrate must issue an order of eviction in terms of the Act. In C.A. 1299/87, C.A.M. 14.06.1995, S.N. Silva J. (as he was then) held that if the case of the party summoned is that he is in occupation of another land, then he would not be ejected from the land he is in occupation upon a writ that will be issued in the Magistrate's Court.

In any event, the Petitioner cannot now raise these issues as the learned Magistrate has ordered eviction. 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. Further it was held that it was open for the petitioner to seek to quash the quit notice by way of certiorari when the determination was made by the 1st Respondent, or to move in Revision at the conclusion of the Magistrates findings.

I am in respectful agreement with the above statement. The Petitioner withdrew the revision application filed reserving the right to file a revision application in the appropriate Court. The Petitioner cannot after nearly three years from the issue of the quit notice seek to assail it in these proceedings after the learned Magistrate has issued an order of eviction. Delay is a ground to refuse the discretionary relief by way of writ of certiorari.

Hearing

The learned President's Counsel for the Petitioner submitted that the 1st Respondent should have given the Petitioner a hearing before issuing the quit notice. He relied inter alia on the following dicta of Denning J. in *Schmidt v. The Secretary of State for Home Affairs* [(1969) 1 All. E.R. 904]:

> "There is now no distinction between judicial and administrative decisions"
>
> "The rules of natural justice applied whenever an individual has some right, interest or legitimate expectation"

There is no dispute that the Petitioner was not given a hearing before the quit notice was issue. However, section 2(1A) of the Act states:

> "(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1)."

This sub-section was brought in by the amending Act No. 29 of 1983, the Bill of which was referred to the Supreme Court under Article 122(1)(b) of the Constitution as it stood then. The Supreme Court in S.D. No. 2 of 1983 held that the proposed sub-section appears to be inconsistent with Article 4(c) of the Constitution in that it seeks to oust the exercise by the Court of the judicial power of the People and therefore the Bill requires in terms of Article 123(2)(b) to be passed by the special majority specified under the provisions of paragraph (2) of Article 84.

At that point the learned Deputy Solicitor General indicated that the intention of the amendment is to limit the hearing or representation referred to in section 3(1A) before the competent authority. It is now an accepted principle that the application of the rules of natural justice can be excluded from administrative decision making process {*Saeed v. Minister for Immigration and Citizenship* [(2010) HCA 23; 241 CLR 252; 84 ALJR 507; 267 ALR 204; 115 ALD 493]}.

This now is the law and therefore the Petitioner cannot claim to have a right to be heard by the competent authority before a quit notice is issued.

For all the above reasons, the application is dismissed with costs.

Judge of the Court of Appeal

K. Priyantha Fernando J.

I agree.

Judge of the Court of Appeal