

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

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

CA (Writ) Application No: 858/2009

Balangoda Plantations PLC,
110, Norris Canal Road,
Colombo 10.

PETITIONER

Vs.

1. Janatha Estates Development Board,
No. 55/75, Vauxhall Lane, Colombo 2.
2. Sri Lanka State Plantations Corporation
No. 28, Mudalige Mawatha, Colombo 1.
3. Minister of Plantation Industries,
No. 55/75, Vauxhall Lane, Colombo 2.
4. Land Reform Commission.
5. Nimal Punchihewa,
Chairman, Land Reform Commission.
- 5A. Sumanatissa Thambugala,
Chairman, Land Reform Commission.

4th, 5th and 5A Respondents at
Land Reform Commission,
P.O. Box 1526,
No. C82, Gregory's Avenue, Colombo 7.

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

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: Maithri Wickremesinghe, P.C., with Rakitha Jayatunga
for the Petitioner

Susantha Balapatabendi, P.C., Additional Solicitor
General with Ms. Maithri Amarasinghe Jayathilake,
State Counsel for the 1st, 2nd, 3rd and 6th Respondents

Dr. Sunil Cooray with Malika Ranasinghe for the 4th
and 5th Respondents

Argued on: 06th September 2018

Written Submissions: Tendered on behalf of the Petitioner on 16th October
2018 and 14th December 2018

Tendered on behalf of the 1st, 2nd, 3rd and 6th
Respondents on 12th July 2019

Tendered on behalf of the 4th and 5th Respondents on
3rd December 2018

Decided on: 07th November 2019

Arjuna Obeyesekere, J

The Petitioner has filed this application seeking *inter alia* the following relief:¹

- (a) A Writ of Prohibition restraining the 4th Respondent, the Land Reform Commission from issuing any permits, approvals or exercising any other authority in respect of the agricultural lands and estate lands which are referred to in the lease agreements annexed to the petition marked 'P6(i)' – 'P6(xxiv)';
- (b) A Writ of Prohibition restraining the 4th Respondent from interfering in any manner with the lawful possession and occupation of the Petitioner with regard to any of the agricultural lands and estate lands referred to the said lease agreements annexed to the petition marked 'P6(i)' – 'P6(xxiv)'.

The Petitioner, who is the lessee under the said lease agreements marked 'P6(i)' – 'P6(xxiv)' states that in 2005, it instituted action in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, seeking to evict from Palm Garden Estate (which is an estate leased to the Petitioner by the 2nd Respondent) a person by the name of Kumaravel, who had served as a driver at the Petitioner's Office in Ratnapura. At the inquiry held before the Magistrate's Court of Ratnapura, the said Kumaravel had produced a permit dated 8th May 1994 issued by the 4th Respondent, annexed to the petition marked 'P10' by which the 4th Respondent had authorised the said Kumaravel to occupy an extent of 20 perches land situated within the said estate. The

¹ Paragraphs (b) and (c) of the prayer to the petition.

Petitioner states further that the said Kumaravel had produced a receipt to confirm that it had paid the 4th Respondent a sum of Rs. 816.75 as lease rental for the period 1994 – 2004. It is the position of the Petitioner that even though the said estate land had vested with the 4th Respondent, the title to the said estate has subsequently vested with the 2nd Respondent, the Sri Lanka State Plantations Corporation, and therefore the alienation of any land situated within the said estate by the 4th Respondent is illegal. The Petitioner states that while it is not seeking a Writ of Certiorari to quash the said lease in favour of Kumaravel, it is seeking a Writ of Prohibition to restrain the 4th Respondent from interfering in any manner with the lands that have been leased to it by the 1st and 2nd Respondents in terms of 'P6(i)' – 'P6(xxiv)'.

The issue that arises for the determination of this Court is whether the 4th Respondent can exercise any power in respect of lands which were vested with it in terms of Section 42A of the Land Reform Law No. 1 of 1972, as amended, while an Order made by the Minister under Section 27A(1) of the said Law subsists.

The background facts which are relevant to a consideration of the said issue are as follows.

The Land Reform Law No. 1 of 1972 (the LRC Law) is the first law enacted under the First Republican Constitution of 1972 by the National State Assembly, 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."*

With the introduction of the LRC Law, agricultural lands owned by any person in excess of the ceiling stipulated in the LRC Law vested with the 4th Respondent, by operation of law.² At the time the LRC Law was introduced, in addition to private individuals who owned land, there were several companies, commonly known as 'Sterling companies' and 'Rupee Companies' that owned large extents of agricultural land on which predominantly tea and rubber had been cultivated. The principal enactment did not apply to such lands and the reason for such exclusion has been set out in the speech delivered in Parliament on 10th October 1975 by Hon. Hector Kobbekaduwa, the then Minister of Agriculture and Lands, when he presented the amendment to the LRC Law to include lands owned by such companies.³ Part IIIA to the LRC Law titled 'Special Provisions relating to estate lands owned by public companies' was introduced by the Land Reform (Amendment) Law No. 39 of 1975, to address the nationalisation of such lands.⁴

² Vide Section 3(2) of the LRC Law.

³ Hansard of 10th October 1975 (Columns 1448 – 1459): "On that occasion (*i.e. when the LRC Bill was presented in 1972*) the House will remember that we excluded from the operation of this Law, lands belonging to public companies, both foreign and local lands belonging to religious and charitable trusts. We had very good reasons for excluding those lands, particularly lands belonging to public companies, because of precarious foreign exchange at that time."

⁴ Part IIIA consists of Sections 42A – 42M.

In terms of Section 42A (1) of the LRC Law “Every estate land⁵ owned or possessed by a public company shall, with effect from the coming into operation of Part IIIA,⁶ (a) be deemed to vest in and be possessed by the Commission ; and (b) be deemed to be managed under a statutory trust for and on behalf of the Commission by the agency house or organization which was responsible for, and in charge of, the management of such estate land on the date of such vesting...”

Similar provision with regard to agricultural lands is found in Section 3(2), with the former owner being referred to as the ‘Statutory lessee’.

The effect of such vesting is specified in Section 42A(2) of the LRC Law, which reads as follows:

*“The vesting of an estate land under subsection (1) shall have the effect of giving the Commission **absolute title** to such estate land as from the date of vesting and, subject as hereinafter provided, free from all encumbrances”*

Similar provision in respect of agricultural lands is found in Section 6 of the LRC Law.

This Court notes that in terms of Sections 15 and 42B of the Law, while the land remains vested with the 4th Respondent, the statutory lessee or the

⁵ Estate land has been defined in Section 42M to mean, “any land of which an extent exceeding fifty acres, is under cultivation in tea, rubber, coconut or any other agricultural crop, or is used for any purpose of husbandry, and includes unsold produce of that land and all buildings, fixtures, machinery, implements, vehicles and things, movable and immovable, and all other assets belonging to the owner of such land and used for the purposes of such land.”

⁶ The date is 17th October 1975.

statutory trustee, as the case may be, is responsible for the management of the agricultural or estate land,⁷ and the statutory lease or trust shall continue for one year from the date of vesting, and if the 4th Respondent so decides, be continued for a further period of one year. No statutory lease or trust may be continued for any further period by the Commission, except with the express approval of the Minister.

Thus, in terms of the LRC Law, agricultural lands in excess of the ceiling, and estate lands owned by a public company were deemed to be vested with the 4th Respondent, and until such time a suitable entity was identified to manage the said lands, which period was limited to two years, the management was to remain with the individual or company that owned such land on the basis of a Statutory Lease or Trust. Thus, the role of the 4th Respondent was as a repository of lands that vested with the State in terms of the LRC Law, and as a custodian of such lands until *inter alia* suitable persons were identified to manage the said lands or the lands were alienated in accordance with the LRC Law.

Sections 22(1) and 42H(1) has specified the purposes for which the agricultural and estate lands so vested with the 4th Respondent may be used. This includes the alienation to any corporation established or to be established under the State Agricultural Corporations Act, No. 11 of 1972, or to the Sri Lanka State Plantations Corporation established under the Sri Lanka State Plantations Corporation Act, No. 4 of 1958.⁸

⁷ Section 42B(1) reads as follows: "Where any estate land is vested in the Commission under section 42A, the statutory trustee of such estate land, shall, during the continuance of such statutory trust, be responsible for the good and proper management of such estate land, subject to such general or special directions as may from time to time be issued by the Commission."

⁸ Vide Sections 22(1)(g) and 42H(1)(c).

It is perhaps appropriate to mention at this stage about the establishment of the 1st and 2nd Respondents. The 1st Respondent, the Janatha Estates Development Board is a public corporation established in terms of an Order made under Section 2(1) of the State Agricultural Corporations Act No. 11 of 1972.⁹ In terms of the said Order, the 1st Respondent has been entrusted with the power, *inter alia*, to manage agricultural and estate lands. The 2nd Respondent, the Sri Lanka State Plantations Corporation is a public corporation established under the Sri Lanka State Plantations Corporation Act No. 4 of 1958 with the objective *inter alia* of managing “agricultural and estate lands vested in, transferred or alienated to the Corporation by the Government or any other person or acquired by the Corporation”. It is not in dispute that in keeping with the nationalisation policy of the then Government, management of the said estate lands as well as certain agricultural lands had been handed over to the 1st and 2nd Respondents.¹⁰

The next important amendment to the LRC Law was effected by the Land Reform (Amendment) Act No. 39 of 1981, by the introduction *inter alia* of Section 27A consisting of four sub-sections.

Section 27A(1) reads as follows:

“At the request of the Commission, the Minister may, where he considers it necessary in the interest of the Commission to do so, subject to sections

⁹ The said Order has been published in the Gazette of 6th February 1976.

¹⁰ In 1975, the Rupee and Sterling companies were nationalized, with Agency Houses continuing as trustees. Thereafter in 1976, these were turned over to the two largest State-owned plantation agencies, namely, the Janatha Estates Development Board (JEDB) and State Plantations Corporation (SPC); <https://www.historyofceylontea.com/ceylon-publications/ceylon-tea-articles/the-evolution-of-sri-lankas-plantation-sector.html>.

22, 23 and 42H, by Order published in the Gazette, vest, in any State Corporation specified in the Order, with effect from a date specified in that Order, any agricultural land or estate land or any portion of the land vested in the Commission under this Law, and described in the order, subject to such terms and conditions relating to consideration for the vesting of that land in such Corporation as may be agreed upon between the Commission and such Corporation.”

The consequences of an Order made under Section 27A(1) are set out in Section 27A(2) and (3).

Acting in terms of Section 27A of the LRC Law, the Minister has made two Orders which are relevant to this application. The first Order has been made by the Minister of Agriculture Development and Research, in terms of Section 27A of the LRC Law, read together with Section 42H thereof. The said Order, which had been published in Extraordinary Gazette No. 183/10 dated 12th March 1982, has been annexed to the petition marked ‘P2’ and reads as follows:¹¹

“ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාවේ අභිවෘද්ධිය සඳහා එසේ කිරීම අවශ්‍ය යයි සලකා බැලීමෙන් පසුව එම කොමිෂන් සභාව විසින් කරන ලද ඉල්ලීමක් අනුවල 1975 අංක 39 දරණ පනතින් දල 1981 අංක 14 දරණ පනතින් දල 1981 අංක 39 දරණ පනතින් ද සංශෝධනය කරන ලද 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ නීතියේ අංක 42 එච් වගන්තිය සමඟ කියැවෙන අංක 27ඒ වගන්තිය යටතේ මෙහි පහත උප ලේඛණයේ සඳහන් වතු ඉඩම් 1972 අංක 11 දරණ රාජ්‍ය කෘෂිකාර්මික සංස්ථා පනත යටතේ පිහිටුවන ලද පහත වතු සංවර්ධන මණ්ඩලයට මෙයින් පවරා දෙනු ලැබෙන මෙකී ඉඩම් වෙනුවෙන් ගෙවිය යුතු මුදල පිළිබඳ කිසියම් පොරොන්දුවක් හෝ ගිවිසුමක් ඇතුළත් නොකෙරේ”

¹¹ The schedule to ‘P2’ contains 166 estate lands.

The second Order has been made by the Minister of Forestry, Irrigation and Mahaweli Development, in terms of Section 27A of the LRC Law, read together with Sections 22, 23 and 42H thereof. The said Order which had been published in Extraordinary Gazette No. 815/10 dated 21st April 1994, has been annexed to the petition marked 'P3' and reads as follows:¹²

"Pursuant to a request of the Land Reform Commission, having considered it necessary in the interest of the Commission to do so, Agricultural Lands and Estate Lands specified in the Schedule, hereto are hereby vested under Section 27A read with Sections 22, 23 and 42H of the Land Reform Law, No. 1 of 1972, as amended by Law No. 39 of 1975, Act No. 14 of 1981, Act No. 39 of 1981, Act No. 14 of 1986, and Act No. 18 of 1986 in the Sri Lanka State Plantation Corporation, established, under the Sri Lanka State Plantations Corporation Act No. 4 of 1958.

The said State Plantation Corporation is bound to pay to the Land Reform Commission, the nominal value of the Lands referred to in the Schedule."

Thus, in terms of Section 27A(1) of the LRC Law, the agricultural and estate lands referred to in the Schedules to 'P2' and 'P3' vested with the 1st and 2nd Respondents, respectively and the title to the said lands stood transferred to the 1st and 2nd Respondents effective from the date of such Orders, together with all rights and liabilities of the 4th Respondent in respect of such lands.¹³

¹² The schedule to 'P3' contains 123 agricultural and estate lands.

¹³ Vide Sections 27A(2) and (3).

It is not in dispute that even though the objectives sought to be achieved by the LRC Law was laudable,¹⁴ its implementation did not achieve the results that were expected. The enormous losses that were incurred by the 1st and 2nd Respondents in managing the lands were an unbearable burden on the Treasury, resulting in the decision in 1992 to privatise the estate sector.¹⁵ The first stage of this process was effected by incorporating plantation companies in terms of an Order made under Section 2(2) of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987, as amended (the Conversion Act),¹⁶ and handing over the management, movable property, contracts, agreements, employees, liabilities, current assets etc of the estates specified in such Order to the relevant company. The Order relating to the Petitioner, annexed to the petition marked '**P1b**' enabled the Petitioner to take over the functions and business specified in Part I in respect of the estates referred to in Part II of the Schedule to '**P1b**'.

In terms of Section 2(3) of the Conversion Act, the shares of the Petitioner were issued in the name of, and held by the Secretary to the Treasury, on behalf of the Government of Sri Lanka. In 1996, by which time the Orders '**P2**' and '**P3**' vesting the ownership of the estate lands referred to in '**P2**' and '**P3**' with the 1st and 2nd Respondents respectively, had been made, the Government implemented the second stage of the privatisation process by offering 51% of the shares it held in the Petitioner for sale through the Colombo Stock Exchange. The Petitioner has annexed to the petition marked

¹⁴ Speech by Hon. Hector Kobbekaduwa in presenting the Land Reform (Amendment) Bill on 10th October 1975 – "We tried to embody in cold print, by placing a ceiling on the ownership of land, our will and determination to redistribute the vast acres of land that were concentrated in the hands of a few people in this country."

¹⁵ Vide report of the Asian Development Bank on the Plantation Reform Project, December 2004.

¹⁶ The Order made by the Registrar of Companies under Section 2(2) of the Conversion Act in respect of the Petitioner has been annexed to the petition marked 'P1b'.

'P9', the Information Statement issued by the Government at the time it invited competitive bids for the said parcel of shares. Paragraph 3.1 of 'P9' reads as follows:

*"As at the date of the issue of this Statement, the Company has physical possession of the following estate lands formerly managed by the Janatha Estates Development Board and the Sri Lanka State Plantations Corporation and **owned by the two corporations.**"*

It is not in dispute that the said 51% of the shares had been purchased by Distilleries Company of Sri Lanka, and that the corporate name of the Petitioner was subsequently changed to 'Balangoda Plantations PLC' to comply with the provisions of the Companies Act No. 7 of 2007.

The Petitioner states that in March 1994, the 1st Respondent executed the lease agreements annexed to the petition marked 'P6(i)' – 'P6(vi)' in favour of the Petitioner in respect of the six estates that had been vested in the 1st Respondent by virtue of the Order marked 'P2' while the 2nd Respondent executed the lease agreements annexed to the petition marked 'P6(vii)' – 'P6(xxiv)' in favour of the Petitioner in respect of the eighteen estates that had been vested in the 2nd Respondent by virtue of the Order marked 'P3', in 1999.

The position of the Petitioner can therefore be summarised as follows:

- (a) The ownership of the lands referred to in 'P2' is with the 1st Respondent;
- (b) The ownership of the lands referred to in 'P3' is with the 2nd Respondent;

- (c) The 4th Respondent ceased to be the owner of the lands referred to in 'P2' and 'P3' after the said Orders 'P2' and 'P3' were made;
- (d) The 1st and 2nd Respondents have executed lease agreements in respect of the said lands in favour of the Petitioner;
- (e) While Orders 'P2' and 'P3' and the said lease agreements subsist, the Petitioner is entitled to occupy the said lands free from any encumbrance or interference by an third party;
- (f) Any interference by the 4th Respondent with such right of the Petitioner is illegal and *ultra vires* the powers of the 4th Respondent.

In considering whether the 4th Respondent acted illegally or *ultra vires* its powers, it would be useful to bear in mind the following statement made by Lord Diplock in Council of Civil Service Unions vs Minister for the Civil Service¹⁷:

"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'.

¹⁷ 1985 AC 374

“By ‘illegality’ as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.”

Useful guidance has been set out in De Smith’s Judicial Review in the following manner:¹⁸

“The task for the courts in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the decision-maker. The instrument will normally be a statute or statutory instrument, but it may also be an enunciated policy, and sometimes a prerogative or other “common law” power. The courts when exercising this power of construction are enforcing the rule of law, by requiring administrative bodies to act within the “four corners” of their powers or duties. They are also acting as guardians of Parliament’s will, seeking to ensure that the exercise of power is in accordance with the scope and purpose of Parliament’s enactments.”

As noted at the outset, the issue that arises for determination in this application is whether the 4th Respondent can exercise any power in respect of lands which were vested with it in terms of Section 42A of the Land Reform

¹⁸ 6th Edition at page 226.

Law No. 1 of 1972, as amended, while an Order made by the Minister under Section 27A(1) subsists.

The learned President's Counsel for the Petitioner submitted that the effect of the Orders 'P2' and 'P3' made by the Minister in terms of Section 27A(1) of the LRC Law is that all right, title and interest that the 4th Respondent had over the agricultural and estate lands referred to in the said Orders are vested with the 1st or 2nd Respondent, as the case may be, after the said Orders were made, and that the 4th Respondent ceased to have any title to the said lands.

The above submission of the learned President's Counsel for the Petitioner is confirmed by the provisions of Section 27A(2) which specifically states as follows:

*"(2) An Order under subsection (1) shall have the effect of vesting in such State Corporation specified in the Order **such right, title and interest** to the agricultural land or estate land or portion thereof described in that Order, **as was held by the Commission** on the day immediately preceding the date on which the Order takes effect."*

The provisions of Section 27A(3) leaves no room for any ambiguity when it states as follows:

*"Where any agricultural land or estate land or any portion thereof is vested in a State Corporation by an Order made under subsection (1), **all the rights and liabilities of the Commission** under any contract or agreement, express or implied, **which relate to such agricultural land or***

estate land or portion thereof, and which subsist on the day immediately prior to the date of such vesting, shall become the rights and liabilities of such State Corporation."

The above provisions reflect the intention of the legislature that the rights and liabilities of the 4th Respondent in respect of any agricultural or estate land, together with the ownership of such lands shall pass to the 1st and 2nd Respondents, with the making of an Order under Section 27A(1).

The learned Additional Solicitor General appearing for the 1st, 2nd, 3rd and 6th Respondents also submitted that the Orders marked 'P2' and 'P3' made under Section 27A(1) absolutely and unequivocally vests the land in respect of which that Order is made in the 1st and 2nd Respondents, and that all right, title and interest that the 4th Respondent had over the said lands stand vested in the 1st and 2nd Respondents. In fact, the Hon. Attorney General has expressed an opinion to the Secretary of the Ministry of Plantation Industries that an Order made under Section 27A(1) "*has the effect of vesting in the relevant Corporation such title in the land that was held by the Land Reform Commission immediately before the making of such Order*".¹⁹ In this backdrop, the learned Additional Solicitor General has submitted further that the 4th Respondent '*has no lawful basis to claim any title or ownership to the said estates.*'

It is therefore the submission of the learned President's Counsel for the Petitioner as well as the learned President's Counsel for the 1st, 2nd, 3rd and 6th Respondents that (a) the title that the 4th Respondent had over the lands that were vested with it in terms of the LRC Law were vested with the 1st and 2nd

¹⁹ A copy of the opinion dated 10th February 2005 has been annexed to the petition marked 'P10'.

Respondents, upon an Order being made under Section 27A(1), together with all other rights and liabilities of the 4th Respondent relating to such lands; (b) the 4th Respondent ceased to have any title to such lands upon the making of the said Order.

The learned President's Counsel for the Petitioner and the learned President's Counsel for the 1st, 2nd, 3rd and 6th Respondents brought to the attention of this Court, the judgment of this Court in Kelani Valley Plantation PLC vs Janatha Estate Development Board and others.²⁰ The underlying facts of that case are identical to this application and this Court had issued a Writ of Prohibition restraining the 4th Respondent to this application from interfering in any manner whatsoever with the lawful possession that the petitioner in that application had by virtue of lease agreements similar to this application.

This Court will now consider the position of the 4th Respondent.

The first argument advanced by the learned Counsel for the 4th Respondent was that the Orders made by the Minister in terms of Section 27A(1) *'are invalid for the reason that the Minister would get jurisdiction to issue an Order under that provision only in the event the 4th Respondent requests that such an Order be made'* and *'that the 4th Respondent has never made any such request, and never requested that any such Order be made under Section 27A(1).'*

This Court is in agreement with the learned Counsel for the 4th Respondent that an Order can be made by the Minister under Section 27A(1) only at the

²⁰ CA (Writ) Application No. 657/2011; CA Minutes of 3rd June 2016. This Court observes that the 4th Respondent was the 3rd Respondent in the said application.

request of the 4th Respondent. This Court however cannot agree with the rest of the submission that the 4th Respondent never made any such request to the Minister, for several reasons. As observed earlier, the 4th Respondent is the agency that was established by the Government to be the custodian of all agricultural lands which were in excess of the ceiling imposed under the LRC Law, and subsequent to the amendment introduced in 1975, all estate lands that vested with the 4th Respondent. The 4th Respondent had thus been entrusted with an enormous responsibility and it was the duty of the 4th Respondent to have protected the lands that were vested with it. Therefore, if the 4th Respondent never made such a request, where was the 4th Respondent when the Minister made the Orders 'P2' and 'P3' vesting thousands of acres of land with the 1st and 2nd Respondents? It would indeed be a tragedy if the 4th Respondent did not realise that the lands that had been vested with it, are no longer with it, and are now being managed by the 1st and 2nd Respondent. Surely, the 4th Respondent ought to have wondered what is happening to the lands vested in it. The above argument advanced on behalf of the 4th Respondent, which rather unfortunately has been subscribed to, in the affidavit of its Chairman, the 5th Respondent, demonstrates the callous disregard with which it has treated the statutory responsibilities entrusted to it, and probably explains the disastrous consequences of the Land Reform programme initiated in 1972.

In any event, if the 4th Respondent did not make a request, as stipulated in Section 27A(1), it ought to have informed the Minister and ought to have moved to have the said Orders 'P2' and 'P3' cancelled. The 4th Respondent has not produced a single scrap of paper to demonstrate that it adopted such a

course of action. In the said circumstances, this Court sees no merit in the first argument advanced on behalf of the 4th Respondent.

The basis for the second argument presented on behalf of the 4th Respondent is that Sections 27A(1) and 27A(2) must be read together. The said argument is that the use of the words, '*subject to Sections 22, 23²¹ and 42H*' in Section 27A(1) means that the power of the 4th Respondent, conferred by Sections 22 and 42H, to alienate land is kept alive, inspite of an Order being made under Section 27A(1). This argument runs contrary to the provisions of Section 27A(2) which specifies that the effect of an Order under Section 27A(1) is to vest the title in the State Corporation mentioned therein. It is to get over the provisions of Section 27A(2) that the learned Counsel for the 4th Respondent is urging that the two Sections be read together. The learned President's Counsel for the Petitioner has quite correctly submitted that the words, '*subject to Sections 22, 23 and 42H*' in Section 27A(1), must be understood in the context of the rest of the wording in Section 27A(1). As noted above, the Order that is made by the Minister must be '*at the request of the Commission*'. Thus, such request of the 4th Respondent to vest any agricultural or estate land in any State Corporation must be within the powers of alienation conferred on the 4th Respondent by Sections 22 and 42H of the LRC Law, and should be subject to the restrictions in Section 23. Thus, if the request of the 4th Respondent is not within the provisions of Sections 22, 23 and 42H, the Minister can disregard the request. This Court is of the view that this is the logical meaning that can be given to the said words, '*subject to Sections 22, 23 and 42H*'. The interpretation sought to be given by the 4th Respondent that in spite of an Order under Section 27A(1), the power of alienation conferred on the 4th Respondent by Sections 22 and 42H is kept alive runs contrary to the rest of the provisions of Section 27A and

²¹ Section 23 specifies that no land shall be alienated to a person who is not a citizen of Sri Lanka.

does violence to the plain meaning of the said section. This Court therefore does not see any merit in the second argument advanced on behalf of the 4th Respondent.

The final argument of the learned Counsel for the 4th Respondent is that there is no proof that the land that has been alienated by the 4th Respondent in favour of Kumaravel falls within the land that has been leased to the Petitioner. It has also been submitted that the lands referred to in the Orders **P2**' and **P3**' have not been referred to by reference to any survey plans and that whether the 4th Respondent has leased out lands over which the Petitioner claims leasehold rights is a disputed question of fact which this Court cannot go into.

It is not in dispute that agricultural and estate lands vested in the 4th Respondent in terms of the LRC Law. There is no dispute that the said lands vested either in the 2nd or 3rd Respondents by virtue of the Orders **P2**' and **P3**'. The 4th Respondent has not filed any material to demonstrate that only parts of certain agricultural or estate lands that vested with the 4th Respondent, were subsequently vested in the 1st and 2nd Respondents by virtue of **P2**' and **P3**'. It is the same lands that vested with the 4th Respondent that have now been leased to the Petitioner. Thus, on the material presented to this Court, there cannot be any doubt with regard to the identity of the land. In any event, the Petitioner is not seeking a Writ of Certiorari to quash the said lease given to Kumaravel but is only seeking a Writ of Prohibition.

For the above reasons, this Court rejects the argument of the 4th Respondent (a) that the Orders **P2**' and **P3**' does not have the effect of passing title to the

1st and 2nd Respondents; and (b) that the 4th Respondent continues to remain the absolute owner of the said estate lands.

It is indeed disheartening to note that the 4th Respondent, which is an agency established by the Government and funded by the Government, has completely disregarded the advice tendered by the Hon. Attorney General and acted totally contrary to the provisions of the LRC Law. The 4th Respondent must bear in mind that, just as much as the 1st and 2nd Respondents, it is also an agency created by the Government to execute State policy relating to the management and utilisation of lands vested in terms of the LRC Law, and that it cannot act contrary to State policy or in an arbitrary manner.

In the above circumstances, this Court, having carefully considered the provisions of Sections 27A(1) – (3), is in agreement with the submission of the learned President’s Counsel for the Petitioner that the 4th Respondent does not have any legal authority over the agricultural and estate lands vested in the 1st and 2nd Respondents by ‘P2’ and ‘P3’. The 4th Respondent cannot exercise any powers over the said lands, as long as the Orders ‘P2’ and ‘P3’ subsists. This Court is therefore of the view that the 4th Respondent acted *ultra vires* its powers and illegally when it executed leases after the Orders ‘P2’ and ‘P3’ came into effect. This Court, being further of the view that the 4th Respondent must be restrained from continuing with such interference, issues the Writs of Prohibition prayed for in paragraphs (b) and (c) of the prayer to the petition. This Court makes no order with regard to costs.

Judge of the Court of Appeal