

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

Geethani Chandrakanthi Epa,  
“Sirisanda”,  
Keppetiyagoda,  
Nagoda,  
Galle.  
And 4 Others  
Petitioners

**CA CASE NO: CA/WRIT/249/2013**

Vs.

The Divisional Secretary,  
Welivitiya-Divithura,  
Divisional Secretariat,  
Welivitiya-Divithura.  
And Another  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shantha Jayawardena with Chamara  
Nanayakkarawasam for the Petitioners.  
Chaya Sri Nammuni, S.S.C., for the  
Respondents.

Decided on: 15.11.2019

Mahinda Samayawardhena, J.

This case has a chequered history.

There is no dispute regarding identification of the land. I will accept for the purpose of this case that the land is depicted in Plan marked R4, tendered by the respondents.

The petitioners are in possession of this land.

The 1<sup>st</sup> respondent, the Divisional Secretary of Welivitiya-Divithura, according to the petitioners, at the instigation of the 2<sup>nd</sup> respondent, made several attempts to dispossess the 4<sup>th</sup> petitioner from this land.

They are as follows:

1. In or about 1998 a case was filed in the Magistrate's Court of Baddegama under the State Lands (Recovery of Possession) Act, No.7 of 1979, as amended, against Sarathchandra Epa, a predecessor of the petitioners, which was dismissed due to lack of territorial jurisdiction.
2. Case No.78888 was filed against Epa, in the Magistrate's Court of Elpitiya, under the State Lands (Recovery of Possession) Act, which application was allowed.
3. The High Court reversed this order in case No. HC/Revision/235/1999 marked P9. As seen from the Judgment of the High Court, the Court has *inter alia* relied on the Certificate of Quiet Possession tendered by the said Epa, which I will refer to later, in arriving at that decision. No appeal was made against this Judgment of the High Court by the State.

4. Case No. 94084 was filed in the Magistrate's Court of Elpitiya under the State Lands (Recovery of Possession) Act, against Epa, which was later abandoned upon the death of Epa.
5. Case No.991 was filed in the Magistrate's Court of Elpitiya under the State Lands (Recovery of Possession) Act against the 4<sup>th</sup> petitioner, which was dismissed by the Magistrate's Court by order marked P14 relying on the earlier High Court Judgment and the aforementioned Certificate of Quiet Possession. No appeal has been made against this order by the State.
6. Failing all the attempts to recover possession under the State Lands (Recovery of Possession) Act, the Divisional Secretary has then taken steps to acquire the land under the Land Acquisition Act on the basis that this is a private land.  
Section 2 Notice marked P15 was sent stating that it is necessary for the Southern Development Authority.  
The vesting order under section 38(a) marked P16 has been made.  
The petitioners have filed the writ application No. CA/Writ/658/2008 to get that order quashed, but later withdrawn.
7. Thereafter, as seen from P20, the petitioners have filed CA/Writ/778/2008, and the proceedings of that case has been terminated on the State informing Court that the land is no longer required by the Southern Development Authority.

It is in that backdrop, the Divisional Secretary again served the Quit Notice marked P21 on the 4<sup>th</sup> petitioner under the State Lands (Recovery of Possession) Act to eject her from the land.

It is this Quit Notice marked P21 which the petitioners seek to quash by writ of certiorari. The petitioners also seek an order in the nature of writ of prohibition, prohibiting the respondents from taking further steps under the State Lands (Recovery of Possession) Act to evict the petitioners.

The respondents have filed objections to this application.

The petitioners claim title to this land by deeds and by the Certificate of Quiet Possession issued under section 7 of the Crown Lands Ordinance, No. 12 of 1840. This Certificate of Quiet Possession has been tendered by the respondents as R1.

The learned counsel for the petitioners has referred to page 33 of the book titled “Select Laws on State Lands” authored by R.K.W. Goonesekere, which reads as follows:

*Section 7 of the Ordinance also provided for Certificate of Quiet Possession (CQP) to be given to a person on application if the Crown has no claim to the land. The CQP is good and valid title against the Crown and is sometimes followed by crown grant. Earlier it was possible to get a certificate from the District Court under the Lands (Edictile Citations) Ordinance No. 7 of 1835 which gave a good and valid title.*

The petitioners came before this Court against the Quit Notice issued, and before the application was filed in the Magistrate’s

Court seeking eviction under the State Lands (Recovery of Possession) Act.

Even if the 1<sup>st</sup> respondent filed the application in the Magistrate's Court, the 4<sup>th</sup> respondent could, in terms of section 9(1) of the State Lands (Recovery of Possession) Act, have taken up the defence 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.*"

Let me now consider the standpoint of the learned Senior State Counsel for the respondents on the said Certificate of Quiet Possession marked R1.

Firstly, the learned SSC states that R1 is invalid, because, as seen from R1(a), it has not been registered in the Land Registry under the Registration of Documents Ordinance.

Elaborating this point further, the learned SSC in paragraph 16 of the written submission states as follows:

*SC Appeal 32/2009 decided on 4.3.2010 refers to the application of section 7 of the Act which states that all instruments made before or after the 1<sup>st</sup> January 1864, unless it is duly registered, be void against all parties claiming an adverse interest...It does not affect the validity of the title but states that "unregistered instruments are void against subsequent registered instruments and such instrument means an instrument affecting land."*

According to R1(a), the extracts from the Land Registry, R1 has been executed on 05.06.1865, that is, after 01.01.1864. On the other hand, there is no subsequent registered instrument in respect of the land, under the registration of Documents Ordinance.

As the learned counsel for the petitioners submits, the registration under the Registration of Documents Ordinance does not determine title to a particular land. Registration will only give priority against an unregistered or subsequently registered instrument.

Secondly, the learned SSC by tendering the Gazette dated 16.11.1934 marked R2 states that this land was settled in favour of the Crown under the Land Settlement Ordinance.

The respondents in paragraph 8(c) of the statement of objections state that “*The existence of the above mentioned land settlement gazette in relation to the subject state land was not known to the predecessors of the office of Divisional Secretary of Walipitiya-Divithura Divisional Secretariat until much later*”.

If that argument is to be accepted, there is no end to litigation, and there is no meaning to the doctrine of *res judicata*. “*The doctrine of res judicata applies to all matters which existed at the time of giving the judgment and which the party had an opportunity of bringing before Court.*”<sup>1</sup>

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<sup>1</sup> Banda vs. Karohamy (1948) 50 NLR 369 at 373, Jane Nona v. Mohamadu (1932) 1 CLW 158, Sinniah v. Eliakutty (1932) 1 CLW 253 at 254.

The doctrine of *res judicata*, as the Supreme Court in *Stassen Exports Ltd v. Lipton Ltd*<sup>2</sup> expressed, has found justification in two fundamental principles: “*The first principle, which is public in nature, is based on the maxim interest rei publicae ut sit finis litium (in the interest of the state that there be an end to litigation) and secondly on the footing of a maxim, private in nature, namely, nemo debet bis vexari pro un at eadem causa (that no person should be proceeded against twice for the same cause).*”

This Judgment of mine shall not be understood that when a case is dismissed on whatever the ground, *res judicata* applies. I do not propose to discuss the whole gamut of *res judicata* here.

But in the facts and circumstance of this case, I hold that: (a) the respondents cannot now cling on R2 to justify the Quit Notice issued under the State Lands (Recovery of Possession) Act, which is being challenged in this case; and (b) insofar as the recovery of possession of this land under the provisions of the State Lands (Recovery of Possession) Act is concerned, the matter is *res judicata*.

I quash the Quit Notice marked P21 by way of writ of certiorari as prayed for in paragraph (c) of the prayer to the petition; and also prohibit the respondents by way of writ of prohibition from taking further actions to evict the petitioners from the land under the State Lands (Recovery of Possession) Act.

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<sup>2</sup> [2009] 2 Sri LR 172 at 185

The application of the petitioners is allowed with costs.

Judge of the Court of Appeal