

**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 and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 210/2019**

1. Pemawathie Ariyadasa
2. Nandani Malawara Arachchi

No. 3/9, Welikala Mawatha,  
Pagoda Road, Nugegoda.

**PETITIONERS**

Vs

1. M.J.D. Fernando,  
General Manager of Railways,  
General Manager's Office,  
Railway Department, Colombo 10.
2. The Secretary,  
Ministry of Transport and Civil Aviation,  
'Sethsiripaya', 7<sup>th</sup> Floor,  
Battaramulla.
3. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

Malawara Arachchige Ariyatilake,  
No. 278/8, Old Kottawa Road,  
Embuldeniya, Nugegoda.

**INTERVENIENT - PETITIONER**

**Before:** Arjuna Obeyesekere, J / President of the Court of Appeal

**Counsel:** Ms. Chandrika Morawaka for the Petitioners  
Ms. Indumini Randeni, State Counsel for the Respondents  
Malaka Herath for the Intervenant - Petitioner

**Supported on:** 10<sup>th</sup> December 2019

**Written submissions:** Tendered on behalf of the Petitioners on 24<sup>th</sup> December 2019  
Tendered on behalf of the Respondents on 19<sup>th</sup> December 2019  
Tendered on behalf of the Intervenant - Petitioners on 23<sup>rd</sup> December 2019

**Decided on:** 05<sup>th</sup> February 2021

**Arjuna Obeyesekere, J., P/CA**

When this matter was mentioned on 18<sup>th</sup> January 2021, the learned Counsel for all parties informed Court that they have no objection to this matter being considered by me, sitting alone, and the Order being delivered by me, as I was a member of the Bench before which this matter was supported for notice and interim relief on 10<sup>th</sup> December 2019.

The facts of this matter, as pleaded in the amended petition, are briefly as follows.

The Petitioners admit that premises bearing assessment No. 42/A, Stanley Tillekeratne Mawatha, Nugegoda is State land. The Petitioners admit further that the said land is part of a railway reservation and is under the control of Sri Lanka Railways. It is common knowledge that the railway line between Maradana and Avissawella, known as the *Kelani Valley Line* passes through the Nugegoda town. The above land is situated in close proximity to the said railway line and the Nugegoda Railway Station.

The husband of the 1<sup>st</sup> Petitioner M. A. Ariyadasa, who is the father of the 2<sup>nd</sup> Petitioner and the Interventient - Petitioner, had entered into a lease agreement with the then General Manager of Sri Lanka Railways in respect of the said land on 28<sup>th</sup> October 1969. In terms of the said lease agreement, marked 'R4', Sri Lanka Railways had leased the said land to Ariyadasa for a period of five years with effect from 28<sup>th</sup> July 1968. Clause 2 of 'R4' specifically provides that the lessee will not be entitled at the end of the lease period to the payment of any compensation for any buildings that may be erected on the said land. Thus, by agreement, the State is not liable to pay compensation for the improvements done by the lessee.

It is admitted that after the death of Ariyadasa, his wife, the 1<sup>st</sup> Petitioner was permitted to continue as the lessee and that lease rentals were paid by the 1<sup>st</sup> Petitioner. The 1<sup>st</sup> Petitioner has produced marked 'P2' the lease agreement that was entered into on 5<sup>th</sup> September 2000 for a period of five years commencing from 1<sup>st</sup> January 1998. The 1<sup>st</sup> Petitioner had entered into a further lease agreement with the then General Manager of Sri Lanka Railways on 6<sup>th</sup> February 2016. In terms of the latter lease agreement marked 'P26', the conditions of which are reiterated in 'P32', Sri Lanka Railways had leased the said land to the 1<sup>st</sup> Petitioner for a period of five years commencing 1<sup>st</sup> January 2013 at an annual lease rental of Rs. 600,000. The 1<sup>st</sup> Petitioner had paid the lease rental due until 31<sup>st</sup> December 2017, which is the terminal date of 'P26' and 'P32'.

Sri Lanka Railways has not extended the lease after 1<sup>st</sup> January 2018, in spite of requests by the Petitioners. It is the position of the learned State Counsel, as borne out by the Report marked 'R16' and 'R17' that the Government proposes to expand and improve the railway system in the Western Province. Feasibility studies have been carried out to improve the *Kelani Valley Line* by upgrading the present single track to double track up to Padukka. The Project *will modernize and upgrade the track, signal and telecommunications infrastructure and apply electric railways to improve railway network capacity and operation speed of the Kelani Valley Line*. The above expansion has been proposed not only to cater to the rapid increase in the number of commuters arising from the urban development taking place in the cities situated along the *Kelani Valley Line*, but also to attract commuters to railway transportation and thereby ease the vehicular congestion on the main roads. The learned State Counsel submitted that the State land which had been leased to the 1<sup>st</sup>

Petitioner is required to accommodate the facilities that are being built around the Nugegoda Railway Station. Thus, I am satisfied that the said State land is required for the development plans of the Government.

By letter dated 17<sup>th</sup> September 2018 marked 'P41', the 1<sup>st</sup> Respondent General Manager of Railways has informed the 1<sup>st</sup> Petitioner:

- (a) that the lease period expired on 31<sup>st</sup> December 2017;
- (b) that the lease agreement in respect of the said State land therefore stands terminated; and
- (c) accordingly to hand over the said State land within 30 days.

As the 1<sup>st</sup> Petitioner did not comply with 'P41', the 1<sup>st</sup> Respondent had issued the quit notice marked 'P43' to the 1<sup>st</sup> Petitioner in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (**the Act**) directing that vacant possession of the said land be handed over on or before 25<sup>th</sup> January 2019. The 1<sup>st</sup> Petitioner has not complied with the said quit notice. The 1<sup>st</sup> Respondent has therefore filed an application in the Magistrate's Court, Gangodawila in terms of Section 5 of the Act, seeking to eject the 1<sup>st</sup> Petitioner from the said land.

Dissatisfied with the above course of action of the 1<sup>st</sup> Respondent, the Petitioners filed this application on 24<sup>th</sup> May 2019. By an amended petition, the Petitioners have sought the following relief:

- a) A Writ of Certiorari to quash the Quit Notice marked 'P43';
- b) A Writ of Mandamus directing the 1<sup>st</sup> Respondent to execute a lease in respect of the said property in respect of the 2<sup>nd</sup> Petitioner;
- c) An interim order staying further proceedings in Magistrate's Court Case No. 27411.

The application for intervention has been filed by the son of the 1<sup>st</sup> Petitioner, claiming that he too has an interest in the business that is carried out on the said

premises by the 1<sup>st</sup> Petitioner. In his written submissions, the Intervient - Petitioner had moved that the relief prayed by the Petitioners be granted.

In considering the application for a Writ of Certiorari to quash the quit notice '**P43**', it would be appropriate for me to bear in mind the following statement of Lord Diplock in the case of **Council of Civil Service Unions vs Minister for the Civil Service**<sup>1</sup>:

*“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.”**”*

The learned Counsel for the Petitioners is not complaining about the procedure followed by the 1<sup>st</sup> Respondent. Her complaint instead is that the 1<sup>st</sup> Respondent has acted arbitrarily and illegally by issuing the above quit notice. Lord Diplock went onto identify *illegality* in the following manner:

*“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.”*

The State Lands (Recovery of Possession) Act was introduced in 1979 to provide for an expeditious mode of recovery of State land from persons who were in unauthorised possession or occupation of such state lands. Section 18 of the Act defines ‘State Land’ and ‘Unauthorised possession or occupation’ as follows:

**‘State land’** – *“land to which **the State is lawfully entitled** or which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto,....”*

**‘Unauthorized possession or occupation’** – *“except possession or occupation upon a valid permit or other written authority of the State granted in*

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<sup>1</sup>1985 AC 374.

*accordance with any written law, and includes possession or occupation by encroachment upon State land.”*

In **Namunukula Plantations PLC v. Nimal Punchihewa**<sup>2</sup>, this Court held that:

*“A competent authority can have recourse to the [State Lands (Recovery of Possession)] 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”.*

Referring to the definition of ‘Unauthorized possession or occupation’, S.N. Silva, J (as he was then) said in **Ihalapathirana vs Urban Development Authority and Others**<sup>3</sup> that:

*‘This definition is couched in wide terms so that, in every situation where a person is in possession or occupation of State Land, the possession or occupation is considered as unauthorised unless such possession or occupation is warranted by a permit or other written authority granted in accordance with any written law.’*

The lease agreement ‘**P26**’ (and ‘**P32**’) between the 1<sup>st</sup> Petitioner and the 1<sup>st</sup> Respondent expired on 31<sup>st</sup> December 2017. The 1<sup>st</sup> Petitioner has not been issued with a permit or other written authority in accordance with any written law in respect of the said State land, for any period thereafter. The possession and occupation of the said State land by the 1<sup>st</sup> Petitioner and those claiming under her is therefore clearly unauthorised. In the written submission filed on behalf of the Petitioners, it has been submitted that ‘**P32**’ is dated 23<sup>rd</sup> July 2015 and that the five year period would end only on 22<sup>nd</sup> July 2020. This position is clearly not correct as both ‘**P26**’ and ‘**P32**’ clearly provide that the lease shall expire on 31<sup>st</sup> December 2017. The practice adopted in ‘**R4**’ and followed in ‘**P2**’, ‘**P26**’ and ‘**P32**’ has been to back date the starting date of the lease period, at the time of the execution of the

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<sup>2</sup> CA (PHC) APN 29/2016; CA Minutes of 9<sup>th</sup> July 2018.

<sup>3</sup> [1988] 1 Sri LR 416.

said lease agreements. This is perfectly legal and does not mean that the agreement is valid for a period of five years from the date of its execution. In any event, the payment receipts produced by the Petitioners do not go beyond 31<sup>st</sup> December 2017.

In terms of Section 3 of the Act, where the Competent Authority – in this case, the 1<sup>st</sup> Respondent - is of the opinion that any land is State land and that any person is in unauthorised possession or occupation of such land, he may issue a quit notice to the person in possession of the property identified in the said notice, requiring such person to vacate the said land with his or her dependants, if any, and deliver vacant possession of such land, on a date not less than thirty days from the date of the issue of the said quit notice. Section 3(1A) of the Act provides that, *'no person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1)'*.

It has been submitted on behalf of the Petitioners that the land occupied by them is not required for the expansion of the railway track. In my view, this is immaterial. I have already referred to the submission of the learned State Counsel, supported by the documents 'R16' and 'R17' that supports the requirement of the land for the development activity of Sri Lanka Railways and thereby contradicts the position of the Petitioners. I must state that even if the land is not required for the stated purpose, the discretion whether to extend the lease is with the 1<sup>st</sup> Respondent. The Petitioners cannot demand that the said land be given on a lease to them. Furthermore, the 1<sup>st</sup> Respondent is empowered in terms of the Act to take steps to evict the 1<sup>st</sup> Petitioner where the 1<sup>st</sup> Petitioner has not vacated the premises in spite of there being no valid lease agreement.

In the event the 1<sup>st</sup> Petitioner who is the person in possession fails to vacate such land and deliver vacant possession, the Competent Authority – in this case, the 1<sup>st</sup> Respondent - shall be entitled in terms of Section 5 of the Act to file an application for ejectment in the Magistrate's Court. The learned Magistrate is thereafter required to issue summons in terms of Section 6 of the Act to the 1st Petitioner to appear and to show cause as to why she should not be ejected from the land as prayed for in the application for ejectment.

The scope of the Inquiry that has to be held by the learned Magistrate and the defences that could be taken up by a person against whom an application for ejectment has been filed, have been set out in Section 9 of the Act, which reads as follows:

*"At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may 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."*

A very strict regime has therefore been put in place by the legislature for the reason, as stated in **Ihalapathirana vs Bulankulame, Director-General, Urban Development Authority**,<sup>4</sup> that *"The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action"*.

The provisions of Section 9 of the Act have been considered in several judgments of the Supreme Court and this Court.<sup>5</sup> In **Nirmal Paper Converters (Pvt) Limited vs Sri Lanka Ports Authority**<sup>6</sup> it was held as follows:

*"the only ground on which the petitioner is entitled to remain on this land is upon a valid permit or other written authority of the State as laid down in section 9 (1) of the State Lands (Recovery of Possession) Act. He cannot contest any of the other matters."*

The above position has been confirmed in **Aravindakumar vs Alwis and Others**<sup>7</sup> where Sisira De Abrew J [with Sripavan J (*as he then was*) agreeing] has held as follows:

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<sup>4</sup> Ibid; at page 420.

<sup>5</sup> See *Herath vs Morgan Engineering (Pvt) Limited* [SC Appeal No. 214/2012 – SC Minutes of 27<sup>th</sup> June 2013 – Judgment of Sripavan J (*as he then was*)]; *Muhandiram vs Chairman, No. 111, Janatha Estates Development Board* [1992 1 Sri LR 110].

<sup>6</sup>[1993] 1 Sri LR 219.

<sup>7</sup>[2007] 1 Sri LR 316.



*“According to the scheme provided in the Act a person who is in possession or occupation of any State land and has been served with quit notice under Section 3 of the Act can continue to be in possession or occupation of the land only upon a valid permit or other written authority of the State described in Section 9 of the Act.”*

The Act makes it clear that if the land in question is State land, and the person in possession is unable to show a valid permit or other written authority of the State issued in terms of any written law to possess the said land, the State is entitled to issue a quit notice seeking to eject the person in illegal occupation, from the said land. If the said quit notice is not complied with, the Competent Authority is entitled to make an application in terms of the Act to eject such person.

In this application, there is no dispute that the land in question is State land and that the lease executed in favour of the 1<sup>st</sup> Petitioner lapsed on 31<sup>st</sup> December 2017. As I have already noted, the occupation of the said State land by the 1<sup>st</sup> Petitioner and those claiming under her is clearly unauthorised. This is a classic case where the provisions of the State Lands (Recovery of Possession) Act could be invoked by the 1<sup>st</sup> Respondent. I am therefore of the view that the 1<sup>st</sup> Respondent acted within the provisions of the Act when he issued the quit notice **‘P43’** on the 1<sup>st</sup> Petitioner and thereafter filed action when the 1<sup>st</sup> Petitioner did not comply with the said quit notice. The action of the 1<sup>st</sup> Respondent is therefore clearly not illegal.

In the above circumstances, I see no legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

**President of the Court of Appeal**