

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

In the matter of an Application for Orders in the nature of Writs of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No: 484/2011**

M.I. Fernando,  
Samagiyapura Mawatha,  
Ragala,  
Halgran Oya.

**PETITIONER**

Vs.

- 1) J.M.C.Priyadharshani,  
Authorised Officer/Competent Authority,  
Ministry of Plantation Industries.
  - 2) Hon. Mahinda Samarasinghe,  
Minister of Plantation Industries.
  - 3) Malini Peiris,  
Secretary,  
Ministry of Plantation Industries.
- 1<sup>st</sup> – 3<sup>rd</sup> Respondents at  
No. 55/75, Vauxhall Street,  
Colombo 2.
- 4) Land Reform Commission.  
82C, Hector Kobbekaduwa Mawatha,  
Colombo 7.
  - 5) Maturata Plantations Limited,  
Ragala,  
Halgran Oya.

**RESPONDENTS**

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

**Counsel:** Sanjeeva Jayawardena, P.C., with Rukshan Senadheera for the Petitioner

Milinda Gunatilake, Additional Solicitor General for the 1<sup>st</sup> – 3<sup>rd</sup> Respondents

S.S. Sahabandu, P.C., for the 4<sup>th</sup> Respondent

Ms. Daphne Peiris for the 5<sup>th</sup> Respondent

**Written Submissions:** Tendered on behalf of the Petitioner on 7<sup>th</sup> November 2018, 27<sup>th</sup> March 2019 and 3<sup>rd</sup> March 2020

Tendered on behalf of the 1<sup>st</sup> – 3<sup>rd</sup> Respondents on 7<sup>th</sup> December 2018 and 6<sup>th</sup> January 2021

Tendered on behalf of the 4<sup>th</sup> Respondent on 6<sup>th</sup> December 2018

Tendered on behalf of the 5<sup>th</sup> Respondent on 28<sup>th</sup> November 2018

**Decided on:** 10<sup>th</sup> June 2021

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

The Petitioner has filed this application seeking *inter alia* a Writ of Certiorari to quash the Quit Notice marked 'X8' served on him by the 1<sup>st</sup> Respondent, the Competent Authority in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended (**the Act**).

The facts of this matter very briefly are as follows.

The Petitioner states that his father, Davith Fernando came into possession of the land described in the First Schedule to the petition in 1923 and that he continued to be in possession of the said land until his death in 1970. The Petitioner states further that his father transferred the aforementioned land to Richard Fernando, the elder brother of the Petitioner by Deed of Transfer No. 3112 dated 7<sup>th</sup> September 1966, marked 'X3'. I have examined 'X3' and observe that while details of any prior registration have not been specified, it acknowledges that Davith Fernando has held

and possessed the said land for over twenty years. The extent of the land referred to therein is *about half an acre* and the boundaries given in 'X3' are as follows:

North	Wire fence separating the portion from Ragala Estate's Superintendent's Bungalow
East	V.C. Road leading to Uva Paranagama
South	Barbed wire fence separating the land from Ragala Estate
West	No. 17, Tea Field belonging to Upper Division of Ragala Estate

It would thus be seen that the Superintendent's bungalow was situated on the northern boundary of the said land possessed by Davith Fernando.

The Petitioner states that his brother, Richard Fernando transferred the ownership of the said land to him by Deed of Gift No. 113 dated 2<sup>nd</sup> February 1985, marked 'X4'. The extent of the land and the boundaries are the same as 'X3'. The Petitioner states that he transferred 35 perches out of the said land to his two sisters by Deed of Gift No. 707 dated 5<sup>th</sup> January 1995, marked 'X5'. The land transferred by the Petitioner to his two sisters has been depicted as Lot No. 2 of Plan No. 3904, while the extent of land that the Petitioner retained has been depicted as Lot No. 1.

It is admitted that the land occupied by the Petitioner is surrounded on three sides by Ragala Estate. It is the position of the Respondents that the land occupied by the Petitioner too is part of the Ragala Estate. The Respondents state that Ragala Estate including *Halgran Oya* Division vested in the 4<sup>th</sup> Respondent, the Land Reform Commission under the provisions of the Land Reform Law No. 1 of 1972, as amended (**the LRC Law**). The Statutory Declaration made by the owner of the Ragala Group is marked '4R1'.

In terms of an Order made by the Minister of Agriculture under Section 27A(1) of the LRC Law and published in Extraordinary Gazette No. 183/10 dated 12<sup>th</sup> March 1982 marked 'R1', the Ragala Group including *Halgran Oya* division had been vested with the Janatha Estates Development Board (**the JEDB**), a Corporation established under the State Agricultural Corporations Act No. 11 of 1972. In terms of Section 27A(2) of the LRC Law, an Order under Section 27A(1) shall have the effect of vesting in the JEDB 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. Thus, title in the Ragala Estate is now with the JEDB

By 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), published in Extraordinary Gazette No. 720/2 dated 22<sup>nd</sup> June 1992, marked '5R2', the 5<sup>th</sup> Respondent, Mathurata Plantations Limited had been incorporated to take over the functions and carry on the business of the parts of the JEDB specified therein, including the Ragala Estate and St Leonards Estate.

The JEDB had thereafter executed an Indenture of Lease No. 763 dated 18<sup>th</sup> November 1999 marked 'R2' in terms of which it had leased to the 5<sup>th</sup> Respondent the land referred to therein, including the Ragala Estate and the Halgran Oya Estate, in extent of approximately 1402A, for a period of 53 years.

Section 18 of the Act defines 'State Land' as follows:

*" 'State land' means 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, and includes:*

*(b) land vested in or owned by under the control of –*

- (i) the Land Reform Commission established by the Land Reform Law, No.1 of 1972;*
- (ii) any corporate body established by or under ..... the State Agricultural Corporations Act No. 11 of 1972, ...., as the case may be;"*

Thus, Ragala Estate falls within the definition of State Land [*by virtue of b(ii)*] for the purposes of the Act.

The Petitioner admits that the land possessed by him is bounded by Ragala Estate that is occupied by the 5<sup>th</sup> Respondent. The Petitioner states since 1999, there have

been periodic disputes between himself and the management of the 5<sup>th</sup> Respondent, with regard to the ownership and possession of the land possessed by the Petitioner.

The Petitioner states that in July 1997, he instituted Case No. L/592 in the District Court of Nuwara Eliya against the Superintendent of the 5<sup>th</sup> Respondent and the predecessor of the 1<sup>st</sup> Respondent, seeking *inter alia* a declaration of title in respect of the aforementioned land possessed by the Petitioner. By way of a Claim in Reconvention, as contained in the amended answer of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, the defendants had prayed for an order to eject the Petitioner and/or anyone holding under the Petitioner, from the land referred to in the 2<sup>nd</sup> Schedule to the answer, which land is depicted in Plan No. 6151 and is in extent of 1R 19P. I must note that as per the said Schedule, the northern boundary of the land from which ejection of the Petitioner was sought is the Superintendent's Bungalow, while the eastern boundary of the said land is the road.

By a judgment dated 18<sup>th</sup> January 2011, the District Court dismissed the action of the Petitioner and the claim in reconvention. The District Judge had observed that the Petitioner's father had claimed title to the said land described in the 1<sup>st</sup> schedule to the plaint by virtue of long possession for over twenty years:

“පැර 20 වසරකට වැඩි කාලයක් තුළින් තනතුරු වන කරුණක් වනුයේ තෙවන පාර්ශවයකගෙන් පැමිණිලිකරුවන් වෙත දේපල ගැනීමක් නොව දිරිස කාලයක සිට භුක්තිය දැරීම මත පළමු උප ලේඛණයගත දේපල සම්බන්ධයෙන් අයිතිවාසිකම් කියාපා ඇති බවට වේ.”

However, in the absence of any evidence other than the Petitioner's oral evidence as to when the Petitioner's father came into possession of the said land, and against whom he took adverse possession of the land, the District Judge had concluded that the fact that the Petitioner's father had prescriptive title has not been proved before the District Court. The position of the Petitioner that he had title to the said land by virtue of the aforementioned deeds 'X3' and 'X4' has not been accepted by the District Court.<sup>1</sup> Therefore, due to the failure of the Petitioner to prove how his father initially obtained title which he passed on to the Petitioner's brother by virtue of 'X3', the District Judge had dismissed the action of the Petitioner.

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<sup>1</sup> Vide page 15 of the judgment.

After the above action was dismissed, the 1<sup>st</sup> Respondent, the Officer of the Ministry of Plantation Industries who had been designated the Competent Authority for the purposes of the Act, had served the Petitioner with a Quit Notice dated 17<sup>th</sup> June 2011 marked 'X8' to hand over quiet and vacant possession of the above land possessed by the Petitioner. Aggrieved by the decision to issue the said quit notice, the Petitioner filed this application, seeking a Writ of Certiorari to quash 'X8'.

Before proceeding to consider the submissions on behalf of the Petitioner, it would be useful to lay down, very briefly, the general framework of the Act, in order to place in perspective the standard of review which Courts wish to adopt in reviewing decisions taken under the Act.

The general objective of the Act has been discussed in **Namunukula Plantations PLC v. Nimal Punchihewa**,<sup>2</sup> where this Court held as follows:

*"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".*

A strict regime has been put in place by the legislature in order to achieve the above purpose of the Act and to ensure that possession of State land can be obtained through '*an expeditious machinery without recourse to an ordinary civil action*'.<sup>3</sup>

The starting point of the said regime is Section 3 of the Act which reads as follows:

*"(1) Where a competent authority is of the opinion:*

*(a) that any land is State land; and*

*(b) that any person is in unauthorized possession or occupation of such land,*

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

<sup>3</sup> Ihalapathirana v. Bulankulame [1988] 1 Sri LR 416 at 420.

*the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependents, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.*

*(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1).<sup>4</sup>*

*(2) Every notice under subsection (1) issued in respect of any State land is in this Act referred to as a “quit notice”.*

*(3) A quit notice in respect of any State land shall be deemed to have been served on the person in possession or occupation thereof if such notice is sent by registered post.*

*(4) Every quit notice shall be in Form ‘A’ set out in the Schedule to this Act.”*

Section 3 of the Act is made up of several components. Firstly, prior to initiating the process described under Section 3, the Competent Authority must form an opinion that the land in question is State land, and that the person against whom the quit notice is being issued is in *unauthorized possession or occupation of such land*.<sup>5</sup> In forming that opinion, the Competent Authority is not required to afford anyone a hearing or conduct an inquiry.

In the event the person in possession fails to vacate such land and deliver vacant possession, the Competent Authority shall be entitled in terms of Section 5 of the Act to file an application for ejectment in the Magistrate's Court. The Magistrate is thereafter required to issue summons in terms of Section 6 of the Act on the person

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<sup>4</sup> State Lands (Recovery of Possession) (Amendment) Act No. 29 of 1983.

<sup>5</sup> Vide Section 18 of the Act

named in the said application to appear and to show cause as to why he should not be ejected from the land as prayed for in the application for ejectment.

The scope of the Inquiry that is held by the Magistrate is narrow. While Section 9(2) precludes the Magistrate from calling any evidence from the competent authority in support of his application under Section 5, the defences that could be taken up by a person against whom an application has been filed for ejectment are limited to those set out in Section 9(1) of the Act, namely 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 person against whom an Order of ejectment has been issued, has an opportunity to vindicate his/her title under Section 12 of the Act.

Therefore, it is clear that the process which is triggered by the Competent Authority's opinion, leading to the issuance of the quit notice can have far reaching consequences on one's proprietary rights and therefore must be placed under strict scrutiny of Courts.<sup>6</sup>

I shall now consider the two principal arguments of the learned President's Counsel for the Petitioner.

The first argument relates to the quit notice 'X8'. In terms of Section 3(4), every quit notice shall be in accordance with Form 'A' of the Act, in terms of which the Competent Authority is required to describe the land and state the situation of the land in a schedule to the said quit notice.

The schedule to 'X8' reads as follows:

“මධ්‍යම පලාතේ නුවරඑළිය දිස්ත්‍රික්කයේ වලපනේ ප්‍රාදේශීය ආදායම් නිලධාරී කොට්ඨාශයේ  
හල්ගුණ්ඛය, රාගල වත්ත ඉහල කොටසේ පිහිටා ඇති

උතුරට ශාන්ත ලෙනාඩිස් වතුයායද

නැගෙනහිර ශාන්ත ලෙනාඩිස් වතුයායද

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<sup>6</sup> See CA (Writ) Application No. 293/2017; CA Minutes of 18<sup>th</sup> November 2019.



දකුණට රාගල වත්ත වතු අධිකාරී නිල නිවසද

බස්නාහිරට ගාන්ත ලෙනාඩස් වතුයායේ සිට රාගල වතුයාය වෙත දිවෙන මාර්ගයද

යන සතර මායිම් තුළ පිහිටි ඉඩම් කොටස සහ ඒ තුළ පිහිටා තිබෙන ගොඩනැගිලි ඇතුළු අනෙකුත් සෑම සියලුම දේද වේ.”

The learned President’s Counsel for the Petitioner submitted that it is important that the quit notice is precise with regard to the extent and boundaries but that the quit notice ‘X8’ does not contain an extent of land from which ejection is sought, nor is there a reference to the land by way of a Survey Plan. It is the position of the Petitioner that although the boundaries of the land have been given, the accuracy of which I will advert to later, the extent of land that the Petitioner is in possession of can be greater than what the State can have a claim to. The Petitioner states that the words සතර මායිම් තුළ පිහිටි ඉඩම් කොටස without any specification of the extent to which the quit notice is intended to apply to, would give the 1<sup>st</sup> Respondent the proverbial freedom of the wild horse to abuse his powers and take possession of all extents of land within those four boundaries which he submitted would lead to an abuse of due process and defeat the rule of law. The learned Additional Solicitor General however submitted that right around the land possessed by the Petitioner is the Ragala Estate and its divisions and that there is no difficulty in identifying the land to which the quit notice relates to.

The learned President’s Counsel for the Petitioner submitted that a higher burden must be placed on the Competent Authority to ensure that the corpus is properly and precisely identified in view of the strict regime put in place by the Act. An individual who is served with a quit notice can only present the limited defences available to him in terms of the Act and does not have any means of challenging the boundaries stated therein. Therefore, the Competent Authority must take the responsibility of properly identifying the land the possession of which is sought to be recovered.

The learned Additional Solicitor General submitted that all that Section 3(4) of the Act requires is for the quit notice to be in accordance with Form A of the Schedule to the Act, and that there is no requirement in Form A to annex a plan, specify metes and bounds and to specify extents. He submitted further that in the absence of any

such requirement in the Act, it would be wrong for this Court to impose such a requirement.

The learned Additional Solicitor General submitted further that the land in which the Petitioner is in unlawful possession is situated on a corner of the Ragala Estate and is bounded on three sides by the Estate and one side by the road and falls squarely within the Ragala Estate. He submitted that in the absence of any other land:

- (a) the entire land within the said boundaries is part of the Ragala Estate;
- (b) it is not necessary to specify the extent of land from which ejection is sought;
- (c) the specification of metes and bounds is irrelevant.
- (d) it is not impractical to identify and take over possession of the land possessed by the Petitioner.

The submission of the learned Additional Solicitor General is not without merit, given the peculiar factual circumstances of this application that all other land surrounding the land possessed by the Petitioner is land forming part of Ragala Estate. I must however state that that does not negate the requirement in Form A which is to *describe the land stating the situation*. The best way to *describe a land* is by referring to a survey plan. Similarly, *stating the situation* of a land could be done by reference to a survey plan. Furthermore, I am of the view that while at least an approximate extent of the land must be specified where ejection is sought from a large extent of land, as in this application, where ejection is sought from a land situated in an Urban area, the extent of the land must be specified clearly.

The failure of the 1<sup>st</sup> Respondent to identify the land by reference to a survey plan has given rise to the next submission of the learned President's Counsel for the Petitioner that in any event, the boundaries specified in 'X8' are wrong. There are three survey plans relating to the impugned land that were produced before the District Court. They are:

- a) Plan No. 3904 dated 29<sup>th</sup> October 1994;<sup>7</sup>
- b) Plan No. 4962 dated 28<sup>th</sup> November 2008;<sup>8</sup>
- c) Plan No. 6151 dated 5<sup>th</sup> November 2010.<sup>9</sup>

Of the above three plans, Plan No. 4962 has been prepared pursuant to a Commission issued by the District Court of Nuwara Eliya, while Plan No. 6151 has been relied upon by the 1<sup>st</sup> Respondent to support the claim in reconvention before the District Court. In each of the three plans, the Manager’s Bungalow is situated on the northern boundary while the Road is situated on the eastern Boundary.

A comparison of the boundaries in the above three survey plans with the boundaries of the quit notice in ‘**X8**’ is set out below:

	Survey Plan Nos. 3904, 4962 and 6151	Quit Notice
North	Superintendent’s Bungalow	St. Leonards Estate
East	Road	St. Leonards Estate
South	Ragala Estate Field No. 17	Superintendent’s Bungalow
West	No. 17, Tea Field - Upper Division of Ragala Estate	Road

It is clear from the three Survey Plans, including the Survey Plan that was relied upon by the 1<sup>st</sup> Respondent in the District Court to support the claim in reconvention, that the Superintendent’s Bungalow is situated to the north of the land possessed by the Petitioner. According to ‘**X8**’, the said bungalow is situated on the southern boundary. The same position applies to the road, which is the eastern boundary on each of the said survey plans but is situated on the western boundary in the quit notice. It also appears that Ragala Estate and St Leonard’s Estate are two separate estates.<sup>10</sup> Thus, even though the quit notice ‘**X8**’ has described the land by reference to boundaries, the boundaries are incorrect with the result that the *situation of the*

<sup>7</sup> Vide page 187 of ‘X7’.

<sup>8</sup> Vide page 173 of ‘X7’.

<sup>9</sup> Vide page 171 of ‘X7’.

<sup>10</sup> Vide ‘R2’.

*land* has not been correctly identified as required by Form 'A'. I am therefore of the view that '**X8**' is not in conformity with the provisions of Form 'A' and that the Quit Notice is liable to be quashed by a Writ of Certiorari.

I shall now consider the second argument of the learned President's Counsel for the Petitioner, which was raised during the course of the submissions, that the 1<sup>st</sup> Respondent, in her capacity as the Plantation Supervising Officer of the Plantation Management Supervision Unit of the Ministry of Plantation Industries cannot be classified as a Competent Authority for the purposes of the Act.

Section 18 of the Act defines a 'competent authority' as follows:

*"Competent Authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes ..... :*

*(l) an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body.*

I have already adverted to the fact that Ragala Estate has been vested in the JEDB, that title to the said estate is with the JEDB and to the fact that land vested in the JEDB is State land for the purposes of the Act.

The learned President's Counsel for the Petitioner submitted that the said land has been leased to the 5<sup>th</sup> Respondent and that there is no proof that the 5<sup>th</sup> Respondent has authorised the 1<sup>st</sup> Respondent in any manner. In order to come within paragraph (l) of the definition and be a competent authority for the purposes of the Act, what is required is for the corporate body in whom the land is vested – the JEDB in this case – to authorise the 1<sup>st</sup> Respondent. The fact that the land has been leased to the 5<sup>th</sup> Respondent is therefore immaterial.

The Respondents have produced by motion dated 7<sup>th</sup> October 2019, a Board Resolution of the JEDB dated 21<sup>st</sup> July 2009, appointing the 1<sup>st</sup> Respondent as the Competent Authority for the purposes of the Act in respect of land vested in the

JEDB. As the 1<sup>st</sup> Respondent has been authorized by the JEDB to initiate action under the Act, I am of the view that the 1<sup>st</sup> Respondent is entitled to function as the Competent Authority for the purposes of the Act and that the 1<sup>st</sup> Respondent has the power to issue the quit notice 'X8'. I therefore do not see any merit in the second submission on behalf of the Petitioner.

In the above circumstances, I issue a Writ of Certiorari quashing the quit notice marked 'X8'. The Respondents may issue in terms of the Act, a fresh quit notice to the Petitioner in respect of the land possessed by the Petitioner.

I make no order with regard to costs.

**President of the Court of Appeal**