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

In the matter of an application for the issue of a Writ of Mandamus and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Rupasinghe Arachilage Wijayasiri Perera,
No.24/12, Alubogahalanda Mawatha,
Bandarawatte,
Gampaha

C.A. (Writ) Application No: 119/2016 **PETITIONER**

Vs.

1. The Divisional Secretary
   The Divisional Secretariat,
   Athanagalla.

2. The District Secretary
   The District Secretariat,
   Gampaha.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. &**
K. K. A. V. SWARNADHIPATHI, J.

Counsel: Manohara De Silva (PC) with Nimal Hippola,
for the Petitioner

Vicum de Abrew (S.D.S.G)
for the Respondent

Decided on: 03.11.2021

K. K. A. V. SWARNADHIPATHI, J

JUDGEMENT

Petitioner had filed this application for writs in the nature of Mandamus and Prohibition and had prayed for few other judicial orders. The Petitioner had introduced the Land he claims by Plan No. 810 drawn by a licensed surveyor and commissioner Arnold Binduhewa on 04.04.1928

Lot B in Plan No.810 aforementioned was sold by its owner Rosaline Florence Perera by deed No. 65 attested by D. F. De Silva Notary Public on 20th of April 1928 to Dulcie Gladys Thillekarathne. According to the deed, which was marked as P2a with the petition. It depicts a land at Tihariya. Wich is in the extent of 22 Acres, two roads and 22.53 perches (A2 R2 P22.53).

Dilcie Gladys Thillekarathne then gifted the Land to Chandrani de Livera, who subdivided lot B into two equal portions and gifted it to her son and daughter. The subdivision was shown in Plan No. 810 by a licenced surveyor R.A.Chandrarathna on 01. 0.9. 1978. The son James Ranil Virendra de Livera, who got lot B1, sold the same to the Petitioner by deed 1490 dated 16.08.2006 attested by F J & G de Saram Notaries.

Elum Devika Perera de Livera, the owner of Lot B2, sold a portion of B2 to the Petitioner. This lot B2 was subdivided by plan No.1023 of J.P.I. Abeykoon (licence Surveyor on the 18th of April 1994. The Petitioner had bought lot 8 in the extent of 22.50 perches.

Petitioner claims he is the owner of lots 22, 44B,45,46,57,58 and 62 of plan No.1023, but deeds are not forwarded to prove his position. For road widening, a preliminary plan was drawn by the Sri Lanka Surveyor Department. According to this preliminary Plan No, 3892 south-easts of Lot B, in Plan No. 810 is depicted as lot No, 264 and 308. Lot 8 in plan 1023 is defined as lot 255.

The Petitioner states that lots 1-6, 9-12, and 14 of plan 1023 are depicted in the preliminary Plan No 3892 lots 263,262,260,259,249 and 222 belong to third party purchasers. Out of the preliminary Plan No. 3892, only lots 264,265,306,307 and 308. (From lot B1 of Plan No. 810) and lots 255 (from B2 of plan No.810) is held by the Petitioner.

The 1st Respondent published a notice under Section 7 of the Land Acquisition Act in Gazette Extraordinary No. 1817/4 dated 01/07.2013, including the lots 264, 265, 306,307 and 255 of preliminary Plan No 3892. With Section 7 notice, the Petitioner realised that the lots he claimed

had been described as unlawfully occupied, along with some of the lots held by third-party purchases.

An inquiry was held under Section 9 of the Land Acquisition Act on 06.09.2013 and pronounced the Petitioner to be the owner of lots 255,264,265, and 308. Subsequently, by notice dated 19.02.2014. 1st Respondent had informed that the Petitioner is the owner only of lots 264 and 308. Further 1st Respondent had reported that by preliminary Plan No. 20218, those lots were already acquired by the State as far back as 1931. When inquired for grounds in which the authority claims those lots as State land, the only reason given to the Plaintiff was that in Plan no 20218 (this was marked and produced as P14), there is a side note which reads as 'Stakes on the boundaries of lots 1 and 3 replaced with Public Works Dept Stones by P.W.D., checked by Mr C Dirckze third-grade surveyor, ……inserted by V. Sadasivam examine by M. Benjamin. (11.01.32). On the strength of this information, it is clear that the only basis on which the 1st Respondent claims the land in question belongs to the State is a side minute entered in the said document.

Page 2 of the P14 in the Tenantment List to accompany P.P.20218 -W. P some lots of land had been identified as lands encroached by Dr J.D.L. Perera. Other than that, the authorities failed to furnish proof to prove that these lands belong to the State. Petitioner claimed compensation for the land, but the authorities have not paid, making excuses that the land was already acquired.

The Petitioner seeks from this court mandates,

(a) Issue notice on the Respondents

(b) Grant and issue a mandate in the nature of a writ of mandamus to directed 1st and/ or 2nd Respondent to award compensation to the Petitioner regarding lots 264, 308, and 255 in plan 3892 in terms of section 17 of the Land Acquisition Act.

(c) Grant and issue a mandate in the nature of a writ of mandamus to directed 1st and/ or 2nd Respondent to award compensation to the Petitioner in respect of lots 263,262, 260, 259, 258, 257, 254, 253, 252, 251, 250, 249, 222 in plan 3892 in terms of section 17 of the Land Acquisition Act.

(d) Grand and issue a mandate in the nature of a rate of prohibition preventing the 1st and 2nd Respondents and/or the State from taking possession of lots 264, 308, and 255 in plan 38921

owned and claimed by the Petitioner without recourse to the provisions of the Land Acquisition Act.

(e) Grand and issue a mandate in the nature of a rate of prohibition preventing the 1st and 2nd Respondents and/or the State from taking possession of lot 263, 262, 260, 259, 258, 257, 254, 253, 252, 251, 250, 249, and 222 in plan 38921 and claimed by the third-party purchases without recourse to the provisions of the Land Acquisition Act.

.(f) Grand and issue a mandate in the nature of a rate of prohibition preventing the 1st and 2nd Respondents and/or the State from taking possession of lots 264, 308, and 255 in plan 3892 owned and claimed by the Petitioner and lots 263, 262, 260, 259, 258, 257, 254, 253, 252, 251, 250, 249, and 222 of plan 3892 on and claimed by third-party purchases without recourse to the provisions of the Land Acquisition Act.

The objections were filed on behalf of the first and second respondents. They contended that lots in question had been identified as state land. However, according to circular number 1 of the Ministry of Highways, a decision had been taken to pay compensation to illegal occupants of state lands who had made improvements. Lots 249, 250, 251, 253, 254, 255, 257, 258, 259, and 262 of the Plan 3892 had been identified by the chief value as lots that had not been improved, and therefore these lots will not be paid any compensation. Lots 222, 252, 260 and 263 of Plan No 3892 was identified as lots with some improvements; therefore, these lots will be paid compensation. After an enhancement of compensation by the. LARC Committee, owners of those four lots, were paid and had already excepted the payment. The Respondent further noted that the word owner was used inadvertently, and the correct word should have been illegal occupants. Petitioner claims no compensation was paid to him at any time.

Both parties filed written submissions and agreed to dispose of the matter on the written submissions already filed.

Petitioner stresses that Section 7 of the Land Acquisition Act was issued, and after an enquiry, a decision was made in terms of Section 10(1) (a). On the strength of the findings of that inquiry, lots 255, 264, 265 and 308 plan No. 3892 were identified as lots belonging to the Petitioner. According to section 10(3), if there had been any dispute, it should have been referred to a competent court before pronouncing the ownership. Section 10(5) of the land acquisition act reads as,

"Where an acquiring officer makes a decision on any claim or dispute under subsection (1) and the claims, or dispute is not referred for a determination as provided in Section 3 the decision shall be final".

Once the ownership is pronounced, it is mandatory to act under Section 17. After the findings of Section 10(1)(a), which became final, there cannot be a revival and come up with a new finding. If the land belonged to the State, the publishing of Section 7 notice in the Gazette extraordinary number 1817/4 dated 01.07.2013 was unnecessary. The Act of publishing in the said Gazette by 1st and 2nd Respondents and officers of the government proves that for all purposes, these lands were considered not as state land but as private own land. Therefore, no officer can now claim them as state lands.

Lots 215 and lot 221 of the said Plan had been identified as privately held land. These two lots are part of lot B2 of plan 810, and it is mandatory to explain how those two lots became private land. The Respondents have at all times considered these lands as private lands until after the Section 10(1)(a) decision was reached.

The Respondents identified the owners on the strength of the surveyor General's Plan and the tenement list. Lots 255, 264, 308 were identified as state land and the Petitioner as an unlawful occupant. When the Gazette marked as P8 is perused, it is clear that it had referred to each lot separately, indicating the owner and his staters to hold the lot. For example, the following lots were described as

Lot 249 - Sunil Wijersthna

263 P Manel Wickramathilaja

265 W.P. Rupasinghe

According to the Petitioner, the document marked P9a, P9b, P9C, P9d are documents on which the authorities had accepted him as the owner. The law does not permit state land to be owned by any other form other than on a state grant. Even on prescription, one cannot claim a state land. The land had been identified in the tenement list as state land. Therefore, it is clear that the officer who issued documents P9a - P9d had no authority to pronounce these lands as privately owned land. The Petitioner who saw the Gazette identified his lands as State-owned and him as an unlawful occupant. He should have objected and exercised his right to safeguard his title at the time of this Gazette notification. It is settled law that an administrative error of an officer will not give any right to the Petitioner.

G.M. Nimalasiri V. Col. P. B.J. Fernando and others[1] Express that administrative error cannot be a basis of legitimate expectation.

Vasana Vs Incorporation of Legal Education[2] held, "When the basic ingredient necessary for the formation of a legitimate expectation…… is lacking, the Petitioner cannot rely on a document which contains a provisional decision which has been subsequently found to be a decision based on erroneous factual data submitted to the law college due to an inadvertent error committed by the examiner. "

In light of this decision, it is clear the letters P9a-P9d declaring the Petitioner as the owner does not give any legitimacy to the Petitioner. On the other hand, the Petitioner had the opportunity to go before a competent court and prove his title, challenging document P11and the Gazette, which has named him an unlawful occupier.

That was the time at which the Petitioner should have defended his rights. A person who sleeps on his right cannot suddenly seek remedies from Court.

As the first Respondent or the officer who issued documents marked as P9 has no legal standing, the question of compensation does not arise. However, since there is a decision to pay unlawful occupants who had made improvements, as that is a declaration by the Minister to grant compensation, it becomes valid. As there was no land to acquire, and the law does not permit a right on documents or decisions taken on administrative error, compensation cannot be considered to lots owned by the State.

Section 18 of the Land Accusation Act speaks of situations where an acquiring officer makes a mistake and if such a mistake was found before making the award under Section 17. In such an event, any proceedings after the error shall be null and void. In the present case, the Section 17 award had not been granted. Therefore, when the officer realises that the Petitioner's declaration as the owner of the lots is incorrect, the decision was taken to consider the Petitioner as an owner becomes null and void. Therefore, the Petitioner cannot seek a writ from this Court.

The Petitioner must come with clean hands. In this instance, Petitioner knew he had been identified as an unlawful occupier according to the Gazette he produced to this Court marked as P8. Without first clearing this position at a proper forum, he cannot ask for the writs he had prayed for. He should have gone before the appropriate Court to get a declaration regarding his

[1] SC FR 256/2910
[2] 2004 SLR 154

title to the subject matter. Without following the correct path, he had been trying to establish his claim as the owner of the portion of land on a decision of an officer of the Athanagale divisional secret. The officer who declared that the Petitioner as the owner is not competent to declare ownership of lands claimed by the State. In this instance, the officer had requested the Attorney General's opinion before awarding compensation under Section 17 of the Land Acquisition Act. Mere seeking a view from the Attorney General does not give a right to anyone.

The Petitioner claims that he has a right to defend the title of lots 263, 262, 260, 259, 258, 257, 254, etc. He claims that he had intervened at the sale of the lots. What is essential is that even he was the previous owner who sold those lots of lands after the sale, he has no right to bring an action on behalf of the present owners unless the person who bought the land came forward to safeguard his rights. A court will entertain only the titleholder. Even though the Petitioner claims that he must warrant and defend the title, how can he do so if the present owners are not coming forward? Until the people who bought the lands from him come forward, the Petitioner has no status to interfere in matters that do not concern him. It is the law that necessary parties should be present. When the necessary parties are not before the Court, their rights cannot be discussed. This position had been discussed in *Ukwatta Vs DFCC*[3] and *Blambers V DG customs.*[4] In these cases, it had discussed that failure to make necessary parties is a fatal irregularity. Therefore, the Petitioner's argument that he must safeguard the ownership of those who bought from him cannot be considered.

As discussed earlier, the Petitioner should have gone before the relevant Court, which has the power to hear and examine witnesses and documents and come to a conclusion regarding the title. At such a forum, the State and the Petitioner could have placed their respective witnesses and subjected them cross-examined. All deeds, plans and any vital documents were produced and clarified. Thereby a judge can conclude a trial and pronounce the owner.

The most crucial issue, in this case, is to determine the ownership of the subject matter, the State or an individual. In *Thajudeen Vs Sri Lanka tea board and another*[5] discussed a similar situation, a writ should not be issued in a condition of this nature.

[3] 2004 1 SLR 164
[4] 2002 3 SLR 401
[5] 1981 2SLR 471

When considering all the above facts, it is my opinion that the Petitioner should prove his title by a competent court. He has no right to the remedies he has prayed for from this Court. Therefore, I dismiss the petition of the Petitioner subject to tax cost.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal