

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

In the matter of an application for a Mandate in the nature of a Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A.Writ Application No:

434/2019

Karunatileka Jayasundera
Wickremasekera Rajapaksa Wahalanayaka
Nisi Mudiyansele Mahen Susantha
Madugalle
No: 15, Anura Mawatha,
Madiwela Road,
Thalapathpitiya,
Nugegoda.

Petitioner

Vs.

1. Land Reform Commission
No: 475, Kaduwela Road, Battaramulla.
2. Sirimevan Dias
Chairman,
Land Reform Commission,
No: 475, Kaduwela Road,
Battaramulla.

2.A. Nilantha Wijesinghe
Chairman,
Land Reform Commission,
No: 475, Kaduwela Road,
Battaramulla.

Respondents

Before: M.T. Mohammed Laffar, J.
S. U. B. Karalliyadde, J.

Counsel: Lakshman Perera P.C. with Upendra Walgamapaya instructed by
Niluka Dissanayake for the Petitioner
Thisath Wijayagunawardana P.C with Jithen De Silva instructed by
Mallawarachchi Associates for the 1st and 2A Respondents

Argued on: 12.11.2021

Decided on: 27.01.2022.

S.U.B. Karalliyadde, J.

The Petitioner preferred this Application against the 1st and 2nd Respondents seeking reliefs *inter alia*, a writ of Certiorari to quash the decision containing in the Quit Notice marked as P-8 issued by the Chairman of the LRC under section 3 of the State Land (Recovery of Possession) Act, No. 7 of 1979 as amended. After filing this Application, the 2nd Respondent, Mr. Sirimevan Dias who was the Chairman of the Land Reform Commission (hereinafter referred to as the LRC), the 1st Respondent ceased to hold office and his successor Mr. Nilantha Wijesinghe has been substituted as the 2A Respondent.

The Petitioner's mother, Ekanayaka Basnayaka Mudiyanse Ralahamillage Mildred Sudarma Delwita Madugalle owned agricultural land in excess of 50 Acres. By operation of the Land Reform Law, No. 01 of 1972 (the Land Reform Law) all that agricultural land owned by her deemed to vest in the LRC and she deemed to hold the said land under a statutory lease from the LRC. She made a Statutory Declaration in terms of section 18 of the Land Reform Law in respect of said land and by the powers vested under section 19 of the Land Reform Law, the Chairman of the LRC at that time made a Statutory Determination published in the Extraordinary Government Gazette No. 206/3 dated 29th March 1976 (marked as P-3) specifying the several lands she was allowed to retain. Out of the lands described in 1st to 7th schedules in P-3, the land described in the 1st schedule is consisting with several lands, namely Walawwatta, Pattiya Hena, Wewadante Hena, Bogaha Kumbura, Wewadante Kumbura, Diyaniddewela and Wewliyadda which is in total extent of 45 Acres 2 Roods 32 Perches and depicted in the Final Village Plan No. 1240 Supplement No. 2 (marked as P-4) as lots 231 and 232. The position of the Petitioner is that the land called Pattiya Hena mentioned above in extent of 15 Acres falls within Lot 232 in P-4 which is in extent of 33 Acres 2 Roods and 17 Perches and it was possessed by his mother until it

was gifted to the Petitioner by his mother on the deed of gift bearing No. 6573 attested on 20.12.1989 (marked as P-5). The Petitioner claims that he is possessing that land as a private land since it was gifted to him without any disturbance or hindrance. The 2nd Respondent's predecessor in office, by letter dated 03.09.2018 (marked as P-6) and later corrected the same by letter dated 22.03.2019 (marked as A1) informed to hand over the vacant possession of a portion of Pattiya Hena in the extent of 4 Acres 0 Roods and 14 Perches to the LRC District Director of Kurunegala on or before 25.09.2018 alleging that the Petitioner and his brother are in unlawful possession of that portion.

The position of the LRC is that the said portion of land had been vested on the LRC and it is neither included in the Extraordinary Gazette marked as P-3 which the Statutory Determination is in favour of the Petitioner's mother nor shown in the Final Village Plan marked as P-4. Responding to the said letters, the Petitioner by letter dated 11.10.2018 (marked as P-7) informed the predecessor of the 2nd Respondent that he is in possession of the land gifted to him by his mother on the deed of gift marked as P-5 and thus, his possession is legal. Nevertheless, a Quit Notice dated 04.06.2019 (marked as P-8) has been sent by the predecessor of the 2nd Respondent to the Petitioner in terms of section 3 of the State Land (Recovery of Possession) Act, requiring him to vacate and deliver the vacant possession of the land described in the schedule thereto on or before 23.07.2019. By this Application, the Petitioner seeks to quash the Quit Notice on the grounds that it has been issued without power, jurisdiction or authority and/or *ultra vires* the powers and authority of the 1st and/or 2nd Respondent/s.

The Respondent's position is that the mother of the Petitioner made a Statutory Declaration (marked as 1R2) for Pattiya Hena for an extent of 22 Acres, that she was allowed to retain 17 Acres 2 Roods and 36 Perches out of that 22 Acres by the Statutory Determination published in the Extraordinary Government Gazette No. 206/03 dated 29th March 1976 marked as 1R3 (Petitioner has tendered the same document marked as P-3), that the LRC is the absolute owner of an extent of 4 Acres 0 Roods and 14 Perches of Pattiya Hena morefully described in the schedule to the Quit Notice marked as P-8, that the land described in that schedule is situated adjacently to the land called Pattiya Hena which the Petitioner's mother was allowed to retained on the Statutory Determination and that the Petitioner and his brother encroaching upon the land

described in the schedule to the Quit Notice which is owned by the LRC are in unlawful possession of that land.

When the matter was taken up for hearing on 12.11.2021, the learned Counsel for both parties made oral submissions and thereafter, they were allowed to file written submissions within one month from that date. Nevertheless, neither party filed written submissions up till 17.12.2021.

The learned Counsel for the Respondents argued that the crux of this Application deals with the ownership of the land described in the Quit Notice and therefore, it is not amenable to the writ jurisdiction. By this Writ Application, the Petitioner challenges the opinion formed by the 2nd Respondent's predecessor in office that the land described in the schedule to the Quit Notice marked as P-8 is a State land and the Petitioner and his brother are in unauthorized possession of that land. Since that opinion has been formed by the 2nd Respondent's predecessor in office on the administrative powers vested in him in terms of the State Land (Recovery of Possession) Act, and the administrative decisions are amenable to writ jurisdiction, this Court cannot accept the above stated argument of the learned Counsel for the Respondent.

The learned Counsel for the Petitioner submitted to the Court that the Petitioner is possessing the land called Pattiya Hena which his mother was allowed to retained on P-3 dated 29.03.1976 and thereafter, gifted to him on P-5 by her in 1989, thus it is a private land which the Petitioner and his predecessor in title enjoyed undisturbed, uninterrupted possession since 1976 to the date of the Quit Notice on 04.06.2019 and the LRC has no right, title or interest in the said land since 1976. The learned Counsel for the Petitioner further submitted to Court that the LRC has failed to identify the portion in the extent of 4 Acres 0 Roods and 14 Perches of Pattiya Hena on a plan which the Respondents allege that the Petitioner is in unauthorized possession.

The land as described in the schedule to the Quit Notice marked as P-8, is a portion of an extent of 4 Acres 0 Roods and 14 Perches in Pattiya Hena. The argument of the learned Counsel for the Respondents is that the said portion of land belongs to the LRC and it is situated adjacent to the land called Pattiya Hena which the Petitioner's mother was allowed to retained on the Statutory Determination and it is not included into that

Statutory Determination and the Petitioner had encroached upon that portion of land and possessing the same.

It is the position of the learned Counsel for the Respondents that the land described in the schedule to the Quit Notice marked as P-8 is depicted in the F.V.P. No. 1240 Supplement No. 2 marked as 1R1 and described in the Final Supplementary Tenement List marked as 1R6. According to 1R6, Pattiya Hena is situated within lot 232. It has been admitted by the Respondents that the Statutory Determination has been made on 1R3 (or P-3) for lots 231 and 232 in favour of the Petitioner's mother. Under such circumstance, it establishes the fact that the land described in the schedule to the Quit Notice should be within lot No. 232.

Section 6 of the Land Surveys Ordinance, No. 4 of 1866 (as amended), provides thus;

'If any plan or survey offered in evidence in any suit shall purport to be signed by the Surveyor-General or officer acting on his behalf, such plan or survey shall be received in evidence, and may be taken to be prima facie proof of the facts exhibited therein; and it shall not be necessary to prove that it was in fact signed by the Surveyor-General or officer acting on his behalf, nor that it was made by his authority, nor that the same is accurate, until evidence to the contrary shall have first been given'.

Hence, when applying the provisions in that section to the instant action, the Court should consider the contents of the plan made by the Surveyor-General (marked as 1R1) and the Final Supplementary Tenement List (marked as 1R6) produced from the custody of the LRC as *prima facie* evidence and 1R1 and 1R6 is accurate since no evidence contrary has been tendered. According to 1R6, lot 232 has been exclusively claimed by the Petitioner's mother before the Surveyor-General and the Statutory Determination has been made for that lot in favour of her. The LRC neither had claimed that lot nor a Statutory Determination had been made for the same in its favour. Therefore, it is quite clear from the above stated evidence produced on behalf of the Respondents and the admission made by the Respondents that the Statutory Determination has been made on P-3 for lots 231 and 232 in favour of the Petitioner's mother that the LRC has no right/title to any portion of land in the land shown in the F.V.P. 1240 Supplement No. 2 marked as 1R1/P-4 and described in the Tenement List marked as 1R6.

The allegation of the LRC against the Petitioner is that he had encroached upon the land of the LRC. The Petitioner denies that allegation and his position is that there is no remaining portion of Pattiya Hena which belongs to the State other than the Pattiya Hena for which the Statutory Determination P-3 was made in his mother's favour in 1976 and included into lot 232 in the Surveyor-General's plan marked as P-4. The Petitioner claim that his mother possessed said Pattiya Hena from the date of the Statutory Determination in 1976 till the land was gifted to him in 1989 and after it was gifted to him, he is possessing it up till the date of the Quit Notice on 04.06.2019 and has relied on a long period of legal possession. Therefore, in addition to the paper title to Pattiya Hena the Petitioner is claiming it on prescription. Under such circumstances, it is clear that there is a serious question to be decided as to whether the land described in the schedule to the Quit Notice is a State land. In the case of *Senanayake vs. Damunupola* (1982 2 SLR 621) the Supreme Court has held that;

'A purposive examination and interpretation of this Law (State Land (Recovery of Possession) Act) shows that it was enacted to get back possession of State land which had been given to a person on a contractual footing and where there was an obligation to vacate and give up possession or occupation on the happening of some event as a necessary consequence. This procedure could not be availed of where it is not clear that the land in respect of which the right or title of the State was doubtful or in dispute' (at page 628). It was further held that;

'The scope of the State Land (Recovery of Possession) Act was to provide a speedy or summary mode of getting back possession or occupation of 'State land' as defined in the Act, where there was not subsisting at the relevant date, in the opinion of the Competent Authority, a valid permit of authority. It was not meant to obtain possession of land which the State had lost possession of by encroachment or ouster for a considerable period of time by ejecting a person in such occupation' (at page 628).

In view of that decision of the Supreme Court it is clear that the procedure laid down in the State Land (Recovery of Possession) Act could not be used to evict a person from a land which the right or title of the State to that land is doubtful or in dispute and it was not meant to obtain possession of land which the State had lost possession of by

encroachment or ouster for a considerable period of time by ejecting a person in such occupation in circumstances such as have transpired in the instant Application.

Considering all the above stated facts and circumstances, I hold that there was no material for the LRC to form an opinion that the land described in the schedule to the Quit Notice is a State land and that the Petitioner has encroached upon that land and he is in unlawful possession/occupation of the same. Therefore, I hold that the attempt of the LRC to recover possession of the subject matter of the instant action is inconsistent with the scope of the State Land (Recovery of Possession) Act and it has no right to issue the Quit Notice marked as P-8 in terms of that Act. Under the said circumstances, it is manifestly clear that P-8 has been issued by the predecessor of the 2nd Respondent without jurisdiction and it is *ultra vires*. Therefore, I decide to issue a writ of Certiorari quashing the decision containing in the Quit Notice marked as P-8. The Respondents should pay Rs. 75 000/- as costs to the Petitioner.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL