

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

*In the matter of an application under Article 140
of the Constitution for a mandate in the nature of
Writs of Prohibition and Mandamus.*

CA/WRIT/191/2021

1. J. Migara. R. Jayasundera
Jayasundera Waluwwa,
Udakaravita.
2. J. Moniruwanthi R. Jayasundera
5B, Katendolawatte, Ratnapura.

Petitioners

Vs.

1. Land Reform Commission
475, Kaduwela Road. Battaramulla.
2. Mr. Nilantha Wijesinghe (Attorney-at-
Law) Chairman, Land Reform
Commission,
475, Kaduwela Road. Battaramulla.
3. D. K. D. Dissanayake
Executive Director,
Land Reform Commission,
475, Kaduwela Road. Battaramulla
- 3A. Mr. T. A. P. Mahanama
Thilakarathna
Executive Director,
Land Reform Commission,
475, Kaduwela Road. Battaramulla
4. H. M. W. Weerakone
Director General,
Department of Agriculture,
Peradeniya.

5. G. D. Keerthi Gamage
Commissioner-General of Lands,
Land Commissioner General's
Department,
Battaramulla.
6. K. S. Vijayakeerthi
Senior Assistant Secretary,
Ministry of Plantations,
Sethsiripaya, Battaramulla.
7. W. A. Madduma Weerasekera
Commissioner-General of Agrarian
Services,
Department of Agrarian Services,
Colombo 7.
8. R. M. U. K. Wijeratne
Member,
Land Reform Commission,
475, Kaduwela Road, Battaramulla.
9. G. A. Ratnaseeli
Additional Director General,
Department of Finance,
Ministry of Finance,
The Secretariat, Colombo 01.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Faisz Musthapha PC with Thushani Machado for the Petitioners.
Ruwantha Cooray for the 1st, 2nd & 3rd Respondents.
Avanthi Weerakoon, SC for the 5th and 7th Respondents.

Argued on : 15.06.2022

Decided on : 03.08.2022

Sobhitha Rajakaruna J.

One Chitra Werapitiya along with J. M. Dudley Jayasundera and Madara Tennakoon, on or about 12.01.1999, have instituted a partition action bearing No.15049/Partition in the District Court of Ratnapura seeking to partition the subject land of the instant application which is morefully described in the schedules to the Petition. The said J. M. Dudley Jayasundera is supposed to be the brother of the 1st Petitioner and the said Madara Tennakoon is the wife of the 1st Petitioner.

According to the Petitioners, while a lis-pendens was in operation with regard to the said subject land, the 1st Respondent Land Reform Commission ('LRC') has executed deeds of transfer bearing Nos. 6921, 6922 and 6923 dated 02.09.1999 and has transferred an undivided portion of the subject land containing an extent of one acre each to one Rupahinge Gunaratne and his two sons namely, Rupahinge Indrakumara and Rupahinge Chandrakumara. Subsequently the said two sons were also made defendants to the partition action and they have sought a dismissal of the said action claiming the entirety of the subject land. The LRC also has filed its statement of claims in the said partition action and has claimed 7/10th of the subject land. The said statement of claim is marked as 'P5'.

The 1st Petitioner by Deed bearing No. 3655 dated 29.07.2004 (Marked 'P6') received a half portion of allotments of land called "Ganga adddarahena" depicted as Lot 21 in the FVP 39 and allotment of land called 'Ganga adddarahena' and 'Lokudeniya'hena' depicted as Lot 21B in FVP 39 (marked as 'P6') from the said Dudley Jayasundara.

1st Petitioner who became aware that the said land was vested with the LRC, wrote to the relevant Minister indicating his willingness to purchase the said land from the LRC and as a result the relevant Minister directed the Chairman LRC to look into the matter.

During the pendency of the aforementioned Partition Action, the LRC has conducted an inquiry whilst giving an opportunity to all the stakeholders to represent themselves at the inquiry. The 1st Petitioner has requested the LRC to grant a lease in his daughter's name (2nd Petitioner) as he held more than 50 acres of land. The said inquiry continued for a period over 8 years and on conclusion, a report dated 15.02.2013, marked 'P8', was submitted.

The aforementioned report marked 'P8' discloses, *inter alia*, the following details and observations about the subject land;

- i. The entire subject land consisting of A6.R0.P6 has been vested with the 1st Respondent LRC under the LRC Law;
- ii. There had been multiple transactions between the period of 07.04.1987 and 23.05.1988;
- iii. Since the entirety of the subject matter was vested with the LRC, any transaction after the introduction of the LRC Law is considered to be illegal, as per the section 18(5) of the LRC Law;
- iv. The LRC has sold 3 acres of the land vested with LRC to Mr. R. Gunaratne and two others of the same family on 02.09.1999 for housing purpose under section 22(1)(c) of the LRC Law;
- v. "The 1st Petitioner has made a request that he be given the land vested from Mrs. Dedigama, i.e, A3.R0.P6, after determining this extent as a part of the Statutory Declaration as he has purchased the same in 2004";
- vi. "As Mr. Migara Jayasundara is husband of Mrs. Madara Tennakoon who is the sole heir to the statutory declaration ('SD') of her father, wife and husband cannot own lands over 50 acres of land under LRC Law; First this SD should be verified; If the SD covers 50 acres, this land cannot be sold to Mr. Migara Jayasundara unless it is given on lease;"
- vii. "Balance land (apart from the lands sold – extent of A2.R3.P31 and another A0.R0.P29) with the extent of A3.R0.P06 could be declared as SD to Mrs. Dedigama, if appropriate, after identification and considering present position of the lands already proposed for balance SD of Mrs. Dedigama . By this process, the ownership of the land does not automatically passes on to Mr. Migara Jayasundare as he is husband of Mrs. Madara Tennakoon who is the sole heir to SD of her father. Assume, litigation may arise between Mr. Guneratne and Mr. Migara Tennakoon on purchase deeds, though they are illegal".
- viii. "Mr. R. Gunaratne and his family has enjoyed the entire land for the last so many years without paying a single cent to the LRC for unsold lands. The income derived is considerable".

Subsequently, based on the said Report, the LRC made a determination dated 26.02.2013 marked 'P10' on the subject land. However, since then no action has been taken to implement such determination which is acceptable to the 1st Petitioner. Therefore, the Petitioners of the instant application seek, inter alia, for a mandate in the nature of a writ of Mandamus directing the 1st and/or 2nd to 9th Respondents to implement the decision of the 1st Respondent dated 26.02.2013 marked as 'P10'.

Now I advert to examine whether the Petitioners are entitled to the reliefs prayed for in the prayer of the Petition, particularly whether this Court could issue a writ of Mandamus as prayed for in paragraph (b) of the prayer of the Petition. It is important to observe that none of the Respondents have filed statements of objections against the Petition of the Petitioners. On the day of the hearing the learned Counsel for the 1st to 3rd Respondents indicated that the decision marked as 'P10' has not been rescinded by LRC. Similarly, at the threshold stage of this matter the LRC has not resisted on issuing formal notice on the Respondents of this application.

Thus, the pertinent question is whether this Court could grant reliefs in favour of the Petitioners merely because the Respondents have not raised any objections to the assertions of the Petitioners. The decision of the LRC marked 'P10' is based on the conclusions and the recommendation of the Report marked 'P8'. The inquiring officer has issued the said Report on 15.02.2013 as a consequent to the meeting held on 02.10.2012 on which date several interested parties have participated. On a careful perusal of the said Report 'P8' it appears that the said inquiring officer himself has raised several valid points such as declaring that the transactions taken place after the LRC law coming in to effect was illegal. This Court had no opportunity to listen to submissions on behalf of the other relevant parties who were interested in the subject matter other than going through the contents of the said Report 'P8'. Although I gathered above mentioned facts from the Report marked 'P8', this Court is unable to assess the actual rights of the Petitioners or other parties only with the available material to Court due to the complexity of the issues. Therefore, I am of the view that this Court is not fully possessed with facts and evidence to analyze the decisions in 'P8' and 'P10' and thus, I am not inclined to issue a writ directing the LRC to implement the decisions reflected in 'P10'.

However, I divert my attention now to the contention of the Petitioners who assert that the Executive Director of LRC, subsequent to the above determination marked 'P10', has

requested the 1st Petitioner by way of a letter dated 05.07.2013 (marked 'P11') to provide a project proposal in respect of the subject land in order to lease out the relevant balance portion of the land. The Petitioner through document marked 'P12' has submitted such proposal to the LRC. Though such proposal was submitted by the 1st Petitioner, no further actions have been taken by the LRC up to date with regard to the said land in favour of the Petitioners.

Moreover, it is necessary to draw my attention to the 1st Petitioner's letter dated 11.03.2021 (marked 'P20') addressed to the Chairman of LRC. What emanates from the said letter is that the Legal Officer of LRC has communicated to the 1st Respondent that the deterrent to execute the decision in 'P10' was a Supreme Court case bearing No. SC/SPL/LA/415/2019, pending at that time. According to the Petitioners the said Supreme Court case is a Special Leave to Appeal Application from the Judgement of the Court of Appeal dated 15th October 2019 in case bearing No. CA/WRIT/ 271/2013. The Petitioners state that R. Guneratne and his two sons R.Indrakumar and Chandrakumar filed three writ applications including the said application No. CA/WRIT/271/2013 and the 1st Petitioner was not a party to those applications. It seems to be that the Petitioners of those writ applications have moved Court *inter alia* not to transfer certain portions of the subject land to any third party other than those Petitioners.

As per the Judgement marked as 'P16' the said application No. CA/WRIT/271/2013 has been dismissed and the Petitioners allege that the said Supreme Court case bearing No. SC/SPL/LA/415/2019 also has been dismissed on 10.03.2021. Anyhow a copy of such order of the Supreme Court has not been annexed to the instant application. Apart from all above, the Petitioners filing a motion dated 20.06.2022 tendered to this Court a copy of the proceedings in case No. 15049/Partition dated 17.11.2021 and accordingly, the District Court of Ratnapaura as per an application of the respective Plaintiff has dismissed the said Partition Action.

In light of the above, I take the view that if all relevant litigation has come to an end there seems to be no other valid reason for LRC to desist from resolving the disputes in respect of the subject land and from addressing the issues raised by the Petitioners. It is observed that a grave prejudice would be caused to the 1st Petitioner/ Petitioners who have been seeking relief from LRC and also to any other parties with legitimate rights if no action would be taken expeditiously by LRC.

In the circumstances, I proceed to issue a mandate in the nature of a writ of Mandamus directing the 1st Respondent LRC to resolve the issues of the Petitioners according to law without any further delay and if the LRC is satisfied that the decisions in 'P8' and 'P10' are reasonable and lawful, to give effect to such decisions in an appropriate manner before taking decisions, if any, to alienate the subject land to a third party other than the Petitioners. I take the view that there is no necessity to issue a writ of Prohibition as prayed for by the Petitioners due to the nature of the above mandate issued by this Court.

Application is partly allowed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal