

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
under and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

P.R Padma Gamlath

“Gamlath Niwasa”, Paradise,

Kuruvita.

PETITIONER

CA (Writ) No: 270/2017

Vs.

1. Mahaweli Authority of Sri Lanka
No. 500, T. B. Jaya Mawatha,
Colombo 10
2. Gotabaya Jayarathne
Director General,
Mahaweli Authority of Sri Lanka,
No. 500, T. B. Jaya Mawatha,
Colombo 10
3. D. A. Asantha Gunasekera
Director Land
Mahaweli Authority of Sri Lanka,
No. 500, T. B. Jaya Mawatha,
Colombo 10

4. Anura Dissanayake
Secretary
Ministry of Mahaweli Development and
Environment
No. 500, T. B. Jaya Mawatha,
Colombo 10

5. I. G. Amarasena
Resident Project Manager
Office of the Resident Project Manager,
Walawa Special Area,
Embilipitiya

6. Block Manager
Walawa Chandrikawewa Unit
Embilipitiya

7. Nihal Dalugoda
Nihal stores,
Kuttigala
Embilipitiya

RESPONDENTS

Before: C.P Kirtisinghe, J
Mayadunne Corea, J

Counsel: Saliya Peiris P.C with Thanuka Nandasiri and S. Jayawardena for the
Petitioner
R. Aluwihara S.C for the 1st to 6th Respondents
Nihal Jayawardena P.C with R. Herath for the 7th Respondent

Written Submissions: Tendered by the Petitioner on 12/10/2022
Tendered by the 1st to 6th Respondents on 12/10/2022
Tendered by the 7th Respondent on 12/10/2022

Decided on: 31/10/2022

Mayadunne Corea J

When this case was taken up on 05/10/2022, all parties agreed to dispose of this by way of written submissions. Accordingly, all parties have filed their respective written submissions.

The facts of the case briefly are as follows, the Petitioner is in occupation of a Mahaweli land, namely, Lot B12 which she says was originally occupied by her late husband, and subsequent to her husband's death, she had been occupying the said land. The Petitioner states that the said land, an extent of 10 perches was shown to her late husband by the officers of the 1st Respondent, who had also given oral authorization to build a commercial property. Subsequently, a construction had come up and the Petitioner came to the said property in 1985 after marrying the occupier, one Nandasena Dalugoda. The Petitioner contends that it was considered their matrimonial home and that both her children were born there. While the Petitioner had made an application to get a permit for the said land, her late husband's brother, who is the 7th Respondent has also taken a claim to

the said land. There had been several litigations between the Petitioner and the 7th Respondent, which resulted in the Petitioner getting possession of the said land.

Petitioner states that after a land kachcheri, her name was nominated to obtain a permit. However, 1 to 6 Respondents have held several inquiries and taken a decision to award the permit to the 7th Respondent, hence this application for a writ.

Petitioner's complaint to this Court

- Petitioner complains that the 3rd Respondent who held the final inquiry had not given the Petitioner a fair hearing, thereby, violating procedural fairness and principles of natural justice.
- 1st to 6th Respondents have disregarded the continuous possession of the property by the Petitioner and the failure to consider the possession of the Petitioner and granting the permit for the impugned land to the 7th Respondent, is, therefore, arbitrary, ultra vires tainted with bias and unreasonableness.

The Petitioner, among other things, has sought the following reliefs from this Court,

(d) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the findings of the inquiry of the 3rd Respondent contained in P-25

(e) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decisions contained in the letter marked as P-26

(f) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision contained in the letter marked as P-27

(g) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision contained in the letter marked as P-27A

(h) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 6th Respondents to regularize the Petitioner's possession by issuing a permit to her according to law.

(i) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 6th Respondents to issue a permit to the Petitioner in relation to the land subjected in this matter.

The Respondents in their objections have taken several preliminary objections for the maintainability of this application, namely,

- Misrepresentation of facts,
- Suppression of material facts,
- Ubberima fides,
- The Petitioner's application is futile and vexatious and is also misconceived in law.

This Court will consider the said objections.

It is common ground that the disputed land is Lot 12 and has the number 12B New Town Embilipitiya. The said Lot consists of 10 perches of land. There was no dispute among the parties that the said Lot belongs to the 1st Respondent, the Mahaweli Authority of Sri Lanka. After several litigations, presently, the Petitioner is in possession of the said property. In 1981, the Mahaweli Authority has auctioned the land and people had been allocated Lots. However, it is common ground that Lot 12B which is the disputed land, had not been included in the said allocation as it was meant to be a car park. The Respondents contended that in 1984, an amended plan had been made and among other Lots, the said car park too had been divided into 3 Lots, namely Lot A, Lot B, and Lot C.

A dispute had arisen between the Petitioner and the 7th Respondent pertaining to Lot 12B as both have staked claims to obtain a lease for the said land. Both parties contend that they have been informed by the 1st Respondent that they will be given the lease on different occasions.

The Petitioner's version

The Petitioner contends that her husband had been shown the land in the year 1981 and had been told by the officers of the 1st Respondent to construct a commercial building. However, the Petitioner has failed to demonstrate the names of the officers or the legal basis on which the said offer had been made, as state lands cannot be allowed to be occupied by unauthorized occupants. It is also pertinent to note that state land cannot be alienated the way the Petitioner has submitted.

The Petitioner has failed to demonstrate to this Court, with any documents to substantiate her version of her husband being allocated or how he came to occupy the land.

With the contradictory position taken by the 7th Respondent, the manner in which the Petitioner's husband first came to the land is not clear. Keeping it as it may, it was the contention of the Petitioner that thereafter, the Petitioner's husband had constructed on the land prior to 1985 and in 1985, the Petitioner got married and had shifted to the said premises 12B. The Petitioner pleads that the said Lot had not only been used as their residence but also as their business premises for her husband's wholesale business of collecting paddy and also consisted of a rice mill (para 8 of the petition).

In 1986, in the birth certificate of the Petitioner's daughter, the address is given only as "Newtown Embilipitiya" by her late husband. In 1988, the Petitioner's child's birth certificate marked as P4(a) depicts the residing address as 12B, the disputed lot in this application the informant had been the Petitioner herself. In 1987, the Petitioner's husband obtained electricity for premises P7(a). Thereafter the Petitioner has tendered a letter to the electricity board pertaining to a defect in the electricity meter of the disputed premises. The Petitioner had subsequently attached two electricity bills which had been dispatched in the year 2015 and the assessment rates for the year 2012, 2013, 2014, and 2015 which were also issued in the name of the Petitioner (P8 (a), (b), (c)). This Court finds that the oldest document which represents that the Petitioner's late husband had been in possession of the premises, is dated 1987 and that is the year that the 7th Respondent submitted that he had permitted his late brother to occupy the disputed premises.

It is the contention of the Petitioner, that the Petitioner's brother-in-law, namely the 7th Respondent had subsequently staked a claim to the said land which resulted in the 7th Respondent also occupying part of the said land. The Petitioner concedes that thereafter, she had leased the land to a third party and her occupation was through the 3rd party. The lease agreement was tendered marked (R9). It is observed that as contended by the Respondents, documents marked R10, A, B, and C, demonstrate that the Petitioner has been leasing out Lot 12B to a third party and obtained

lease rentals when she does not have a legal title to the said land, which is owned by the 1st Respondent.

It is the contention of the Petitioner, that as a result of the 7th Respondent's forceful occupation, there had been several litigations. The 7th Respondent had instituted an action in the District Court of Embilipitiya. (4559/L). The said action had been dismissed by the District Court and the subsequent appeal to the Civil Appellate High Court by the 7th Respondent had also been dismissed (Case No. SP HCA AP 228/2012). Thereafter, the Petitioner has taken steps to eject the 7th Respondent from the premises through the fiscal.

The Petitioner thereafter made an application to obtain a permit from the 1st Respondent. It was the contention of the Petitioner, that she had been present for a land kachcheri, and in the said land kachcheri, she had submitted all the documents to establish that she was residing in the said premises. The said land kachcheri had been held in the year 2011. The Petitioner had tendered an affidavit to the said land kachcheri P13, whereby she had submitted that she is in possession of the said land and that she or her children have no commercial land within the Walawe area belonging to the Sri Lanka Mahaweli Authority.

The Petitioner has used the said address of the premises when paying the taxes and also has paid the assessment rates for the said premises from 2012 to 2015. The Petitioner also tendered the electricity bills she had paid for the premises (P 7B and 7C) and the assessment rates that had been issued in her name (P-8A - P-8G) to demonstrate her possession of the land.

It is the contention of the Petitioner, that after the land kachcheri the Petitioner had been named and selected as an eligible person to hold a permit for the said disputed land. However, the Petitioner has failed to submit any documentation to establish this ground urged by her. The Petitioner also conceded that due to certain threats, she is now not in occupation of the premises in dispute, but she had shifted to Kuruwita Ratnapura.

The 7th Respondent's Claim.

The 7th Respondent submitted that in the year 1984, certain lots that had not been auctioned in the year 1981 had been leased out. The auctioned lots and the successful occupants' names are reflected in P1 (b). The disputed premises had been originally left as a car park and due to the unavailability of lands, the Authority had decided to lease the said Lot after dividing it into three sub lots as Lot A, Lot B, and Lot C.

It was the contention of the Respondent that subsequent to the auction in 1984, the unauctioned land had also been allotted and Lot No.12B had been handed over to one H. T. Sarath on November 17th (1R1 annexure 2). Subsequently, the said Sarath had duly paid the lease value for a year to the 1st Respondent in keeping with the Gazette marked as P1 (R2A, R2B).

The 7th Respondent submits that the documents R1 – R5 established that from 1984 to 1987, the original grantee H. T Sarath was in possession, and thereafter t 7th Respondent had been in possession. The Petitioner strongly contended that H. T. Sarath whom the 7th Respondent claim was the original recipient of Lot 12B, was never handed over the said Lot. To establish this position, he relied on document P1B which does not depict an allottee by the name of H. T. Sarath or by the name of Lot B.

However, this was clarified by the 1st Respondent that the original lot which compromised of Lots A, B, and C, which was the reserved lot for car parking and was blocked out subsequent to the auction in the year 1984. Therefore, the said Lot and the name of the recipient H. T. Sarath would not be reflected in the document the Petitioner relied on. However, this Court observes that there is a document R1 whereby in the year 1984, the 1st Respondent handed over Lot 12B to H. T Sarath.

The Respondents also marked the document R7(a) where the Petitioner's late husband had sought to obtain title to another Lot under the Mahaweli Authority in Embilipitiya where he had given his address as Kurundugasara Thungama and contended that as per the said letter which is dated

05.06.1985, the Petitioner's late husband specifically stated that he had been living in the said Kurundugasara Thungama for the last 6 years. It was the contention of the 7th Respondent that his brother prior to coming to occupation in his land, had made an application to obtain the title to a land on the basis that he had been in occupation of the said address for a period of more than 6 years, therefore, to transfer the title to him (R7a). It was also the contention of the 7th Respondent that his deceased brother had always been in Thungama Embilipitya, and not at the disputed premises. It was his contention, that the Petitioner's late husband was allowed to occupy lot 12 B as he had death threats at the premises he was residing.

As per the documents submitted to this Court, there is a clear dispute pertaining to when the Petitioner's late husband had come to the said premises and the circumstances in which he came to occupy them. It is trite law that when facts are in dispute this Court is not the forum to canvass the same.

Thereafter, the original recipient Sarath had entered into an agreement to sell with the 7th Respondent to vend the disputed Lot B12 to the 7th Respondent. It was the contention of the 7th Respondent that thereafter, he had constructed the building on the premises and commenced a business. The recipient Sarath subsequently informed the manager of the 1st Respondent by his letter dated 25.10.1985 (R3) to transfer the permit that he was to get to the 7th Respondent due to the improvements that had been done by the 7th Respondent and as he is doing business in the said premises. The said letter had been acknowledged by the regional manager of the 1st Respondent in his letter dated 85.10.31 (R4) and also has recommended the same.

The manager of land acquisition had replied to the regional manager in his letter dated 05.11.85 (R5) whereby it had been stated that the contents had been noted to issue a permit to the 7th Respondent. The said letter states as follows,

වෙළඳ බිම් අංක 12-බී.

ඔබගේ 1985.10.31 දානම හා බී එම්/අ7/6/13 අංකිත ලිපිය ගැනයි.

සදහන් නිර් දේශය පරිදි මෙකී ඉඩම් කොටස් සදහා බලපත්‍ර නිකුත් කරන අවස්ථාවකදී නිහාල් දලුගොඩ මහතාඅදාල ඉඩම සදහා බලපත්‍ර නිකුත් කිරීමට සටහන්කර ගෙන ඇති බව කරුණාවෙන් දන්වා සිටිමි.

In 1989, the regional manager of the 1st Respondent carried out an inspection and had submitted a report informing the status of the auctioned land and the occupants of the auctioned land. In the said report, he had lamented that there are unauthorized occupants in some of the lands who are occupying the lands without payment and had sought permission to regularize the same. In the said report too, under Lot 12B, it is noted that the 7th Respondent is in occupation of the Lot that had been given to the original recipient H.T. Sarath (1R1annexure 7).

To substantiate this, the 7th Respondent had submitted R13 J which is a receipt issued by the Embilipitiya Urban Council in favor of the 7th Respondent for payment made up to the year 2011, and a letter by the Embilipitiya Pradeshiya Saba marked R14 which certifies that the 7th Respondent had been in possession of the said land and that he had paid the assessment rates for the said land. The 7th Respondent had also submitted to this Court, the Assessment notices for the years 2004, 2009, 2019, and 2011 which had been issued in his name. He also has submitted receipts for payment of assessment rates marked as R13 A- R13 E and the assessment rates where his name has been included instead of the original holder of the said premises Sarath. (R12).

In 2009, the 7th Respondent had paid the lease rentals and the fine for the disputed Lot 12B for the period 1984 to 2009. In their letters in 2005 and 2010, the Divisional Manager had informed the original recipient that he had illegally transferred the possession of Lot 12B to the 7th Respondent and had given a warning that if the possession is not taken, the 1st Respondent was going to lay by the selection of the recipient Sarath, The Acting Director lands had given his consent to the said recommendation and forwarded the recommendation to the Director General of the 1st Respondent. The Embilipitya Pradeshiya Sabha had also acknowledged that the 7th Respondent had paid the assessment rates for the disputed Lot B for the period 1985 to 2005 and a letter issued by the Embilipitiya Municipal Council states that the assessment rates had been paid till 2015. In perusing the said documents, this Court finds, that the assessment rates had been paid for Assessment No.

307/1. Whether this Assessment number is given to the disputed Lot 12B was not submitted to this Court.

The 7th Respondent also contended that after the original grantee, H. T. Sarath had informed to transfer the said land to the 7th Respondent, a special inquiry had been conducted to ascertain the occupants of the lots and in the said register, under the present occupant column, the name that is reflected is the 7th Respondent's name (R15(a), (b), (c),). He had also been informed by the regional manager of the 1st Respondent by letter dated 05.05.2005 that since the 7th Respondent is in occupation of Lot 12B, the 1st Respondent will take steps to cancel the rights of H. T. Sarath and take steps to issue a permit to the 7th Respondent under the provisions of the Land Development Ordinance (R15).

It is the contention of the 7th Respondent that he had permitted his brother, the husband of the Petitioner to occupy the said premises in the year 1987 for security reasons. It was the contention of the 7th Respondent that he had given the Petitioner's husband, permission to carry on a business on the said premises during the period of 1987, as his brother was under a death threat. The 7th Respondent did not dispute the fact that his younger brother had obtained electricity under his name in the year 1987. However, he contended that at the time the deceased husband of the Petitioner made the application to obtain electricity, what was available to the premises was only water which had been taken in the name of the 7th Respondent. However, no documents have been submitted to establish this fact.

In 1989, the Petitioner's husband who is the 7th Respondent's brother had been killed and it was the contention of the 7th Respondent that they had permitted the Petitioner to occupy the said land for some time, but subsequently, the Petitioner had refused to hand over possession of the said premises.

Objections of the 7th Respondent

The Petitioner submits that by Gazette dated 16/11/1979 (P1(a)), applications had been called from residents of Rathnapura, Hambantota, and Monaragala to apply for land Lots that were auctioned

for purposes of commercial activities. The 7th Respondent submitted that in any event, the Petitioner is not eligible to seek a lease within the 'Special Area' as the Lots were given to the people living in certain areas only. They further contended that the Petitioner by her own pleadings had admitted that she is living in Kuruwita, thus disqualifying her from applying for a Lot under Gazette marked as P1A.

It was further submitted that even though Kuruwita was within the Ratnapura district, it does not fall within the 'Special Area' depicted in Gazette P1(a) as Kuruwita is 50km away from the 'Special Area'. It was also contended that the Petitioner had been disqualified after an inquiry on the basis that she is not living within the stipulated area of the Gazette and the people who were eligible to apply should be people who were residing within the commercial area of Embilipitiya. Thus, the Petitioner's application had not been recommended (P7 (a)).

According to P17 D, it had also been stated that the eligibility requirement of residing within the aforesaid areas had been given due publicity by the newspapers. This Court was not tendered with any newspaper articles to substantiate this. Also, a plain reading of P1(a) demonstrates that applicants of Ratnapura, Hambantota, and Monaragala districts are eligible to apply.

Suppression and misrepresentation of facts

It is the contention of the 7th Respondent that the Petitioner has failed to come before this Court with clean hands. As demonstrated in R8, the 7th Respondent contends that the Petitioner had been given possession of another lot namely Lot No. 4 by the Mahaweli Authority in the year 1989. This Court observes that the Petitioner has suppressed this fact, nor has she explained document R8.

The 7th Respondent also submits that the Petitioner in paragraph 8, specifically said that in 1985 when she moved to the premises in dispute Lot 12B, it contained the paddy collection center and a rice mill. However, in the objections when the Respondents took the position that to have a rice mill there was no electricity, the Petitioner contradicted her own position and submitted that there

was no rice mill. The Petitioner has failed to give an explanation as to the contradictory position she has taken on her petition and the counter-objections. Thus, the 7th Respondent's contention that the Petitioner is guilty of suppression and misrepresentation of material facts and also lying under oath, succeeds.

It was also the contention of the 7th Respondent that in paragraph 26 of the petition, it has been stated that the Residential Project Manager of Walave Mahaweli Unit Embilipitya had informed him that they cannot regularize the possession or issue permits to the Petitioner as there is active litigation. However, the Petitioner has failed to establish this by any documentary evidence.

The Respondents have also submitted to this Court that as per P13, which the Petitioner relied on to get the land in dispute, she had submitted that she or her children do not have any other commercial land within the Walave area belonging to the Mahaweli Authority. However, in the counter affidavit of the Petitioner in paragraph 10, the Petitioner had submitted that she had been granted a plot of land for residential purposes which again contradicts the contents of her affidavit marked as P13. Thus, in considering all the material that has been submitted to this Court, the 7th Respondent's submission that there is suppression and misrepresentation of material facts has to succeed.

The 7th Respondent also has taken up an objection on the basis that the Petitioner has failed to pay any assessment rates pertaining to the subject premises but she has started paying the assessment rate only from the year 2012 for the purpose of litigation. It was his contention that his brother the late husband of the petitioner had not paid the assessment rates because the land nor the building was owned by him. The contention of the 7th Respondent was that it was he who had paid the assessment rate prior to that. The 1st to 6th Respondents also conceded and submitted that as per their inquiries, the 7th Respondent had paid to the Embilipitya Pradeshiya Saba the assessment taxes for 12B from 1985 to 2005 and from 2006-2011. We find the Petitioner has failed to disclose this but has submitted that she has paid the assessment rates from 2012 onwards. In our view, it was the Petitioner's duty to disclose the correct facts to this Court to obtain the relief sought in this petition.

In *Namunukula Plantation Limited vs. Minster of Land and Others* SC Appeal No. 46/2008, decided on 13/03/2012 it was held as follows; *“if any party invoking the discretionary jurisdiction of a Court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.*

The importance of coming to court with clean hands was recently stressed in ***Orient Pearl Hotels vs Cey Nor-Foundation Limited & others* CA Writ 226/2018 decided on 02.08.2021** where it was held *“It is settled law that a party seeking prerogative relief should come to court with clean hands. The expression is derived from one of equity’s maxims – He who comes to Equity must come with clean hands.*

Inquiry held by the 3rd Respondent

This brings us to the main argument of the Petitioner, namely the challenge to the 3rd Respondent’s inquiry. It is pertinent to note that the said inquiry had been held in 2016. The report compiled after the inquiry was tendered to Court marked 1R1. The Petitioner and the 7th Respondent had been present for the said inquiry. This Court observes that there had been several inquiries held prior to this inquiry pertaining to the dispute between the Petitioner and the 7th Respondent. As per the documents available to Court, it appears that the respective inquiries have failed to resolve the dispute between the parties. This Court has not been provided with the final recommendations of the said inquiries by either party, thus this Court will not have the benefit to see whether the said inquiries had ended with a final conclusion or not.

We also find the officers of the 1st Respondent had first acknowledged the 7th Respondent’s possession and had informed that he would be given a permit but subsequently also acknowledged the Petitioner’s possession and there is a recommendation for the Petitioner to be given a permit. However, none of the parties have challenged the basis of having another inquiry but all parties have participated in the said inquiry. Thus, this Court will not venture to ascertain the need for another inquiry.

The Petitioner by her petition, has attempted to challenge the said inquiry on the basis of it being biased, arbitrary, unreasonable, and unfair. We do observe that the Petitioner made this allegation

only after the inquiring officer's recommendations had seen the light of day. However, none of the parties have tendered the proceedings of the said inquiry to this Court. In the absence of the said proceedings, this Court is not in a position to come to any conclusion pertaining to the conduct of the said inquiry.

Further, the Petitioner after having taken part in the said inquiry without any objection, had submitted herself to the jurisdiction of the inquiry. This Court also observes that the Petitioner after submitting herself to the inquiry now cannot be heard to complain about the outcome. The Petitioner has failed to tender any material to demonstrate that she had objected to the manner in which the inquiry was conducted before the recommendations were made available. This Court is also mindful of the fact, that this Court cannot and should not assume the power of the inquiring officer.

Decision in P26

The Petitioner also submits that as per the provisions of the Mahaweli Authority, especially section 22A, the 3rd Respondent does not have the power to arrive at the decision that he had arrived at as reflected in P26. Thus, the inquiry decision is done in ultra vires. Therefore, it is the Petitioner's contention that the decisions reflected in P 25, 26, and 27A should be quashed. This Court will now consider the first impugned document P25. We find that by P25, the Director Lands has reported facts. It appears that the author of P25 has reported facts based on the attached annexures. In our view, the Petitioner has failed to impeach to the satisfaction of this Court, the findings of the said report, especially in view of the documents that have been submitted to this Court.

This Court has considered document P26 as well as documents P27, and P27A which are a result of P26. We do find that all parties have conceded that the title to the said premises in dispute, is still with the 1st Respondent. It is also not disputed that the Petitioner is occupying the said premises without any valid authority from the 1st Respondent. It is also pertinent to note that the 7th Respondent also has no valid permit to occupy the disputed Lot B as both parties are not at variance on the fact that the rightful owner of the said property is the 1st Respondent. Thus, making the occupants of the said lot unauthorized occupants of state land.

This Court will now consider the Petitioner's main objection that in view of section 22(A) of the Mahaweli Authority Act, the author of P26 does not have the power to arrive at the decision reflected therein, and accordingly, the said decision is ultra vires. We observe that document P26 is signed by the Director General of the Mahaweli Authority.

Section 22A states as follows,

It shall be lawful for the Minister to whom the administration of this Act is assigned to exercise in, or with respect to, any special area-

- (a) the powers conferred on a Minister by paragraph (b) of the proviso to section 20 of the Land Development Ordinance;*
- (b) the powers conferred on a Minister by sections 49, 51, 79, and 80 of the Crown Lands Ordinance.; and*
- (c) the powers relating to special grants and leases of State land conferred on a Minister by any provision of the Crown Lands Ordinance or by any Order or regulation made thereunder,*

as if the reference to "Minister" in such section, provision, order or regulation were a reference to the Minister to whom the administration of this Act is assigned; and for so long and so long only as this section is in force, no Minister other than the Minister to whom the administration of this Act is assigned shall exercise and such power, in, or with respect to, a special area.'

As per section 22A, it is clear that the powers conferred under the sub-paragraph referred to in 22A (a), (b), and (c) are vested with the Minister.

This Court observes that although the legislature has inserted section 22A by Amendment No. 59 of 1993, it has not repealed section 22 in the original Act. Thus, in our view, section 22 is still in existence and in operation. Section 22 states as follows;

- (1) The written laws for the time being specified in Schedule B hereto shall have effect in every Special Area subject to the modification that it shall be lawful for the Authority to exercise and discharge in such area any of the powers or functions vested by any such written law in any authority, officer or person in like manner as though the reference in any such*

written law to the authority, officer or person empowered to exercise or discharge such powers or functions included a reference to the Authority.

(2) No authority, officer or person in which or whom any power or function is vested by any written law for the time being specified in Schedule B hereto shall, in relation to a Special Area, exercise or discharge any such power or function except for the purpose of executing or carrying out any arrangement or contract made by the Authority under section 14.

(3) Any power or function which the Authority is authorized by subsection (1) to exercise or discharge, may be exercised or discharged on behalf of the Authority by any director of the Authority or by any employee of the Authority as is authorized in that behalf by the Authority.

(4) Where he considers it expedient to do so for the efficient discharge of the functions of the Authority, the Minister may, with the concurrence of the Minister concerned and the approval of the President, by Order published in the Gazette amend, alter or vary Schedule B hereto.

Section 22 of the Act empowers the 1st Respondent to exercise and discharge the powers and functions as enumerated in section 22 (1). Section 22 (3) of the Act permits the powers and functions enumerated in subsection (1) to be exercised or discharged on behalf of the Authority by any director of the Authority or by any employee of the Authority as authorized on this behalf of the Authority. It is clear that the decision in document P26 is signed by a director and counter-signed by the Director General of the 1st Respondent. In our view, the said letter does not violate the provisions of section 22(3). It is also pertinent to note that Petitioner too has failed to challenge the contents of the letter for violation of section 22(3). Therefore, in our view, the decision arrived at and reflected in P26 is done pursuant to the powers vested with the executors of the said document pursuant to section 22(3). This Court observes that section 22A does not curtail the powers and functions of the Authority which are enumerated under section 22 (3). Therefore, we

cannot agree with the submissions of the learned Counsel for the Petitioner, that P26 is ultra vires of the provisions of section 22A.

We also find that document P27 is a communication informing the decision taken in P26. Thus, since we have decided not to quash P26, the Petitioner's prayers (d), (e), and (f) will have to fail. We also find that the failure to hand the premises pursuant to P27 has resulted in P27A. Thus, in view of our decisions pertaining to P26 and 27, the prayer (g) also has to fail. It is also pertinent to observe that in any event, the Petitioner has failed to establish before this Court, that she has any valid authority to occupy Lot 12B given by the Mahaweli Authority.

In view of the admission by the 7th Respondent as well as the Petitioner, that they do not possess a valid permit to occupy the premises Lot B, and in view of the fact that Lot 12B is owned by the 1st Respondent, in our view, the 1st Respondent is entitled to send the notice reflected in P27, as for all purposes, at the time of sending the notice, the Petitioner lacks any legal authority to occupy the premises owned by the 1st Respondent. Thus, she becomes an unauthorized occupier of state land and becomes subject to eviction under the State Lands Recovery of Possession Act.

Accordingly, for the aforesaid reasons, we are not inclined to grant the reliefs prayed in the petition and therefore we dismiss this application without costs.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal

