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 Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/374/2022

Don Sarath Rajapaksha of "Dinuka"
Wattegema South,
Dickwella.

Petitioner

Vs.

1. Susantha Aththanayake
   Divisional Secretary,
   The Divisional Secretariat,
   Dickwella.

2. Hon. Attorney General
   The Attorney General's Department,
   Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Nagitha Wijesekera for the Petitioner.

Rajika Aluwihare, SC for Respondents.

Supported on : 22.11.2022

Decided on : 29.11.2022

Sobhitha Rajakaruna J.

A writ of Certiorari is sought by the Petitioner to quash the quit notice ('P2') issued under the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, ('Act') against the Petitioner in reference to the land morefully described in the schedule to the said quit notice ('Land'). Additionally, the Petitioner seeks a writ of Prohibition to restrain the Respondents from taking steps to eject him and also an interim order is sought to stay the proceedings in the Magistrate's Court of Matara bearing case No. 52049 filed against the Petitioner under the said Act in respect of the same land.

The Petitioner's alleged ground of challenge is that he was in occupation of the Land for a long time and accordingly, he has prescriptive tittle to the land. The Petitioner further contends that the 1st Respondent is duty bound to establish the fact that the Land belongs to State.

The Petitioner heavily relies on the judgement in ***Senanayake vs. Damunupola (1982) 2 Sri. L.R. 621*** where Victor Perera J. held that a.) the said Act 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 possession; b.) the Section 3 should not be used by a competent authority to eject a person who has been found by him to be in possession of a land where there is doubt whether the State had title or where the possessor relies on a long period of possession.

Significantly, this judgement was delivered prior to the amendment to the said Act brought into by way of the Amendment Act No. 29 of 1983. When discussing the judicial precedent, generally, the ratio decidendi of a judgement can be overruled by an appellate court in the hierarchy. Also, it is seen that the Parliament enact laws giving the same effect of overruling a judgement. The above ***Damunupola*** case is a unique instance where the legislature brought an amendment to the said Act to overcome the effect of the said judgement in the ***Damunupola*** case. I must draw my attention to the Hansard dated 09.08.1983 of the Parliament of Sri Lanka which reflects the speech made by the then Minister of Lands, Lands Development & Mahaweli after the order for second reading of the bill in reference to the said Amendment Act No. 29 of 1983. The said Minister submitted to House the purpose of introducing the said Amendment and categorically referred to the said ***Damunupola*** case identifying the same as the reason to which the

Government has been compelled to introduce the said Amendment Act No. 29 of 1983. The following passage of the said speech illustrates the above position;

> "මේ සංශෝධන පනත් කෙටුම්පත අවශ්‍ය වී තිබෙන්නේ, දැනට අවුරුදු එක හමාරකට පමණ පෙර සුප්‍රිම් උසාවිය දෙන ලද තීරණයක් නිසා රජයට අයිති ඉඩම් ලබා ගැනීම අමාරු වුණු නිසායි. එම්. බී. සේනානායක සහ මහනුවර දිසාපතිතුමා අතර ඇති වුණු අංක 1082 දරණ නඩුව ශ්‍රේෂ්ඨාධිකරණය දක්වා ඇපැල් මාර්ගයෙන් ගෙන ගොස් දෙන ලද තීරණය නිසා මේ සංශෝධනය ඉදිරිපත් කිරීමට ආණ්ඩුවට සිදු වුණා."

By the said amendment Act No. 29 of 1983 the section 3 of the principal enactment was amended and accordingly, Section 3 (i) has been repealed and a new sub section has been substituted. Before the above amendment, the old Section 3 (iii) of the principal enactment stipulated that "where a competent authority is of opinion that any person is in unauthorized possession or occupation of any state land the competent authority may take steps to evict such person." Anyhow the said new Amendment enhanced immensely the powers of the competent authority whereby if the competent authority is of the **opinion**;

a) that any land is a state land

b) that any person is in unauthorized or occupation of such land

he may take steps to evict the unauthorized occupants.

Furthermore, in term of Section 9 of the Act, it shall not be competent for the Magistrate's Court to call for any evidence from the competent authority in support of the applications under Section 5. There is plethora of judgments where the scheme of the Act has been illustrated.

Among many of such decisions, in ***Farrook vs. Gunawarden Government Agent Ampara (1980) 2 Sri. L.R. 243*** it was held that,

> *"Urgency appears to be the hallmark of this Act. Under section 3, 30 days notice shall be given. Under section 4, the person in possession is not entitled to object to notice on any ground whatsoever except as provided for in section 9 and the person who is in possession is required to* ***vacate the land within the month*** *specified by the notice. Under section 6 the Magistrate is required to Issue summons forthwith to appear and show cause on a date* ***not later than two weeks*** *from the date of issue of such summons. Under section 8(2) the*

Magistrate is required to give priority over all state business of that court. Under section 9, the party notice can raise objections only on the basis of a valid permit issued by the State. Under section 10, if the Magistrate is not satisfied, "he shall make order directing ***ejectment forthwith*** *and no appeal shall lie against the order of ejectment. Under section 17, the provisions of this Act have notwithstanding anything contained in any written law".*

"When the Legislature has made express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process described in the Act itself, it is not for this Court to grant relief on the ground that the petitioner has not been heard. Where the structure of the entire Act is to preclude investigations and inquires and where is it expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he form the opinion that any land is State land".

In ***Mohandiram vs. Chairman Janatha Estate Development Board (1992) 1 Sri. L.R. 110,*** it was held that:

"in an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the State granted according to any written law. If his burden is not discharged the only option open to the Magistrate is to order ejectment.'

In the case of ***Muttuvelu vs. Dias and another (2004) 2 Sri. L.R. 335,*** it was held by Wijeratne J.,

"Provisions of the State Lands (Recovery of Possession) Act reveal that it is a special enactment providing for the speedy recovery of State Lands from unlawful occupiers. The State continued to be the owner of the estates leased"

In ***Ihalapathirana vs. Bulankulama Director General U.D.A (1988) 1 Sri. L.R. 416,*** S.N. Silva J. has held that:

"…the phrase "unauthorized possession or occupation" is defined in Section 18 of the Act, as amended by Act No. 29 of 1983 to mean the following;

Every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon State Land"

This definition is couched in wide terms so that in every situation where a person is in possession or occupation of State land, the possession or occupation is considered as unauthorized unless such possession or occupation is warranted by a permit, or other written authority granted in accordance with any written law. Therefore, I am unable to accept the contention of the Counsel for the Petitioner that a land which is a subject matter of an agreement in the nature of the document marked P1 comes outside the perspective of the State Land (recovery of Possession) Act."

The rights and liabilities under the agreement could be the subject matter of a civil action instituted by either the U.D.A or the petitioner. The mere fact that such a civil action is possible does not have the effect of placing the land described in the notice marked 'P3', outside the purview of the State Lands (Recovery of Possession) Act. Indeed, in all instances where a person is in unauthorized occupation or possession of State land, such person could be ejected from the Land in an appropriate civil action. The clear object of the State Lands (Recovery of Possession) Act, is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action. The dicta of the Supreme Court in the case of Weerakoon vs. Ranhamy and the passage of the Canadian judgement quoted by Professor Wade, therefore do not have a bearing on this case. Accordingly, the application of the Petitioner is dismissed with costs."

The Court of Appeal held in ***M. I. Fernando vs. J. M. C. Priyadharshani, Authorised Officer/Competent Authority and others, CA/Writ/484/2021 decided on 10.06.2021***;

"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.[1] *In forming that opinion, the Competent Authority is not required to afford anyone a hearing or conduct an inquiry".* (emphasis added)

[1] Vide-Section 18 of the Act

His Lordship Justice Arjuna Obeyesekara after analyzing the precedence laid down in related judgements has taken an advanced approach in a recent case ***Udagedara Waththe Anusha Kumari Nikaathagoda vs. Jayasinghe Mudiyanselage Chamila Indika Jayasinghe, Divisional Secretary and others, CA/Writ/293/2017 decide on 18.11.2019*** where His Lordship has held***;***

> *''The strict regime for the expeditious recovery of State land stipulated in the Act only provides a person served with a quit notice, the limited remedies under Section 9, and a person against whom an Order of ejectment has been issued, an opportunity to vindicate her title under Section 12 of the Act. It is the view of this Court that the legislature could not have intended for the Competent Authority's opinion, which can have far reaching consequences on one' s proprietary rights, to be baseless. The Competent Authority's opinion must thus be formed on a rational basis. What constitutes a rational basis must be ascertained case by case. In the present application, this Court is of the view that a Surveyor General's Plan confirming that the land acquisition process had been completed, would amply satisfy the test for rationality''.*[2]
>
> *''This Court wishes to emphasise, for the avoidance of any doubt that the Competent Authority is not required in terms of the Act to carry out an inquiry of the title of the person who is in unauthorized possession of such land''.*
>
> *''The principle then is that while no inquiry is needed to form an opinion, there should be a rational basis to form the opinion that the State is lawfully entitled to the land. The rational basis should satisfy the Wednesbury test of reasonableness. Thus, a Competent Authority would be acting reasonably if he were acting on the basis of a Surveyor General's plan, even if the occupant is claiming prescription. The Competent Authority is not expected to, and indeed is precluded from, carrying out an inquiry''.* (Emphasis added)

Now I advert to the facts and circumstances of the instant Application. The land described in the Schedule to the impugned quit notice is in extent of 0.623 Hectares (1.5394665

[2] See Section 83 of the Evidence Ordinance reads as follows: 'The court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor General or officer acting on his behalf were duly made by his authority and are accurate; but maps, plans, or surveys not so signed must be proved to be accurate.'; Section 21 of the Survey Act No. 17 of 2002 provides as follows: "Any cadastral map, plan, or any other plan or map prepared in accordance with the provisions of this Act or any written law, purported to be signed by the Surveyor General or officer acting on his behalf and offered in evidence in any suit shall be received in evidence, and shall be taken to be prima facie proof of the facts stated therein." Similar provision was found in Section 6 of the Land Surveys Ordinance, which has since been repealed by the Survey Act.

Acres) and has been described as Lot No. 1 of Surveyor General's preliminary plan 13211. The said preliminary plan No. 13211 is annexed to the Petition, marked 'P3', and the tenement list therein clearly enumerates that the claimant to its Lot No.1 is the 'Crown'. The extent of Lot No.1 is also approximately same as described in the Schedule to the Quit notice. This clearly emphasizes that the 1st Respondent has considered primary evidence on the title of the State in reference to the Land and accordingly, I take the view that it can be assumed that the 1st Respondent has taken a rational decision before issuing the quit notice. Also, I have drawn my attention to the alleged reasons, which are reflected in the document, marked 'P5', given by the 1st Respondent for issuing the quit notice.

Thus, I take the view that the Petitioner has failed to submit a prima facie case or an arguable question of law upon which this Court could issue formal notice of this application to the Respondents. This order should not be an impediment for the Petitioner to maintain any claim in the District Court under section 12 of the Act. Furthermore, this Order should not be construed as a special license for any authority to demolish any religious monuments on the Land unlawfully in a manner which leads to an unrest among any religious group.

In the circumstances, I proceed to refuse this Application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal