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

In the matter of an application for the grant of Writs of Certiorari and Prohibition under and in terms of Article 140 of the Constitution.

CA(WRIT) Application
No.WRT 182/20

1. Ahamathu Lebbe Subaitha Umma
   No. 55,
   Ashraff Nagar,
   Oluvil-01

2. Sulaima Lebbe Haniffa alias Sulaiman Aniffa
   No. 89, Ashraff Nagar,
   Oluvil-01

3. Mohamed Aboobucker Mohamed Musathik, No. 88, Ashraff Nagar
   Oluvil-01

PETITIONERS

Vs.

1. W.A.C. Weragoda,
   Conservator General of Forests, Forest Department of Sri Lanka,
   82 Rajamalwatta Road, Battaramulla.

2. S.M. Chandrasena,
Hon. Minister of Land and Land Development,
"Mihikatha Madura", Land Secretariat,
No. 1200/6 Rajamalwatta Rd,
Battaramulla.

3. Lieutenant General Shavendra Silva,
Commander of the Sri Lanka Army,
Sri Lanka Army Headquarters,
Sri Jayewardenepura.

RESPONDENTS

1A. Dr. K. M. A .Bandara,
Conservator General of Forests,
Forest Department of Sri Lanka,
82, Rajamalwatta Road,
Battaramulla.

2A Harin Fernando,
Hon. Minister of Tourism and Lands,
Ministry of Tourism and Lands,
"Mihikatha Madura",
Land Secretariat,
No.1200/6
Rajamalwatta Rd, Battaramulla.

3A. Major General Vikum Liyanage
Commander of the Sri Lanka Army,
Sri Lanka Army Headquarters, Sri Jayewardenepura.

ADDED RESPONDENTS

Before: **D.N. Samarakoon, J.**
B. Sasi Mahendran, J.

Counsel: Pulasthi Hewamanna with Fadhila Fairoze and Githmi Wijenarayana instructed by Tharmaja Tharmarajah for the Petitioner
Vikum de Abrew, ASG, PC with Shamanthi Dunuwille SC for the Respondents

Written Submissions: 24.11.2022(by the Petitioner)
25.11.2022(by the Respondents)
On

Argued On : 14.10.2022 and 22.11.2022

Decided On : 30.11.2022

B. Sasi Mahendran, J.

The Petitioners, by Petition dated 21st July 2020, seek to invoke this Court's Writ jurisdiction, to impugn the arbitrary and irrational or unreasonable decision of the 1st Respondent (The Conservator General of Forests acting as the "competent authority") to issue Quit Notices ("P5a", "P6a", and "P7a") on them under Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended. They pray for a Writ of Certiorari to quash the said decision of the 1st Respondent to issue Quit Notices, a Writ of Prohibition to prevent any of the Respondents from proceeding with the Quit Notices, and an award of compensation.

Their grievance is that the lands in respect of which the Quit Notices were served were lands that they were in lawful occupation in the capacity of permit holders. It must be noted that all three permits, under which the Petitioners respectively rely, were issued under different laws. The 1st Petitioner avers that the permit was issued to her in April 1980 ("P1a" – AD/35/ES/26/163). This is an annual permit issued under the Crown Lands Ordinance No. 8 of 1947. The 2nd Petitioner avers that the permit was issued to her in

September 1991 ("P2a"- AD/35/ES/461/496) under Section 19(2) of the Land Development Ordinance No. 19 of 1935, as amended. The 3rd Petitioner avers that he resides on the land, with his family, under a permit issued to his late father in April 1980 ("P3a"- AD/35/ES/322/211). This too is a permit to occupy the land concerned under the Crown Lands Ordinance.

The 1st Petitioner was served with a Quit Notice ("P5a") on 24th June 2020. The Notice was dated 28th February 2020. She was ordered to vacate the land on or before 25th July 2020. The 2nd and 3rd Petitioners were also each served with Quit Notices dated 28th February 2020, respectively "P6a" and "P7a", on the same day as the 1st Petitioner and were ordered to vacate the respective lands in question by 25th July 2020.

The Respondents, rejecting the contention that the Petitioners have valid permits, state that the Petitioners are illegal occupiers of a State forest land falling within the purview of the Department of Forests and that they do not have any right to occupy the lands concerned as they do not hold valid permits. Later, however, when this matter was taken up in Court on 22nd November 2022, for the Respondents to support their motion dated 15th November, it was conceded that the Quit Notice issued to the 2nd Petitioner is not valid, as the permit was not cancelled, and that the Respondents will not be pursuing that Quit Notice issued to the 2nd Petitioner.

The State Lands (Recovery of Possession) Act No. 7 of 1979, as amended provides for an expeditious method of recovery of "state lands" without the State being forced to go through a very cumbersome process of a protracted civil action and consequent appeals (Vide L.H.M.B.B. Herath v. Morgan Engineering [2013] 1 SLR 222). According to Section 3(1) of the Act, where a **competent authority** forms an opinion that any land is State land and that a person is in unauthorised possession or occupation of that land, the competent authority may serve a notice (referred to as a "Quit Notice") on such person requiring such person to vacate that land and to deliver vacant possession of that land. This Section reads:

Where a competent authority is of the opinion

(a) that any land is State land; and

(b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his

dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.

Section 18 of the Act defines "unauthorized possession or occupation" thus:

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.

Therefore, this statutory scheme is set in motion once the competent authority has formed an opinion that the land is State land (first limb), and that the person is in unauthorized possession or occupation of that land (second limb). That is a condition precedent to issuing a Quit Notice.

It is well-settled that, as adverted to above, the objective of this Act is to create, to use the words of his Lordship S.N. Silva J. (as he then was) in Ihalapathirana v. Bulankulame [1988] 1 SLR 416, "an expeditious machinery for the recovery of state lands from persons in unauthorised possession or occupation" as "urgency appears to be the hallmark of the Act" (per his Lordship Abdul Cader J. in Farook v. Gunewardene [1980] 2 SLR 243).

Notwithstanding that objective, it is also settled law that this Court in the exercise of its supervisory jurisdiction, conferred by virtue of Article 140 of the Constitution, unless this extraordinary Writ jurisdiction has been ousted by the Constitution itself, must test the lawfulness of the opinion of the competent authority on the basis of the well-established grounds of judicial review. In Dayananda v. Thalwatte [2001] 2 SLR 73 his Lordship Jayasinghe J. opined that it was open for the Petitioner to seek to quash the Quit Notice by way of certiorari when the determination was made by the 1st Respondent. Citing this judgment, in Amarasiri Gunarathna v. Senarath Bandara CA PHC 212/2006 decided on 24.07.2018, his Lordship Janak De Silva J., observed that the competent authority's ultra vires action in commencing proceedings contrary to Section 14(2) of the Act, "is an issue to be tested in appropriate proceedings where administrative law principles apply". More recently, his Lordship Sobhitha Rajakaruna J. in Padmanadon v. General Manager, Department of Railway CA/MC/REV/28/2016 decided on 20.11.2020, observed, "Also, a writ proceeding does lie to the Court of Appeal if the alleged unauthorized occupant could show that the Competent Authority's action is ultra vires."

We are mindful that Section 3(1A) of the Act takes away the right to a hearing of the person to whom the Quit Notice has been served. There is no opportunity to make representations to the competent authority either. By this provision, that person is forbidden from canvassing her grievance before the competent authority. This also illustrates why the competent authority must exercise care and caution when forming that opinion. This Section was introduced by the State Lands (Recovery of Possession) (Amendment) Act No. 29 of 1983, following the judgment of Senanayake v. Damunupola [1982] 2 SLR 621.

Accordingly, although a competent authority need not grant a hearing, the "vires" of the competent authority's opinion, is not immune from judicial review on the grounds of illegality and irrationality. His Lordship Arjuna Obeyesekere J. in Udagedara Waththe Anusha Kumari v. Jayasinghe Mudiyanselage Chamila Indika Jayasinghe, CA (Writ) Application No. 293/2017 decided on 18.11. 2019, succinctly observed:

"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."

In the case of Udagedara Waththe Anusha Kumari (supra) his Lordship Arjuna Obeyesekere J. reviewed the reasonableness of the opinion formed by the competent authority (the Divisional Secretary) with regard to the first limb i.e. whether the land is state land. The question for determination, in that case, was whether "...the Respondent act[ed] illegally or unreasonably or irrationally when he formed his opinion that the land which is the subject matter of the said quit notice is State land." It was 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**." [emphasis added]

We entirely agree with this proposition of law and would adopt the following dicta of his Lordship as well:

"This Court wishes to reiterate that merely because a person who is ejected or against whom an order for ejectment has been made, has a remedy by way of Section 12 does not absolve

the Competent Authority from his obligation to act reasonably and legally, when forming the all important opinion in terms of Section 3."

In the instant case, there is no dispute that the lands concerned are State lands. What is in dispute is whether they are in unauthorized possession or occupation (the second limb). What is troubling to see and stands as a reason justifying judicial review of the 'vires' of the opinion formulated, is the insinuation of a statement found in the Written Submissions of the Respondents. On page 3 of the same, it states while raising an objection as to the absence of the Divisional Secretary of Addalaichenai as a necessary party, "the supporting documents **were not in custody of the 1st Respondent**. The 1st Respondent as the competent authority had issued the Quit Notice on the 1st Petitioner on the premise that the permit issued to the 1st Petitioner was not a valid permit as it had been cancelled by the Provincial Commissioner of Land." This then creates doubt about whether the opinion had been correctly formulated and whether all the relevant documents were considered since at the argument stage, or even in their Statement of Objections before the argument stage, there was no mention that the 1st Respondent based his opinion on such letter. The letter, if not in his custody initially, could have been submitted to this Court, with our permission, even later. However, there was no mention that the opinion was formulated on that letter.

Having said that, we will address whether the failure to include the Divisional Secretary of Addalaichenai as a party to this application is fatal. The Supreme Court in Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero [2011] 2 SLR 258 set out two rules in this regard. The relevant excerpt of the judgment of his Lordship Amaratunga J. reads:

"The first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. If it is a body of persons whose decision or exercise of power is sought to be quashed each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made respondent……

If the act sought to be impugned had been done by one party on a direction given by another party who has power granted by law to give such direction, the party who had given the direction is also a necessary party and the failure to make such party a respondent is fatal to the validity of the application.

The second rule is that those who would be affected by the outcome of the writ application should be made respondents to the application…."

In the instant application, the decisions sought to be impugned were made by the 1st Respondent in his capacity as the competent authority. The issue before us is whether he correctly formed an opinion that the land was state land and that the occupants were not in lawful occupation. It is this action of the competent authority and not the Divisional Secretary that is sought to be impugned. The issue does not concern the cancellation of permits. This objection cannot be maintained.

In relation to the 1st Petitioner, she is occupying the land on a valid annual permit issued under the Crown Lands Ordinance. Assuming that the Petitioner is holding an annual permit, as contended by her, then she is not entitled to the relief prayed for as there is no documentation on record to show that this permit has been renewed, and that it was valid at the time of service of the Quit Notice.

In relation to the 2nd Petitioner, the permit on which the land was alienated to her does not appear to be cancelled. The Respondent's initial contention that the Petitioner is in illegal occupation is merely a bare assertion, with no material to substantiate it. There is no basis for the issuance of the Quit Notice, as the 2nd Petitioner does not fall within the class of persons to whom the Act would be applicable. As mentioned above, the learned Additional Solicitor General appearing on behalf of the Respondents gave an undertaking that the Quit Notice issued to the 2nd Petitioner would be withdrawn.

This judgment does not in any way prevent revocation or cancellation of the permit if the land concerned is forest land and one which should be preserved. It is for the Respondents to act in accordance with the due process of law by taking steps to do so. However, we urge that as indicated in the journal entries of the Fundamental Rights Application (annexed to the Petition as "P4b") an amicable settlement is reached by allocation of suitable alternate land, since the Petitioner is dispossessed through no fault of her own.

In respect of the 3rd Petitioner, we are unable to reach a conclusion in his favour. This is because his occupation of the land is, on his own admission, on the strength of a permit issued to his father under the Crown Lands Ordinance. The permit, in terms of the fifth condition, is personal to the permit holder. Section 16 of the Crown Lands Ordinance reads:

(1) Where it is provided in any permit or, license that such permit or license is personal to the Grantee thereof, all rights under such Permit or license shall be finally determined by the death of grantee.

(2)Where it is provided in any permit or license that such permit or license shall be personal to the grantee thereof, the land in respect of which such permit or license was issued and all improvements effected thereon shall, on the death of the grantee, be the property of the Crown, and no person claiming through, from or under the grantee shall have any interest in such land or be entitled to any compensation for any such improvements.

For these reasons, we quash the Quit Notice("P6a") issued to the 2nd Petitioner. As the 1st Petitioner, has failed to adduce any material to substantiate the position that the permit was renewed annually, the Quit Notice issued to the 1st Petitioner ("P5a") will stand valid. The relief prayed for by the 3rd Petitioner cannot be granted because of the personal nature of the permit, as aforesaid. We make no order for costs.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL