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 Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Case No. C.A. Writ: 223/2020

Namunukula Plantation PLC

No.310, High Level Road, Nawinna

Maharagama.

Petitioner

Vs.

1. Land Reform Commission,
   No.475,Kaduwela Road, Battaramulla.

2. Sri Lanka Plantations Corporation
   No. 18, Gregory's Road,
   Colombo 07.

3. Korala Godage Sumith Kumara,
   Galwatta, Maramba,
   Akuressa.

4. J.M.C. Priyadarshani,
   Competent Authority,
   Ministry of Plantations Industries,
   11th Floor, Sethsiripaya State II,
   Battaramulla.

Respondents

Before : **D.N. Samarakoon, J.**

B. Sasi Mahendran, J.

Counsel: Kanishka Witharana for the Petitioner
Saman Galappaththi for the 1st Respondent

Supported On: 03.02.2022

Decided On: 05.04.2022

B. Sasi Mahendran, J.

The Petitioner filed this application for Writs of Certiorari and Prohibition. The Writ of Certiorari is to quash the decision contained in the letter dated 15.05.2019, in which the 1st Respondent indicated to the Petitioner that a decision has been taken to grant title deeds to the 3rd Respondent to the portion of land which is the subject matter of this dispute.

In the limited objections filed by the 1st Respondent, by way of an affidavit on 26.07.2021, it is claimed that the portion of the land claimed by the Petitioner has already been transferred to the 3rd Respondent by deed No. 12341 dated 17.02.2020 before the institution of this action.

When the matter was taken up support, Counsel for the Respondent raised the preliminary objection, namely when facts are disputed writs cannot be issued and that this dispute concerning the portion of 'Madurumukalana' is in the nature of a land dispute which should be resolved in a civil court.

We have carefully considered the oral submissions of both Counsels regarding the preliminary objection raised by the learned Counsel for the 1st Respondent, and We have also carefully perused the Petition along with the supporting documents submitted by the Petitioner and the limited objections filed by the 1st Respondent.

This Court has to consider whether the material facts are disputed. The following facts are relevant to determine this matter.

The Petitioner in its Petition averred that by an Indenture of Lease No. 87 dated 18.01.1994 it obtained and has since been in possession of the property known as 'Hulandawa Estate', situated in the villages of Maramba and Lenama, which is inclusive of Belmont- Madurumukalana Division. It is also averred that on or about 13.05.2019 the 3rd Respondent forcibly encroached upon the said Madurumukalana area of the Belmont Division, commenced clearing the tea plantation maintained by the Petitioner, and

constructed an unauthorized temporary shed therein. The Petitioner was informed by the 3rd Respondent that he had been granted possession of the same area by the 1st Respondent.

The Superintendent of the Petitioner Company sought to verify this by letter dated 13.05.2019 to the 1st Respondent. In response, the Chairman of the 1st Respondent stated by letter dated 15.05.2019 (marked as P8) which is challenged by the Petitioner, that Hulandawa Estate, Belmont Estate, and Madurumukalana Estate were entrusted to the 1st Respondent by virtue of the Land Reform Law No. 1 of 1972 and although 708 hectares of the Hulandawa Estate and 54.02 hectares of the Belmont Estate were transferred to the 2nd Respondent for maintenance in terms of Gazette Extraordinary No. 181/12 dated 27.02.1982 Madurumukalana Estate was on no occasion transferred to the 2nd Respondent. It was also stated that as per the documentation presented by the 3rd Respondent and possessed by the 1st Respondent, this land had been occupied by the 3rd Respondent's father since 1994 and from 2000 the 3rd Respondent had continued to occupy it.

It is claimed by the Petitioner that given the totality of land (762.02 hectares) that was transferred to the 2nd Respondent, the Madurumukalana land must necessarily be part of that since the total area of the property leased to the Petitioner by the 2nd Respondent is almost the same, as per the Schedule to the Indenture of Lease No.87.

In the light of this contention, this Court will now determine whether it is, in fact, the appropriate forum to address this issue.

Wade and Forsyth in their text "Administrative Law" 11th Edition at p. 547 state,

"A feature of prerogative remedy procedure which remains unaltered in the modern procedure is that evidence is taken on affidavit i.e. by sworn statements in writing rather than orally. It is possible, but exceptional, for the court to allow cross-examination on the affidavits. If the case turns upon a conflict of evidence, quashing and prohibiting orders may therefore involve difficulties."

And further at p. 557,

"Cross-examination was also only rarely allowed under Order 53. **On the whole judicial review is not concerned with factual disputes and is ill-suited to resolve such disputes. In the absence of oral testimony courts rely on affidavit evidence without the benefit of cross-examination, and generally take the facts where they are in issue as they are deposed to by the public authority.** But factual disputes can arise for instance, over the existence of a jurisdictional fact or the truthfulness of a particular witness where justice requires the cross-examination be ordered." [emphasis added]

Time and time again, it has often been held that the writ jurisdiction is not the appropriate forum when matters of fact are in dispute. This is buttressed by the following authorities.

In Thajudeen v. Sri Lanka Tea Board and Another 1981 (2) SLR 471, His Lordship Ranasinghe J (as he then was) held;

"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation, Parraju v. General Manager B. N. Rly.

This judgment was referred to with approval in the case of Dr. Puvanendran v. Premasiri [2009] 2 SLR 107 by Her Ladyship Shiranee Tilakawardane J (with Their Lordships Amaratunga J and Marsoof J agreeing).

One of the Indian judgments referred to by His Lordship Ranasinghe J in Thajudeen v Sri Lanka Tea Board (supra), which was later followed by our Courts is the judgment delivered by Bose J. in Bibhuti Bhusan Ghosh v. Damodar Valley Corporation AIR 1953 Cal 581.

According to His Lordship Bose J.,

"It is the case of the petitioner that he was not afforded an opportunity to take the assistance of his lawyer nor to cross-examine witnesses and tender his own witnesses for

examination. This is however disputed by the respondents. A good deal of evidence has to be taken before any satisfactory conclusion can be arrived at on the points……" As observed by G.N. Das J. in the case of -- ' Parraju v. General Manager, B.N. Rly AIR 1952 Cal 610 the remedy by way of an application under Article 226 of the Constitution is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct".

(This passage was quoted in Office Equipment Ltd v. Urban Development Authority CA Application No 1062/2000, decided on 05.09.2003)

In Public Interest Law Foundation v. Central Environmental Authority [2001] 3 SLR 330, His Lordship U.De Z. Gunawardena J. held,

"It is worth observing that the review procedure is not well suited to determination of disputed facts - factual issues arising in this case being imprecise and disputed."

In Office Equipment Ltd v. Urban Development Authority (supra), considering the above judgments, one of the grounds on which His Lordship K. Sripavan J. (as he then was) decided that the Petitioner's claim cannot suitably be decided in a writ application was the contradicting claims by the Petitioner and the Respondent.

In Wijenayake and others v. Minister of Public Administration [2011] 2 SLR 247 His Lordship Anil Gooneratne J. held,

"However the material furnished suggest that a title/boundary dispute is agitated before the Kurunegala District Court. As such finality (subject to appeal) of title and boundary of the land in dispute lies in the action filed in the District Court of Kurunegala. These are all disputed fact which cannot be decided in a Writ Court, of the Court of Appeal. Vide Dr. K. Puvanendram & Another vs. T.M. Premasiri."

A similar approach is seen in the following line of recent judgments of this Court as well.

In Don William Warnaguptha Rajapakse v. K.P. Rangana Fernando CA Writ Application No:119/2013, decided on 09.05.2019, His Lordship Arjuna Obeysekere J. held;

"The question of title cannot be adjudicated by a Writ Court, as it involves disputed questions of fact, which could only be resolved by oral testimony of witnesses. The power of this Court to issue writs when the facts are in dispute was considered in the case of Thajudeen v. Sri Lanka Tea Board and Another."

Further, it was held that; "this Court is of the view that the question of the Petitioner's title is a matter for the Petitioner to establish in a Civil Court."

In Hettiarachchige Jayasooriya v. N.M. Gunawathie and others, C.A.Writ Application 63/2015, decided on 26.09.2019, His Lordship Janak De Silva J. held,

"*The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct."*

In Public Interest Law Foundation v. Central Environmental Authority CA WRIT, 527/2015 decided on 24.02.2020 His Lordship Mahinda Samayawardhena J. held,

"This Court in the exercise of writ jurisdiction cannot decide on administrative decisions where the facts involved are in dispute. Simply stated, when major facts are in dispute writ will not lie……This Court cannot decide whether the Petitioner or the Respondents are correct on this issue. That is outside the purview of this Court. When this main ground upon which the Petitioner's whole case is based is in dispute, can this case be maintained? I think not."

Very recently the Indian Supreme Court in Punjab National Bank v. Atmanand Singh (decided on 06.05.2020) held,

"We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court

should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law."

In this regard, it may also be useful to refer to a few judgments of the UK Courts on this point, some of which have been referred to by our courts.

Devlin J in R v. Fulham etc. Rent Tribunal exp. Zerek [1951] 2 KB 1 held:

"Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there. But where the dispute turns to a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere."

In R v. Home Secretary exp. Zamir [1980] A.C. 930 Lord Wilberforce held,

"The Divisional Court, on the other hand, on judicial review…. considers the case on affidavit evidence, as to which cross-examination, though allowable does not take place in practice. It is, as this case will exemplify, not in a position to find out the truth between conflicting statements."

(These judgments were referred in the judgment of His Lordship Sriskandarajah J in Ceylon Oxygen v. Biygama Pradeshiya Sabhawa [2008] 2 SLR 245) where His Lordship held that; *"The main challenge to the said decision is on the basis that the plant, machinery and the fixtures used by the petitioner in the said Property are movable property and it cannot be considered as immovable property. This is a disputed question of fact and this question cannot be determined in this process.")*

In Regina v. Jenner [1983] 1 W.L.R. 873, (referred to in Office Equipment Ltd v. Urban Development Authority (supra)) Watkins L.J. observed,

"The process of judicial review, which rarely allows of the reception of oral evidence, is not suited to resolving the issues of fact involved in deciding whether activity said to be prohibited by it is caught by section 90. These issues could not possibly be decided upon the contents of affidavits, which is the form of evidence usually received by the Divisional Court."

Accordingly, this Court is of the opinion that since the instant case involves a disputed question of fact, i.e., whether the title to the disputed portion of the Madurumukalana land belongs to the 1st or 2nd Respondent, this is a reason by itself for this Court to dismiss this application in limine.

JUDGE OF THE COURT OF APPEAL

D.N.SAMARAKOON,J

I AGREE

JUDGE OF THE COURT OF APPEAL