

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

In the matter of an application for Orders in
the nature of Certiorari and Mandamus under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

CA WRT Application No: 351/2020

Yodha Pedige Lalitha Samarakoon
Mayinnoluwa,
Dorawaka.

Petitioner

Vs.

1. The National Water Supply and Drainage
Board
Galle Road,
Ratmalana.

2. Eng. R.H. Ruvinis
General Manager
The National Water Supply and Drainage
Board
Galle Road,
Ratmalana.

**0
Respondents**

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

Counsel: Amarasiri Panditharatne with Runy Marzoo for the Petitioner
State Counsel for Respondent

Written

Submissions : 20.07.2022 (by the Petitioner)

On

Support On: 25.05.2022

Order On : 25.07.2022

B. Sasi Mahendran, J.

The Petitioner, by amended Petition, dated 16th March 2021, invoking the writ jurisdiction of this Court in terms of Article 140 of the Constitution, seeks a Writ of Certiorari to quash the Quit Notice (dated 13th February 2006) served on her pursuant to Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, by the then General Manager of the National Water Supply and Drainage Board demanding the Petitioner vacate the land described in the Notice. In the interim, the Petitioner prays for an Order staying the operation of the Quit Notice and an Order restraining the National Water Supply and Drainage Board or its servants/agents from implementing the Notice, pending the final determination of this application. This Order concerns whether notice ought to be issued to the Respondents.

It is relevant to note that the Petitioner preferred an application to the Provincial High Court (Civil Appeal) of the Sabaragamuwa Province holden at Kegalle in terms of Article 154P of the Constitution, seeking a Writ of Certiorari to quash the Quit Notice. By an Order dated 16th March 2009, the application was dismissed. The Petitioner then appealed to this Court and subsequently withdrew the appeal reserving her right to pursue this application. We were able to peruse the relevant documents in the Brief, which included the case record of the proceedings of the Provincial High Court as well.

The legislation applicable to this case is the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended. The legislation 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 Ramzeen v. Morgan Engineering SC Appeal 214/12 reported in (2013) BLR 108). 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.

The Petitioner challenges the Quit Notice on the basis that it is illegal as the 1st Respondent (the National Water Supply and Drainage Board) is not a “competent authority” within the meaning of the State Lands (Recovery of Possession) Act. If this is correct, then the Quit Notice issued by the General Manager of the 1st Respondent would be without jurisdiction and ultra vires. Additionally, the Petitioner contends that the land which she is occupying is private land and it is different from that described in the Quit Notice.

As the statute makes it clear that no person is entitled to any hearing or to make any representation in respect of a Quit Notice (Section 3(1A)) and the opinion of the competent authority has been judicially held to be conclusive this Court must be vigilant and guard an aggrieved party against an excess of power. In the landmark judgment of Council of Civil Service Unions v. Minister for the Civil Service (the GCHQ Case) [1985] A.C. 374, [1984] 3 All ER 935, Lord Diplock famously described illegality as “**the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.**” [emphasis added]

Further, this Court must also inquire whether there was a rational basis upon which the competent authority formed its opinion. Rationality is judged in the sense of ‘Wednesbury Unreasonableness’ or ‘irrationality’. This was famously described in the case of Associated Provincial Picture Houses v. Wednesbury Corporation [1947] 2 All ER 680, by Lord Greene M.R. as, “**something so absurd that no sensible person could ever dream that it lay within the powers of the authority**” and in the GCHQ case (supra) by Lord Diplock as, “**a decision which is so outrageous in its defiance of logic or of accepted**

moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.” [emphasis added]

Recently his Lordship Arjuna Obeyesekere J. observed in CA (Writ) Application No. 293/2017 decided on 18.11.2019, that this Court could exercise its writ jurisdiction if the opinion formed by the competent authority is illegal, irrational, or procedurally improper.

It is then incumbent upon this Court to focus on whether the National Water Supply and Drainage Board is a “competent authority” within the meaning of the Act and if so, whether the General Manager of the National Water Supply and Drainage Board has jurisdiction to issue a Quit Notice in terms of the Act and whether the General Manager has correctly formed an opinion that the land concerned is state land.

A “competent authority” is defined in Section 18 of the Act. This definition reads:

“Competent authority” used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....
- (h).....
- (i).....
- (j).....
- (k).....

(l) an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body. [emphasis added]

This provision was considered in Wedamulla v. Abeysinghe [1999] 3 SLR 26 by the Supreme Court. His Lordship Amerasinghe J. (with their Lordships Gunawardana J. and Gunasekera J. agreeing) held that “Competent Authority” includes an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body. It was found that the Additional Director General of the Urban Development Authority was by name and designation appointed “competent authority” by the Board of the Urban Development Authority in whom the land was vested.

In terms of Section 3 of the National Water Supply and Drainage Board Law No. 2 of 1974, as amended, the National Water Supply and Drainage Board is a body corporate, which can institute proceedings and also be sued in legal proceedings. The General Manager is appointed by the said Board, with the approval of the Minister. As provided in Section 68(2) of the Law No. 2 of 1974 the General Manager is, subject to the general direction of the Board on policy matters, tasked with “the direction of the business of the Board, the organisation and execution of the powers, functions, and duties of the Board, and the administrative control of the employees of the Board.”

On this basis, we hold that the General Manager of the National Water Supply and Drainage Board will have jurisdiction as a “competent authority” to issue a Quit Notice in terms of Section 3 of the State Lands (Recovery of Possession) Act. The next issue is whether the land concerned is state land.

According to Survey Plan No. 502 prepared by the Surveyor General, the Surveyor General has formed the opinion that it is state land. In terms of Section 83 of the Evidence Ordinance and Section 21 of the Survey Act No. 17 of 2002 this Court can presume that the said plan is accurate, and, on that basis, it is rational for the General Manager to form an opinion that it is state land.

It is insufficient, in terms of the definition of the “competent authority” that the officer is authorized by the corporate body, but the land must be vested in or owned by or under the control of the corporate body.

The land in question has been vested in the National Water Supply and Drainage Board in terms of Section 64(1) of the Law No. 2 of 1974 by an Order of the relevant

Minister under a voluntary transfer scheme as published in Gazette No. 1141/19 dated 20th July 2000. Schedule 1 of the said Gazette provides a description of the land which is the same as that in the Quit Notice.

Therefore, we hold that the General Manager has formed a correct opinion and his opinion is not ultra vires.

When dealing with state land it is important to bear in mind, as held by his Lordship Anil Gooneratne J. Attorney General v. H.H. Pitagaldeniya C.A. 333/94(F) reported in 2008 BLR 204, “when it involves state land there is always a necessity to safeguard the interest of the state since very many statutes enacted for state land, the purpose would be spelt out to achieve a purpose for the ultimate benefit of the society at large.”

In the instant case, a water tank was constructed on the land concerned. Effective and efficient water supply and management for the benefit of inhabitants of the area are within the purview of the National Water Supply and Drainage Board. One duty the Board is tasked with is to take over and carry on any water supply or sewerage undertaking of any local authority transferred to the Board under section 64 by a voluntary transfer Order or a compulsory transfer Order (Section 16(1)(d) of the Law No. 2 of 1974).

Further, the Petitioner states that she has been in long occupation of the land, which she inherited from her parents. However, that is irrelevant as she cannot claim prescriptive title against state land.

The Petitioner contends that the land she occupies is of a different description to that found in the Quit Notice. If that is so, this Court is not the correct forum to make such a finding as this is a factual matter in dispute.

It must also be noted that the Petitioner is not without remedy. The Act, however, provides a remedy to a legitimate owner to vindicate her rights by filing an action in the District Court in terms of Section 12 of the Act, and in terms of Section 13, the State becomes liable to pay damages if it is established that the property in issue does not belong to the State. (As discussed in SC Appeal 246-250/14 decided on 04.08.2017)

Thus, this application is dismissed without issuing notice.

JUDGE OF THE COURT OF APPEAL

D.N.SAMARAKOON,J.

I AGREE

JUDGE OF THE COURT OF APPEAL