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 Writ of Mandamus and Prohibition under and in terms of Article 140 of the Constitution.

CA WRT 09/2020

1. Kadimachcharige Arnelis of Lidagawawatta Tissamaharamaya
   (Appearing by his Attorney, Kadimachcharige Samodis, *alias* Kadimachcharige Saman Kumaratunga)

2. Kadimachcharige Samodis *alias* Kadimachcharige Saman Kumaratunga
   Kumarathunga
   Lidagawawatta,
   Tissamaharamaya

Petitioners

Vs.

1. J.K. Wimalasena
   Magama,
   Tissamaharamaya

2. Weeratunga Arachchige Padmadasa
   Magama
   Tissamaharamaya

3. Jayawardene Kankanamage
   Dharmadasa
   Magama
   Tissamaharamaya

4. Jayawardene Kankanamge Jayasena
   Magama, Tissamaharamaya.

5. The Divisional Secretary,
   Divisional Secretariat,
   Tissamaharamaya.

6. District Secretary
   District Secretariat
   Hambantota.

7. Land Commissioner of the Southern Province
   Land Commissioner's Department of the Southern Province,
   No. 211, Wakwella Road,
   Galle.

8. Hon. S.M. Chandrasena M.P.
   Minister of Environment and Wildlife Resources,
   Lands and Land Development
   Ministry of Lands and Land Development,
   "Mihikatha Medura"
   Land Secretariat
   No. 1200/6,
   Rajamalwatte Road
   Battaramulla.

9. District Valuer
   Valuation Department
   Southern Regional Office
   No. 7/ 2/1,
   H.G.P.M.Building
   KotuwegodA, Matara.

10. Surveyor General
    Sri Lanka Survey Department
    No.150, Kirula Road
    Narahenpita
    Colombo 05

Respondents

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

Counsel: Senany Dayaratne with Eshanthi Mendis for the Petitioners
Chandima Muthukumarana for the 2nd and 4th Respondents
Y. Fernando, DSG for the 5th-10th Respondents

Argued On : 15.11.2022

Written Submissions: 15.12.2022 (by the Petitioner)
13.12.2022(by the 2nd and 4th Respondents)
On 23.01.2023 (by 5th to 10th Respondents)

Decided On : 03.02.2023

B. Sasi Mahendran, J.

The present application, which is the result of a prolonged legal battle stemming from the ineptitude of the State officials concerned, is a complete waste of time and resources and serves as an example of the type of conduct that cannot be tolerated; it is not the conduct of diligent, conscientious State officials, entrusted with powers and functions in the expectation that they would exercise those powers and functions diligently and conscientiously. The Respondent authorities have also displayed contemptuous conduct by their utter disregard for Court orders. This contemptible and frankly appalling conduct will be elaborated on in the course of this judgment.

The Petitioners who are siblings, are before this Court seeking, *inter alia,* a Writ of Mandamus to compel the 6th Respondent (the District Secretary, Hambantota) to rectify the error in the permit (bearing No. 17343 dated **29th June 1949 -** "X2") issued to their late father, namely one Kadimachcharige Jandiris (hereinafter sometimes referred to as "the permit holder") under the Land Development Ordinance No. 19 of 1935, as amended. This error was discovered only when a commission was re-issued by the District Court in 2018, more than seventy years after the permit was issued, to determine the quantum of compensation payable to the 1st to 4th Respondents for the developments they had done on that land. The error is that the particular Lot number referred to in the permit (Lot 38 in Final Village Plan No. 636) is in fact a roadway and not the allotment of land that was alienated to the Petitioners' father. A mistake that managed to stay hidden over the years, despite, as explained below, the land having been assessed on a commission issued by Court prior to its re-issuance in 2018. The Petitioners made this application to compel the relevant Respondent authorities to rectify this error in the permit by identifying the actual land referred to in the Schedule of the permit, with its definitive boundaries, and to compel the registration of the 1st Petitioner (eldest son of the permit holder) as successor to that land, under his late father's permit.

The background of this application in its chronological order, as narrated in the Petition, is as follows.

A dispute involving the Petitioners' father, the 1st Respondent, and three others resulted in the Police instituting an action in the Magistrate's Court of Tissamaharama in 1980 (Cases bearing No. 518 and 519). At the behest of the learned Magistrate, the parties agreed to a settlement whereby the 1st Respondent was entitled to occupy the land (the corpus alienated under the permit) for a period of two and a half years, to set off a debt of Rs. 4000/- the Petitioners' father owed the 1st Respondent. The 1st Respondent

agreed to hand over vacant possession of that land to the Petitioners' father at the expiration of that period (These conditions are found in the Order of the learned Magistrate dated **2nd December 1980** - "P1a"). The 1st Respondent at the end of that period went back on his word. He had permitted the 2nd and 3rd Respondents to occupy the land too. The Petitioners' father (the permit holder) passed away on **7th April 1986**. The Petitioners claim that it is the eldest son (the 1st Petitioner) who is entitled to succeed to the land and that they took steps to have him administratively declared/ recognised as the successor, after the demise of their father.

The Government Agent of Hambantota (as they were then referred to) instituted two actions in the Magistrate's Court of Tissamaharama under the provisions of the State Land (Recovery of Possession) Act No. 7 of 1979, as amended, to evict the 2nd and 3rd Respondents (Cases bearing No. 1699 and 1698, respectively). As the Journal Entry (dated **11th January 1991**- on page 170 of the Brief) shows, it was admitted that the 2nd Respondent, who was present in Court on that day, did not occupy the land on any valid written authority. The learned Magistrate ordered their eviction ("මෙම ඉඩමෙන් අස්වන ලෙසට නියෝග කරමි." - vide page 170 of the Brief). Aggrieved by these Orders for eviction, the 2nd and 3rd Respondents each filed a revision application in the High Court of Matara (Cases bearing No. 28/1991 and 51/1991, respectively). The High Court saw no merit to their applications because the Respondents did not possess any valid permit or written authority to possess the land and rejected the same by Orders "P4b" and "P4a" dated **4th March 1994** (vide pages 173 and 174 of the Brief).

It must be stated that no steps were taken by the relevant competent authority (the Government Agent of Hambantota – now the Divisional Secretary) to recover that land from the Respondents. This failure to abide by the Court Order is contemptuous conduct. There is no reason forthcoming for such failure. This behaviour is surprising to see because when compared with the other writ applications we have had before us, the competent authority has been swift in evicting unlawful possessors of state land. Sometimes too quickly that they fail to properly formulate the all-important opinion in terms of Section 3 of that Act, before instituting the action in the Magistrate's Court.

The 5th to 10th Respondent authorities in their Statement of Objections assert that the action was instituted under the State Lands (Recovery of Possession) Act to secure and recover state land from unlawful occupation (vide paragraph 10). In the face of their failure to recover the land from the 2nd and 3rd Respondents, who continued to possess the land despite the Court orders, the strong assertions of the "absolute ownership of the

State" made in the Statement of Objections of the 5th to 10th Respondent authorities become empty or toothless.

Thereafter, the Petitioners received a notice (in terms of Section 106 of the Land Development Ordinance -dated **30th June 1999** - "P5") from the Divisional Secretary, Tissamaharama to show cause why the permit should not be cancelled. An order cancelling the permit ("P6") was issued on 15th November 1999, subject to an appeal to the Commissioner General of Lands (as provided for in the Ordinance). This cancellation was on the basis that the Petitioners' father had breached the terms of the permit. The order of cancellation was appealed to the Commissioner General of Lands. The Land Commissioner of the Southern Province by letter dated **25th May 2000** ("P7") to the Divisional Secretary, Tissamaharama (copied to, among others, the 2nd Petitioner and the 3rd Respondent) suspended the Divisional Secretary's Order cancelling the permit and instructed him to inform those seeking to succeed to the land, under Schedule 3 of the Ordinance, to commence judicial proceedings, within three months from the date of issuance of the said letter, to determine the lawful successor to that land as no consensus could be reached on the matter. This letter ("P7") titled "**ප්‍රාදේශීය මට්ටමින් නොවිසඳුන ඉඩම් ආරවුල විසඳීම පළාත් දින පරීක්ෂණ- ඉ. ලෙ. 17343 ඉඩම් ආරවුල"** reads:

"උක්ත කරුණ සම්බන්ධයෙන් 2000.03.21 දින පරීක්ෂණය හා බැඳේ.

මෙම ඉඩම් ප්‍රශ්නය සමථයකට පත් කිරීම සඳහා අවස්ථා කිහිපයකදී උත්සාහ ගෙන ඇති නමුත් උක්ත බලපත්‍රකරුගේ පසුඋරුම කරුවන් (දරුවන්) ගේ පොදු එකඟතාවයක් ඉදිරිපත් නොවීමෙන් මෙම ආරවුල දෙපාර්ශවයේ එකඟතාවයක් මත සමථයකට පත්කළ නොහැකි බව පැහැදිලි වේ. එබැවින් ඉ.සං.ආ පනතේ 106 වගන්තිය යටතේ ක්‍රියා කිරීමෙන් පසු ඔබ විසින් 1999.11.15 දින නිකුත් කරන ලද එම පනතේ 110 වගන්තිය යටතේ වූ නිවේදනය අනුව ඉදිරි කටයුතු කිරීම තාවකාලිකව අත්හිටුවා මාස 03ක් ඇතුලත මෙම ඉඩමේ හුක්තිය ලබා ගැනීම සඳහා සුදුසු අධිකරණ ක්‍රියාමාර්ගයක් ගන්නා ලෙස ඉදිරිපත්ව ඇති 03 වන උපලේඛනගත ඥාතීන් වෙත උපලේඛනගත තැපෑලෙන් දැනුම් දෙන්න.

එම කාලය තුල ඔවුන් අධිකරණ ක්‍රියාමාගර්යක් ගනු නොලබන්නේ නම් දැනට ඉඩම හුක්ති විඳිනු ලබන ආකාරය අනුව නියමානුකූල කිරීම පළාත බැලීම සඳහා නියමිත ආකෘතියෙන් වාර්තා ඉදිරිපත් කරන්න.

(එස්. වාහලවත්ත)

දකුණු පළාත් ඉඩම් කොමසාරිස් සහ රජයේ අතිරේක ඉඩම් කොමසාරිස් "

The powers of the Commissioner acting as an appellate forum are set out in Section 115 of the Ordinance. The Commissioner has the power to, *inter alia*, direct further inquiry to be made or information to be furnished or evidence to be given, set aside, modify the order of the Divisional Secretary, or make an order that he considers just.

We observe that in the aforesaid letter the Land Commissioner has opted to conveniently pass the buck to the Courts to determine the entitlement to succeed when the Land Development Ordinance amply makes provision for the Divisional Secretary, who would have the benefit being possessed of all the relevant information to make that decision and the ability to conduct an exhaustive inquiry and to resolve the same. This is distinct from challenging the correctness or the legality, in relevant judicial proceedings, of a decision that has been made by the Divisional Secretary, or the relevant administrative authority. The proposed course of action would mean that there would not be an initial administrative decision that is then challenged judicially, instead, the judiciary would have to make that initial administrative decision. This is the course of action that the Commissioner had opted to take. We are of the view that to let the judiciary make that initial decision is an abdication of their statutory functions.

This decision made out of convenience triggered lengthy contentious litigation which could have been avoided altogether. To put it in context, the Land Commissioner decided in the year 2000 to instruct the parties to commence litigation to determine the issue of succession (a matter which, as stressed above, could have been resolved by the respective administrative officers themselves) which then commenced in the year 2000 and has since made its way up to the Supreme Court, back to the District Court, and now before us. Whether this litigation will finally come to an end with this judgment in the year 2023 is yet to be seen. The cost in terms of time, money, and other resources to battle it out, a cost which has to be borne by those financially unsound, is monumental. An inconsiderate decision, which represents an abdication of power. The material made available to us, which was undoubtedly available to the Divisional Secretary and the Land Commissioner, appears to point to the fact that there is no controversy as to succession. The relevant Court records aptly demonstrate that the 2nd and 3rd Respondents are unauthorised possessors of that allotment of land. There is no contention of such nature about whether the children of the permit holder are in fact his children or not. If it was contested, then it would require judicial determination. The provisions of the Ordinance clearly set out the line of succession, in the absence of nomination or in the failure of the nominee to succeed to the land.

We observed that in the permit ("X2") there appears to be one 'Podisina' (daughter of the permit holder) who has been nominated as successor. However, the relevant administrative officers would be better capable of ascertaining whether, in fact, she failed to succeed to the said land within the six months statutory time limit or not, because this

material is not before us. If she failed to do so, she would lose her entitlement to succeed as per Section 68 read together with Sections 84 and 85 of the Ordinance and succession will be determined as per the Third Schedule.

The decision evinced in "P7" is also erroneous because it recommends a report to be submitted to him to decide if to regularize possession of those actually possessing the land i.e. the 2nd and 3rd Respondents. That is to regularize persons who have been judicially recognised as unauthorised possessors of that land. An absurd decision to say the least.

We would like to note that, if the Land Commissioner concerned had been made a party to this application by name we would have unhesitatingly ordered costs to be borne by him, as one wrong decision has led to immense hardship and inconvenience. Instructing to commence judicial proceedings, for what was purely an administrative matter that could have been resolved in a matter of months, has now taken more than twenty years to come to an end.

As instructed, the Petitioners filed, by Plaint dated **31st August 2000** ("P8"), an action in the Tissamaharama District Court (Case bearing No. 144/2000/L) against the 1st to 4th Respondents, the Divisional Secretary, Tissamaharama (the 5th Respondent) and the Land Commissioner of the Southern Province (the 7th Respondent). The Plaint which sets out the entire story notes that the Respondents had since 1979 periodically carried out developments on the land. The Petitioners sought a declaration that the 1st to 4th Respondents had no proprietary rights to that land and a declaration that it is the Petitioners who are entitled to succeed to the land as children of the deceased permit holder.

The 1st to 4th Respondents, in their Answer dated 29th March 2001 ("P9"), state, among other things, that the plot of land on which they reside (in the extent of ½ acre) is one-half of the disputed land, which was sold by the Petitioners' father (the permit holder) to one W.P. Saranelis, the father-in-law of the 2nd Respondent, on the 30th of May 1973 for a consideration of Rs. 650/-, who in turn gifted it to the 2nd Respondent as dowry in 1979. Subsequently, they constructed a house on that land, with no objection from the permit holder. Further, the other half of the land (in the extent of ½ acre) was purchased by the 1st Respondent from the permit holder in 1974 and thereafter the 1st Respondent handed it over to his siblings, the 3rd and 4th Respondents, who developed it. It is also claimed that the Petitioners do not have locus standi to institute the action as their father had

breached the conditions of the permit, which was then cancelled as a result. A claim in reconvention was made for compensation in sums of Rs. 600,000/-, Rs. 450,000/-, and Rs. 500,000/- respectively to the 2nd, 3rd, and 4th Respondents for the improvements they made on the respective parts of the land.

The 5th and 7th Respondents (the Divisional Secretary and the Provincial Land Commissioner), on whose instructions the action was instituted, in their Answer ("P10" – on page 466 of the Brief) claimed that they had been misjoined. They were subsequently discharged from the proceedings. The trial proceeded with five admissions (one of which was the land), sixteen and ten issues raised respectively on behalf of the Petitioners and the 1st to 4th Respondents (Pages 257 to 263 of the Brief). Both parties led evidence. The learned District Judge by judgment dated **23rd July 2009** ("P20") held that the Respondents were sold their respective parts of the land by the permit holder, who had done so in breach of the terms of the permit; the permit had not been cancelled as it was suspended on appeal; the 1st Petitioner was entitled to succeed to the land as the firstborn son of the permit holder; the Respondents were entitled to compensation for the bona fide improvements and until such compensation was paid the Respondents were entitled to remain on their respective parts of the land. As observed by the learned District Judge (on page 461 of the Brief):

"මා ඉහත සඳහන් කර ඇති හේතු මත ඉහත වන්දි මුදල ලබා ගැනීමෙන් අනතුරුව පමණක් මෙම නඩුවේ 01 වන, 02 වන, 03 වන හා 04 වන විත්තිකරුවන් පැමිණිල්ලේ ආයාචනයේ ඉල්ලා ඇති පරිදි පැමිණිල්ලේ උපලේඛනගත විෂය වස්තුවෙන් නෙරපා ඉවත් කර එම විෂය වස්තුවේ හුක්තිය 01 වන පැමිණිලිකරුට පමණක් ලබා ගැනීමට අයිතියක් ඇති බවට තීරණය කරමි."

The amount of compensation payable was determined to be Rs. 655,000/- to the 2nd Respondent and Rs. 800,000/- to the 4th Respondent. The quantum was determined based on an aggregate of the amount determined in the assessment report ("4V1" on page 186 of the Brief) issued by a Valuer attached to the Valuation Department (Southern Region) dated 2nd November 2005 (Rs. 455,000/- to the 2nd Respondent and Rs.600,000/- to the 4th Respondent), based on a commission issued by Court, and an addition of Rs. 200,000/- included by the learned District Judge to reflect the depreciation of the rupee (from the year 2005 when the assessment was done to the year 2009 when the judgment was delivered - vide pages 28-30 of the judgment of the learned District Judge – Pages 459 to 461 of the Brief).

Aggrieved by the said judgment, the 2nd and 4th Respondents preferred an appeal to the High Court of Civil Appeals holden in Tangalle (Case bearing No.

SP/HCCA/TA/41/2009F) to set aside the judgment of the learned District Judge. However, this appeal was dismissed because the 2nd and 4th Respondents agreed to abide by the decision in the appeal, which was filed by the Petitioners, and for both appeals to be heard together. The Petitioners filed an appeal (Case bearing No. SP/HCCA/TA/40/2009F) against the judgment of the learned District Judge to vary or amend the amount of compensation payable by them. The appeal was, as stated in the judgment of the High Court of Civil Appeals, primarily based on the amount of compensation that was ordered to be payable. It was found that the assessment report was made on a commission that required the improvements to be assessed at the market value at the time (2005). Nonetheless, the High Court of Civil Appeals, by its judgment dated **2nd March 2017** ("P27" on page 591 of the Brief)**,** held that the assessment must be computed at the date the action was instituted, which meant that the order relating to the amount of compensation, and the additions of Rs. 200,000/- each made thereto by the learned District Judge was erroneous. It was ordered that a fresh commission be issued to the Valuation Department, and for the assessment to be computed at the market value in the year 2000. The relevant part of the judgment (on page 593 of the Brief) reads:

"ඒ අනුව අප විසින් උගත් දිසා විනිසුරු දෙන ලද වන්දි මුදල සම්බන්ධයෙන් කර ඇති නියෝගයද, ඊට අමතරව වන්දි මුදලට රුපියල් ලක්ෂ දෙකක මුදලක් පොලිය ලෙස එකතු කර ඇති තීන්දුව ඉවත් කරන අතර, තීන්දුවේ අනෙකුත් කරුණු නම් ජන්දිරිස් වෙත නිකුත් කර ඇති පැ. 21 දරන බලපත්‍රය මේ දක්වා වලංගුව පවතින බවත්, එමෙන්ම 01 වන පැමිණිලිකරු වන ජන්දිරිස් ගේ වැඩිමහල් පුත්‍රයා සංවර්ධන ආඥා පනතේ 72 වගන්තිය සහ 3 වන උපලේඛනය අනුව අනුප්‍රාප්තිකයා ලෙස නම් කර හැකි බවට උගත් දිසා විනිසුරුවරයා කර ඇති තීන්දුව ඒ ආකාරයෙන්ම තැබීමට තීරණය කරමු. එම කරුණුවලට යටත්ව අප විසින් 41/2009 ඇපැල ඉල්ලා අස්කරගන්නා බැවින් නිෂ්ප්‍රභා කරමු."

The 2nd Respondent appealed to the Supreme Court against this judgment on the basis that the said judgment of the High Court of Civil Appeals is contrary to law and against the weight of evidence; that the learned Judges had misdirected themselves in holding that the 1st Petitioner can be nominated as the successor of the permit holder and that the learned Judges misdirected themselves in the assessment of compensation (as per the Petition of Appeal of the 2nd Respondent dated 6th April 2017- "P29"). On **4th July 2017**, the Supreme Court refused leave to appeal ("P30" on page 599 of the Brief).

The original case record arrived back at the District Court of Tissamaharama. A commission was issued to the Government Valuer, Valuation Department of the Southern Province on **19th July 2018** to obtain a valuation in relation to the market value for the year 2000 of the building and plantations on the land, on the direction of the High Court

of Civil Appeals ("P33a" on page 618 of the Brief). All parties were informed to be present at the land on the 4th of December 2018.

The Petitioners claim that to their surprise the 2nd and 4th Respondents moved Court to make a special application ("P34" – **17th January 2019**). It was brought to the notice of the Court that when the officer of the Valuation Department visited the land to execute the commission it was discovered that the allotment of land, viz. Lot 38 in the Final Village Plan No. 636, alienated under the permit issued to the permit holder is a roadway, and the Respondents are in possession of Lot 37B in the Final Village Plan No. 636. The Respondents prayed for a declaration that the buildings constructed by them do not fall within the scheduled property and to declare that the judgment was based on an error. A letter dated 28th January 2019 issued by one S.M. Abeywickrama, District Valuer, Valuation Department (Southern Provincial Office -II) to the Registrar of the District Court of Tissamaharama notes that Lot 38 is a road ("P36").

The Petitioners' contention is that despite this error, which must surely be a clerical error, the Schedule in the Plaint has definitive boundaries with an identifiable extent, and the learned District Judge has not referred to the Lot number but instead referred to the scheduled property itself. It is also averred that at the trial the land was admitted. The Petitioners had written to the 7th Respondent, copying the 5th and 6th Respondents to inquire into this matter and rectify the error. The 7th Respondent had referred the matter to the 5th Respondent for an examination to be conducted and a report to be submitted thereon ("P42" dated 7th May 2019). The 5th Respondent in response to that letter noted that the 9th Respondent (the District Valuer, Valuation Department) had informed him that Lot 38 is a road, and therefore no valuation could be provided ("P45" dated 6th December 2019).

Therefore, the Petitioners are at present before this Court seeking a Writ of Mandamus to compel the 6th Respondent to rectify this error on the permit; a Writ of Mandamus to compel the 6th Respondent through the 10th Respondent to demarcate the boundaries of the land by reference to the metes and bounds of the scheduled property; a Writ of Mandamus compelling the 5th, 6th, 7th Respondents, or any one of them, to name the 1st Petitioner as successor to the land of the original permit holder; a Writ of Prohibition to prevent the 1st to 4th Respondents from taking steps to apply for a permit for Lot 37B.

On a perusal of the Schedule found in the Quit Notice as depicted in the Journal Entries (on pages 153, and 164 of the Brief) of the action instituted against the 2nd and 3rd Respondents under the State Lands (Recovery of Possession) Act, and the Schedule found in the Plaint by which the Petitioners instituted the action in the District Court, on the instructions of the Land Commissioner, are the same. Both Schedules, respectively, are as follows:

"*උපලේඛණය*

හම්බන්තොට දිස්ත්‍රික්කයේ තිස්සමහාරාම සහකාර ආණ්ඩුවේ ඒජන්ත කොට්ටාසයේ මාගම ග්‍රාම නිලධාරී වසමේ අ.ග.සි. 636 හා ලොට් අංක 38 දරණ රජයේ ඉඩම් අක්කර (01) එකක ප්‍රමාණය

උතුරට: කුඹුරු යායද

නැගෙනහිරට: ඩබ්.එල්.ජී. මවුලිස් පදිංචි ඉඩමද

දකුණට: මාගම පාරද

බටහිරට: බෙබිනෝනා පදිංචි ඉඩමද වේ."

"**ඉහත කී උපලේඛණය**

දකුණු පළාතේ, හම්බන්තොට දිස්ත්‍රික්කයේ, මාගම්පත්තුවේ, තිස්සමහාරාම ප්‍රාදේශීය ආදායම් නිලධාරී කොට්ටාශයේ, මාගම ග්‍රාම සේවා නිලධාරී වසමේ, පිහිටි බලපත්‍ර අංක ඉ.ලේ. 17343 හි සඳහන්, අ.ග.පි. 636 හි කැබලි අංක 38 දරන රජයේ ඉඩම් කැබැල්ලට, උතුරට: කුඹුරු යායද, නැගෙනහිරට: ඩබ්. ජී. එල්. මවුලිස් පදිංචි ඉඩමද, දකුණට: මාගම පාරද, බටහිරට: බෙබිනෝනා පදිංචි ඉඩමද යන සතර මායිම් තුල පිහිටි අක්කරයක් පමණ (අ: 01, පමණ) විශාල ඉඩම වේ."

The land as described in the permit ("X2") is also referred to as Lot 38 in Final Village Plan No. 636, in an extent of one acre. It is worth noting that this permit does not provide a detailed schedule, with definitive boundaries. Rather it only provides the information set out in this paragraph. If this is the case, then the competent authority could not have relied on the Schedule in the permit as there is no Schedule. A question then arises of how, specifically, based on what material, the competent authority drafted the aforesaid Schedule. The Court can presume that the Schedule indicated in the record of the State Land (Recovery of Possession) Act proceedings would have been a description of the land issued under the permit.

It would be unfair for the Petitioners to be faulted for this error at this juncture, after all these years, and contentious legal battles, as they appear to rely on the description of the land referred in those instruments prepared by the respective Respondent authorities. As mentioned in the commencement of this judgment, the fault lies squarely with the Respondent authorities. It would be wanting in common sense to

expect ordinary lay persons to whom land has been alienated to undertake surveys, as that is an onus falling on the issuing authorities. It is for this reason that the statement found in paragraph 22 of the Statement of Objections of the 5th to 10th Respondents which seems to cast such a burden on the litigant and unfairly find fault with such litigant is unacceptable. The suggestion that it is the Petitioners' fault for waiting seventy-plus years since the issuance of the permit to lodge this application is abhorrent. The statement verbatim reads:

"….. and that the application of the Petitioner before Your Lordships' Court has been filed after 70 after issue of permit and 34 years of the Petitioner seeking succession thereto and after several rounds of litigation purportedly to settle private interests thereon, to ascertain the correctness of the corpus/state land as identified in the permit which has been issued, is both frivolous and futile, and the Petitioner is moreover guilty of lashes without any conceivable justification for the unexplained and inordinate delay in seeking a remedy in writ."

This statement is in complete ignorance of the fact that the description of the land found in the respective Schedule was, as quoted above, drafted by the State Officials themselves; the Schedule as found in the action instituted in terms of the State Land (Recovery of Possession) Act against the 2nd and 3rd Respondents, unauthorised occupants. The Petitioners in filing their Plaint have relied on the Schedules prepared by the relevant State Officials.

It must also be noted that the Land Development Ordinance as originally conceived did not contain a provision for a survey of the land to be undertaken prior to its alienation under a permit. It was only by an amendment in the year 1981 (by Amendment Act No. 27 of 1981) that the Legislature insisted on a survey to be carried out prior to lands being alienated on permits. This Section (Section 19(3)) provides that additionally, the Government Agent shall cause the land alienated on such a permit to be surveyed by the Surveyor-General, and the extent and description (by reference to metes and bounds) of the land so surveyed shall be inserted in such permit.

It is therefore conceivable that such a provision would have been included because there would have been many issues, similar to the error found in the present application, relating to the lands originally alienated, i.e., lands alienated at a time when such surveys were not insisted. Therefore, it is inconceivable to now place the entire blame on the permit holder, a beneficiary under this Ordinance in 1949, entitled to this land on the ground that he belonged to an economically disadvantaged group.

It appears that the Legislature, in its wisdom, recognizing human fallibility, has made provisions for the correction or rectification of flawed instruments issued under the Ordinance. In terms of Section 20 of the State Lands Ordinance:

Where it appears to a prescribed officer that any instrument of disposition (whether executed before or after the commencement of this Ordinance) contains any clerical or other error or requires amendment **in respect of the description of the land comprised therein** or in respect of the inscription or recital of the name or designation of the grantee or of any other material fact, such error may be rectified or such amendment may be made by an indorsement on such instrument of disposition signed by such prescribed officer and the grantee; and any indorsement so signed shall be sufficient for all purposes to rectify the error or to effect the amendment; and the instrument on which any such indorsement is made shall have effect as though it had been originally issued or executed as so rectified or amended. [emphasis added]

A request has been made by the Petitioners to the Land Commissioner ("P41") to do so. The Statement of Objections does not address this.

It must be noted that the permit has not yet been cancelled. Therefore, the Respondent authorities can act in terms of Section 19(3) of the Land Development Ordinance, in causing a survey of the respective lands to be undertaken, along with Section 20 of the State Lands Ordinance to rectify their mistake.

Therefore, on a review of the entire history of this case, it appears that the present trouble arises from the 'original sin' which is the absence of a description of the allotment of land, with reference to its boundaries, alienated under the permit. Second, when Courts have ordered the eviction of unlawful, unauthorised occupiers of land, that has not been carried out. Third, the Land Commissioner's abdication of responsibility by passing the buck to the courts, when that matter could have been resolved administratively. Fourth, the failure of the relevant Respondent authorities to take steps to rectify the error in the permit issued by them.

The argument that the permit holder was not issued an allotment of land, but a road, is illogical. This is because permits are issued, and it can be judicially presumed in this case to have been issued, at a Land Kachcheri in which the selection is made as to which person is entitled to the allotment. To be eligible to participate at such Kachcheri the candidates should have occupied or claim to occupy the land. It would be illogical for them to occupy or claim occupation of a road. Further, it is the Respondent authorities who prepared the Schedules to eject the Respondents under the State Lands (Recovery of Possession) Act, and also sought to cancel the permit on the ground that the permit holder

had breached the conditions it was issued under. There would not have been any need for cancellation if the land alienated is actually a road.

It is also astounding how this error of an incorrect Lot was not discovered before. Firstly, when the competent authority formulated an opinion that the land is state land this should have surfaced. It clearly shows that the competent authority has been haphazard in forming that opinion. Moreover, this error should have been discovered when the District Court issued a commission for the first time to have the improvements on the land to be assessed. An inspection surely would have been carried out in order for the initial valuer to determine the quantum of compensation as he did. If not doubts arise about his report, such as whose land he was actually valuing, whether he in fact referred to the Schedule and whether the figures that he presented were accurate.

At the argument stage when we asked the learned Counsel for the 5th to 10th Respondents what authority the Respondent authorities had to require a judicial solution to determine succession, it is deplorable to note that the answer was that they were not concerned with the outcome of the court ruling. Meaning that although Court has made a finding that the 1st Petitioner is entitled to succeed, they are not bound by such a finding. Rather startling remarks from an officer of the Court. To add further, when learned State Counsel appears in that capacity, on behalf of the State, there is a duty to advice the relevant State authorities concerned instead of adopting a win-at-any-cost approach and trying to justify and defend absurd decisions of the relevant authorities.

Accordingly, in the hope of finally bringing an end to this matter, we grant the relief prayed for. The Divisional Secretary and the Land Commissioner are ordered to act through the Surveyor General of Lands (10th Respondent) and cause a survey of those allotments of land to be done. Following which, the Divisional Secretary and Land Commissioner are ordered to identify the land described in the permit. The relevant Respondent authorities are also ordered to conduct an inquiry into the matter of succession, bearing in mind that the Courts have determined that the 1st Petitioner is the lawful successor.

Considering that this application involved twenty-plus years of contentious legal battles, we conclude this judgment with reference to an observation of his Lordship Amerasinghe J. in Jeyaraj Fernandopulle v. Premachandra De Silva [1996] 1 SLR 70:

"Public policy requires that there must be an end to litigation, for the sake of certainty and the maintenance of law and order, in the pacific settlement of disputes between the citizen and the

State or between other persons; for the sake of preventing the vexation of persons by those who can afford to indulge in litigation; and for the conservation of the resources of the State. Interest rei publicae ut sit finis litium."

This Application is allowed. We make no order for costs.

JUDGE OF THE COURT OF APPEAL

D. N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL