

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

*In the matter of an application for Orders in  
terms of Article 140 of the Constitution of Sri  
Lanka for mandates in the nature of Writ of  
Certiorari.*

**CA/WRIT/151/2021**

Warakamure Gedara Ahamed  
Mohamed Mazeen  
15/2, (8A),  
Kurundugaha Ela,  
Akurana.

**Petitioner**

Vs.

1. Ms. A.H.M. Indika Kumari Abesinghe  
Divisional Secretary,  
Divisional Secretary's Office,  
Akurana.
2. Hon. Attorney- General  
Attorney-General's Department,  
Colombo 12.

**Respondents**

**Before** : Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel** : Murshid Maharoo with S. Ahamed for the Petitioner.

S. Dunuwilla, SC for the Respondents.

**Supported on** : 29.11.2022

**Written Submissions:** Petitioner - 14.12.2022

Respondents- --

**Decided on** : 27.01.2023

**Sobhitha Rajakaruna J.**

A writ of Certiorari is sought by the Petitioner to quash the quit notice dated 18.07.2019 ('P13') 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 ('Land') to the said quit notice. For the purpose of making an order on issuance of notice by this Court, the learned Counsel for the Petitioner as well as the learned State Counsel who appears for the Respondents on 29.11.2022 agreed that this Application be dealt with solely on the basis of written submissions.

The Petitioner's alleged ground of challenge is that he has put up a building on the Land and the 1<sup>st</sup> Respondent-Divisional Secretary has waited until the completion of the construction of the said building to issue the impugned quit notice. The Petitioner pleads that the Land is adjacent to the office of the 1<sup>st</sup> Respondent. Based on such circumstances, the Petitioner pleads mala fides on the part of the 1<sup>st</sup> Respondent. The Petitioner states that he and his predecessors have been in undisputed, uninterrupted possession for well over 50 years and thereby has obtained prescriptive title to the Land.

The Petitioner's main contention is that the 1<sup>st</sup> Respondent taking steps to recover the possession of the western boundary of the Land (1.4 Perches) is illegal, unlawful and arbitrary as it's merely a boundary dispute. On perusal of the journal entry dated 27.04.2021 of this case, it implies that the learned Counsel for the Petitioner had informed this Court that he would be satisfied if a superimposition of Surveyor General's Plan marked 'P7' is carried out on Plan marked 'P16' (the Petitioner has sought to correct it as 'P17' in his written submissions). Subsequently, after carrying out such superimposition,

the Surveyor General has tendered to Court the tracing No. Maha/AKR/2019/126 together with a copy of the Preliminary Plan No. Maha/2449 along with the motion dated 16.12.2021. In view of the said tracing Maha/AKR/2019/126, the Surveyor General has clarified that the Petitioner has encroached Lot Nos. 1 and 2 of Preliminary Plan Maha/5737. The said area of encroachment is depicted as Lot No. A in the said tracing Maha/AKR/2019/126.

In terms of Section 3(1) of the Act, if the competent authority is of the opinion;

a) that any land is a state land

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

he may take steps to evict the unauthorized occupants.

Furthermore, in terms 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 of the Act. It is observed that there is plethora of judgments where the scheme of the Act has been illustrated.

Among several other judgements<sup>1</sup>, the Court in *Farook vs. Gunawardena Government Agent Ampara (1980) 2 Sri. L.R. 243* held;

*“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*

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<sup>1</sup>Ihalapathirana vs. Bulankulame, Director-General, U.D.A. (1988) 1 Sri. L.R. 416; Gunaratne (Alexis Auction Rooms) vs. Abeysinghe (Urban Development Authority) (1988) 1 Sri. L.R. 255; Nirmal Paper Converters (Pvt) Ltd. vs. Sri Lanka Port Authority and another (1993) 1 Sri. L.R. 219; Aravindakumar vs. Alwis and others (2007) 1 Sri. L.R. 316; Wedamulla vs. Abeysinghe 1999 3 Sri. L.R. 26; Muhandiram vs. Chairman No. 111, Janatha Estate Development Board (1992) 1 Sri. L.R. 110

*shall lie against the order of ejectment. Under section 17, the provisions of this Act have effect 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 forms the opinion that any land is State land”.*

**In *Don Sarath Rajapaksha vs. Susantha Aththanayake, Divisional Secretary and another, CA/WRIT/374/2022 decided on 29.11.2022*, I have referred to the following passage of His Lordship Justice Arjuna Obeyesekera in *Udagedara Waththe Anusha Kumari Nikaathagoda vs. Jayasinghe Mudiyanseelage Chamila Indika Jayasinghe, Divisional Secretary and others, CA/Writ/293/2017 decided on 18.11.2019*;**

*“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”.*<sup>2</sup>

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<sup>2</sup> 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

“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)

In the said judgement the Court analyzing the precedent laid down in related judgements has taken an advanced approach in respect of the applications made under State Lands (Recovery of Possession) Act No. 7 of 1979.

In the instant Application, the Surveyor General has not reported any evidence contradicting the quit notice or supporting the Petitioner's alleged claim that the Land is private land. Even the Petitioner has not tendered any evidence to Court in order to establish that the subject land is not a State Land apart from his assertions on prescriptive title. In terms of Section 21 of the Survey Act No. 17 of 2002, any plan prepared according to law, inter alia, purported to be signed by the Surveyor General and shall be taken to be prima facie proof of the facts stated therein until evidence to the contrary shall have first been given.

The Petitioner's purported grounds of review in the instant Application cannot be assumed as sufficient material to collaborate the independent evidence together with the Surveyor General's plan which are tendered to Court by the 1<sup>st</sup> Respondent. Hence, I see no reason to arrive at a conclusion that the 1<sup>st</sup> Respondent's opinion that the subject Land is a State Land is unreasonable and irrational. It is observed that the Petitioner anyway has the opportunity to institute an action against the State, under Section 12 of the Act for the vindication of his purported title, within 6 months from the date of the order of ejectment by a Magistrate's Court.

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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.

This Court has constantly taken the view that in an application for judicial review, the stage of notice demands that the Court should consider whether the case is suitable for full investigation at a hearing at which all parties have been given notice. Thus, I hold that the test for prima facie case has not been fulfilled by the Petitioner of the instant Application and accordingly, the Application for formal notice on the Respondents is refused.

Application is dismissed.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**