

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

*In the matter of an Application under and in terms
of Article 140 of the Constitution for mandates in
the nature of Writ of Certiorari, Prohibition and
Mandamus.*

T. A. N. S. Thevarapperuma,
No.9/1/1, Hunuwala North,
Cross Road, Hunuwala,
Opanayaka,
Ratnapura.

CA/WRIT/353/2022

Petitioner

Vs.

1. J. M. C. Priyadarshani,
Competent Authority/ Assistant Director,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
11th Floor, 'Sethsiripaya Stage II',
Battaramulla.
2. Secretary,
Ministry of Plantation Industries,
11th Floor, 'Sethsiripaya Stage II',
Battaramulla.
3. Dr. Ramesh Pathirana,
Hon. Minister of Plantation Industries,
Ministry of Plantation Industries,
11th Floor, 'Sethsiripaya Stage II',
Battaramulla.

4. Sri Lanka State Plantations Corporation,
No.11, Duke Street,
Colombo 01.
5. Harin Fernando
Hon Minister of Tourism and Lands,
“MihikathaMedura”,
Land Secretariat,
No.1200/6, Rajamalwatta Road,
Battaramulla.
6. Secretary,
Ministry of Tourism and Lands,
“MihikathaMedura”,
Land Secretariat,
No.1200/6, Rajamalwatta Road,
Battaramulla.
7. H. Dhammika Satharasinghe,
Divisional Secretary of Opanayaka
Divisional Secretariat,
Opanayaka.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Nishantha Sirimanne with Deshara Goonathilaka for the Petitioner.

Manoli Jinadasa with Nilushi Dewapura for the 1st Respondent.

Avanti Weerakoon SC for the 2nd, 3rd, 4th and 7th Respondents.

Supported on : 16.11.2022

Written Submissions : Petitioner - 16.12.2022

1st Respondent- 14.12.2022

Decided on : 27.01.2023

Sobhitha Rajakaruna J.

A writ of Certiorari is sought by the Petitioner to quash the quit notice ('P19') issued against the Petitioner under the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, ('Act') in reference to the land morefully described in the schedule ('Land') to the said quit notice. Additionally, the Petitioner seeks a writ of Prohibition to restrain the Respondents from taking steps to eject her and also an interim order is sought to stay the proceedings in the Magistrate's Court of Balangoda case bearing No. 84337 filed against the Petitioner under the said Act in respect of the same land.

The Petitioner pleads that the impugned quit notice is illegal, null & void and the decisions taken by the 1st to 6th Respondents are inter alia illegal, ultra vires and unlawful. The Petitioner's alleged main grounds of challenge are;

- i. impugned quit notice 'P19' was issued without a proper basis as the land concerned is private land owned by the Petitioner's husband
- ii. the quit notice does not accurately identify the Land
- iii. the quit notice was not duly served on the Petitioner and as such the Petitioner is not in unauthorized occupation.
- iv. summons in relations to the ejectment proceedings in the Magistrate's Court of Balangoda were not duly served on the Petitioner.

Whether the land concerned is private land

The Petitioner submits that her husband became the lawful owner of the subject premises by virtue of Deed of Transfer, marked 'P2'. A Deed of Declaration 'P2(a)' also has been attested in favour of the purchaser of the said Deed of Transfer, in respect of the same land. The Petitioner pleads that the subject premises has been depicted as Lot No.322 in the Surveyor General's Final Village Plan No.200 and has been admitted as being private land as far back in 1938.

The contention of the 1st Respondent is that the Petitioner has been recruited as a trainee clerk by the 4th Respondent-Sri Lanka State Plantation Corporation ('SLSPC') and thereafter the Petitioner was serving at the Hunuwella Estate within which the Petitioner has been provided with an official quarters. As stated by the 1st Respondent, the impugned quit notice has been served in respect of the premises of the said official quarters. Upon the Petitioner being transferred to a different Estate, the Petitioner has been requested to hand over the official quarters and however, the Petitioner had refused to adhere to the said request. The 1st Respondent referring to the proceedings of the case bearing No. B/4707/03 in the Labour Tribunal asserts that such proceedings of the Labour Tribunal and its order, marked 'R10', clearly implies that the Petitioner had not contradicted or challenged the stand that the subject premises was allocated to her as official quarters.

The 1st Respondent strenuously argues that the land described in the schedule of the said Deed 'P2' has absolutely no nexus to the official quarters occupied by the Petitioner and her husband which is situated in the Hunuwella Estate. Now a question arises whether this Review Court can play the role of a trial judge and analyze evidence to identify the block of land described in the said Deed 'P2' and differentiate such land with the 'Land' described in the Schedule to the quit notice

The precedent enunciated in several judgements of the superior courts is that the Act expressly precludes the need for an inquiry by a competent authority before he forms the opinion that any land is State Land (See- *Farook vs. Gunawardena Government Agent Ampara (1980) 2 Sri. L.R. 243*).

His Lordship Justice Arjuna Obeyesekere after analyzing the precedent laid down in related judgements has taken an advanced approach in a recent case *Udagedara Waththe Anusha Kumari Nikaathagoda vs. Jayasinghe Mudiyansele Chamila Indika Jayasinghe, Divisional Secretary and others, CA/Writ/293/2017 decided on 18.11.2019* where His Lordship has held;

“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 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.

In light of the above, I take the view that there is no necessity for the Competent Authority to establish that this Land upon which the quit notice has been served is State Land but his duty should be to form an opinion under Section 3 of the Act on a rational basis. Hence, there is no necessity based on the circumstances of the instant Application to investigate whether the ‘Land’ is State Land. Anyhow, a requirement exists for this Court to consider whether there was a rational basis for the Competent Authority to form the opinion that the State is lawfully entitled to the ‘Land’.

Availability of a rational basis

On a careful perusal of the Gazette Extraordinary No.815/10 published on 21.04.1994 (marked ‘R2(d)’), it appears that the agricultural and estate lands listed in the said Gazette Notification including the Hunuwella Estate has been vested in the SLSPC in terms of Section 27A read together with Sections 22, 23 & 42H of the Land Reform Law No.1 of 1972. Thus, the said Hunuwella Estate which was originally a land vested in the Land Reform Commission has been subsequently vested in SLSPC in terms of the provisions of the law by virtue of ‘R2(d)’. In terms of the Interpretation Section 18 of the said State Lands (Recovery of Possession) Act, land vested in or under the control of SLSPC falls within the category of

State Land. The Indenture of Lease No.4834, marked 'R2(e)' by which the SLSPC has leased out the land including the Hunuwella Estate to the Kahawatta Plantations Limited would not affect the title of the SLSPC to the land.

Now, I need to ascertain whether the official quarters referred to in the instant Application is situated within the 'Land' described in the Schedule to the quit notice. By letter dated 22.05.2022 ('R3'), the Superintendent of Hunuwella Estate has informed the Petitioner his decision to take over the official quarters. The Petitioner has acknowledged the receipt of the original of the said letter after making an endorsement to that effect on the face of the said letter. The 1st paragraph of the letter 'R3';

"I write with reference to the discussion I had with you on the even date in the presence of my Asst. Superintendents Mr. Damith Mohottige and Mr. T.K. Jayaratne. As informed to you I have decided to take-over the official quarters provided to you in Hunuwella North Division due to administrative reasons."

In response to the said letter 'R3', the Petitioner has written the letter dated 09.06.2002 marked 'R5' wherein she has stated;

"Official Quarters"

*"I thank you for your letter dated 22.05.2002...Subsequent to a visit by the former Group Director Mr. R. M. Bondewya, he informed that the **Quarters** was in a dilapidated condition and as the Company was having financial constraints if I was able to repair the Quarters he would permit to moving, I have spent nearly Rs.80000/- and inform the Group director and former Superintendent of Hunuwella they both confirmed that I could reside in this Quarters until I am employed by Kahawatte Plantations Ltd."*

*".....I am sincerely hoping that I will be allowed to continue staying in present **Quarters**."*
(Emphasis added).

The Petitioner has made a further request by the letter dated 25.12.2002, marked 'R6', seeking for an extension to occupy the said official quarters.

The learned President of the Labour Tribunal of Balangoda in case bearing No. B/4707/03 (marked 'R10') has observed that the Petitioner had refused to be transferred from the official quarters citing personal reasons. The said learned President has taken cognizance of the fact that the Petitioner's claim for alleged improvements made to the official quarters worth Rs.180,000.00. Consequently, the learned Labour Tribunal President has arrived at a conclusion based on overall evidence of the case that the main reason for not complying with the transfer orders was the undesirability of the Petitioner to leave the official quarters and accordingly, there cannot be any constructive termination of services (See-page 17 of 'R10').

In the circumstances, it can be well assumed that the purpose of issuing the quit notice was due to the refusal of the Petitioner to vacate the said official quarters. This Court is unable to resolve with the available material, the title issues in respect of the subject 'Land' and particularly the arguments of the Petitioner that the land described in the said Transfer Deed 'P2' is not the same Land/Premises described in the schedule of the quit notice. Anyhow, for the purpose of a fuller and proper adjudication of the instant Application, it is sufficient to identify the 'Land' described in the Schedule to the quit notice. The Review Court examining the title of parties in an application filed based on the actions or decisions taken under the Act would tend to undermine the clear intention of the legislature which introduced mighty provisions to recover the possession of State Land in an expeditious manner.

The 'Land' upon which the ejectment is sought has been morefully described in the schedule to the quit notice 'P19' by sufficiently referring to the boundaries and the extent, although no reference has been made to a specific plan. The Register of Settlements, marked 'P5' and the documents, marked 'P9(a)', 'P10(a)' and 'P10(b)', illustrate that the above official quarters is situated on the Hunuwella Estate which belongs to the SLSPC. I am unable to accept the Petitioner's argument that the 'Land' is private land as the Lot Nos. 311 (Hunuwalawatta) and 322 (Hunuwala estate), among other, are subject to settlements effected under the said Register of Settlements 'P5', according to the provisions of the Land Settlement Ordinance, although such land comes under a column titled "Admitted Private".

Thus, I take the view that the impugned quit notice is in accordance with the dicta enunciated in *M. I. Fernando vs. J. M. C. Priyadharshani-Authorized Officer/Competent Authority and others, CA/Writ/484/2011 decided on 10.06.2021*, a case heavily relied on by the Petitioner.

The 1st Respondent tendering his affidavit to Court has affirmed that he had issued the quit notice 'P19' after reaching the opinion that the Petitioner was in unauthorized occupation of the Land upon consideration of the documents, marked 'R2(a)' to 'R2(h)'. As per paragraph 17 of the said affidavit, the Gazette Notification which reflects the vesting order, the (a)Indenture of Lease No.4834, (b)Field Plan No.1074 and (c)the Google maps are among the documents he has perused.

It appears that the Kahawatta Plantations PLC has taken several steps to notify the 1st Respondent of the unauthorized occupation of the land by the Petitioner. The 1st Respondent by his letter dated 30.08.2017, marked R19, has requested the Petitioner to show cause on her ownership and however, the Petitioner has failed to respond thereto. (See-'R20')

Based on all the material made available to Court and the Order of the learned President of the Labor Tribunal in case bearing No.B4707/03, I am convinced that the Competent Authority's main concern was to evict the Petitioner from the land upon which the said official quarters is situated. I am compelled to accept the version of the 1st Respondent that the Petitioner does not dispute the fact that she was given the subject premises as her official quarters. My above reasoning precludes further evaluation of evidence by this Court as in a Trial Court to decide whether the quit notice ('P19') does not accurately identify the 'Land'.

For the reasons set out above, I am convinced that the 1st Respondent has formed an opinion on a rational basis under Section 3 of the Act that the State is lawfully entitled to the 'Land'. Nevertheless, the Petitioner is privileged under Section 12 of the Act to vindicate her title in an appropriate Court of law.

Service of quit notice

The Petitioner contends that the proof of dispatch of the quit notice by registered post to the correct person and to the address is a mandatory and essential preliminary requirement to establish that the quit notice was deemed to be served on intended recipient. The Sections 3(1)(b) and 3(3) deal with the serving quit notices.

Section 3(1)(b) reads;

‘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 3(3);

‘A quit notice in respect of any State land shall be deemed to have been served on the person in possession or occupation thereof if such notice is sent by registered post.’

The Petitioner heavily relies on the judgement of *Gunaratne (Alexis Auction Rooms) vs. Abeysinghe (Urban Development Authority) (1988) 1 Sri. L.R. 255* in order to emphasize her above argument. The main two issues in the said *Gunaratne case* were; (i) when the Act requires that the specified date to vacate the premises should be a date not less than 30 days from the date of the issuance of the quit notice under Section 3, the appellant had been given only 15 days notice to quit, (ii) no notice has been served on the company namely, Alexis Auction Rooms, which was the tenant of the Respondent (Urban Development Authority). The argument raised by the appellant in the said case was that the appellant namely, Gunaratna was a Director of Alexis Auction Rooms (company).

On perusal of the quit notice ‘P19’ of the instant Application, it appears that such notice has been served directly on the Petitioner in the month of May 2018 and a period not less than 30 days has been afforded to the Petitioner to vacate the Land. Before issuing the said quit notice, the Ministry of Plantation Industries by way of its letter dated 30.08.2017 (‘R19’) has requested the Petitioner to vacate the Land before the said Ministry takes steps in terms of the provisions of the Act to evict the Petitioner. Answering the relevant paragraph of the

statement of objections (of the 1st Respondent) by which the said 'R19' was introduced, the Petitioner has categorically admitted in her counter affidavit the receipt of the said 'R19' and also the fact that she had not responded to the same.

Hence, it is difficult to believe that the Petitioner was totally unaware of any process to evict her from the Land under the provisions of the Act. Even if there is no proof of dispatch of the quit notice under registered cover, the circumstances of this case provide that the Petitioner has received sufficient notice of the quit notice or of the eviction process. Thus, I cannot assume that the quit notice 'P19' is defective or it has not been communicated to the Petitioner. I am satisfied that no substantive prejudice has been caused to the Petitioner based on the alleged objections under Section 3 of the Act as the learned Magistrate has not issued any final order to evict the Petitioner up to date. The proceedings of the Magistrate's Court of Balangoda in case bearing No.84337 has been suspended by this Court until an order on issuance of notice and interim relief is issued by this Court.

Another facet of the Petitioner's argument is that the summons in reference to the said case in the Magistrate's Court of Balangoda were not duly served on the Petitioner. In light of my above findings, I cannot assume that any substantial prejudice has been caused to the Petitioner by not receiving such summons as pleaded in her Petition.

Competent Authority

Although the Petitioner has pleaded in her Petition that the 1st Respondent is not a Competent Authority for the purpose of ejecting the Petitioner from the Land, no sufficient and lucid submissions were made and no adequate material were placed before Court in order to establish a viable legal ground for this Court to consider and make a determination upon the said Competent Authority.

Conclusion

Having considered carefully the facts and circumstances of this case along with the principles enunciated in the decisions of this Court and the Supreme Court on the State Lands (Recovery

of Possession) Act No. 7 of 1979, I am not inclined to issue formal notice of this Application on the Respondents.

This Court in *S. Ravindra Karunanayake vs. Attorney General & others, CA/Writ/63/2020* decided on 07.07.2020 has held;

"Whether there is an arguable ground for judicial review includes whether there is some properly arguable vitiating flaw such as unlawfulness, unfairness, or unreasonableness. The vitiating ground must be arguably material to the impugned decision. That decision must be arguably amenable to judicial review – see R v Chief Rabbi ex p. Wachmann (1992) 1 WLR 1036 at 1037H"

This Court has also taken the view that in an application for judicial review, the Court should consider whether the case is suitable for full investigation at a hearing at which all parties have been given notice based on an arguable question. I see there is no appropriate question available apart from the issues discussed above for this Court to examine even after issuing formal notice on the Respondents.

Application is refused.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal