

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

In the matter of an Application for Writs of
Certiorari and Mandamus under Article 140
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/ 0187/2019

Rukmal Susantha Dias,
269B, 4th lane, Shanthipura,
Thalawathugoda.

Petitioner

Vs

1. Sri Lanka State Plantations Corporation,
11, Duke Street,
Colombo 01.

2. Hon. Lakshman Kiriella, Minister of Public
Enterprise, Kandyan Heritage and Kandy
Development, 36th Floor, East Tower, World
Trade Center, Colombo 1.

2A. Hon. Ramesh Pathirana, Minister of
Planation Industries and Export Agriculture,
NOW
Minister of Plantation Industries 11th Floor,
Sethsiripaya, 2nd Stage,
Battaramulla.

3. Ravindra Hewavitharane, Secretary,
Ministry of Plantation Industries and Export

Agriculture. 11th Floor, Sethsiripaya, 2nd Stage, Battaramulla.

3A. Janaka Dharmakeerthi Secretary,
Ministry of Plantation Industries 11th Floor,
Sethsiripaya, 2nd Stage,
Battaramulla.

4. Land Reform Commission,
475, Kaduwela Road,
Battaramulla.

5. Prasanna Kotalawala.

6. Ravi Kotalawela.
(Heirs of the late Vijitha Kotalawala)

7. Yasmin Rajapaksha.

8. Amal Dias.
(Heirs of the late Seetha Dias)

9. Constance Ludowyke.
5th to 9th Respondents all of 32, 1/2, Castle
Street, Colombo 8.

10. Heshan Ratwatte.

11. Sharmini Ratwatte.

12. Ruha Samarasinghe.

13. Dilki Wickremanayake.

14. Ruwan Ratwatte.

15. Dharshini Ratwatte.

10th to 15th Respondents all of 53/1 Nawala
Road, Nugegoda.

16. Indrani Pethiyagoda,
171/1, Model Farm Road,
Colombo 8.

17. Chula Ellepola.

18. Tikiri Banda Ellepola,
c/o Mrs. Rani Ellepola,
24, Anagarika Dharmapala Mw,
Kandy.

19. Chitrani Upashanta Peiris
(nee Wijesinha).

20. Ranjani Damayanthi Wimalaratne ‘
(nee Wijesinha).

21. Dananthi Asandimithra Arnott
(nee Wijesinha).

22. Francis Dharshana Wijesinha.

19th to 22nd Respondents all of 31/3B, 1st
Lane, Sri Gnanendra Road, Nawala.

23. Chalani Wijesinha.

24. Lalinda Chrisanthi Wijesinha.

25. Ranjan Tilak Wijesinha.

26. Nelun Priyanthi Wijesinha.

27. Sharmala Lucilla Wijesinha.

23rd to 27th Respondents all of 269/29,
Summerfield Residencies, Boralesgamuwa.

28. Manel Wanigatunga, 6, Boyd Place,
Colombo 5.

29. Aruni Maya Mahipala.

30. Vivina Dias Bandaranaike (nee
Dunuwille), 25, Vijitha Road,
Embaldeniya.

31. Tikiri Banda Harindranath, Dunuwille,
496/8, Piachaud Gardens,
Kandy.

- 32. Nihal Jayawardhana.
- 33. Asoka Jayawadhana.
- 34. Ranian Jayawardhana.
- 35. Sarath Jayawardhana.

32nd to 35th Respondents all of 25, Shady
Grove, Colombo 8.

- 36. Olga Alwis Jayawardhana.
- 37. Tanya Jayawardhana.
- 38. Shirani Samarathunge.
- 39. Savithri Amerasekera.
- 40. Kishani Dias.
- 41. Ajith Jayawardhana.
- 42. Susantha Jayawardhana.
- 43. Mrinalini Basnayake.
- 44. Surangani Herath.
- 45. Tamara Weerasinghe.

36th to 45th Respondents all of 31/5, 2nd
Lane, Koswatta, Nawala.

- 46. Varini Obeysekera.
- 47. Devika Tennakone.
- 48. Nerine Perera.
- 49. Chulangani Abeykone.

46th to 49th Respondents all of 175/28,
Lake View Drive, Nawala Road,
Narahenpita, Colombo 5.

- 50. Thushara Perera.
- 51. Chithranganie Mallika Perera.
- 52. Vasantha Basnayake.
- 53. Chitral Basnayake.
- 54. Mohan Basnayake.

Written Submissions on: 21.02.2023 by the Petitioner.
03.09.2023 by the 1st, 2A, 3A & 59th
Respondents.
02.09.2023 by the 4th Respondent.

Decided on: 03.05.2023

MOHAMMED LAFFAR, J.

The Petitioner has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, the following main reliefs;

1. A Writ of Mandamus directing the 1st and 2nd Respondents to provide the Petitioner (in joint ownership with the 5th to 58th Respondents) with 168 hectares of land as promised and provided in documents dated 12-06-2017 and 25-09-2017 produced marked as P45 and P47. **And in the alternative:**
2. A Writ of Certiorari quashing the Indenture of Lease bearing No. 685 dated 03-02-1999 produced as P22.
3. A Writ of Mandamus directing the 1st and 2nd Respondents to forthwith place the Petitioner (and 5th to 58th Respondents) in possession of their entitlements of Rassagala Estate, which has been identified and demarcated by the 4th Respondent in document dated 20-09-1996 produced as P8. **And in the Alternative:**
4. A Writ of Mandamus directing the 1st Respondent to pay to the Petitioner (and 5th to 58th Respondents) the present market value of their share of Rassagala Estate.

5. A Writ of Mandamus directing the 1st Respondent to pay to the Petitioner (and 5th to 58th Respondents) the proper value of the rental for their share of Rassagala Estate from 01-01-1995 to 01-01-2019.

The contention of the Petitioner in a nutshell:

The land, generally referred to as the “Rassagala Estate”, spanning a total extent of approximately 2172 Acres 03 Roods and 29 Perches (A2172-R03-P29) was leased by its owners to the North Sylhet Tea Company Limited and the South Sylhet Tea Company Limited for 99 years from 01-01-1896 to 31-12-1994. By the indenture of lease No. 2158 dated 19-08-1897 marked as **P1** the said lease was assigned to the Consolidated Tea and Lands Company Limited by the owners. Subsequently, the Consolidated Tea and Lands Company Limited had been assigned to a Company called the Anglo-American Direct Tea Trading Company Limited. The Anglo-American Direct Tea Trading Company Limited had transferred its leasehold rights of this Estate to the 1st Respondent (Sri-Lanka State Plantations Corporation) by deed bearing No. 548 dated 30-12-1971 marked as **P4**. The Original owner, by deed bearing No. 7150 dated 23-10-1911 marked as **P2** had gifted a portion of this Estate to Ellen Mahawalatenne Gunasekera, Ezlina Mahawalatenne Ellawala, Jane Sophia Mahawalatenne Jayawardene, Rosamund Constance Mahawalatenne and Mabel Augusta Mahawalatenne. It is averred that the Petitioner and the 5th to 58th Respondents are the descendants of the aforesaid co-owners. Thereafter, under the provisions of the Land Reform Law No. 01 of 1972 (as amended) the said Estate was vested with the 4th Respondent (Land Reform Commission). However, the portion of the Rassagala Estate owned by the Petitioner and the 5th to 58 Respondents

had not been vested with the Commission as they did not come to the statutory ceiling for holdings. It is stated that the entire Rassagala Estate was subject to the said lease agreement. Despite the fact that the said lease agreement had expired on 31-12-1994, the 1st to 3rd Respondents failed to hand over the vacant possession of the portion of the said Estate to the owners, namely the Petitioner and the 5th to 58 Respondents. Thus, the Petitioner in prayer (e) of the Petition, seeking a mandate in the nature of a Writ of Mandamus directing the 1st and 2nd Respondents to forthwith place the Petitioner (and 5th to 58th Respondents) in possession of their entitlements of Rassagala Estate, which have been identified and demarcated by the 4th Respondent in a document dated 20-09-1996 produced as P8.

Moreover, it is averred that the Chairman of the 1st Respondent Corporation by letter dated 12-06-2017 marked as **P45** addressed to the Petitioner consented to give alternative land to the Petitioner and the 5th to 58th Respondents in lieu of the land purportedly owned by them, and the Minister of State Plantation Development by letter dated 25-09-2017 marked as **P47** addressed to the Chairman State Plantation Corporation, recommending to give alternative land to the Petitioner and the 5th to 58th Respondents. As such, the Petitioner, in prayer (c) of the Petition, is seeking a Writ of Mandamus directing the 1st and 2nd Respondents to provide the Petitioner and the 5th to 58th Respondents with 168 hectares of land as promised in P45 and P47 on the basis of a legitimate expectation. The Petitioner further states that the 1st Respondent by the lease agreement No. 685 dated 03-02-1999 marked as **P22**, leased the Rassagala Estate to Balangoda Plantation Limited for a period of 53 years, commencing from 11-06-1992 which is bad in law, and therefore, in prayer (d) of the Petition the Petitioner is praying for a Writ of Certiorari to quash

the said lease agreement. In the alternative, in prayers (f) and (g) the Petitioner is seeking a Writ of Mandamus directing the 1st Respondent to pay to the Petitioner and the 5th to 58 Respondents the Present market value and the rental for their share of Rassagala Estate from 01-01-1995 to 01-01-2019.

The contention of the 1st, 2nd, 3rd and 59th Respondents (contesting Respondents).

The 1st, 2nd, 3rd and 59th Respondents, in their objections, took up the position that;

1. The 1st Respondent, by the deed of transfer bearing No. 548 dated 30-12-1971 marked as **1R1** purchased the Rassagala Estate from the Anglo American Tea Trading Company, and thereafter, leased the said estate to Balangoda Plantations by deed No. 685 dated 08-02-1999 for a period of 53 years, which is marked as **1R2**. It is averred in the objection that the land claimed by the Petitioner and the 5th to 58th Respondents is not a part of the land which is the subject matter of the deed marked 1R1.

Having scrutinized the averments of the Petition, it is abundantly clear that the land purportedly claimed by the Petitioner was not vested with the 4th Respondent (LRC) and the same remains as private land. As such, the 1st, 2nd, 3rd and 4th Respondents have no obligation in law to provide alternative land to the Petitioner. As the land in dispute was admittedly not vested with the LRC, there is no lawful basis to promise to provide alternative land. Hence, it is the view of this Court that there is no value attached to the aforesaid documents marked as **P45** and **P47**, and therefore, the Petitioner is precluded from claiming alternative land on the ground of legitimate expectation based on **P45** and **P47**.

What is legitimate expectation? This concept is focused upon the idea of fairness and the enforcement of promises or representations. This principle creates the idea that it is unlawful for a public authority to fail to abide by a promise or representation that it has made without good reason, provided that the promise is lawful and that whoever made the promise was entitled to bind the authority.

In **Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale**¹, the Court of Appeal simply described the principle of legitimate expectation as follows:

“...When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities...”

Wade discusses the principle of legitimate expectations² as follows:

“...A further and more satisfactory reason for the protection of legitimate expectations lie in the trust that has been reposed by the citizen in what he has been told or led to believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and the government becomes a choice between chaos and coercion.” “...It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area

¹ CA/Writ/328/215/CA-Minutes of 19/2/2020.

² H.W.R. Wade and C.F. Forsyth, Administrative Law, 11th Edition, p.451

since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after a close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made....” (Page 452)”

The meaning and scope of the doctrine of legitimate expectation were considered at length in **Union of India vs. Hindustan Development Corporation**³, where it was stated that,

“Time is a three-fold present: the present as we experience it, the past as a present memory, and the future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, desire, or hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in a regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectations should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself

³ 1994 AIR 988, 1993 (3) SCC 499.

fructify into a right and, therefore, it does not amount to a right in a conventional sense.”⁴

When applying the above-stated principles to the instant Application, the question that begs an answer is whether a promise or an assurance that was given by the Respondents to the Petitioner to provide alternative land is lawful. It is pertinent to note that the promise given in P45 and P47 is not lawful as the land in suit was not vested with the LRC. Similarly, the expectation of the Petitioner for an alternative land is not legitimate as he was fully aware of the fact that the land claimed by him was not vested. In these circumstances, the Petitioner is not entitled to the relief as prayed for in paragraph (c) of the Petition.

Besides, the Petitioner contends that, after the expiry of the lease agreement, the 1st Respondent failed and neglected to hand over the vacant possession of the land claimed by him, and therefore, seeking a mandate in the nature of Writ of Certiorari directing the 1st and 2nd Respondents to place the Petitioner and the 5th to 58th Respondents in the subject matter. It is trite law that, upon the termination of the lease agreement, in the event of failure on the part of the lessee to hand over the vacant possession of the subject matter, the lessor is entitled to invoke the jurisdiction of the District Court for the ejectment of the lessee. Similarly, the relief, seeking to quash the lease agreement marked as **P22** as well should be determined in the District Court which is vested with original civil jurisdiction. In these circumstances, it appears to this Court that, instead of invoking the alternative remedy provided in law, seeking prerogative Writs which is a discretionary remedy provided in law, is untenable.

⁴ Vide para 28 of the judgment.

Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him. In **Linus Silva Vs. The University Council of Vidyodaya University**⁵ it was observed that “the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy.” The Court of Appeal in **Tennakoon Vs. The Director-General of Customs**⁶ held that “the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction.

Moreover, it is to be noted that the 1st Respondent is claiming title to the land in dispute by a deed of transfer marked as 1R1. The Petitioner and the 5th to 58th Respondents are claiming title to a portion of the said Estate as descendants of the donees in P2. It is to be noted that the Petitioner has not submitted a comprehensive pedigree to establish his devolution of title. The Petitioner's name is not mentioned in P8 as well. As the title to the subject matter is in dispute, the Petitioner will have to invoke the civil jurisdiction of the District Court for the determination of his title either by way of a *Re-vindicatio* action or action for declaration of title. It is settled law that a petitioner is not entitled to seek a Writ of Mandamus where his right to the subject matter is questionable.

The original civil jurisdiction to decide the title of the parties to the land in dispute, to handover the possession of the subject matter to the Petitioner by ejecting the 1st Respondent from the corpus and to revoke the lease

⁵ 64 NLR 104

⁶ 2004 (1) SLR 53

agreement marked as P22, is vested with the District Court which exercises the original civil jurisdiction. As the facts are in dispute and the identification of the subject matter is an issue, the oral and documentary evidence is to be led before the trial Court for an appropriate adjudication, and therefore, the instant Application is misconceived in law.

In this regard, I refer to the judgment of **Thajudeen Vs. Sri-Lanka Tea Board**⁷ where the Court of Appeal held that;

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and 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, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”

Thus, I hold that the Petitioner is not entitled to the reliefs as prayed for in paragraphs (d) and (e) as well.

Furthermore, I observe that the reliefs as prayed for in paragraphs (f) and (g), seeking Writs of Mandamus directing the 1st Respondent to pay the Petitioner and the 5th to 58th Respondents the present market value of their share of Rassagala Estate and the rental from 01-01-1995 to 01-01-

⁷ 1981(2)SLR-471.

2019 do not arise since admittedly the subject matter had not been vested with the LRC.

For the foregoing reasons, I hold that the Petitioner's Application is misconceived in law and facts, thus, the Application is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL