

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

C.A. (Writ) Application No:

0081/2019

In the matter of an Application for a mandate
in the nature of Writ of Certiorari in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Prasad Muditha Wanasinghe,
254/2B, Kaluwarippuwa West, Katana.

PETITIONER

Vs.

1. Land Reform Commission,
475, Kaduwela Road, Battaramulla.
2. Sirimewan Dias,
Chairman,
Land Reform Commission,
475, Kaduwela Road, Battaramulla.
3. Senerath Rateralagegedara,
Deputy Director,
District Land Reform Commission,
National Housing Building, Kandy.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before:

M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Senaka De Seram, Nirosha Bandara with Aruna Jayathilaka for the Petitioner.

Gihan Liyanage instructed by Dinesh Widanapathirana for the 1st and 2nd Respondents.

Saranga Wimalasena, DSG for the 4th Respondent.

Written submissions tendered on:

02.12.2022 by the Petitioner.

14.02.2022 by the 1st and 2nd Respondents.

Argued on: 27.10.2022

Decided on: 07.06.2023

S.U.B. Karalliyadde, J.

The Petitioner to this Writ Application is seeking to issue a mandate in the nature of the Writ of Certiorari to quash the decision marked as P30(A) contained in the letter marked as P30. P 30 has been issued to the Power of Attorney-holder of the Petitioner on 12.01.2019 by the then Chairman of the Land Reform Commission (the 1st Respondent). It has been informed by P30 that the 1st Respondent has decided to cancel the decisions of the then Chairman of the 1st Respondent dated 29.05.2017 marked as P27. The decisions contained in P27 were that the 1st Respondent is not claiming the land depicted as lot A in the Plan No. 2258 dated 17.07.1969 made by the Surveyor Mr. D.H. Karunaratne marked as P29, lot A is private land and it does not govern under the provisions of the Land Reform Law.

The position of the Petitioner

The land called “Hantana Estate” the extent of 918 Acres 3 Roods was owned by the ‘Hantana Investment Company of Ceylon’. That land is depicted in Plan No. T.P. 42410 marked as P5. By way of a Statutory Declaration marked as P8, 859 Acres out of the land depicted in P5 was vested with the 1st Respondent. Before the Statutory Declaration P8 was issued, by deed No 792 dated 18.12.1970 attested by S.S Pillai Notary Public marked as P6, ‘Hantana Investment Company of Ceylon’ transferred 14 Acres 1 Rood and 21 Perches out of the land depicted in P5 to Jayasundara Mudiyansele Kumburegedara Wimala Menike. Thereafter, by the deed No. 3118 dated 20.02.1988 attested by the same Notary Public said Jayasundara Mudiyansele Kumburegedara Wimala Menike transferred her rights of the land to Hettiarachchige Sam Prabath Rodrigo. Said Rodrigo, by deed bearing No. 7002 dated 31.03.2018 marked as P2 transferred it to Prasad Muditha Wanigasinghe, the Petitioner to this Writ Application. The position of the Petitioner is that the land he claims is shown as Lot A in plan No. 2258 marked as P29. In 1983, the National Housing Development Authority made a plan bearing No. Noora 39 marked as P9 through the Licensed Surveyor Mr. Aelian Rajapakse to vest with the National Housing Development Authority an extent of 156 Acres and 33 Perches from the land shown in the plan marked P5. The learned Counsel for the Petitioner submitted to Court that the land shown in P9 consists of a part of the land vested with the 1st Respondent on the Statutory Declaration marked as P8 and a part of the land claim by the Petitioner as private land. The learned Counsel drew the attention of the Court to the fact that when surveying the land to prepare the plan marked as P9, only the Officers of the National Housing Development Authority participated and showed the boundaries to the Surveyor. Therefore, the National Housing Development Authority erroneously incorporated the land claim by the Petitioner into

the land shown in Plan P9. By the Extra Ordinary Gazette bearing No. 456/4 dated 01.06.1987 marked as P10, the land shown in plan P9 has been vested with the National Housing Development Authority. The learned Counsel further submitted to Court that there had been a series of correspondence between the Petitioner, the 1st – 3rd Respondents and the National Housing Development Authority which support the position of the Petitioner that the land he claims is private land. Those documents have been marked as P17, P18, P20, P21, P22, P23, P23A, P24, P25, P26 and P27. In the letter marked as P27, it has been stated that the 1st Respondent is not claiming lot A shown in the plan marked as P29. The position of the Petitioner is that lot A in P29 belongs to him on the chain of title deeds hereinbefore mentioned. Nevertheless, by P30 the letter marked as P27 has been cancelled. The position of the learned Counsel for the Petitioner was that even though, before taking the decision mentioned in P30, the Petitioner should have been given an opportunity to present his facts, he was not given a hearing by the Respondents. Therefore, the learned Counsel argued that cancellation of P27 without being given a hearing to the Petitioner is against the rule of *audi alteram partem* in the principle of natural justice.

The learned Counsel for the Petitioner further argued that the decision marked as P30(A) contained in the letter marked as P 30 is contrary to what has been stated in the letter marked as P27 and the 1st Respondent has no right to lot A in the plan marked as P29 and therefore, the decision marked as P30(A) in P30 to cancel the decisions mentioned in the letter marked as P27 is erroneous, illegal and unlawful.

The Position of the 1st to 4th Respondents

The position of the Respondents is that an extent of 859 Acres 2 Roods 9 Perches out of the ‘Hantana Estate’ owned by the ‘Hantana Investment Company of Ceylon’ was vested with the 1st Respondent by virtue of the Statutory Declaration marked as 1R1

made under section 18 of the Land Reform Law, No. 1 of 1972 on 20.10.1972. Thereafter, by the Extra Ordinary Gazette Notification No. 176/6 dated 12.08.1975 marked as 1R4 published under section 19 of the Land Reform Law, out of the said land, 50 Acres depicted as Lots 1 and 2 in plan No. Maha 1312 marked as 1R5 was divested on the 'Hantana Investment Co. Ltd'. Thereafter, by the Extra Ordinary Gazette Notification No. 456/4 dated 01.06.1987 marked as 1R6, out of the remaining portion of the land which was vested with the 1st Respondent on 1R1 was vested on the National Housing Development Authority under section 27A (1) of the Land Reform Law. The land which was so vested with National Housing Development Authority on 1R6 is depicted as Lot 1 in Plan No. NURA 39 dated 16.12.1986 prepared by Mr. Aelian Rajapakse Licensed Surveyor marked as 1R7. Subsequently, by the Extra Ordinary Gazette Notification No. 2016/36 dated 26.04.2017 marked as 1R8, out of the land vested with the National Housing Development Authority on 1R6 a land in the extent of 14 Acres 1 Rood 21 Perches was divested again with the 1st Respondent under section 27A (4) of the Land Reform Law. The land which was so divested with the 1st Respondent on the 1R8 is depicted as Lot A in the Plan No. 2258 prepared in June 1969 by Mr. D. H. Karunaratne Licensed Surveyor marked as 1R9 (which is also marked as P27 by the Petitioner) which the subject matter of this Application.

Analysis of the facts of the case

The position of the Petitioner is that in 1983 when the Survey plan bearing No. NURA 39 marked as P9 was prepared by the National Housing Development Authority, a portion of the land owned by the predecessor in title of the Petitioner had also been included in the land shown in that plan. The land is claimed by the Petitioner on the chain of title deeds shown in the Surveyor Plan No. 4124/16 marked as P1 prepared in 2017. Nevertheless, the position of the 1st Respondent is that the land in dispute which

is shown as lot A in the Survey Plan No. 2258 prepared in 1969 marked as 1R9 (produced by the Petitioner as P29) belongs to the 1st Respondent. There is no evidence before Court that the lands claimed by both parties are one and the same land. The two vital documents in this Writ Application are P27 and P30. According to the letter issued by the 1st Respondent marked as P27, the land shown as lot A in plan No. 2258 marked as P29/1R9 is the land dealt with the deed marked as P6 which is shown in the Petitioner's chain of title. Nevertheless, in the title deeds tendered to Court by the Petitioner to establish his title to the land he claims, the Plan marked as P 29 is not mentioned. The Petitioner has tendered to Court several letters exchanged between the Petitioner, the 1st Respondent and the National Housing Development Authority which states that the land mentioned in those letters does not belong to the 1st Respondent or the 1st Respondent do not claim that land or it belongs to the Petitioner. Nevertheless, it appears to Court that those letters have not been issued after properly identifying the land on a plan by superimposing the Surveyor plans hereinbefore mentioned. On the other hand, in P27 it has been stated that the land dealt with the deed No. 792 dated 18.12.1970 attested by Mr. S.S. Pillai, Notary Public is private land, it does not govern under the Land Reform Law, it does not belong to the 1st Respondent and the 1st Respondent does not claim that land. That deed marked as P6 is the first deed mentioned in the chain of title of the Petitioner. The position of the Respondents is that it is a fraudulent deed since, by the date of the attestation of that deed, the Notary Public who is said to have attested P6, Mr. Pillai was not among the lives. The Respondents further claim that not only that deed but also the 2nd deed mentioned in the chain of title of the Petitioner which is said to have been attested by the same Notary Public is also a fraudulent deed on the same ground. To satisfy the Court about that fact the

Respondents have tendered to Court the Land Registry Folios, Monthly Lists, Day Book Registers etc.

Conclusion of the Court

Under the above-stated circumstances, it is evident that the facts which go to the root of this Application like identification of the land, its ownership etc., which the Court cannot decide only on the affidavit evidence are in dispute. Therefore, if the letters marked as P27 and P30 do not relate to the land claim by the Petitioner and if it belongs to the 1st Respondent, a necessity does not arise for the 1st Respondent to offer a hearing to the Petitioner. When the material facts are in dispute and the Court could not make a decision only on the affidavit evidence, it refuses to exercise the discretionary powers to issue Writs.

A.S. Choudri in his book on the “*Law of Writs and Fundamental Rights*” (2nd edn, Vol.2) (at page 449) states thus:

"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

Referring to the above-stated quoting, in the case of *Thajudeen V. Sri Lanka Tea Board and Another*¹, Ranasinghe J with Seneviratne J agreeing held:

"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties

¹ (1981) 2 Sri LR 471.

would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation 3, Porraju v. General Manager B. N. Rly 4” (at page 474).

Whether the subject matter in the instant Writ Application is State land or not and to whom it belongs are the matters which should be determined by a Court, which has jurisdiction to call the evidence of the parties for the Court to make a decision.

Considering all the above-stated facts and circumstances, I hold that in the instant Writ Application, this Court cannot exercise its writ jurisdiction for the reasons that if the land mentioned in P27 and P30 is not the land claim by the Petitioner and its State land a necessity does not arise for the Respondents to give a hearing to the Petitioner and since P30 is based on the material facts which the Court is not in a position to make a decision only on affidavit evidence. Therefore, I dismiss the Writ Application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL