

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

*In the matter of an application for orders in the nature of Writ of Certiorari, Prohibition and Writ of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

A. Aravindh Kumar,  
Henfold Estate,  
Lindula.

**Petitioner**

Application No:  
**CA/ WRIT/390/2018**

**Vs.**

1. J.M.C. Priyadharshini,  
Competent Authority,  
Plantation Management Monitoring  
Division,  
Ministry of Plantation Industry,  
11<sup>th</sup> floor, Sethsiripaya 2<sup>nd</sup> Block,  
Battaramulla.
2. The Chief Executive Officer,  
Watawala Plantation Company,  
No. 60, Dharmapala Mawatha,  
Colombo 03.
3. The Superintendent,  
Henfold Estate,  
Lindula.

**Respondents**

**BEFORE** : D. N. Samarakoon J  
Neil Iddawala J

**COUNSEL** : V. Puvitharan PC with A. Rajasekaran  
and G. Arunraj for the Petitioner

K.V. S Ganesharajan with  
M.Mangaleswaraj Shanker, S. Ganesan  
and Tharindi Sankalpana for the  
Respondents

**Argued on** : 12.07.2023

**Written Submission** : 02.08.2023

**Decided on** : 27.09.2023

**Iddawala – J**

The petitioner through this application seeks relief by way of Writ of Certiorari to quash the Quit Notice issued by the 1<sup>st</sup> respondent, Writ of Prohibition against the 1<sup>st</sup> respondent from proceeding in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979 from taking actions to eject the petitioner from the land and Writ of Mandamus directing the 1<sup>st</sup> respondent not to interfere with the lawful possession of the petitioner.

The facts of the case are as follows. The petitioner has been in possession of the land since 10.05.1985, which is certified by the Grama Niladari of 476/N/Henfold, Lindula (*P1*). The petitioner stated he has been paying taxes for the land since 1989 (*P2*). The 1<sup>st</sup> respondent in accordance with the State Lands (Recovery of Possession) Act issued a Quit Notice (*P3*) dated 31.10.2018 demanding the petitioner to handover the possession of the land to the superintendent/agents of Henfold Estate on or before 20.12.2018.

The petitioner further claims that the said land does not belong to Henfold Estate which is certified by the 3<sup>rd</sup> respondent who is the superintendent of Henfold Estate through his letter dated 10.01.1988 (P4). Thereby the petitioner stated the said land is vested/owned by the Land Reform Commission (LRC) and the Director of District Land Reform Commission has issued a letter dated 26.03.2014 (P5) stating that upon the payment of Rs. 33,898.50/- for the possession of the abovementioned land from 1987 to 2013, the Deed will be issued. Thereby on 08.04.2014 the petitioner paid a sum of Rs. 33,900/- to obtain the Deed (P6).

The petitioner states that Land Reform Commission has requested the Nuwara Eliya Election Commissioner and the Divisional Secretary, Divisional Secretariat through letters dated 26.11.2018 (P7 & P8) to verify the eligibility of the petitioner in order to grant a long-term lease to the land occupied by the petitioner.

Petitioner states that he replies to a letter dated 17.08.2017 (P9) informing the 1<sup>st</sup> respondent by his letter dated 01.09.2017 (P10) that the land in dispute does not belong to Henfold Estate and thus the 1<sup>st</sup> respondent is not entitled to take any actions in terms of the circular/letter (P11) dated 10.12.2003 signed by the Competent Authority, Plantation Management Monitoring Division, Ministry of Plantation Industry.

The petitioner claims that despite the land in question belonging to the Land Reform Commission and the said directives (P11) by the Hon. Minister of Plantations Industry, the 1<sup>st</sup> respondent sent Quit Notice to the petitioner. The petitioner further states that since the land belongs to Land Reform Commission, the Ministry of Plantation Industry has no authority to evict the petitioner and/or take any action under the State Lands (Recovery of Possession) Act. Thereby, the petitioner claims that the Quit Notice issued by the 1<sup>st</sup> respondent is ultra vires and violated the principles of Natural Justice.

The petitioner also claims that he spent over Rs. 1,500,000/- to develop the land (P12 A – G) over the last 33 years. And thereby claims that unless interim relief is granted grave and irreparable loss/harm would be caused to the petitioner by the actions of the 1<sup>st</sup> respondent.

Thereby through this application the petitioner seeks to invoke this Court to issue notice to respondents, issue Writ of Certiorari to quash the Quit Notice issued by the 1<sup>st</sup> respondent dated 31.10.2018, Writ of Prohibition against the 1<sup>st</sup> respondent from proceeding in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979 from taking actions to eject the petitioner from the land (*Which is 1A.OR.26P in extent situated between Henfold Division Field and Agra Oya and behind the Henfold Group Maternity Ward*) and Writ of Mandamus directing the 1<sup>st</sup> respondent not to interfere with the lawful possession of the petitioner.

The main contention of the President's Counsel appearing for the petitioner was that the Quit Notice (P3) issued by the 1<sup>st</sup> respondent was not issued by a competent authority under the State Lands (Recovery of Possession) Act as amended.

Section 18 of the State Lands (Recovery of Possession) Act interprets 'Competent Authority'. As per Section 18 of the act:

*“competent authority’ used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes: .....*

*(K) any other public officer authorized by the Government Agent in respect of any matter or provision of this Act; and*

*(I) an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body.”*

When examining the Quit Notice (P3) issued, it is evident that it is signed by the 1<sup>st</sup> respondent who claims to be a competent authority of the Plantation Management Monitoring Division – Ministry of Plantation. And thus, it cannot be contended that the Quit Notice is unlawful/illegal or ultra vires.

Further during the submissions made by the President's Counsel, it was also specified that the land in concern was originally owned by the Land Reform Commission (LRC) and later through the nationalization of plantations in the country the management of estates were vested within the Sri Lanka State Plantation Corporation (SLSPC) and within the Janatha Estates Development

Board (JEDB). The corpus in dispute was vested within the JEDB and thus it could be said the 1<sup>st</sup> respondent who claims to be an authoritative of the Plantation Management Monitoring Division – Ministry of Plantation can be considered as a competent authority, thereby the Quit Notice is valid as per the State Lands (Recovery of Possession) Act.

The counsel for the respondent in his submissions contends that the question whether the land in dispute is within the control of Land Reform Commission or Plantation Management Company is a matter of fact. The counsel reiterates that in this instant case the land in concern is vested with the JEDB, and the JEDB gave the said land on lease to Watawala Plantation. As per *1R1* lease agreement it is admitted that the land is under the control of Plantation Management Company. Thereby counsel for the respondent claims that there is a question of disputed facts and he contends that a writ does not lie in such instance.

Inter alia the petitioner claimed through the payment receipts (*P2*) that the petitioner has been in possession of the said land and has paid taxes to the local authority, which was not a disputed fact.

Further the contention of the petitioner was that he was in the said land in anticipation of the grant by the Land Reform Commission. *P5*, *P6*, *P7* and *P8* are all documents corresponding to the Land Reform Commission. The petitioner claims to be in possession of the land in dispute since 1985 and developed it. The petitioner also claims that he paid money (*P6*) as required by the Land Reform Commission to obtain a conveyance in 2014. And thus, emphasizes on his legitimate expectations to be in possession of the said land. Accordingly, it could be said that the petitioners' legitimate expectations should be vested with the Land Reform Commission and not against the 1<sup>st</sup> respondents. However, the counsel for the respondent during his submissions emphasized on the fact that the petitioner relies on the documents of the Land Reform Commission but has not made the Land Reform Commission a party to the case.

The case of ***Dominic v Minister of Lands and others*** (2010) 2 SLR page 398 held: “*where an order would affect adversely a party who is not before Court, that party must be deemed to be a necessary party and consequently the failure*

*to make the necessary party a respondent must be regarded fatal to the application.*

*A necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to complete and final decisions on the question involved in the proceedings.”*

In the instant application it is evident that the petitioner is seeking relief on the basis of the documents issued by the Land Reform Commission which are disputed and contested, and thus this court too observes that the petitioner has failed to name the Land Reform Commission as a party to the case.

Both counsels during the submissions, directed the attention to Land Reform Act Section 42H. The Section reads as follows:

(1) “Any estate land vested in the Commission under this Part of this Law may be used for any of the following purposes:

(a) alienation by way of sale, exchange, rent purchase or lease to persons for agricultural development or animal husbandry, or for a co-operative or collective farm or enterprise;

(aa) alienation, by way of sale or lease with the approval of the Minister for non-agricultural purposes;

(b) alienation by way of sale in individual allotments to persons for the construction of residential houses;

(c) alienation to any corporation established or to be established under the State Agricultural Corporations Act or to the Sri Lanka State Plantations Corporation established under the Sri Lanka State Plantations Corporation Act;

(d) for a farm or plantation managed by the Commission directly or by its agents;

(e) for village expansion or any other public purpose .....”

Thereby in terms of Section 42(H)(1) of the Land Reform Act, the Land Reform Commission is vested with the power to alienate the said land through sale, lease or any other transfer to individuals, estates, companies, corporate and

even governmental bodies. Further the land can be used for construction of houses, apartments, buildings or any other development.

Thereby the counsel for the respondents emphasized on the fact that the said corpus was alienated by Land Reform Commission to Sri Lanka State Plantation Corporation (SLSPC) and Janatha Estates Development Board (JEDB) was an act within the lawful purview of the Land Reform Act. Later in 1994, the land occupied by the Henfold Estate was leased out by the JEDB to a 3<sup>rd</sup> party: Watawala Plantation Limited. Through the document marked *1R1* the lease agreement between JEDB and Watawala Plantation Limited, JEDB the lessor agreed to lease Henfold Estate to the lessee Watawala Plantation Limited for a period of 99 years.

Nevertheless, when inquisitively examining the lease agreement (*1R1*) this court observed that the total extent of the said Henfold Estate containing approximately 1333 Acres had been leased by the JEDB to the 1<sup>st</sup> respondent company for a term of 99 years with the agreement of rent of Rs. 500/- of lawful money, per calendar year.

The counsel for the respondents further stated that the petitioner was an employee of the estate and upon ending his employment the petitioner failed to the return the land/quarters to the respective authority. However, in response the President's Counsel stated that the petitioner admits that he was an employee yet contested the later and said that he returned the quarters he was given during the employment when he left the service and claimed that the corpus in dispute in the instant application is a different portion of land. In support of this argument the petitioner further stated that in the upcountry, areas within the estates does not have separate names and stated that in the instant application the designated name Henfold Estate refers to the entire Grama Sevaka Division of the Lindula area and not a specific portion of land.

According to the facts that were brought forward by the Counsel there is no dispute over the fact that the petitioner is in possession of the said land, however, it is evident that the petitioner is in anticipation that he will obtain rights over the land sooner or later (*P5*). Yet, on the other hand it can be observed through Section 42(H) of the Land Reform Act that the commission has the power to alienate the land and according to *1R1* the lease agreement,

the larger land 'Henfold Estate' which extends to 1333 Acres has been given on lease to Watawala Plantation for a term of 99 years in the year 1994.

Upon consideration of the facts and submissions made by the Counsel for the respondents it can be said that in accordance with the State Lands (Recovery of Possession) Act amended time to time, the said Quit Notice (P3) was issued by the competent authority, as they believe the land in dispute is within the purview of the respondents.

The State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended) outlines the procedure to be followed when ejecting an unauthorized occupant from a state-owned land. According to Section 3 of the act, where a competent authority is of the view that any state-owned land is occupied/possessed by an unauthorized occupant the law vests the power with the competent authority to issue a Quit Notice to the party in unauthorized occupation to vacate the said land. As per Section 4 of the act, the Quit Notice issued makes it obligatory for the occupants and his dependents (*if any*) occupying the said land to vacate the land on or before the date specified.

Section 5 of the act sets out the subsequent occurrences if the party fails to comply with the Quit Notice. At such an instance the competent authority who issued the notice may make an application to the Magistrate's Court praying for the recovery of possession of the land and for an order of ejectment of such person in occupation. Thereafter as per Section 6 of the act, the law vests the power to the Magistrate to issue notice to the relevant party named in the application to show cause as to why he should not be ejected from the said land. Nevertheless, as per Section 7 if upon the date specified in the summons the said party fails to show cause against the order of ejectment the court shall forthwith issue an order directing the party and his dependents to be ejected from the land. In contrast, Section 8 of the act specifies if the party appears to court on the date specified to show cause the court may proceed to hear and determine the matter on a later date. Section 9 of the act states that during the inquiry the party may establish that he is in possession of the land upon a valid permit or any other written authority. And subsequent to the inquiry, if the Magistrate's Court is not satisfied with the submissions of the



party the court, through Section 10 of the act direct the person and his dependents to eject the land.

In the instant application the matter is still at the juncture of Section 3, where the competent authority issued the Quit Notice to the petitioner of this case. However, it could be observed that upon an application made by the competent authority to the Magistrate's Court, the Magistrate's Court may issue notice to the said party to show cause for the objection of being ejected from the said land. Even at such a stage the petitioner is able to prove that he is occupying the said land with lawful authorization.

During the submissions made by the President's Counsel, for the petitioner drew the attention to the case of ***Mohamed v Land Reform Commission and another*** (1996) 2 SLR and claimed that the facts of the abovementioned case being similar to the instant application. However, when examining the case of Mohamed v Land Reform Commission (*supra*) it is clear that the petitioner of the case and the Land Reform Commission has been in a lawful lease and there is evident documentation to prove the contentions. Nevertheless, in contrast, in the instant application the petitioner has no sufficient evidence to prove he is occupying the land with lawful authorization. And furthermore, if the petitioner has any claim against the Land Reform Commission, the commission should have been named as a party to this application, which the petitioner has not done in this case.

Thereby upon the consideration of the above submissions this Court does not see any reasonable grounds to grant relief.

Application dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**D.N. Samarakoon J**

I agree.

**JUDGE OF THE COURT OF APPEAL**

