

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

In the matter of an application made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for Writ of Certiorari and Mandamus.

Jeyakumar Rajeswaran,  
D7, Periya Paranthan,  
Kilinochchi.

**Petitioner**

**C.A.Writ No.497/2022**

Vs

01. B. Jeyaharan,  
Divisional Secretary,  
Divisional Secretariat,  
Karaichchi, Kilinochchi.
02. A. Sothirathnan,  
Provincial Land Commissioner,  
No.59, Temple Road,  
Jaffna.
03. K.D. Bandula Jayasinghe,  
The Commissioner General,  
No.1200/06,  
Meekatha Madhura,  
Rajamalwatte Road,  
Battaramulla.
04. Karhigesu Neethirasa,  
Periya Paranthan,  
Kilinochchi.
05. S. Singharasa,  
Periya Paranthan,  
Kilinochchi.
06. S. Pararajasingham,  
Periya Paranthan,  
Kilinochchi.
07. Mathew Tenhnsone Dharshiya,  
Periya Paranthan, Kilinochchi.
08. S. Sanmuganaatha,  
Periya Paranthan,  
Kilinochchi.

09. K. Buwaneshwari,  
Periya Paranthan,  
Kilinochchi.
10. S. Sivasubramaniam,  
Periya Paranthan,  
Kilinochchi.
11. A. Anusiyadevi,  
Periya Paranthan,  
Kilinochchi.
12. T. Idaparooban,  
Periya Paranthan,  
Kilinochchi.
13. M. Maheswari,  
Periya Paranthan,  
Kilinochchi.
14. K. Palanivel,  
Periya Paranthan,  
Kilinochchi.
15. M. Yogeswari,  
Periya Paranthan,  
Kilinochchi.
16. S. Ragunathan,  
Periya Paranthan,  
Kilinochchi.
17. P. Paitharaskaralingam,  
Periya Paranthan,  
Kilinochchi.
18. Y. Erambamoorthi,  
Periya Paranthan,  
Kilinochchi.
19. S. Krishnamoorthi,  
Periya Paranthan,  
Kilinochchi.
20. The Attorney-General,  
Attorney-General's Department,  
Hulftsdorp, Colombo 12.

**Respondents**

Before : **N. Bandula Karunarthna, J. (P/CA)**  
**M.Ahsan R.Marikar, J.**

Counsel : D.P.L.A. Kashyapa Perera for the Petitioner.  
Samanthi Dunuwila, SC for the Respondents.

Argued on : 28.03.2023

Decided on : 29.05.2023

**M. Ahsan R. Marikar, J.**

### **Introduction**

1. The Petitioner had filed this application seeking reliefs from this court by invoking the jurisdiction of the Writ of Certiorari and Writ of Mandamus.
2. The Petitioner has sought to issue notices to the Respondents for the reliefs prayed for in the prayer of the amended petition dated 1<sup>st</sup> March 2023.

### **Facts related by the Petitioner**

3. This matter was supported by Attorney at Law Kashyapa Perera on 28<sup>th</sup> March 2023. The said Attorney contended that the Petitioner's predecessor was Mr. Hunt and the Petitioner's father Kumaraswamy Jeykumar possessed the land subject to the petition for more than 60 years.
4. During the period of war, the Petitioner were unable to possess the land and subsequently, after resettlement the Petitioner had come back to the said land in 2010 and had established his business on the said land.
5. The Petitioner had admitted that the Petitioner's father was the power of attorney holder of Mr. Hunt for the disputed land.

6. After the demise of the Petitioner's father, the Petitioner had constructed a building on the said land and carried out his business for a long period of time expecting to obtain a permit under the Land Development Ordinance in his name.
7. However, after making several applications to obtain the land on a long term lease from the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent had given a small portion of the said land to the Petitioner and released the balance to a 3<sup>rd</sup> party.
8. Further, this had affected the legitimate expectation of the Petitioner to receive the land which the Petitioner was in possession for a long period of time.

**Objections raised against the aforesaid application by the State**

9. The State Counsel Shevanthi Dunuwilla appeared for the Respondents and brought to the notice of the court that Mr. Hunt had expired in 2002. It is confirmed in paragraph 6 of the amended petition dated 1<sup>st</sup> March 2023.
10. The Petitioner's father had expired in 2009 which has been confirmed by the death certificate marked and produced as X4.
11. On the said grounds it is obvious that the Petitioner did not have any legal status to possess the disputed land.
12. The Petitioner had received notice of eviction as per the letter marked and produced as X15. The State Counsel has emphasized that the Petitioner has failed to show cause and any right to the disputed land to issue a permit to him.

13. The power of Attorney given by Mr. Hunt had been canceled in 1995 and it is to be noted that the said power of Attorney was given to the Petitioner's father only to act on behalf of Mr. Hunt. As Mr. Hunt is presently demised and the power of Attorney holder, (the father of the Petitioner) is also demised there is no iota of evidence that the land which was leased to Mr. Hunt will devolve with the Petitioner.
14. Furthermore, the State Counsel pointed out under State Lands Recovery of Possession Act, Section 6 and 7 specify that when summons is issued by the Magistrate to show cause, the person whose name is on the application needs to appear and show cause and should satisfy the Court why they should not be ejected.
15. In the event of a party failing to show cause, the Learned Magistrate will issue an ejectment order.
16. The Petitioner had not taken any steps to prove his legitimate expectation towards the disputed land claimed by him.

**Consideration of facts**

17. In considering the facts pertinent to the petition and affidavit and in considering the submissions made by the Petitioner we do not see any valid documents or facts proven by the Petitioner to the effect that the land claimed by him in the schedule to the amended petition dated 1<sup>st</sup> March 2023 had been possessed by him or that the State has given a promise that after the demise of the lessee, Mr. Hunt, the land will be vested with the Petitioner as a beneficiary.

18. It is to be noted the Petitioner's father was only a Power of Attorney holder of Mr. Hunt and he could not have expected beneficial rights for the said land as he was not an heir of Mr. Hunt.
19. In the said circumstances we do not see any grounds in support of the Petitioner's claim made in his petition that he has legitimate expectation for the land referred to in the schedule to the amended petition.
20. Beside these facts we do not see any evidence that the Divisional Secretary had acted arbitrarily or illegally by issuing the notice of quit and the permits for the State Land.
21. In considering the decisions **R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs**<sup>1</sup> and **Desmond Perera v Karunaratne**<sup>2</sup> the court has respectively held as follows;

*Lord Hoffmann; 'As per the facts of the case that an undertaking to work "on the feasibility of resettling the Ilois"<sup>3</sup> on the Chagos Islands and to change the law to permit resettlement did not amount to an "unequivocal assurance" that the Ilois could return; no legitimate expectation found.<sup>4</sup>*

*'Where a tenanted house vested in the Commissioner of National Housing under the Ceiling on Housing Property Law,*

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<sup>1</sup> [2008] UKHL 61, para 60.

<sup>2</sup> [1994] 3 SLR 316.

<sup>3</sup> Inhabitants of the Chagos Archipelago, descended from African slaves and Indian plantation workers.

<sup>4</sup> R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs [2008] UKHL 61, para. 60.

*and where its tenant had failed to apply under Section 9 of the Law to the Commissioner to purchase such house, the prospect of such tenant being able to purchase it from the Commissioner under Section 12(2) of the Ceiling on Housing Property Law, No. 1 of 1973 is only a “hope” that he has (and not a “reasonable expectation”) and he therefore has no right to be heard by the Commissioner before the latter decides to divest the house under Section 17A(1) of the Ceiling on Housing Property Law.’<sup>5</sup>*

22. Thus, we are of the view that the Petitioner cannot and does not have any legal right to maintain or seek to invoke the writ jurisdiction of this court.

### **CONCLUSION**

23. In view of the aforesaid consideration we dismiss the amended petition dated 1<sup>st</sup> March 2023, subject to payment of cost for the Respondents.

**Judge of the Court of Appeal**

**N. Bandula Karunaratna J. (P/CA)**

I agree

**President of the Court of Appeal**

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<sup>5</sup> Desmond Perera v. Karunaratne [1994] 3 SLR 316.