

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

**In the matter of an Application for mandates in the
nature of Writ of *Certiorari* under and in terms of
Article 140 of the Constitution of The Democratic
Socialist Republic of Sri Lanka**

Ganewattage Don Jayalath Wasantha,

Walakumbura, Nagoda,

Galle.

Petitioner

CA/ WRIT/133/2014

Vs,

1. J.M.C. Priyadharshani,
“Competent Authority”
Ministry of Plantation Industries,
No. 55/75, Vouxhall Lane,
Colombo 02.

2. Elpitiya Plantations PLC,
Gulugahakanda Estate,
Nagoda.

Respondents

Before

**: Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel : Santha Jayawardena for the Petitioner,

Kushan de. Alwis PC with Hiran Jayasooriya and A. Tennakoon for the 1st and 2nd Respondents

Argued On: **06.11.2015**

Written Submissions On: **25.02.2016**

Order On: **22.07.2016**

Order

Vijith K. Malalgoda PC J (P/CA)

Petitioner to the present application Ganewattage Don Jayalath Wasantha had come before this court seeking inter alia,

- c) Grant and issue an order in the nature of Writ of *Certiorari* quashing the quit notice marked P-10

Petitioner has made the Competent Authority to the Ministry of Plantation Industries and the Elpitya Plantation Co. Ltd as the 1st and the 2nd Respondents to the present application.

In his Petition supported by the affidavit dated 6th May 2014, Petitioner has taken up the position that,

- a) In 1995 the Petitioner came into possession of the land depicted in the plan No. 16307 dated 02.03.2001 prepared by ADA Gunasekara Licensed Surveyor with leave and license of one Mr. S.M. Wijerathne, who was a senior Police Officer and a friend of the Petitioner's father.
- b) Somewhere 1996 the said Mr. S.M. Wijerathne had passed away, but the heirs, if any, of the said Mr. Wijerathne did not claim the land and the Petitioner continued in possession and developed the said land.
- c) The Petitioner become aware that the land he is in possession is a portion of a larger land vested in the Land Reform Commission by operation of the Land Reform Law and around year 2000

he made an application to the Land Reform Commission for the grant of a deed to the Petitioner to the Land occupied by him.

- d) After carrying out a survey in the year 2001, a certificate was issued under section 21 (1) (c) of the Land Reform Act No 1 of 1972 at a functions held in Galle informing that a deed would be issued to the Petitioner in respect of the Land in question in due course (P-2)
- e) In January 2007 he was served with a quit notice dated 02.01.2007 from the competent authority of the Ministry of Plantation Industries acting under the Provisions of the State Land (Recovery of Possession) Act No 7 of 1979 (P-3)
- f) After replying the said notice served on him, that he is not in illegal occupation of a land belonging to Elpitya Plantation Company, but in a land acquired by the Land Reform Commission under section 22 (1) (c) of the Land Reform Law No 1 of 1972, the Petitioner wrote several letters to Land Reform Commission and to His Excellency the President submitting his grievance. (P-4, P-5, P-8 and P-9)
- g) In the year 2014 once again the Competent Authority of the Ministry of Plantation Industry has served with the Petitioner a quit notice dated 22.04.2014 informing that the Petitioner is required to vacate the Land and Premises before 13.05.2014 (P-10)

As observed by this court the contention of the Petitioner was that he had legitimate expectation of receiving a deed for the land he was in occupation since 1996. In addition to the above argument the Petitioner has further challenged the authority of the 1st Respondent to issue a quit notice to eject him for the reason that,

- a) The purported quit notice is not in accordance with the provisions of the State Land (Recovery of Procession) Act No 7 of 1979
- b) The provisions of the State Land (Recovery of Procession) Act No 7 of 1979 cannot be invoked in respect of Lands alienated to a private party company under long term lease

However when considering the above material placed before this court by the Petitioner, the court observes the importance of the role played by the Land Reformed Commission in this case. The Petitioner has produced marked P-2, a certificate said to have been issued by the Land Reform Commission under section 22 (1) (c) of the Land Reform Act no 1 of 1972. Petitioner has further produced marked P-5, a letter sent by the District Office of the Land Reform Commission calling for additional material from the Elections Office Galle. In July 2013 Executive Director of the Land Reform Commission had responded to a communication by the Presidential Secretariat with a copy to the Petitioner that necessary steps would be taken after looking into this matter.

If the Land Reform Commission had initiated a process to consider the possibility of granting a deed to the Petitioner, the best party who could say whether the land in question is within the land already alienated to the State Plantation Corporation and thereafter leased out to the second Respondent or not.

In the pleadings filed before this court both the Petitioner as well as the Respondents have admitted the fact that the land referred to this case is a portion of a larger land vested in the Land Reform Commission with the operation of the Land Reform Law.

In these circumstances this court observes that the Land Reform Commission should be a necessary party before this court in deciding this case but, the Petitioner has failed to make the Land Reform Commission a party to the present case.

In the case of *Vidur Impex & Traders (P) Ltd V. Tosh Apartments (P) Ltd* (2012) 8 SCC 384 Indian Supreme Court held that, "A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court"

In the case of *Mumbai International Airport (P) Ltd V. Regency Convention Centre & Hotels (P) Ltd* (2010) 7 SCC 417 it was held that, "A necessary party is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a necessary party is not impleaded, the suit itself is liable to be dismissed.

Whilst challenging the position taken up by the Petitioner before this court, the Respondents have submitted a contrary position as to how the Petitioner came into occupation of the land and building referred to the present application.

As submitted by the Respondents the land and the building which is the subject matter to the quit notice P-10, was part and parcel of Gulugahakanda Estate which was leased out to the 2nd Respondent by the Sri Lanka State Plantation Corporation. (Here in after referred to as SLSPC)

It was the position taken up by the 2nd Respondent before this court that, on a request made by the Officer in Charge of Police Station Nagoda the 2nd Respondent had agreed to lease out the Estate Quarters referred to in P-10 to be used by the Officer in Charge for a nominal monthly rent of Rs. 75/- up to April 1996 but the possession of the said Estate Quarters was not handed over to the 2nd Respondent in April 1996 as agreed.

In support of the above position, the Respondents have submitted 4 letters written by the 2nd Respondent to the relevant authorities including the Inspector General of Police.

1st paragraph of letter produced marked R-9 which was signed by the Superintendent – Gulugahakanda Estate dated 16th July 1996 and addressed to the Officer in Charge Police Station Nagoda explains the events took place with regard to the Estate Quarters referred to in the present application as follows,

“I write to inform you that the staff quarters Nagoda Division occupied by Mr. S.M. Wijerathne one time O.I.C. Police Station Nagoda has not been handed over to me, to date. On Mr. Wijerathne’s transfer he had handed over this building to one Mr. Perera former O.I.C Police Station, Nagoda and thereafter he had handed over this to one Mr. Wasantha (P.S 24090) of Police Station Galle, even without the knowledge of the Management”

As observed by this court, the Petitioner has not divulge these facts before this court but merely stated that “he came into occupation of the said property with leave and license of one Mr. S.M. Wijerathne who was a Senior Police Officer and a friend of Petitioner’s Father.”

The fact that the Petitioner too was a Police Officer and the said S.M. Wijerathne came into occupation of the said quarters in his official capacity as the Officer in Charge of Nagoda Police Station was suppressed from this court by the Petitioner for reasons best known to him. It was further revealed that the said S.M. Wijerathne had failed to deposit the rental with the 2nd Respondent at the time the said quarters were handed over to the Petitioner.

In the absence of the Land Reform Commission being represented before this court, the facts referred to above, specially the fact that the said Mr. S.M. Wijerathne came into occupation of the said quarters in his official capacity as the Officer in Charge of Police Station Nagoda and he had to pay Rs. 75/ as a nominal monthly rent for the said quarters to the 2nd Respondent are vital facts to be considered by this court when considering the relief prayed by the Petitioner and therefore it is our view that the Petitioner has deliberately suppressed material facts from this court.

In this regard this court bears in mind the useful reminder of that celebrated jurisprudence as propounded by Pathirana J in the case of *Alponso Appuhamy V. Hettiarachchi* 77 NLR 131 at 135 that a full and fair disclosure of all the material facts has to be placed before court when an application for a Writ of injunction is made and the process of court is invoked. A party applying for a prerogative writ is under a duty to the court to disclose all material facts within their knowledge, and this duty of disclosure is similar to the duty on a party applying for an injunction.

Whilst submitting the fact that the 2nd Respondent was in legal possession of the Official Quarters referred to the present application until it was handed over to the Police Station of Nagoda, the Respondents have further submitted before this court that,

- a) Gulugahakanda Estate and Nagoda Estate and/or Group were vested in the Land Reform Commission with the operation of the Land Reform Law No 1 of 1972
- b) On 27.02.1982 by an order made by the Minister of Agriculture Development and Research, published in the Gazette 181/12 dated 27.02.1982 the said estates were vested with the SLSPC and thus, the SLSPC became the lawful owner of the said estates (R-2)
- c) On or about 11.12.1995 the SLSPC granted a lease in favour of the 2nd Respondent for a period of 53 years and accordingly the said estates were leased to the 2nd Respondent along with a Power of Attorney bearing No 688 dated the same, where by the 2nd Respondent was conferred with the same power and authority to do all acts specified therein, in relation to the said estates and it's management, during the operation of the said lease.
- d) For the administrative purposes, the said Nagoda Estate and/or Group was amalgamated with Gulugahakanda Estate and since then the Nagoda Estate and/or Group was identified as the "Nagoda Division" of "Gulugahakanda Estate".
- e) Thereafter on or about 13.03.2004 the Sri Lanka State Plantations Corporation entered into a duly executed indenture of lease bearing 1433 with the 2nd Respondent in respect of the "Gulugahakanda Estate".

In the said circumstances the Respondents have argued that the SLSPC is the lawful owner of the afore said state lands Gulugahakanda Estate and Nagoda Group (referred to as Gulugahakanda Estate only under the indenture lease 1433) and the 2nd Respondent is the lawful lessee of the said state land.

In the case of *Gunathilake & Another V. Tholappan (2007) 2 Sri LR 394* Sarath N. Silva CJ observed that, "Bagawanthalawa Plantations Ltd, was thus incorporated by an order dated 22.06.1992 made in terms of the said Act. The Bagawanthalawa Estate within which the land occupied by the Petitioner is admittedly situated was leased by the Sri Lanka State Plantations Corporation to Bagawanthalawa Plantations Ltd, by lease bearing No 83 dated 18.01.1994 attested by J Kottage Notary Public.

The lease is for a period of 99 years and contains a provision for prior termination. Therefore the land remains vested in the Sri Lanka State Plantations Corporation.

In terms of section 18 of the State Lands (Recovery of Possession) Act as amended by Act No 58 of 1981, State Land includes "... any land vested in or owned by or under the control of the Sri Lanka State Plantations Corporation" thus the provisions of the Act, as amended would apply in respect of the land and premises in question and held that the purpose of the State Land (Recovery of Possession) Act as amended is to recover possession of the state lands from persons in unauthorized possession or occupation of such land. Section 18 makes it abundantly clear that land is taken to include buildings standing thereon. The specific reference in the definition that land includes any building standing thereon has been ignored in the judgment of the Court of Appeal. The fact that there is a building on the land and that a person is in occupation of that building cannot remove such land from the operation of the Act.

In terms of section 114 of the Evidence Ordinance a Court may presume inter alia "that judicial and official acts have been regularly performed". In this case the Respondent has produced the letter by which he is appointed as the Competent Authority in respect of the Sri Lanka State Plantations Corporation. As the petitioner has not disputed that averment, no further proof is required in regard to the authority of the appellant to perform his official functions under the Act."

When considering the facts of the case in hand along with the finding of the above case, we see no merit in the 2nd argument raised by the Petitioner before this court. With regard to the 1st argument raised, that the land in issue has not been described by reference to a schedule, we see no merit at all since there is no dispute between the parties with regard to the land occupied by the petitioner to the present application.

In addition to the two grounds I have discussed above, the petitioner is further responsible for suppression of material facts before this court and not bringing a necessary party before this court as discussed in this judgment by me.

In the said circumstance I see no merit in this application and therefore dismiss this application with cost fixed at Rs. 10,000/-

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL