

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

**CA Writ 301/2016**

Pattiyagamage Lohitha Hashan ,  
Apple Farm,  
Mahakudugala

**Vs.**

**Petitioner**

W.T.B. Dissanayake,  
Divisional Forest Officer,  
Forest Department,  
Nuwara Eliya.

and 3 others.

**Respondents**

C.A. 301/2016Writ Application

Before : Vijith K Malalgoda PC J. (P/CA) &  
P Padman Surasena ,J.

Counsel : Faiz Musthapa PC with Fizar Marker for the  
Petitioner.  
Vikum de Abrew DSG. for the A.G.

Argued &Decided on : 20.09.2016

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Vijith K. Malalgoda,P.C. J (P/CA)

There are several cases pending before this Court against the action that had been taken by the Forest Department to evict the Petitioners from the lands said to have granted to them. Out of these cases, case Nos. 12-49/2015 which are to be supported before us today, the learned Senior DSG. informs that he had only received notices but not the documents and therefore he is not in a position to assist this Court with regard to those cases. Therefore Court decides to take up these matters separately, once the petitioners serve proper notices on the Attorney General.

With regard to cases 87-90/16 learned Senior DSG. submits that he had not received notices in any of these cases and therefore we direct the Petitioners to serve notices on the Respondents.

In the cases C.A. 292-301/2016, learned Senior DSG. submits that he is ready to make submissions, since the said cases are similar in nature. With regard to CA 302/2016 the learned Senior DSG. Prefers that matter be taken separately since the facts are slightly different. Therefore the Court decides to take up the cases C.A. 292-301/2016 for support today.

At this stage parties agreed to take up cases 292-301/2016 together but the submissions were made by the learned President's Counsel in case No 292/2016.

This case is coming up for support to day. As submitted by the learned President's Counsel for the petitioner, the petitioners predecessor was a member of Walapane Apple Growers Cooperative Society and the Government Agent of Nuwara-Eliya by P1 decided to allocate land to the said society to grow apples in the area. Accordingly by letter dated 31/01/1972, the Secretary of the said Association had informed the membership, of distribution of the said land among the members. The Petitioner has submitted another document marked P3 where one R.M. Chandrasena had been asked to deposit the relevant money for surveying fees etc. in order to allocate the land to the said Chandrasena. The Petitioner has further submitted two receipts, one is for Rs. 150/- a payment to the Apples Growers Society and another acreage receipt said to have paid by R.M. Chandrasena as acreage taxes for the period 2003-2007. Based on

these documents which are before this court, the Petitioner has taken up the position that the Petitioner who has purchased the land in question has legitimate expectation that he would get this land in order to cultivate the apples as referred to in P1. The Petitioner has further taken up the position that in the year 1992, a quit notice has been served by the District Forest Officer of Nuwara Eliya and the said actions are still pending before the Magistrate's Court of Walapane. The position taken up by the Petitioner before this Court is that, at the time the said quit notices were issued, the land in question was not with the Forest Department. By the subsequent gazette the said lands have been declared as a forest and therefore the quit notices issued prior to that Gazette notifications are not valid in law. He further submits that the said lands referred to this action was with the Petitioner and his predecessor since 1972 with uninterrupted possession and therefore is entitled for prescriptive title. As against these arguments, the learned Senior D.S.G appearing for the respondents had relied on a document which he produced before this court where the Government Agent of Nuwara Eliya had written to the Divisional Secretary and the Secretary of the Apple Growers Association in December 1978 where he had directed the Divisional Secretary to take over the land back from the Apple Growers and hand them back to the Forest Department.

We observe that this fact has not been revealed from the documentation submitted by the Petitioner even though the said letter too was copied to the Apple growers society, before this Court. The learned

D.S.G. further placed before this court another document dated 20.05.1992 where the District Secretary of Nuwara Eliya under Section 18 of the State Land (Recovery of possession) Act empowered the District Forest officer, Madappuli Gedara Wasala Mudiyanseelage Wasantha Tikiri Bandara Dissanyake as the Competent Authority to issue orders under the said act to recover state land which comes under the Forest Department.

When considering these submissions placed before us, we observe that all these applications supported before us, namely applications 292/2016 - 301/2016 the persons who have been prosecuted before the Magistrate's Court under the State Land (Recovery of Possession Act) are different for the Petitioners before this Court and the said petitioners have not explained to this Court as to how they came into the possession of this land. The Petitioners were not parties to the original Apple Growers Association for them to claim legitimate expectation even if this court is prepared to accept P1 as a legally binding document. However, we are not inclined to accept P1 as a legally binding document.

In these circumstances it is clear that the Petitioners contention that he had legitimate expectation of getting this land is not established before this Court. With regard to the other submission made by the learned President's Counsel, it is clear that the eviction order issued in the year 1992 is a legally valid document and therefore we are not inclined at this stage to consider it as a document which has no legal basis. When considering all these issues placed before us, this Court is not inclined to

issue notices in these cases. We therefore refuse the notices. Notices are refused in all ten cases C.a. 292-301/2016.

PRESIDENT OF THE COURT OF APPEAL

P Padman Surasena,J.

I agree.

JUDGE OF THE COURT OF APPEAL

Jmr/-