

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 Writs of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ Application) No. 266/2017

Kurusamy Anton Anandakumar,
Udayarkattu,
Mullaitivu.

Petitioner

Vs.

- 1) Marthalingam Prathepan,
Competent Authority,
Divisional Secretary,
Pudukkudiruppu.
- 2) Commissioner General of Lands,
Land Commissioner General's
Department,
No. 1200/6, Rajamalwatte Road,
Battaramulla.
- 3) W.W.A.Chandra,
Commissioner of Land (Development),
Land Commissioner General's
Department,
No. 1200/6, Rajamalwatte Road,
Battaramulla.

Respondents

**Before: P. Padman Surasena J/ President, Court of Appeal
Arjuna Obeyesekere J**

Counsel: P.Peramunagama with C. Hewamanage for the Petitioner
Ms. Ganga Wakishtaarachchi, Senior State Counsel for the
Respondents

Supported on: 11th May 2018 and 01st June 2018

Decided on: 28th June 2018

Arjuna Obeyesekere, J

With the permission of this Court, the learned Senor State Counsel has tendered by way of a motion dated 25th May 2018 (with copy to the Petitioner) documents marked 'R1' – 'R11a' while the Petitioner has tendered by way of a motion a document marked 'P22'.

The Petitioner has filed this application, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the 'Quit Notice' dated 28th January 2016 annexed to the petition, marked 'P1'¹.
- (b) A Writ of Certiorari to quash the 'Quit Notice' dated 2nd February 2016 annexed to the petition, marked 'P2'.

¹ The Quit Notice has been issued under Section 3(2) of the State Lands(Recovery of Possession) Act No. 7 of 1979

- (c) An interim order to stay further proceedings in Magistrate's Court of Mullaitivu Case No. 16603.²

The Petitioner claims that his father, Vadivel Kurusamy was in occupation of a land identified as Lot 46A situated in Udayar Kaddu North, Puthukuddirippu, in extent of 10 acres.³ There is no dispute that the said land is State land. According to the Petitioner, his father had planted coconut and teak trees and developed the said land. He claims that an annual permit had been issued to his father in respect of this land, for which the Petitioner claims his father had made the necessary payments. As proof however, only a letter dated 1st November 1970, by which a cheque for Rs. 60 had been remitted as lease rent, has been produced.⁴ The Petitioner has not produced any other documentary proof in support of his position that his father had been issued an annual permit, on the basis that the said documents have been misplaced.

After his father's death in 1994, the Petitioner claims that he had been in occupation of the said land and cultivated it.⁵ The Petitioner claims that he was forced to leave the area in 2005 due to the then prevailing situation but claims that he returned to the said land in 2015.

² Case No. 16603 had been filed in the Magistrate's Court of Mullaitivu under the provisions of the State Lands Recovery of Possession Act No. 7 of 1979, as amended, seeking to eject the Petitioner from the land referred to in the Quit Notices marked 'P1' and 'P2'.

³ The Quit Notices marked 'P1' and 'P2' have been issued in respect of this land

⁴ This letter has been annexed to the petition, marked as 'P3'

⁵ As proof of cultivation of the said land, the Petitioner has annexed to the petition, letters marked 'P5' issued by the Grama Niladhari, 'P6' issued by the Udayarkaddu North Rural Development Society and 'P7' issued

After returning to the land in 2015, the Petitioner had made representations that an annual permit be issued to him for the said land. Pursuant to a letter written by the Petitioner to the Minister of Lands, the Petitioner had been informed by the Ministry of Lands by a letter dated 9th June 2015⁶ that any issues relating to the said land could be submitted to the mobile service that was to be held on 13th June 2015⁷.

Accordingly, the Petitioner's request for a permit had been considered by a committee consisting of the then Land Commissioner General, an Assistant Director of Lands and an Assistant Land Commissioner. According to the Report of the said committee dated 13th June 2015⁸, the Petitioner had claimed the said land on the basis that his father had a permit for the said land. The said Committee, having examined the claim of the Petitioner had observed that, "*there is no evidence to prove that Ananda Kumar's father has got a permit for this 10 acre land. Ananda Kumar's father has got another MCC land earlier*"⁹. The Committee had thus concluded that the Petitioners "*request cannot be accepted as there is no proof for issuing the permit*". Thus, the Petitioner's request that an annual permit be issued in respect of the said land had been rejected.

As the 1st Respondent, the Divisional Secretary of Puthukuddirippu was of the opinion that the Petitioner was in unauthorized occupation of the said land, the 1st Respondent had served the Petitioner with the notices

⁶ Annexed to the petition marked 'P10a'

⁷ A mobile service had been held to resolve issues relating to lands situated in the North

⁸ Annexed to the petition marked 'P17'

⁹ MCC – Middle Class Colonisation Scheme

marked 'P1' and 'P2',¹⁰ under Section 3(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, to deliver vacant possession of the said land, on or before 1st March 2016. The Petitioner failed to comply with the said notices. Case No. 16603 had thereafter been filed by the 1st Respondent in the Magistrate's Court of Mullaitivu¹¹ under Section 5(1) of the said Act for an order of ejectment of the Petitioner from the said land.¹²

After an inquiry where the Petitioner had been afforded an opportunity of showing cause¹³, the learned Magistrate by his Order dated 10th November 2016¹⁴, had directed the 1st Respondent to eject the Petitioner from the said land.

The Petitioner had filed a revision application against the said Order in the Provincial High Court of the Northern Province, holden in Vavuniya. The said revision application had been refused by the High Court, by its judgment delivered on 1st August 2017¹⁵. The Petitioner does not appear to have filed an appeal against the said judgment of the High Court.

The Petitioner filed this Writ application soon thereafter on 11th August 2017, seeking to quash the said Quit notices marked 'P1' and 'P2'. The

¹⁰ The 'Quit Notice' – vide Section 3(2) of the Act

¹¹ Case No. 16603

¹² The Schedule to the application sets out the boundaries of the land as follows:
North – by TOPO PP20 Lot No. 735 – V. Kurusamy; East – by Road; South – by A35 Road; West – by Suthanthipuram Road

¹³ The Petitioner had filed written objections before the learned Magistrate and submitted the documents that have now been annexed to the petition in this case.

¹⁴ Annexed to the petition marked 'P20'

¹⁵ A copy of the Judgment of the High Court dated 1st August 2017 has been annexed to the petition, marked as 'P21'

Petitioners position is that he has been in possession of the said land with the written authority of the State and that the said authority has not been revoked or rendered invalid. The Petitioner further claims that the said land was to be given to him on a long term lease, as evidenced by letters marked 'P13' and 'P14'. On this basis, the Petitioner has contended that the issuing of the said quit notices is arbitrary and has moved that the said Quit Notices marked 'P1' and 'P2' be quashed by Writs of Certiorari.

A perennial problem faced by the State with regard to land owned by the State has been the encroachment and unlawful occupation and possession of such lands. The legislature has introduced through the State Lands (Recovery of Possession) Act a speedy mechanism to eject persons who were in unauthorized possession and occupation of State lands.

Section 18 of the Act defines 'unauthorised possession or occupation' as follows:

"Unauthorised possession or occupation means every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law and includes possession or occupation by encroachment upon State land."

The defences that could be taken up by a person against whom action has been filed under the Act for ejectment have been set out in Section 9(1) of the Act and reads as follows:

"At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid."

Thus, the defence open to a person on whom a quit notice has been served or against whom action has been filed for ejectment is limited to producing a valid permit or a valid authorization in writing of the State, granted in accordance with any written law, in respect of the said land.

This Court would now proceed to examine the contents of the letters marked as 'P13' and 'P14' as these two letters form the basis of the Petitioners case that he has the written authority of the State to occupy the said land.

'P13' is dated 9th July 2015 and has been sent to the 1st Respondent by the 2nd Respondent Land Commissioner General.¹⁶ 'P13' is titled ප්‍රදානවලංගු කළමනාකරුට හිමිකම් පතක් ලබා දුන් අංක: 46/ඒ දරණ ඉඩම යළි ඉල්ලා සිටීම පිළිබඳ අභියාචනයයි and reads as follows:

¹⁶ There is a handwritten endorsement on 'P13' that it has been copied to the Petitioner. However, 'P13' is essentially correspondence between two Government entities

උක්ත කරුණ සම්බන්ධයෙන් පුද්ගලිකව ප්‍රකාශයක්, සුදන්දිරපුරම්, යන ලිපියේ පදිංචි ගුරුස්වාමි ආනන්ද කුමාර මහතා විසින් ගරු ඉඩම් අමාත්‍යතුමා අමතනු ලැබීමෙන් මා වෙත යොමු කරන ලද 2015/06/17 දිනැති ලිපියේ පිටපතක් මේ සමග ඔබ වෙත එවමි.

02. ඒ අනුව අදාළ ඉඩම සඳහා වාර්ෂික බලපත්‍රයක් (මධ්‍යම පාංතික) කලින් දි තිබූ බව සනාථ කිරීමට රිසිට්පත් පිටපත් ඉදිරිපත් කර ඇති බැවින් අයදුම්කරුගේ පියා එය අර්ධ වශයෙන් සංවර්ධනය කර ඇති බවද පෙනී යන බැවින් ව්‍යාපෘති වාර්තාවක් ලබා ගෙන දිගු කාලීන බදු ක්‍රමයට නිර්දේශ වාර්තා එවන ලෙස කාරුණිකව දන්වමි. එසේම පංගම සේවයේ දි ලබා දි තිබූ තීරණය සංශෝධනය කරන බවද දන්වා සිටමි.

On the face of it, 'P13' is clearly not a valid permit or written authority of the State in respect of the said land. Nor is it evidence of a valid permit or other written authority of the State given to the Petitioner in respect of the said land. It also appears that the reference to a prior permit is in respect of another land. However, this Court would consider 'P13' in the light of 'R7a', which is the response of the 1st Respondent to 'P13'.¹⁷

The relevant portions of 'R7a' are re-produced below:

- "The particular land is not a surveyed Government land situated at Udaiyarkaddu North, Grama Niladhari Division. The Suthanthirapuram Middle Class Colonization Scheme is starting from the Northern Side of this land. The Middle Class Colonization

¹⁷ An English translation of the letter dated 12th August 2015 sent by the 1st Respondent to the 2nd Respondent in response to 'P13' has been produced by the learned Senior State Counsel, marked 'R7a'.

Scheme had been surveyed and divided and issued in 20 acres of land (Survey Plan No. TOPO PP 20 inset 17)

- 20 Acres 02 Rood and 08 Perch was granted to V. Gurusamy the father of the complainant Gurusamy Anton Ananthakumar in this said Middle Class Land (Lot No. 735, Plan No. TOPOPP 20 inset 17).
- Anton Ananthakumar is governing the said 20 acres of Middle Class Land. But he is claiming rights of the 10 acres of not surveyed and reserved for public requirements lands other than the said land.
- The said 10 acres of land, reserved by the Puthukuddirippu Divisional Secretary in the year 2005 for the Government requirement in the area."

The learned Senior State Counsel, relying on the contents of 'R7a' submitted to this Court that the Petitioners father had in fact been given a permit for a land in extent of 20 Acres 2 Roods 8 Perches under the Middle Class Colonisation (MCC) Scheme. She stated that a person is entitled to only one land under this Scheme. She submitted further that the land that is the subject matter of the Quit Notices 'P1' and 'P2' is situated adjacent to the land given to the Petitioners father under the MCC Scheme. The learned Senior State Counsel contended that the Petitioner had encroached onto the land referred to in the quit notice, as well as certain other lands adjacent to the land in respect of which the permit had been issued under the MCC Scheme.

This Court observes that in terms of the Block Survey Tenement List marked 'R5', the Petitioners father had been issued Permit No. 23444 in respect of Lot No. 735 of Topo Plan PP20.¹⁸ The land in respect of which the Quit Notices have been issued is situated on the southern boundary of Lot 735. According to 'R5', the Petitioners father had encroached on to Lot No. 734, which is the reservation for the main road and Lot No. 736 which is a reservation for a cart track. According to Plan PP20, Lots 734 and 736 are situated on either side of Lot No. 735. Significantly, the Block Survey Tenement List marked 'R5' does not refer to the land which is the subject matter of the quit notice, adding credence to the position of the 1st Respondent's assertion in 'R7a' that the said land had been reserved for the State and had not been surveyed. In fact, in 2005, the 1st Respondent had issued the letter marked 'R6a' confirming that the said land¹⁹ has been reserved for Government requirements and has not been divided and granted to any person. This submission of the learned Senior State Counsel explains the second paragraph of 'P13' relating to the production of receipts pertaining to a MCC land.

When this Court considers 'R7a', it is clear that even though the Petitioners father had a permit in respect of Lot 735, neither the Petitioner nor his father had any permit or written authority granted in accordance with any written law in respect of the land which is the subject matter of the Quit Notices 'P1' and 'P2' and that 'P13' cannot be construed as evidence thereof.

¹⁸ Copies of Plan PP20 have been produced with the petition marked as 'R1', 'R2' and 'R3'. The extent of the said Lot 735 is 20 Acres 2 Roods 8 perches.

¹⁹ The land which is the subject matter of the Quit Notice

The next letter relied on by the Petitioner to establish that he has the written authority to occupy the said land is 'P14'. This letter is dated 20th July 2016²⁰ and has been sent by the 2nd Respondent to the 1st Respondent.²¹ The said letter has the same title as 'P13' and reads as follows:

උක්ත කරුණ සම්බන්ධයෙන් මාගේ සමාංක හා 2015/07/09 හා 2015/10/13 ලිපි සම්බන්ධව ඔබේ අවධානය යොමු කරවමි.

02. ඒ අනුව අදාළ ඉඩම වාර්ෂික බලපත්‍ර මගින් ලබා දී ඇති බව සනාථ වූ බැවින් පංගම සේවයේදී දී තිබූ තීරණය සංශෝධනය කර ගැනීමට ඇත්තේ ආනන්දකුමාර නමැති අයට දීර්ඝකාලීන බදු මත අදාළ ඉඩම ලබාදෙන ලෙස ඉඩම් කොමසාරිස් පනරාල් විසින් තීරණය ලබා දී ඇත. තවද උතුරු හා නැගෙනහිර පළාත්වල මෙවැනි ගැටලු විසඳීම සඳහා පියවර 2013/01 චක්‍රලේඛය මගින් පැහැදිලිව සඳහන් කර ඇත.

03. එසේ තිබියදී ඉල්ලුම්කරු වන ගුරුකාමි ඇත්තේ ආනන්දකුමාර යන අයට විරුද්ධව ඔහුව අදාළ ඉඩමෙන් ඉවත් කිරීමට මඬ විසින් මුලතිවු දිසා මහෙස්ත්‍රාත් අධිකරණයේ අංක 16603 දරණ නඩුවක් පවරා ඇති බව මහු මා වෙත පැමැණිලි කර ඇත. අදාළ ඉඩම සම්බන්ධයෙන් ඉඩම් කොමසාරිස් පනරාල් විසින් මීට පෙර තීරණයක් ඔබ වෙත ලබා දී තිබියදී එය ක්‍රියාත්මක නොකර මඬ විසින් මෙවැනි ක්‍රියාමාර්ගයක් ගැනීමට හේතුව මා වෙත වාර්තා කරන ලෙස කාරුණිකව දන්වා සිටිමි.

It appears from the letter marked 'P14' that the 2nd Respondent has not given due consideration to the letter marked 'R7a'. Be that as it may,

²⁰ Annexed to the petition marked 'P14'

²¹ Similar to 'P13', there is a handwritten endorsement on 'P14' that it has been copied to the Petitioner

'P14' is not a written authority of the State authorizing occupation of the said land by the Petitioner nor is it evidence of such fact.

The learned Senior State Counsel has produced to this Court the letter dated 3rd August 2016 marked 'R8'²² which is the response of the 1st Respondent to 'P14'.

The relevant portions of 'R8a' are re-produced below:

"A piece of land located close to the Suthanthirapuram Colonization Scheme depicted as Lot No. 735 in the plan No. TOPOPP 20 to the extent of 20A. 2R. 08P had been given away to Mr. V.Kurusamy in the year 1969 under the Middle Class Colonization Scheme.

Several field inspections and inquiries had been carried out on the alleged encroachment of the piece of land to the extent of 10 A adjoining to the aforesaid land of 20 A occupied by the said Kurusamy and subsequent to his death it is being possessed by his son Anton Anandhakumar and as a result the following facts revealed.

1. It is revealed from the plan that at the planning stage of the Middle Class Scheme, lands by side of the A35 Road had been identified for public purpose and only the piece of lands were allocated along Suthanthirapuram Colonization Scheme Road.
2. No possibility is found out for the allocation of 10Ac lands under annual permit in 1970s in violation of Govt. Policies to a

²² The English translation of 'R8' has been produced as 'R8a'

persons or member his family for whom a piece of land to the extent of 20A had already been alienated under MCC in the year 1969. Also it is not possible to ensure location, extent and boundaries of the land claimed by the party from the documents furnished.

3. LDO permit had been issued to Mr. Anton Anandakumar in the year 2003 for an additional piece of land along A35 main road which was encroached and kept in possession by his late father V.Kurusamy.

4. Therefore it is confirmed that the 10A land is allocated for public purpose and the right of possession was not given to Mr. Kurusamy,

Further it is confirmed that it is a state land by the letter of the Divisional Secretary dated 2005.05.18 who certify the fact.

5. It was instructed by the Provincial Land Commissioner that as per his inquiries a grantee of land under MCC cannot have another piece of state land and hence to grant the claimant with the appropriate land”

Thus, when this Court considers the contents of 'R8a', it is clear that even though the Petitioners father had been granted a permit in respect of Lot No. 735, no permit has been granted in respect of the land which is the subject matter of the Quit Notice. In these circumstances, this Court concludes that 'P14' is certainly not a valid permit or written

authority given by the State nor is it evidence of any such authorization given by the State to the Petitioner in respect of the said land.

In Nirmal Paper Converters (Pvt) Limited vs Sri Lanka Ports Authority²³ this Court held that, "the only ground on which the petitioner is entitled to remain on this land is upon a valid permit or other written authority of the State as laid down in section 9 (1) of the State Lands (Recovery of Possession) Act. He cannot contest any of the other matters."

Referring to the provisions contained in Section 9(1) of the Act, this Court has held as follows in Muhandiram vs Chairman, Janatha Estates Development Board²⁴:

"The said section clearly reveals that at an inquiry of this nature, the person on whom the summons has been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law. The burden of proof of that fact lies on that particular person on whom the summons has been served and appears before the relevant Court."

This view has been confirmed in Aravindakumar vs Alwis and others²⁵ where Sisira De Abrew J [with Sripavan J (*as he then was*) agreeing] has held as follows:

²³ 1993 1 Sri LR 219

²⁴ 1992 1 Sri LR110

²⁵ 2007 1 Sri LR316

“According to the scheme provided in the Act a person who is in possession or occupation of any state land and has been served with quit notice under Section 3 of the Act can continue to be in possession or occupation of the land only upon a valid permit or other written authority of the State described in Section 9 of the Act.”

While it is obvious that **‘P13** and **‘P14’** is not a written authority by the State, this court is of the view that neither **‘P13** nor **‘P14’** is evidence that a written permit or authorisation is to be issued to the Petitioner in accordance with any written law in respect of the said land. There is no material before this Court that the position of the 1st Respondent set out in **‘R8a’** has been contradicted by the 2nd Respondent. The fact that the 2nd Respondent has not contradicted the position of the 1st Respondent as set out in **‘R8a’** and has not issued an annual permit to the Petitioner, is confirmed by the letter dated 15th December 2017 sent by the 2nd Respondent, and submitted to this Court by the Petitioner marked **‘P22a’**. In this factual background, the occupation of the said land by the Petitioner is clearly unauthorized.

The Petitioner has pleaded that the land in question was to be given on a long lease to him. The Petitioner appears to rely on **‘P13** and **‘P14’** to support this position. Although not specifically pleaded, this Court would now consider whether **‘P13** and **‘P14’** can give rise to a legitimate expectation in the mind of the Petitioner that the land in question will be leased to him. As set out above, **‘P13** and **‘P14’** are internal correspondence between two Government entities, with a handwritten endorsement that they have been copied to the Petitioner. This Court

has already held that the reference in 'P13' to an annual permit is a reference to the land given to the Petitioners father under the MCC Scheme and is not a reference to the land which is the subject matter of the Quit Notices. As observed earlier, 'P14' appears to have been written by the 2nd Respondent without due consideration being given to 'R7a'. Thus, it is doubtful if the reference to a long term lease in 'P14' is to the land in question. This Court is of the view that there is no clear and unambiguous statement either in 'P13' or in 'P14' that the land in question will be given on a long term lease to the Petitioner. The latest letter issued by the 2nd Respondent marked 'P22' confirms this position. In these circumstances, this Court is of the view that 'P13' and 'P14' cannot give rise to a legitimate expectation in the mind of the Petitioner that the State was agreeable or was contemplating to give him a long term lease of the said land.

In these circumstances, this Court is of the view that the decision of the 1st Respondent to issue the Quit Notices marked 'P1' and 'P2' is within the law. This Court does not see any illegality in the issuing of the Quit Notices 'P1' and 'P2' by the 1st Respondent. For the reasons set out in this Order, this Court is of the view that this is not a fit case in which notices should be issued as Writs of Certiorari will not lie to quash the Quit Notices marked 'P1' and 'P2'.

The learned Senior State Counsel appearing for the Respondents took up the position that this application is futile as the Magistrate has already made an order for ejectment of the Petitioner from the land in question and that the said Order has been affirmed by the learned High Court Judge. She also took up the position that the Petitioner is guilty of laches

in that the Petitioner has invoked the jurisdiction of this Court only in August 2017 whereas the Quit Notices had been issued in January and February 2016. It has been consistently held by this Court that a discretionary remedy such as a Writ of Certiorari will not lie where the petitioner has been guilty of laches or where the issuance of a writ is futile. Even though the submissions of the learned Senior State Counsel have much merit, the necessity to consider the said submissions of the learned Senior State Counsel does not arise in view of the finding of this Court that there has not been any illegality in the issuance of the Quit Notices marked 'P1' and 'P2'.

Accordingly, this application is dismissed, without costs.

Judge of the Court of Appeal

P. Padman Surasena J/ President, Court of Appeal

I agree.

President, Court of Appeal