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

C.A (Writ) Application No. 69/2013

A.M. Podihamine,
Ellagama, Diyatalawa.

PETITIONER

Vs.

1. T.P.A. Hemakumara,

1A. K.B.A.M.S. Abeykoon,
Divisional Secretary, Haputale.

2. The Commissioner of Land,
Uva Province,
Provincial Land Commissioner's Office,
Kachcheri, Badulla.

3. Land Commissioner General,
Land Commissioner General's Department,
1200/06, Rajamalwatta Road,
Battaramulla.

RESPONDENTS

Before: **Arjuna Obeyesekere, J**

Counsel: W. Dayaratne, P.C with with Mahinda Wickremaratne for the Petitioner

Ms. Nayomi Kahawita, State Counsel for the Respondents

Argued on: 29th August 2018

Written Submissions: Tendered on behalf of the Petitioner on 30th November 2018

Tendered on behalf of the Respondents on 7th January 2019

Decided on: 31st January 2019

Arjuna Obeyesekere, J.

By an amended petition dated 25th March 2013, the Petitioner has sought the following relief:

a) A Writ of Certiorari to quash the quit notice[1] issued by the 1st Respondent in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended (the Act); and

b) A Writ of Mandamus compelling the 1st to 3rd Respondents to issue a permit to the Petitioner in respect of the said land from which the Petitioner is sought to be ejected.

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[1] By the said quit notice, annexed to the petition marked 'P27', the 1st Respondent had sought to evict the Petitioner from Lot No. 782 depicted in Plan No. FVP 387 dated 8th November 1987.

There are two issues that arise in this application for the consideration of this Court. The first is whether the 1st Respondent, the Divisional Secretary of Haputale was entitled to issue a quit notice to the Petitioner and subsequently make an application for ejectment under Section 5 of the Act and obtain an order from the Magistrate's Court to evict the Petitioner from the said land. The second issue is whether a Writ of Mandamus could be granted to compel a public authority to issue a permit to the Petitioner in respect of the said land, under and in terms of the Land Development Ordinance.

The facts of this case briefly are as follows.

The subject matter of this application is a State land depicted as Lot No. 782 in Final Village Plan No. 387 dated 8th November 1987, annexed to the petition marked '**P1**', situated in the village of Ella Aluthwela within the Divisional Secretariat of Haputale in the District of Badulla. It is admitted between the parties that in or around 1960, the State had issued R.P.D Juwanis Appuhamy a permit in respect of a land in extent of 2 roods. The said land includes the aforementioned Lot No. 782. The Petitioner claims that in 1977, Juwanis Appuhamy along with his wife Isabel Perera sold the said land to the Petitioner for a sum of Rs. 1500 and handed over possession of the 2 roods of land to the Petitioner. The Petitioner has annexed to the petition marked '**P2**' a receipt signed by Juwanis Appuhamy, acknowledging the receipt of a sum of Rs. 1500. This Court observes that the receipt **'P2'** does not disclose the purpose for which the money was being paid nor does it refer to any land. It however does refer to an affidavit which has not been produced with the petition.

The Petitioner states that in 1987, a roadway was constructed across the said land, resulting in the land being divided into three lots, identified in '**P1**' as Lot No. 781 in extent of 24P which the Petitioner states is the road reservation, Lot No. 782 in extent of 12.8P and Lot No. 783 in extent of 1R 26.8P. It does not appear that Lot No. 781, although State land, formed part of the land given on a permit to Juwanis Appuhamy for the reason that Lot No. 781 has been referred to as a reservation for a waterway in the Surveyors report annexed to the petition marked '**P15**'. Furthermore, the cumulative extent of Lot Nos. 782 and 783 is 79.6P which is almost identical to the extent of the land given to Juwanis Appuhamy.

In March 1994, the Divisional Secretary of Haputale, acting in terms of Section 109 of the Land Development Ordinance[2], proceeded to cancel the permit issued to Juwanis Appuhamy on the basis that Juwanis Appuhamy had violated the conditions of the permit by *inter alia* alienating the said land to the Petitioner[3].

In December 1994, Isabel Perera, the wife of Juwanis Appuhamy had been issued an annual permit, in respect of Lot No. 782, under the provisions of the Land Development Ordinance. It appears from the evidence led in the District Court that Isabel Perera had paid the rental for 1995 and that the State would

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[2] Section 109 (1) of the Land Development Ordinance reads as follows: "(1) If the permit-holder fails to appear on the date and at the time and place specified in a notice issued under section 106, or appears and states that he has no cause to show why his permit should not be cancelled, the Government Agent may, if he is satisfied that there has been due service of such notice and that there has been a breach of any of the conditions of the permit, make order cancelling such permit but no such order shall be made until after the expiry of a period of fourteen days reckoned from the date specified in the notice issued under section 106."

[3] The permit had been cancelled by notice dated 3rd February 1994, annexed to the petition marked 'P3', for the following reasons:

01. ඉඩම සංවර්ධනය නොකිරීම.
02. ඉඩමේ පදිංචි නොවීම.
03. ඉඩම අන්සතු කිරීම

have extended the permit in respect of Lot No. 782 if not for the pending litigation between the Petitioner and Isabel Perera and her family, with regard to Lot No. 782.[4] The action filed in the District Court was determined in favour of Isabel Perera by the learned District Judge. However, on appeal by the Petitioner in this case, the learned High Court judge set aside the said judgment in November 2010, on the basis that Isabel Perera had no title to vindicate, as the permit issued in 1995 had not been extended.

The Petitioner states that since 1992, she has sought a permit for Lot Nos. 782 and 783 by writing to various government authorities. This Court observes that even though the Petitioner has annexed the responses that were received to such requests, the requests themselves have not been annexed to the petition. Be that as it may, the Petitioner states that while her request for a permit was under consideration by the 3rd Respondent Land Commissioner General, the 1st Respondent Divisional Secretary, Haputale, had issued to the Petitioner a letter dated 26th October 2012 annexed to the petition marked **'P25'**, which reads as follows:

> "යොමුගත කරුණට අදාලව ඔබ විසින් රජයේ ඉඩමක් තුල සිදුකරනු ලබන අනවසර ඉදිකිරීම් නැවැත්වීමට දැනුම් දී ඇතත් මබ එය නොසලකා හැර නැවත ඉදිකිරීම් කටයුතු කරනු ලබන බව මා වෙත වාර්තා වී ඇත.
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> 02. ඒ අනුව එකී ඉදිකිරීම් කටයුතු වහාම අත්හිටුවන ලෙස මෙයින් අවධාරණය කරන අතර ඔබ එය එසේ කිරීමට අපොහොසත් වන්නේනම් සන්තකය ආපසු ලබා ගැනීමට පනත යටතේ ක්‍රියා කරන බව මෙයින් කණගාටුවෙන් දැනුම් දෙමි."

[4] Primary Court, Bandarawela Case No. 16209, filed under the provisions of Section 66(1)(a) of the Primary Courts Procedure Act No. 44 of 1979 and District Court Bandarawela Case No. 12012 filed by Isabel Perera against the Petitioner.

'**P25**' was accompanied by two quit notices, issued under Section 3 of the Act, one in respect of the reservation for the water way Lot No. 781, annexed to the petition marked **'P26'**, and the other in respect of Lot No. 782, annexed to the petition marked **'P27'**, directing the Petitioner to vacate the said lands on or before 30th November 2012 and to hand over vacant possession to the Grama Niladari of Ellegama.

This Court must at this stage observe that the 1st Respondent did not issue a quit notice in respect of Lot No. 783, which is the larger of the three lots of land[5]. In fact, on 11th February 2013, the State has issued to the Petitioner a permit under Section 19(2) of the Land Development Ordinance, annexed to the petition, marked '**P31**', in respect of Lot No. 783. The Respondents have submitted that the Petitioner was subsequently issued a grant under Section 19(4) of the Land Development Ordinance by HE the President in respect of Lot No. 783.[6]

As the Petitioner did not comply with the quit notices '**P26**' and '**P27**', the 1st Respondent filed an application for ejectment in terms of Section 5 of the Act in the Magistrate's Court of Bandarawela seeking to eject the Petitioner from Lot Nos. 781 and 782.[7] After inquiry, the learned Magistrate had proceeded to make an order on 22nd March 2013, ejecting the Petitioner and all those claiming under her, from Lot Nos. 781 and 782[8]. It appears from paragraph 36(a) of the amended petition that the Petitioner is not seeking to interfere with the order of the learned Magistrate in respect of Lot No. 781, as the

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[5] 1R 26.8P.

[6] A copy of the said Grant has been annexed to the Statement of Objections of the 1st Respondent, marked '1R1'.

[7] The applications for ejectment have been annexed to the petition, marked 'P28' and 'P29'.

[8] Vide journal entry of 28th March 2013.

Petitioner admits that although she was in possession of a small strip of land from this Lot, she was never in full possession of the said land and that the said land consisting of 0.060 Hectares was a reservation.

The present application before this Court for a Writ of Certiorari is to quash the quit notice marked **'P27'** in respect of Lot No. 782 and to set aside the order of the learned Magistrate. This Court observes that the Petitioner has not disclosed whether a revision application has been made to set aside the said Order **'P32'**.

It is admitted by the Petitioner that the land in question is State land. It is further admitted by the Petitioner that she came into possession of the entire land in an unauthorised manner, by 'purchasing' the said land from Juwanis Appuhamy. This Court observes that Juwanis Appuhamy was not permitted in terms of the Land Development Ordinance to alienate the said land to a third party and the permit issued to Juwanis Appuhamy had quite correctly been cancelled by the Divisional Secretary. The Petitioner was therefore in unauthorised possession of the entire land given to Juwanis Appuhamy and was thus a trespasser, until a permit was issued in respect of Lot No. 783 in February 2013. However, the Petitioner continued to be in unauthorized possession or occupation of Lot Nos. 781 and 782.

In considering the application for a Writ of Certiorari to quash the quit notice **'P27'**, it would be appropriate for this Court to bear in mind the following statement of Lord Diplock in the case of **Council of Civil Service Unions vs Minister for the Civil Service**[9]:

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[9] 1985 AC 374.

"Judicial review has, I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "**illegality**", the second "**irrationality**" and the third "**procedural impropriety.**"

"By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is *par excellence* a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable."

This Court would now proceed to consider whether the 1st Respondent acted illegally when he issued the quit notices '**P26**' and '**P27**'.

The State Lands (Recovery of Possession) Act was introduced in 1979 to provide for an expeditious mode of recovery of state land from persons who were in unauthorised possession or occupation of such state lands.[10] The purpose of the Act has been discussed in the case of **Namunukula Plantations PLC v. Nimal Punchihewa**[11], where this Court has held as follows:

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[10] Ihalapathirana vs Bulankulame, Director-General U.D.A [1988 (1) Sri LR 416 at 420] – "The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action".

[11] CA (PHC) APN 29/2016; CA Minutes of 9th July 2018.

"A competent authority can have recourse to the [State Lands (Recovery of Possession)] Act to evict any person who is in unauthorized possession or occupation of state land including possession or occupation by encroachment upon state land. Any possession or occupation without 'a valid permit or other written authority of the State granted in accordance with any written law' is unauthorized possession".

A very strict regime has been put in place by the legislature in order to achieve the said purpose of the Act. In terms of Section 3 of the Act, where the Competent Authority is of the opinion that any land is State land and that any person is in unauthorised possession or occupation of such land, he may issue a quit notice to the person in possession of the property identified in the said notice, requiring such person to vacate the said land with his dependents, if any, and deliver vacant possession of such land, on a date not less than thirty days from the date of the issue of the said quit notice. In terms of Section 3(1A) of the Act, 'no person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1)'. In the event the person in possession fails to vacate such land and deliver vacant possession, the Competent Authority shall be entitled in terms of Section 5 of the Act to file an application for ejectment in the Magistrate's Court. The learned Magistrate is thereafter required to issue summons in terms of Section 6 of the Act to the person named in the said application to appear and to show cause as to why he should not be ejected from the land as prayed for in the application for ejectment. The scope of the Inquiry that has to be held by the learned Magistrate and the defenses that could be taken up by a person against whom an application has been filed for ejectment have been set out in Section 9 of the Act, which 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."

The provisions of Section 9 of the Act have been considered in several judgments of the Supreme Court and this Court.[12] In **Nirmal Paper Converters (Pvt) Limited vs Sri Lanka Ports Authority**[13] it was held as follows:

"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."

The above position has been confirmed in **Aravindakumar vs Alwis and others**[14] where Sisira De Abrew J [with Sripavan J (*as he then was*) agreeing] has held as follows:

"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

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[12] See Herath vs Morgan Engineering (Pvt) Limited [SC Appeal No. 214/2012 – SC Minutes of 27th June 2013 – Judgment of Sripavan J (as he then was)]; Muhandiram vs Chairman,No. 111, Janatha Estates Development Board [1992 1 Sri LR 110].

[13] 1993 1 Sri LR 219.

[14] 2007 1 Sri LR 316.

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."

The Act makes it clear that if the land in question is State land, and the person in possession is unable to show a valid permit or other written authority of the State issued in terms of any written law to possess the said land, the State is entitled to issue a quit notice seeking to eject the person in illegal occupation, from the said land and, if the said quit notice is not complied with, to make an application in terms of the Act to eject such person.

In this application, there is no dispute that the land in question is State land and that the Petitioner has no valid permit or other written authority in respect of Lot No. 782. This is a classic case where the provisions of the State Lands (Recovery of Possession) Act could be invoked by issuing a quit notice. Thus, this Court is of the view that the 1st Respondent acted within the provisions of the Act when he issued the quit notices **'P26'** and **'P27'** on the Petitioner and thereafter filed action when the Petitioner did not comply with the said quit notices. The action of the 1st Respondent is therefore clearly not illegal.

If that be the case, what is the basis of the present application? The Petitioner is not complaining of any irrationality or procedural impropriety in respect of the said quit notice **'P27'**. The Petitioner is seeking a Writ of Certiorari to quash **'P27'** on the basis that she had a legitimate expectation that Lot No. 782 would be given to her on a permit and therefore the issuing of the quit notice is

illegal. The Petitioner is relying on the contents of three letters annexed to the petition, marked '**P16**', '**P17**' and '**P24**' in support of her argument.

The relevant portions of the three letters relied on by the Petitioner as having created a legitimate expectation in her mind that a permit would be issued in her favour are re-produced below:

'**P16**' is a letter dated 2nd October 1996 written by the 2nd Respondent Provincial Land Commissioner of the Uva Province to the 1st Respondent, Divisional Secretary of Haputale. This letter has not been copied to the Petitioner.

> "ඒ අනුව පහත නම් සඳහන් අය සඳහා ඉ. සං. ආ.[15] පනතේ 20 'අ' වගන්තිය යටතේ බලපත්‍ර දීම අනුමත කරම්.
>
> 2 හපු/ආ/4/4/1
>
> 96.07.08 - ඒ. එම්. පොඩිහාමිනේ - හෙ. 0.199"

'**P17**' is a letter dated 28th September 2011 written by the 1st Respondent to the Parliamentary Commissioner for Administration (Ombudsman). This letter too has not been copied to the Petitioner.

> "ඒ අනුව මෙම ගැටළුව දිරඝකාලීන සහ සංකීර්ණ ඉඩම් ගැටළුවක් බැවින් ඌව පළාත් ඉඩම් කොමසාරිස් වෙත නැවතත් වාර්තා කරනු ලැබ ඇති අතර වර්තමාන සංශෝධිත පටිපාටි අනුව ඉඩම් බලපත්‍ර නිකුත් කිරීම සඳහා පළාත් ඉඩම් කොමසාරිස් වරයාගේ අනුමැතිය අවශ්‍ය බවද එය ලද පසුව ඉදිරි පියවර ගැනීමට අපේක්ෂිත බවද කාරුණිකව වාර්තා කරම්."

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[15] Land Development Ordinance

'**P24**' is a letter dated 28th November 2012 written by the Land Commissioner General to the 2nd Respondent.

> ඉහත කරුණ සම්බන්ධයෙන් දියතලාව,ඇල්ගම, පියසෙවන ලිපිනයෙහි පදිංචි ඒ. ඒම්. පොඩිහාමිනේ මහත්මිය විසින් 2012.09.27 දිනැතිව වාරිමාර්ග හා ජල සම්පත් කළමනාකරණ ගරු අමාත්‍ය නිමල් සිරිපාලද සිල්වා මැතිතුමා වෙත යවන ලදුව,ඉඩම් හා ඉඩම් සංවර්ධන ගරු අමාත්‍යතුමා විසින් මා වෙත යොමු කර ඇති ලිපියේ ජායා පිටපතක් මේ සමග ඔබ වෙත එවම්.
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> 02. ඒ පිළිබඳව ඔබගේ විශේෂ අවධානය යොමුකර අදාල තැනත්තිය සුදුසුකම් ලබන්නේ නම් බලපත්‍රයක් නිකුත් කිරීම සඳහා ප්‍රාදේශිය ලේකම් මගින් ක්‍රියා කරන මෙන් කාරුණිකව ඉල්ලා සිටිම්.

Does any of the letters '**P16**', '**P17**' and '**P24**' hold out to the Petitioner that she would be given a permit in respect of Lot No. 782 and if so, can the said letters give rise to a legitimate expectation?

In **Ginigathgala Muhandiramlage Nimalsiri vs Colonel P.P.J. Fernando and others**[16], Priyantha Jayawardena J has considered the issue of legitimate expectation and held as follows:

> "An expectation is considered to be legitimate where it is founded upon a promise or practice by the authority that is said to be bound to fulfil the expectation. An expectation the fulfilment of which results in the decision maker making an unlawful decision cannot be treated as a legitimate expectation. Therefore, the expectation must be within the powers of the decision-maker for it to be treated as a legitimate expectation case.

[16] [SC FR Application No. 256/2010; SC Minutes of 17th September 2015].

In order to seek redress under the doctrine of legitimate expectation a person should prove he had a legitimate expectation which was based on a promise or an established practice. Thus, the applicability of the said doctrine is based on the facts and circumstances of each case.

In order to succeed in an application made on the grounds of legitimate expectation, the expectation must be legitimate. Mistakes, decisions based on erroneous factual data or illegality cannot be the basis for a legitimate expectation. A similar view was expressed in *Vasana v. Incorporated Council of Legal Education and Others (2004) 1 SLR 154.*"

As an initial observation, this Court notes that none of the above letters are addressed to the Petitioner and that only '**P24**' has been copied to the Petitioner. Thus, there is no representation or holding out made to the Petitioner and these letters are correspondence between Government departments and public authorities. Be that as it may, '**P24**' only requests that steps be initiated to issue the Petitioner a permit provided she is eligible to receive a permit. Thus, it is not an unequivocal statement that a permit would be issued to the Petitioner. '**P17**' too states that steps will be taken after the approval of the 2nd Respondent, is granted in accordance with the relevant procedure. Thus, no assurance has been given that a permit will be issued.

A citizen of this country cannot have an expectation that State land will be given to him or her on a permit, without the State authorities following the due procedure. The Land Development Ordinance contains clear provisions with regard to the procedure that should be followed when allocating State

land among people of this country. While suitable persons are selected through Land Kachcheris that are held by the Divisional Secretaries and recommendations are made by the Divisional Secretary through the Provincial Land Commissioner to the Land Commissioner General, the final decision whether a permit should be granted needs to be taken by the Land Commissioner General. Furthermore, in terms of Article 33(2)(f) of the Constitution, the power "to keep the Public Seal of the Republic, and to make and execute under the Public Seal ... such grants and dispositions of lands and other immovable property vested in the Republic as the President is by law required or empowered to do, and to use the Public Seal for sealing all things whatsoever that shall pass that Seal" shall be with the President.

What is significant however is that in terms of paragraph 18 of List I (Provincial Council List) of the Ninth Schedule to the Constitution, the powers that have been given to a Provincial Council in respect of land are as follows:

> "18. Land.– Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II."

Appendix II states very clearly as follows:

> "State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33(d)[17] and written law governing this matter.

[17] Article 33 has been substituted by Section 5 of the Nineteenth Amendment to the Constitution. Article 33(2)(f) of the present Constitution is similar to the previous Article 33(d).

Subject as aforesaid, land shall be Provincial Council Subject, subject to the following special provisions:

1. State land –

1:3 Alienation or disposition of the State land within a Province to any citizen or to any organisation shall be by the President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter."

In the case of **Solaimuthu Rasu vs. Superintendent, Stafford Estate**[18], the Supreme Court held as follows:

"Appendix II begins with an unequivocal opener -"State Land shall continue to vest in the Republic and may be disposed of, in accordance with Article 33 (d) and written laws governing the matter." This peremptory declaration is a pointer to the fact that State Land belongs to the Republic and not to a Province. The notion of disposition of State Land in accordance with Article 33 (d) and written laws governing the matter establishes beyond doubt that dominium over all "State Land" lies with the Republic and not with the Provincial Councils.

The Supreme Court has thus clarified the power of the Provincial authorities in respect of alienation of State Land and reinforced the position that State Land lies within the legislative competence of the Central Government and not Provincial Councils.

[18] SC Appeal No. 21/13; SC Minutes of 26th September 2013.

When '**P16**' is considered in the light of the above judgment and the provisions of the Constitution, it is clear that the Provincial Land Commissioner does not have the power to approve the alienation of State Land as sought to be done by '**P16**'. Furthermore, to hold that the Land Commissioner General and HE the President are bound by the approval given by the Provincial Land Commissioner would be contrary to law. Thus, this Court is of the view that the Provincial Land Commissioner who issued '**P16**' did not have the power to issue the said letter and therefore, this Court, following the judgment of the Supreme Court in **Nimalsiri's case** concludes that an illegality cannot be the basis for a legitimate expectation.

There are three other matters that this Court must advert to. The Petitioner admits that she entered into the said land in an unauthorized manner by 'purchasing' the rights conferred on Juwanis Appuhamy in terms of the permit issued to him. Such a course of action is clearly contrary to the provisions of the Land Development Ordinance. Any allocation of the said land to the Petitioner must be in accordance with the provisions of the said Ordinance. This Court reiterates that a public servant cannot act outside the law and illegally hold out to any citizen that a State land will be given to such person. Therefore, any representation made to the Petitioner outside the law is clearly illegal and cannot be recognized and given effect to by this Court.

Section 9 of the State Lands (Recovery of Possession) Act does not recognize the right to occupy State Land other than through a valid permit or a written authority of the State issued in accordance with any written law. This Court notes that the said three letters relied upon by the Petitioner does not fall into

either of the two categories set out in Section 9. Therefore, the action taken by the 1st Respondent to issue the quit notices '**P26**' and '**P27**' is not illegal.

This Court must observe that even where an applicant possessed a permit, the Supreme Court has held[19] that such person is only entitled to a hearing prior to the said permit being withdrawn. The Petitioner in this application was in unauthorized possession of State land, she never held a permit and no promise recognized by law has been made to her. Therefore, applying the said decision of the Supreme Court, the Petitioner would not even be entitled to a hearing, let alone the issuance of a permit in respect of Lot No. 782.

In the above circumstances, this Court is of the view that the Petitioner has failed to establish that she has an expectation that is legitimate, which may be enforced and upheld by law. This Court accordingly rejects the Petitioner's argument that the three letters '**P16**', '**P17**' and '**P24**' gave rise to a legitimate expectation that a permit will be issued in respect of Lot No. 782. The application of the Petitioner for a Writ of Certiorari to quash '**P27**' is devoid of any legal basis and is therefore refused by this Court.

The second issue that this Court is required to consider is whether a Writ of Mandamus could be issued to compel the 1st – 3rd Respondents to issue a permit to the Petitioner in respect of Lot No. 782. In view of the findings of this Court that the decision to issue a quit notice is not liable to be quashed by a Writ of Certiorari, the necessity to consider a Writ of Mandamus does not arise. However, for purposes of completeness, this Court would consider

[19] See Sundarkaran v Bharathi and others 1989 (1) Sri LR 46.

whether a Writ of Mandamus can be issued to give effect to the legitimate expectation that the Petitioner claims to have.

It has been consistently held by our Courts[20] that the foundation of Mandamus is the existence of a legal right to a statutory duty. Where the applicant has sufficient legal interest and the officials have a public duty but have failed to perform such duty, a Writ of Mandamus will lie to secure the performance of the said duty. However, a Writ of Mandamus is not intended to create a right but rather to restore a party who has been denied enjoyment of the said right.

This Court has already held that State land can only be alienated in accordance with the law and that the Petitioner has not demonstrated her entitlement to receive a permit in respect of Lot No. 782. Furthermore, there is no public legal duty on the part of the Respondents to grant a permit to the Petitioner outside the law. In the above circumstances, this Court does not see a legal basis to issue the Writ of Mandamus prayed for.

The application of the Petitioner is accordingly dismissed, without costs.

Judge of the Court of Appeal

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[20] See Perera v NDHA [2001 (3) Sri LR 50]; Wannigama v Incorporated Council of Legal Education and Others [2007 (2) Sri LR 281]; Vasana v Incorporated Council of Legal Education and Others, [2004 (1) Sri LR 154]; Weligama Mutipurpose Co-operative Society Limited v Chandradasa Daluwatte [1984 (1) Sri LR 195]; Wickremasinghe v Ceylon Electricity Board [1997 (2) Sri LR 377] Credit Information Bureau of Sri Lanka V Messrs Jafferjee & Jafferjee (Pvt) Ltd [2005 (1) Sri L R 89].