

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

In the matter of an Application for Orders in the nature of Writ of Certiorari and Writ of Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No. 292/2017**

Udagedara Waththe Ayonis,  
Gabadagama, Ambagasdowa.

**PETITIONER**

Vs.

Jayasinghe Mudiyanseelage Chamila  
Indika Jayasinghe,  
Divisional Secretary,  
Uva Paranagama, Lunuwatta.

**RESPONDENT**

**Before:** Arjuna Obeyesekere, J

**Counsel:** Palitha Kumarasinghe, P.C., with Viraj Bandaranayake for the  
Petitioner

Ms. Chaya Sri Nammuni, Senior State Counsel for the Respondent

**Written Submissions:** Tendered on behalf of the Petitioner on 29<sup>th</sup> October  
2018.

Tendered on behalf of the Respondent on 22<sup>nd</sup>  
January 2019.

**Decided on:** 15<sup>th</sup> November 2019

When this application was taken up for argument on 10<sup>th</sup> September 2018, the learned President's Counsel for the Petitioner and the learned Senior State Counsel for the Respondent moved that this Court pronounce its judgment on the written submissions that would be tendered. This Court was thereafter informed that an amicable resolution of the underlying dispute was being pursued but on 21<sup>st</sup> June 2019, the learned Counsel moved that this Court proceed to deliver its judgment.

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

- a) A Writ of Certiorari to quash the decision to issue the quit notice annexed to the petition marked 'G' under Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended;<sup>1</sup>
- b) A Writ of Prohibition restraining the Respondent from proceeding with Magistrate's Court Case No. 33876/17.<sup>2</sup>

The issue that arises in this application for the determination of this Court is twofold - the first is whether the Respondent acted reasonably when he formed his opinion that the land which is the subject matter of the said quit notice is State land; the second is whether the Respondent acted *ultra vires* his powers when he issued the said quit notice marked 'G'.

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<sup>1</sup> Paragraph (b) of the prayer to the petition.

<sup>2</sup> Paragraph (e) of the prayer to the petition.

Prior to considering the facts of this application, it would be useful for this Court to lay down the legal provisions that are applicable to a determination of the said issue.

The State Lands (Recovery of Possession) Act (the 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.<sup>3</sup> The purpose of the Act has been discussed in the case of Namunukula Plantations PLC v. Nimal Punchihewa<sup>4</sup>, where this Court has held as follows:

*“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 above purpose of the Act. The starting point of the said regime is Section 3(1) of the Act which reads as follows:

*“Where a competent authority is of the opinion:*

*(a) that any land is State land; and*

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<sup>3</sup> 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”.

<sup>4</sup> CA (PHC) APN 29/2016; CA Minutes of 9<sup>th</sup> July 2018; Janak De Silva, J.

(b) *that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice."*

Section 18 of the Act defines 'State Land' and 'Unauthorised possession or occupation' as follows:

" 'State land' means land to which **the State is lawfully entitled** or which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto,....

'Unauthorized 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."*

It would be important to note at this stage that prior to initiating the procedure laid down in the Act, the Competent Authority must form the opinion that the relevant land is State land. In other words, the Competent

Authority must form the opinion that the **State is lawfully entitled** to the land in respect of which the quit notice is to be issued. The fact that the Competent Authority only needs to form an opinion in this regard, and is not required to carry out an investigation of the title of the person who is to be ejected, or give such person a hearing, in the event such person is claiming a title adverse to the State, is very clearly set out in Section 3(1A) of the Act, which reads as follows:

*“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 defences that could be taken up by a person against whom an application has been filed for ejectment have been set out in Section 9(1) 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."*

Section 9(2) of the Act, which reads as follows, very clearly circumscribes the jurisdiction of the Magistrate's Court:

*"It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5."*

The provisions of Section 9 of the Act have been considered in several judgments of the Supreme Court and this Court.<sup>5</sup> In Nirmal Paper Converters (Pvt) Limited vs Sri Lanka Ports Authority<sup>6</sup> 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."* (emphasis added)

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<sup>5</sup> See *Herath vs Morgan Engineering (Pvt) Limited* [(2013) 1 Sri LR 222; Judgment of Sripavan J (as he then was)]; *Muhandiram vs Chairman, No. 111, Janatha Estates Development Board* [1992 1 Sri LR 110].

<sup>6</sup> 1993 1 Sri LR 219.

The above position has been confirmed in Aravindakumar vs Alwis and others<sup>7</sup> 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 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 therefore makes it clear that if in the opinion of the Competent Authority, the State is lawfully entitled to the land in question, and if a person is in unauthorised possession or occupation of such land, the Competent Authority is entitled to issue a quit notice seeking to eject from the said land the person in illegal occupation thereof, and if the said quit notice is not complied with, to make an application in terms of Section 5 of the Act to eject such person.

It is reiterated that the starting point for the entire process is the opinion of the Competent Authority that the land is State land. In view of the strict regime outlined above, and the fact that any person on whom a quit notice has been served has limited defences, it is important that the opinion that is formed by the Competent Authority be based on material that establishes, at least prima facie, that the State is lawfully entitled to the said land.

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<sup>7</sup>2007 1 Sri LR 316.

Having laid out the applicable legal provisions, this Court would briefly examine the facts of this application.

The Petitioner states that the land referred to as Lots 25 and 26 of Final Village Plan No. 445 annexed to the petition marked 'A' containing an extent of 6A 2R 3.7P was owned by Dr. W.L.P.Dasanayake. The Respondent does not dispute the said position that the land referred to in 'A' was a private land, and the fact that it was owned by Dr. Dasanayake.

The Petitioner states that pursuant to a request made by the Government Agent Badulla District, parts of the said Lots 25 and 26 have been sub-divided into two lots, namely Lot Nos. 220<sup>8</sup> and 221 by Supplement Plan No. 2 to FVP 445, which has been annexed to the petition marked 'B'. This Court has examined 'B' which has been signed on behalf of the Surveyor General on 23<sup>rd</sup> January 1965, and observes that in terms of the Tenement List annexed thereto marked 'B1', the requisition for the survey has been made by the Government Agent, Badulla District on 13<sup>th</sup> July 1962, for the purpose of acquiring the said land for the State.

It is not in dispute that the Petitioner is in occupation of a part of the land depicted in Lot No. 220, containing in extent approximately 40 perches and that several other families are in occupation of the rest of the land depicted in Lot Nos. 220 and 221. The Petitioner claims further that he has been in occupation of the said land for a period of 60 years and that he has cultivated the said land and used it as an agricultural land. The Petitioner has produced three receipts by which he had paid the acreage tax for the years 1986, 2011

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<sup>8</sup> The extent of Lot No. 220 is 5A 2R 7P.



and 2016. The Respondent however disputes the above claim that the land has been developed and takes up the position that the quit notice was issued as the Petitioner had failed to cultivate and/or develop the said land.

This Court observes that even though the Petitioner claims that he is in exclusive possession of the said land, the Petitioner has not divulged the circumstances under which he came into possession of the said land nor has the Petitioner produced any title deeds to prove his ownership to the land, except to claim that he has acquired prescriptive title to the said land by his long occupation thereof. This Court must state that the determination of the aforementioned issue before this Court does not require this Court to consider the title of the Petitioner and that, in any event, in an application of this nature it is not the function of this Court to examine the title of the Petitioner.

It was the submission of the learned President's Counsel for the Petitioner that the land occupied by the Petitioner is private land and that even though the said land was identified for acquisition by the State in 1962, steps have not been taken to acquire the said land in terms of the Land Acquisition Act and therefore the said land remains private land. In support of his position that the land is private land, the learned President's Counsel relied on the aforementioned Tenement list relating to Supplement Plan No. 2 of FVP No. 445 marked 'B1', which contains an endorsement under the 'Remarks' column that the said land is "Claimed by Dr. W.L.G.Dasanayake" and is "**to be acquired.**" On this basis, the learned President's Counsel for the Petitioner submitted that the land that he is occupying is not State land and therefore, the issuance of the quit notice 'G' is *ultra vires* the powers conferred on the Respondent, is illegal as well as unreasonable and irrational. This is the basis on

which the Petitioner is seeking the aforementioned Writs of Certiorari and Prohibition.

The position of the Respondent is that the acquisition proceedings that were initiated in 1962 with the requisition for a survey did continue and that the said land had been acquired by the State, thus making it land to which the State is lawfully entitled. The Respondent however has not produced a single document to establish that the acquisition did in fact take place and has stated that the official documents are not available with the Respondent.<sup>9</sup> The Respondent has however stated in his Statement of Objections that copies of all documents are available with the Survey Department and that inquiries have been made to obtain proof that the acquisition proceedings reached a finality and that the said land is a State land. However, no documents other than what was filed with the Statement of Objections have been tendered to this Court.

The Respondent has submitted that in January 2014, the Petitioner submitted an application to register as a person entitled to State land. The relevant parts of the said application, which has been produced by the Respondent marked 'R1' are re-produced below:

ශ්‍රී ලංකා සමාජවාදී ජනරජය සතු ඉඩම කොටසක් ලබා ගැනීම සඳහා  
සුදුසුකම් ඇති තැනැත්තන් ලියාපදිංචි කිරීම සඳහා ඉල්ලුම් පත්‍රය

I. කොටස:

- i. ඉල්ලුම්කරුගේ සම්පූර්ණ නම: උඩගෙදරවත්තේ අයෝතිස්
- ii. ස්ථිර ලිපිනය: ගබඩාගම
- iii. හැඳුනුම්පත් අංකය: 350461116 V

<sup>9</sup> Vide letter dated 15<sup>th</sup> August 2017 sent by the Respondent, annexed to the petition marked 'L'.

iv. උපන් දිනය: 1935.02.15

v. විවාහක/අවිවාහක බව: විවාහකයි

vi. විවාහක නම් දරුවන් ගණන: විවාහක දරුවන් ගණන - 05  
අවිවාහක දරුවන් ගණන - 02

vii. රැකියාව: ගොවිතැන

viii. ආදායම: රු 5000/- (මාසික)

## II. කොටස:

- i. ඔබ දැනට පදිංචි නිවස හා ඉඩම ඔබට අයිතිද? ඔව්/නැත: ඔව්
- ii. එම නිවස හා ඉඩම ඔබට අයිති නැතිනම් අයිතිකරුගේ නම හා ලිපිනය:  
රජයේ ඉඩමක් වුවද එහි ඔප්පුව ලැබී නොමැත
- iii. එම අයට ඇති ඔබගේ සෞභික්ෂ්වය කුමක්ද? (left blank)
- iv. එම නිවස හා ඉඩම අයිති නම් එහි ප්‍රමාණය කොපමණද? අක්: - රැඩ්: 1 පර්:  
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- v. ඔබගේ ඉඩම පිහිටි ඉඩම පහ රජයට අයත් අනවසර ඉඩමක්ද? ඔව්/නැත:  
(left blank)

## III. කොටස:

1. ඉහත සඳහන් ඉඩම් වලට අමතරව ඔබට පනර්පයෙන් ලැබුණු සහ සිත්තක්කර  
ඉඩම් කොපමණ තිබේද?  
1:1 පනර්පය: අක්: - රැඩ්: - පර්: -  
2:2 සිත්තක්කර: අක්: - රැඩ් 1 පර් -  
  
ඔබට උරුමවීමට කොපමණ ඉඩම් තිබේද? අක්: - රැඩ්: - පර්: -

It is the position of the Respondent that the Petitioner, by making the said application to obtain a permit for the said land, has admitted that the land occupied by him is State land and that the Petitioner is *estopped* from denying that he is in occupation of State land. This Court must state that 'R1' is not relevant in determining whether the said land is State land, for the reason that question (v) of Part II has not been answered.

The circumstances in which the Petitioner signed 'R1' has been explained by the Petitioner in his counter affidavit as follows:

*" I handed over the application marked 'R1' ...when some of the Government officers working under (the) Respondent visited the village and distributed the forms to fill and hand over the same and they informed me that our prescriptive title is not acceptable even to obtain a bank loan and misled us that they can convey a better crown title to us.'*

The said explanation is in consonance with the fact that no answer has been offered to question (v) of Part II of 'R1'.

The Respondent has produced marked 'R2', a list of persons selected to receive State land, which contains the name of the Petitioner. This document does not have any evidentiary value as it has been prepared on the assumption that the said land is State land.

The next document that the Respondent has produced is a field inspection report relating to the Petitioner which had been prepared in February 2017, prior to the holding of a Land Kachcheri, marked 'R4'. Item 31 thereof reads as follows:

*"ඉඩම් අනවසරයෙන් අල්ලාගත් දිනය: 1950 වර්ෂයේදී ඉල්ලුම්කරු විසින් අල්ලාගන්නා ලද බවයි."*

It is the contention of the learned Senior State Counsel that the above three documents establish that the land that is occupied by the Petitioner is in fact State land. This Court is of the view that the documents marked 'R1', 'R2' and 'R4' are insufficient to form a reasonable opinion that the State is lawfully entitled to the land occupied by the Petitioner, as there is simply no material

to show that the land was ever owned or acquired by the State. The said material only indicates the Petitioner's intention to obtain clear title. It is observed that 'R4' is inconsistent with the 1962 acquisition proceedings as it seems to imply that the Petitioner was in occupation even prior to 1962. This is simply not material that can be relied on to form a reasonable opinion.

This brings this Court back to the issue that arises for determination – i.e. did the Respondent act illegally or unreasonably or irrationally when he formed his opinion that the land which is the subject matter of the said quit notice is State land. In considering this question, it would be useful to bear in mind the description given by Lord Diplock in Council of Civil Service Unions vs Minister for the Civil Service to the phrases 'illegality' and irrationality:<sup>10</sup>

*"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."*

*"By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'<sup>11</sup>. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

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<sup>10</sup> 1985 AC 374.

<sup>11</sup> Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223

In Regina v. Hull University Visitor, Ex parte Page Lord Browne-Wilkinson, after considering the aforementioned passage of Lord Diplock, observed as follows:<sup>12</sup>

*" Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle [of judicial review] is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that **the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense reasonably.** If the decision-maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully. "* (emphasis added)

As observed at the outset, the starting point of the steps that are initiated under the Act is Section 3(1), which clearly requires the Competent Authority to form an opinion that the land in respect of which he is going to put in motion the procedures laid down in the Act, is land to which the State is lawfully entitled. When one considers the detailed provisions of the Act, which has been outlined above, and the objective that is sought to be achieved, which is the expeditious recovery of State land from persons who are in unauthorised occupation of such State lands, it is the view of this Court that the Competent Authority is only required to form an opinion that the

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<sup>12</sup> [1993] AC 682 at page 701.

impugned land is land to which the State is lawfully entitled to, and that the possession or occupation is unauthorised.

The strict regime for the expeditious recovery of State land stipulated in the Act only provides a person served with a quit notice, the limited remedies under Section 9, and a person against whom an Order of ejectment has been issued, an opportunity to vindicate his title under Section 12 of the Act. It is the view of this Court that the legislature could not have intended for the Competent Authority's opinion, which can have far reaching consequences on one's proprietary rights, to be baseless. The Competent Authority's opinion must thus be formed on a rational basis. What constitutes a rational basis must be ascertained case by case. In the present application, this Court is of the view that a Surveyor General's Plan confirming that the land acquisition process had been completed, would amply satisfy the test for rationality.<sup>13</sup>

This Court wishes to emphasise, for the avoidance of any doubt that the Competent Authority is not required in terms of the Act to carry out an inquiry of the title of the person who is in unauthorized possession of such land.

This position has been clearly laid down in **Farook v. Gunewardena, Government Agent, Ampara**<sup>14</sup> where it was held as follows:

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<sup>13</sup> See Section 83 of the Evidence Ordinance reads as follows: 'The court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor General or officer acting on his behalf were duly made by his authority and are accurate; but maps, plans, or surveys not so signed must be proved to be accurate.'; Section 21 of the Survey Act No. 17 of 2002 provides as follows: "Any cadastral map, plan, or any other plan or map prepared in accordance with the provisions of this Act or any written law, purported to be signed by the Surveyor General or officer acting on his behalf and offered in evidence in any suit shall be received in evidence, and shall be taken to be prima facie proof of the facts stated therein." Similar provision was found in Section 6 of the Land Surveys Ordinance, which has since been repealed by the Survey Act.

<sup>14</sup> 1980 2 Sri L.R. 243.



*"Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land."*

The fact that the Competent Authority is not required to carry out an investigation of the title of the person in unauthorised possession of such land is fortified by the provisions of Section 12 of the Act, which provides a mechanism for a person against whom an order for ejectment has been made to vindicate his title.<sup>15</sup> In fact, in addition to vindicating title and thereby regaining possession of the land, in terms of Section 13 of the Act, a person could also obtain compensation for any damages sustained by being compelled to deliver up possession.

The principle then is that while no inquiry is needed to form an opinion, there should be a rational basis to form the opinion that the State is lawfully entitled to the land. The rational basis should satisfy the *Wednesbury* test of reasonableness. Thus, a Competent Authority would be acting reasonably if he were acting on the basis of a Surveyor General's plan, even if the occupant is

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<sup>15</sup> Section 12 reads as follows: "Nothing in this Act contained shall preclude any person who has been ejected from a land under the provisions of this Act or any person claiming to be the owner thereof from instituting an action against the State for the vindication of his title thereto within six months from the date of the order of ejectment." See *Jayawardana Mudiyanseelage Sumanawathie vs. Hon. Attorney General and others* for an analysis of the remedies available to a person against whom an order for ejectment has been issued – per Janak De Silva, J. [CA 994/2000(F); CA Minutes of 5<sup>th</sup> September 2019]



claiming prescription. The Competent Authority is not expected to, *and indeed is precluded from*, carrying out an inquiry.

What then is the 'reasonable basis' that the Respondent in this application had to form the opinion that the State is lawfully entitled to the land possessed by the Petitioner? The Respondent does not dispute the Petitioner's argument that the land in issue was a private land. The Petitioner does not dispute the position taken up on behalf of the Respondent that the Government Agent, Badulla District made a request to the Survey Department to carry out a survey of the said land in order to acquire the said land for the State. But beyond this, the Respondent has not produced any material to this Court to establish that the acquisition proceeded to a conclusion, except to state that such material is not available.

If so, the only material that was available to the Respondent to enable him to form an opinion that the State is lawfully entitled to the said land was the said survey plan which only states that the land is to be acquired, which in the view of this Court, is insufficient to form the basis of the opinion as per Section 3. Is the application of the Petitioner to regularize his occupation sufficient to form the basis for such opinion? This Court does not think so, suffice it to state that the said documents would have served to corroborate any independent material that the Respondent may have had. It would in fact be dangerous to permit the Respondent to form an opinion that the land is State land solely on an admission by the Petitioner, as such an admission does not prove that the State has lawful entitlement to the land.

In these circumstances, (a) did the Respondent act within his jurisdiction when he formed the opinion that the State is lawfully entitled to the said land? (b) is the opinion of the Respondent that the said land is State land, reasonable and rationale? (c) is it a decision that a *sensible person who had applied his mind to the question to be decided could have arrived at it*? This Court does not think so.

This Court is of the view that given the far reaching consequences of a quit notice, and the limited defences that are open to a person once ejectment proceedings are filed, the basis for the Competent Authority forming his opinion that the land is State land must be on a reasonable basis as discussed earlier. This Court wishes to reiterate that merely because a person who is ejected or against whom an order for ejectment has been made, has a remedy by way of Section 12 does not absolve the Competent Authority from his obligation to act reasonably and legally, when forming the all important opinion in terms of Section 3. Taking into consideration all of the above facts, this Court is of the view that the Respondent acted outside his powers and illegally as well as unreasonably, when he issued the said quit notice marked 'G'.

The next question that this Court must consider is, given the scheme of the Act, can this Court issue a Writ of Certiorari to quash the decision to issue the quit notice. This question is being raised in view of the judgment of the Supreme Court in **Divisional Secretary, Kalutara and another vs Kalupahana Mestrige Jayatissa**.<sup>16</sup> In that case, the Divisional Secretary of Kalutara filed four separate actions in the Magistrate's Court of Kalutara against the respondent

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<sup>16</sup> SC Appeal Nos. 246, 247, 249 and 250/2014; SC Minutes of 4<sup>th</sup> August 2017.

under the State Lands (Recovery of Possession) Act seeking orders for the eviction of the respondent from the land referred to in the application for ejectment. The learned Magistrate made orders for ejectment as prayed for but the learned Judge of the High Court set aside the said orders of the learned Magistrate. Acting in revision, this Court affirmed the order of the High Court on the basis that the State had failed to produce any documents to prove that the land in question was either vested in the State or the impugned property had been acquired by the State.

On an appeal filed by the Hon. Attorney General, the Supreme Court, having considered the provisions of the Act, held as follows:

*"... the main question that needs to be considered is whether there is a requirement to establish the title of the State to the land, by the Competent Authority, in an application made to have an order for ejectment issued under the provisions of the Act. When one considers the structure of the Act, all what is required is for the Competent Authority to form the opinion that the person is in unauthorised possession or occupation of any State land and the Competent authority can serve "notice to quit" under the Act. In considering the provisions of the Act, his Lordship Justice Abdul Cader stated that "where the competent authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion. [Farook v. Goonewardena Government Agent Amparai.] In the said case his Lordship went on to state that: 'the magistrate cannot call for any evidence from the Competent authority in support of the application under section 5, which means the Magistrate cannot call for any evidence from the competent*

*authority to prove that the land described in the schedule to the application is State land. Therefore, the petitioner did not have an opportunity of raising the question whether the land is a state land or private land before the magistrates’.*<sup>17</sup>

*Thus, it appears the Court of Appeal had fallen into error when it held that the Appellant had failed to prove that the land in question was either vested in the State or acquired by the State.”*

The Supreme Court thereafter went on to answer the questions of law raised by the Hon. Attorney General in the following manner:

- (a) The Court of Appeal erred in law by holding that the Competent Authority is required to prove that the land was vested in the Government or acquired, in terms of Section 9 (2) of the State Lands (Recover of Possession) Act.*
- b) The Court of Appeal misdirected itself in holding that the title of the State is doubtful when the ownership is beyond the scope of a Magisterial inquiry under the provisions of the Act.*
- c) The Court of Appeal erred in law in questioning the opinion formed by the Competent Authority, which is beyond the scope of the Act.*

The above reasoning of the Supreme Court reflects the correct legal position for the factual situation where the Competent Authority, having formed an

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<sup>17</sup> Supra; at page 245.

opinion that a particular land is State land, issues a quit notice, and thereafter files an application for ejectment in the Magistrate's Court. In such a situation, the learned Magistrate cannot question the legality or reasonableness of such opinion, nor can the learned Magistrate consider the title of the person who is sought to be ejected. As stated earlier, the scope of the inquiry before the Magistrate's Court is circumscribed by the provisions of Section 9, so that the learned Magistrate can only inquire from the respondent, as to whether he has a valid permit or written authority of the State granted in accordance with any written law and if so, whether such permit or authority is in force. If the respondent cannot say 'yes' to both, the learned Magistrate does not have any choice, and is required to issue the order for ejectment. This is the strict legal regime put in place by the Act, which has been referred to in **Divisional Secretary, Kalutara and another vs Kalupahana Mestrige Jayatissa**.<sup>18</sup>

The situation that this Court is faced with in this application is however different. The jurisdiction of this Court to consider whether the opinion formed by the Competent Authority is *ultra vires*, illegal, unreasonable or irrational has not been circumscribed by the provisions of the Act. This Court is therefore of the view that when considering the legality and /or the reasonableness of the opinion of the Competent Authority in the course of an application filed under Article 140, this Court can ask the Competent Authority to justify the basis on which the opinion was formed. This Court must state that in doing so, it is not the function of this Court to consider the title of the State, or for that matter the title of the person sought to be ejected, to the said land. That is the function of the District Court under Section 12 of the Act or in an *Actio Res Vindicatio*. This Court will only require the Competent Authority to present the

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<sup>18</sup> Supra.

material on which he formed the opinion that the State is lawfully entitled to the said land, so that this Court can consider whether the Competent Authority has acted legally and/or reasonably.

This Court therefore takes the view that when exercising its jurisdiction in terms of Article 140, it is entitled to consider the reasonableness and the legality of the basis on which the Competent Authority formed his opinion as required by Section 3(1) of the Act. This Court has already concluded that the Respondent acted illegally and unreasonably when he decided to issue the quit notice marked 'G' and is therefore of the view that such decision is liable to be quashed by a Writ of Certiorari. Accordingly, this Court issues a Writ of Certiorari in terms of paragraph (b) of the prayer to the petition quashing the decision to issue the quit notice marked 'G', and a Writ of Prohibition, in terms of paragraph (e) of the prayer to the petition, restraining the Respondent from proceeding with Magistrate's Court, Welimada Case No. 33876/17.

The Respondent shall not be prohibited from taking steps against the Petitioner in terms of the State Lands (Recovery of Possession) Act once it obtains material that is sufficient to form a reasonable opinion that the land occupied by the Petitioner is State land. This Court makes no order with regard to costs.

**Judge of the Court of Appeal**