

**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 Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Jesuwaran Ligananthan  
New Valley Factory Div., Norwood Estate,  
Norwood.

**Petitioner**

**Case No. CA (Writ) 330/2019**

**Vs.**

1. Land Reform Commission  
No. 475, Kaduwela Road, Battaramulla.
2. Sirimewan Dias  
Chairman,  
Land Reform Commission,  
No. 475, Kaduwela Road, Battaramulla.
3. Bogawantalawa Tea Estates PLC  
No. 153, Nawala Road, Colombo 05.
4. J. R. R. Varnakulasooriya  
Manager,  
Norwood Estate, Norwood.

**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

K.V.S. Ganeshrajan with Sriranganathan Ragul and K. Nasikethan for the Petitioner

Thisath Wijegunawardena P.C. with Ajith Dayaratne for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

**Supported on:** 20.11.2019 and 10.12.2019

**Decided on:** 20.12.2019

**Janak De Silva J.**

The Petitioner is seeking a writ of certiorari to quash the quit notice dated 26.03.2019 marked "P5" issued by the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (Act). The land forming the subject matter is identified therein as Wanarajah Watta – Glencairn portion (New Valley portion) containing A.1 R. 2 P. 0 in extent.

The Petitioner seeks to assail "P5" on a two-fold basis. Firstly, it is submitted that the 1<sup>st</sup> Respondent is not the owner of the said land which is a portion of Norwood Estate which is being managed by the 3<sup>rd</sup> Respondent under and by virtue of lease agreement bearing no. 162 dated 14.10.1993. Secondly, it is submitted that the land occupied by the Petitioner and the land claimed in the quit notice are two different lands.

## Ownership

The Petitioner claims that the land in issue was vested in the Janatha Estates Development Board (JEDB) by the 1<sup>st</sup> Respondent in terms of an order made by the Minister of Agriculture Development and Research in terms of sections 42H read with section 27A of the Land Reform Law No. 1 of 1972 as amended (Law) and as such P5 is ultra vires the powers of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents.

The relevant gazette is marked as 1003 annexed to P6. Therein items 15 and 20 describes New Valley (part of Wanaraja Estate) containing in extent 144.11 hectares and Wanarajah Estate containing in extent 544.62 hectares respectively. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents disputed this position and drew attention of Court to document marked 1002 annexed to P6 which is the declaration under section 42C of the Law pertaining to Wanarajah Estate which contains A. 1757 R.1 P. 39 in extent. Thus, it was submitted that the total extent of Wanaraja Estate was not vested in the JEDB and that there still exists a portion of Wanaraja Estate vested in the 1<sup>st</sup> Respondent.

The issue then is whether the land forming the subject matter of the application made under the Act is land vested in the 1<sup>st</sup> Respondent or in the JEDB. The parties are taking contrary positions and it is thus a disputed question of fact.

Our courts have consistently held that it will not exercise writ jurisdiction where the facts are in dispute [*Thajudeen v. Sri Lanka Tea Board and another* (1981) 2 Sri.L.R. 471]. The Supreme Court has in *Dr. Puvanendran and another v. Premasiri and two others* [(2009) 2 Sri.L.R. 107, 2009 BLR 65] held that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.

The rationale is that where the major facts are in dispute and the legal result of the facts is subject to controversy it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct.

In fact, in *Wijenayake and others v. Minister of Public Administration* [(2011) 2 Sri.L.R. 247] this Court held that the material furnished suggest that a title/boundary dispute is agitated before the Kurunegala District Court and as such finality (subject to appeal) of title and boundary of the land in dispute lies in the action filed in the District Court of Kurunegala and that these are all disputed facts which cannot be decided in a writ court.

#### **Identity of Land**

The Petitioner further claims that the land occupied by the Petitioner and the land claimed in the quit notice are two different lands and as such the quit notice "P5" is bad in law.

If that be the case then there is no danger of the Petitioner's rights been affected by the quit notice "P5" since as S.N. Silva J. (as he was then) held in C.A. 1299/87, C.A.M. 14.06.1995, if the case of the party summoned is that he is in occupation of another land, then he would not be ejected from the land he is in occupation upon a writ that will be issued in the Magistrate's Court.

For all the foregoing reasons, the Petitioner has failed to make out a prima facie case for the issue of notice. Notice is refused and application dismissed without costs.

  
Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

  
Judge of the Court of Appeal