

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

1. Junaideen Mohamed Iqbal,  
No. 359,  
D. S. Senanayake Veediya,  
Kandy.
  2. Kalamegam Rajesweri,  
No. 412, Balagolla,  
Kengalla.
- Petitioners

**CASE NO: CA/WRIT/328/2015**

Vs.

1. The Divisional Secretary,  
Kundasale Divisional Secretariat,  
Manikhinna.
2. Mahaweli Authority of Sri Lanka,  
No. 500, T. B. Jayah Mawatha,  
Colombo 10.
- 3A. Anura Dissanayake,  
Director General,  
Mahaweli Authority of Sri Lanka,  
No. 500, T. B. Jayah Mawatha,  
Colombo 10.

3B. D. M. S. Dissanayake,  
Director General Mahaweli  
Authority of Sri Lanka,  
No. 500, T. B. Jayah Mawatha,  
Colombo 10.

4. N. Rupasinghe,  
Secretary to the Ministry of  
Mahaweli Development and  
Environment,  
Ministry of Mahaweli  
Development and Environment,  
No. 500, T. B. Jayah Mawatha,  
Colombo 10.

4A. Anura Dissanayake  
Secretary to the Ministry of  
Mahaweli Development and  
Environment,  
Ministry of Mahaweli  
Development and Environment,  
No. 500, T. B. Jayah Mawatha,  
Colombo 10.

Respondents

Before:	Mahinda Samayawardhena, J.
Counsel:	Faisz Musthapha, P.C., with Faisza Markar for the Petitioners. Vikum De Abrew, S.D.S.G for the Respondents.
Argued on:	17.01.2020
Decided on:	19.02.2020

Mahinda Samayawardhena, J.

The immediate reason for the two Petitioners to file this writ application on 10.08.2015 was the serving of the Quit Notice marked P1 on the 1<sup>st</sup> Petitioner by the 1<sup>st</sup> Respondent Divisional Secretary issued under section 3 of the State Lands (Recovery of Possession) Act, No.7 of 1979, as amended, whereby the 1<sup>st</sup> Petitioner was directed to vacate the land described in the Quit Notice on or before 07.08.2014. As the 1<sup>st</sup> Respondent failed to vacate the said land, proceedings had been instituted in the Magistrate's Court under section 5 of the said Act and an eviction order was made by the Magistrate's Court on 13.08.2015, which is the day on which this application was supported for notice before this Court. That is, when this application was supported, the eviction order had already been made, and this may be the reason the interim relief sought in the petition staying the Magistrate's Court proceedings was not sought.

To this extent, the relief sought by the Petitioners to quash the said Notice to Quit by way of a writ of certiorari is no more a live issue.

In addition to a writ of certiorari, the Petitioners in the prayer to the petition sought a writ of mandamus compelling the 2<sup>nd</sup>-4<sup>th</sup> Respondents—the Mahaweli Authority—to grant the 1<sup>st</sup> or the 2<sup>nd</sup> Petitioner a long-term lease of the land.

The Mahaweli Authority in their statement of objections have taken up the strong position that the land described in the Quit Notice is not under the control of the Mahaweli Authority to execute a long-term lease in favour of the Petitioners. Learned

President's Counsel for the Petitioners, at the argument, informed Court that he does not pursue that relief, i.e., mandamus is not sought.

Against this background, learned Senior Deputy Solicitor General for the Respondents moves to dismiss the application of the Petitioners *in limine* on the ground of futility. Learned President's Counsel for the Petitioners resists that application and urges that the matter be disposed of on merits.

In the facts and circumstances of this case, as the Petitioners are not entitled to succeed on merits, as I will explain in a moment, I will abstain from making a ruling on that important question of law—i.e. dismissal of the application *in limine* on the ground of futility—and proceed to decide the matter on merits.

The entire case of the Petitioners is predicated on the concept of “Legitimate Expectation”

What is “Legitimate Expectation”? In simple language, where a public authority represents that it will or will not do something, a person who has reasonably relied on that representation should be entitled to enforce it, if the public authority later attempts to rescind from the representation already made. This doctrine is based on the principles of natural justice and fairness, and seeks to prevent public authorities from abusing power.<sup>1</sup>

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<sup>1</sup> Vide *Perera v. National Police Commission* [2007] BLR 14, *Perera v. Building Materials Corporation Ltd* [2007] BLR 59, *Kurukulasooriya v. Edirisinghe* [2012] BLR 66, *Ariyaratne v. Illangakoon*, SC FR Application No. 444/2012, SCM of 30.07.2019.

The Petitioners' story, in my view, is not rational and is not based on accepted or acceptable facts but on conjectures and hypotheses.

No legitimate expectation which could form the basis for a prerogative writ could have been had by the Petitioners on the facts elicited by them in the petition.

There is no nexus between the Petitioners and the Mahaweli Authority for the former to have such expectation arising from what the latter is alleged to have represented.

Let me unfold the case of the Petitioners as set out by them in the petition.

By virtue of the Crown Grant marked P2(a) dated 16.02.1970, a land in extent of 20 Acres 1 Rood and 15 Perches, described in the schedule thereto, was conveyed to a Company known as Kandy Textile Industries Limited, which is not a party to this application. What has been conveyed by the Crown Grant is admittedly a different portion of land and has nothing to do with the land described in the Quit Notice.

Parts of the said land belonging to the said Company, according to the Petitioners, had subsequently been flooded and permanently submerged by an overflow of the Mahaweli river and/or been earmarked for acquisition by the Mahaweli Authority. This the Petitioners state mainly based on P2(b) dated 18.12.1981.

P2(b) is the principal document of the Petitioners' case. Based on P2(b), the Petitioners state that the Mahaweli Authority agreed to give the said Company an alternative plot of land

behind the then existing site of the Company, as constituting “part of compensation for the lands which are submerged”, which includes the land described in the Quit Notice.

There is no acceptable evidence to suggest that the land described in the Quit Notice formed part of the said alternative plot of land promised to the Company. Nor is there evidence that the Company was placed in possession of such plot of land by the Mahaweli Authority or that the Company developed such plot of land.

The Company went into liquidation and the District Court made an Order winding up the Company under the provisions of the Companies Act in the year 2000, as seen from P2(c).

Then the Petitioners state that the liquidators sold the aforesaid submerged portion of the land described in the Crown Grant to four people, including the late husband of the 2<sup>nd</sup> Petitioner, for a sum as high as Rs. 13.5 million in 2005 by deed marked P2(f).

This deed is also a key document to the Petitioners’ case. The contents of this deed are utterly confusing to me. It speaks of various transactions among the parties and refers to several Plans, sub-divisions etc. I cannot understand how and why a liquidator who sells the assets of the Company would want to get involved in the internal affairs of the parties, such as subdividing land among the parties. The schedule of the deed refers to Plan No.1483 dated 20.10.1993, which is different from the Plan referred to in the Crown Grant marked P2(a). No such new Plan has been tendered to the Court to understand the nexus.

According to the petition, the submerged portion is permanently submerged and earmarked for acquisition. I cannot believe a permanently submerged land being bought for a sum of Rs. 13.5 million. For what?

There is no mention of submersion in the deed. There is no mention of any promise by the Mahaweli Authority. There is no mention of legitimate expectation of accrual of future rights. The said deed is an outright transfer of the land described in the schedule to the deed. Therefore, there is no room for argument that the Company purchased the land with the expectation of receiving a totally different land not described or referred to in the deed.

On the other hand, if part of the land was permanently submerged and the acquisition and compensation process was set in motion, I cannot understand how the liquidators could sell the submerged land as belonging to the Company under liquidation.

The Petitioners tendered the advertisement marked P2(d) published by the liquidators for the sale of the land. According to the said advertisement the land sold was not submerged land but valuable land with permanent buildings.

Then the Petitioners state that on the strength of the deed marked P2(f), the transferees of that deed came into possession of the alternative land which included the portion described in the Quit Notice. As I have already stated, I fail to understand how the transferees of the deed can claim another land on the strength of the said deed.

Thereafter, according to the Petitioners, the late husband of the 2<sup>nd</sup> Petitioner entered into an Agreement marked P2(g) dated 17.02.2007 with the 1<sup>st</sup> Petitioner to sell a plot of land in extent of 2 Acres and 0.94 perches. The Petitioners in paragraph 5(n) of the petition say that “The land described in the said Agreement dated 17.02.2007 is the same land described in the schedule to the impugned Quit Notice P1.”

There is no proof to say the land described in the Agreement P2(g) and the Quit Notice is the same, and, in fact, it cannot be, for the simple reason that the land described in the Quit Notice is 30 Perches and the land described in the said Agreement P2(g) is 2 Acres and 0.94 Perches. Also, the land described in the schedule to the deed P2(f) is the land depicted in Plan No. 1483 dated 20.10.1993, and the land described in the schedule to the Agreement P2(g) is the land depicted in a different Plan–No. 1296 dated 15.06.2006—which is part of Plan No. 5076 dated 21.03.2000. It relevant to note that in the Agreement P2(g), there is no mention of the Deed of Transfer above referred to marked P2(f) or the Crown Grant marked P2(a).

The 1<sup>st</sup> Petitioner had entered into possession of the land described in the Quit Notice on the strength of the said Agreement P2(g).

The 1<sup>st</sup> Petitioner states that he entered into possession of the land on the legitimate expectation that the late husband of the 2<sup>nd</sup> Petitioner would convey all rights to the land described in the Quit Notice to the 1<sup>st</sup> Petitioner after he (the husband of the 2<sup>nd</sup> Petitioner) realised his legitimate expectation of obtaining a long term lease of the same in his favour from the liquidators of the aforementioned Company, who in turn had an entitlement to



such long term lease being executed in its favour by the Mahaweli Authority, as held out by the Mahaweli Authority.

This is in my view an unusual extension of the concept of legitimate expectation. Can legitimate expectation pass to a number of people over a period of time? Does it pass with the land arguably like praedial servitudes? These are questions which can be left open to be decided in a future case.

In the facts and circumstances of this case, I do not need to go so far. The 1<sup>st</sup> Petitioner on whom Notice to Quit has been served, which he seeks to quash by certiorari in these proceedings, has not established that he had grounds for legitimate expectation that the Mahaweli Authority would convey the land in question to the liquidators of the Company and the liquidators would convey the land to the late husband of the 2<sup>nd</sup> Petitioner and the said husband would thereafter convey the land to him. No nexus acceptable to this Court has been shown. The Agreement which the Petitioner relies on to make a claim on legitimate expectation to the land described in the Quit Notice has nothing to do with the land in the Crown Grant which is said to have been submerged.

Application dismissed with costs.

Judge of the Court of Appeal