

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

In the matter of an Application for a mandate in the nature of Writ *Certiorari* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Chandra P. Withana,
No. 04,
Harischandra Mawatha,
Anuradupura.

PETITIONER

Court of Appeal Case No:
CA/WRIT/505/24

Vs.

1. Divisional Secretary,
Nuwaragam Palatha East,
Anuradapura.
2. District Secretary,
Anuradhapura.
3. Provisional Land Commissioner,
Provincial Land Commissioner's office,
Provincial Council Building,
Anuradhapura.
4. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: S.U.B. Karalliyadde, J
Mayadunne Corea, J

Counsel: Tharanga Edirisinghe instructed by Nelusha Dheerasekara for the
Petitioner,
Tashya Gajanayake, SC for the Respondents.

Supported on: 12.09.2024

Decided on: 30.10.2024

Mayadunne Corea J

The Petitioner has sought the following, among other relief in this Application.

- b) *“Grant and issue a mandate in the nature of a writ of Certiorari quashing the decision/s of anyone or more of the Respondents taken under and in terms of the letter marked X12 to evict the Petitioner from the said premises and/or recover the possession of the said premises;*
- c) *Grant and issue an appropriate interim order restraining anyone or more of the Respondents from taking and/or implementing any decisions taken as per the said letter marked X12, pending and until the final determination of this application;*
- d) *issue an appropriate order directing the 3rd Respondent to proceed with the recommendations made by the chief minister of north central province as per the letter marked X3 and advice the President to grant premises No. 04 Harischandra Mawatha, Anuradapura to the Petitioner.”*

The facts of the Petitioner’s case briefly are as follows;

The Petitioner submits that she is the owner of premises No. 04, Harishchandra Mawatha, Anuradhapura by virtue of letters written in 1989 and 1992 by the then Chief Minister of the North Central Province. It is further submitted that the Petitioner has obtained electricity and water for the said premises. The Petitioner had received a quit notice dated 17.01.2023 asking her to vacate the said premises.

Before the above, the Petitioner had been served with a notice to vacate the house situated on the premises and due to the Petitioner's failure to hand over the possession action has been instituted in the Magistrate's Court of Anuradhapura and the said case is currently in appeal before the Court of Appeal bearing Case No. CA/(PHC) 18/ 2021.

The Petitioner, further submits that she had worked as an administrative officer attached to the Provincial Department of Social Services North Central Province until her retirement in 2018.

The Petitioner's case

It is the contention of the Petitioner that despite her being in possession of the letters sent by the then Chief Minister of the North Central Province whereby she claims title to the *corpus*, the 1st Respondent's impugned decision to issue a quit notice is arbitrary, irrational, unreasonable, discriminatory, unlawful and *ultra vires*. Hence, this Writ Application.

The Respondents objections

The learned State Counsel appearing for the Respondents objecting to notices being issued contended that,

- The Petitioner has no permit to occupy the premises in question thus making her an illegal occupant.
- The Petitioner has not come with clean hands.
- Delay and laches.

This Court will consider the Petitioner's case with the objections raised.

The parties are not at variance on the following facts.

- The Petitioner is in occupation of the premises subject to the quit notice.
- The 1st Respondent had sent a quit notice marked as X12.

As per the above admission, it's established that the Petitioner is in possession of the land depicted in the quit notice. The Petitioner's position is that she is in possession of the land as she has obtained the title to the said land. To establish her title, she relies on documents marked as X2 and X3. This Court observes that she has requested the then Chief Minister on sympathetic grounds to release the *corpus* depicted in the quit notice by her letter marked as X1. The Document marked as X2 is in response to the said request.

The Petitioner's main contention in impugning the quit notice marked as X12 is that the said notice is bad in law as she is the owner of the premises. The said contention is summed up in paragraph 19 of the Petition whereby it is stated,

"in the circumstances the Petitioner states that the said impugned decision of the Respondents is capricious, vexatious and prejudicial to the rights of the Petitioner as the owner of the premises No. 04, Harischandra Mawatha, Anuradapura."

Failure to follow the alternative remedy

Hence, the Petitioner's first argument in impugning X12 is based on the fact that she is the owner of the premises and therefore, she cannot be evicted by a quit notice. It is also pertinent to note that this contention is based on the premise the Petitioner obtains title by the letters marked as X2 and X3 issued by the then Chief Minister. This Court will address this subsequently. However, it is also observed that Petitioner's argument that the notice marked as X12 is bad in law on the ground that she is the owner, cannot be sustained in view of Section 12 of the State Lands (Recovery of Possession) Act. The said Section allows for an aggrieved party to file a vindicatory action for wrongful eviction. There is no evidence to demonstrate that the Petitioner had taken any steps to peruse the remedy prescribed by the Statute itself before invoking the Writ jurisdiction of this Court. Therefore, this Court finds the Petitioner has failed to exercise the alternate remedy provided by the statute.

Is the *corpus* State land?

As per the submissions of the Counsel, the first question the Petitioner wants this Court to address is whether the *corpus* is State land. This is a matter that has to be decided through evidence and the forum to do so is not the Writ Court. However, as per the documents submitted and the submissions made by the Petitioner, this Court observes that the contention of the Petitioner is that she owns premises by virtue of X2 and X3. Let me now consider the said two documents. X2 is a document dated 14.01.1992 and is a letter addressed to the Provincial Land Commissioner by the then Chief Minister whereby he requested the possession of the premises to be transferred to the Petitioner. In the second letter dated 06.04.1992, the Chief Minister of the North Central Province once again made a request to the Provincial Land Commissioner to transfer the title to the *corpus* to the Petitioner. The learned State Counsel appearing for the Respondents objected to both letters and challenged the authenticity of the said two documents, thus, making the contents of the said two documents a disputed fact. It was the contention of the learned State Counsel that no copies of the said documents are available in the main file and also the said letters are not genuine.

At the submission stage upon inquiry by this Court, both parties agreed that in order for the Chief Minister to send the said two letters the premises should belong to the State. This is further addressed by paragraph 20 of the Petition and prayer (d) of the same. As for prayer (d) to be granted the ownership of the land has to be vested with the State. Accordingly, by her own pleadings and by the relief prayed for, the Petitioner appears to concede that the land belongs to the State. This Court also observes that the Petitioner cannot blow hot and cold at the same time to achieve the reliefs prayed for in the pleadings.

The parties were not at variance on the ground that there is a procedure established in alienating State land and it is trite law that by a request letter of the Chief Minister, one cannot obtain title to State land. It is also pertinent to note that except for X2 and X3 the Petitioner has failed to tender any documents to demonstrate an independent title to the *corpus*. Hence, based on the available material the only conclusion this Court can arrive at is that the premises belongs to the State.

Under the State Lands (Recovery of Possession) Act the only way an occupant can demonstrate the right to occupy is by demonstrating that the occupancy is based on a Grant or a permit that authorizes the Petitioner to possess the *corpus*. The Petitioner's contention

that she is in occupation of the said premises upon a written authority cannot be sustained in the absence of such authority other than X2 and X3 being tendered to this Court. The only document the Petitioner was able to tender to this Court was the request letter (X2) made by the then Chief Minister, and as stated this was only a request and there is no material submitted to substantiate that as per the request a valid permit or a Grant had been given to her.

Justice Grero in the *Muhandiram v. Chairman, No. 111, Janatha Estate Development Board [1992] 1 SLR 110* stated that, “*Unless the respondent-petitioner had established before the learned Magistrate that he was in occupation of the land stated in the schedule to the application on a valid permit or other written authority of the State, he cannot continue to occupy the said land and in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, the Magistrate has to make an order directing the respondent and his dependants to be ejected from the land. Even the learned Magistrate in his order had stated so.*”

However, in this instance, the Petitioner failed to demonstrate that she is in occupation of the premises by a permit or a Grant. Hence, and in the absence of any title deed tendered in my view, the Petitioner’s main contention of seeking a Writ of *Certiorari* to quash X12 based on her pleadings that the ownership of the premises belongs to her has to fail. In the absence of any valid permit or Grant the Petitioner becomes an unauthorized occupier against whom a quit notice had been issued. In the above circumstances, this Court cannot agree with the Petitioner’s contention that receiving X12 amounts to an arbitrary, irrational, unreasonable, discriminatory, unlawful, and *ultra vires* act. Therefore, the Petitioner’s main contention in support of her Application for a Writ of *Certiorari* cannot be maintained. Furthermore, it is observed that in these circumstances the Petitioner fails to establish any right to obtain the reliefs claimed.

Even though the learned Counsel for the Petitioner, while supporting this Application mentioned another Application bearing Case No. CA(PHC) 18/2021 for the purpose of disclosure no details of the said case were tendered to this Court.

The Petitioner, furthermore, contended that the *corpus* was given to one W.B. Hemapala and therefore the occupant who should be evicted is the said Hemapala and not her. Hence, the argument that the quit notice depicted in X12 should be quashed. Upon inquiry, the Petitioner admitted that the said Hemapala is her husband and furthermore, in our view,

this submission cuts across her own pleadings whereby she pleads that the premises was given to her and a request was made to give her the title. The request letters (X2 and X3) the Petitioner is relying on does not mention the name of Hemapala at all. It is also pertinent to note that the Petitioner concedes that she is in occupation of the *corpus*.

The Petitioner's prayer is vague

The Petitioner's next relief prayed for in prayer (d) was objected to on the ground that it was ambiguous. The said relief pleaded by the Petitioner is reproduced here. It commences as follows, "*issue an appropriate order directing the 3rd Respondent to proceed with the Recommendations of the Chief Minister....*"

When a Petitioner invokes the extraordinary remedy of Writ jurisdiction of the Court of Appeal under Article 140 of the Constitution, it is imperative for the Petitioner to know her grievances and the reliefs that she is praying for. The Petitioner cannot plead for an appropriate order the Court deems fit to suit the Petitioner. This Court on many occasions has held that in the absence of any clear and specific reliefs prayed, the prayer becomes vague. In this instance, this Court is inclined to uphold the objection of the Respondents that the prayer as pleaded is vague and for the said reason this Application has to fail.

In coming to this conclusion, this Court has considered the decision in, ***Amerasinghe and Others v. Central Environmental Authority and Others CA/WRIT/132/2018, decided on 10.09.2020***, where it was held that "*A Petitioner invoking the jurisdiction of this Court must seek relief that would address their grievance and must not refer to each and every section in an Act hoping and praying that his case would come under at least one of the said sections. In other words, the relief that is sought must be specific and should address the concerns of the Petitioner. This would then enable the Respondents to respond to the averments of fact and law raised by the Petitioner. The fact that the relief is vague is an indication that the Petitioner is unsure of the allegations that he/she is making against the Respondents and makes the task of Court to mete out justice that much harder*"

Conclusion

Therefore, considering all the material submitted to this Court and after hearing the submissions of the learned Counsel, this Court is of the view that the Petitioner has failed to establish a *prima facie* case to enable this Court to issue notice. Accordingly, for the reasons stated above this Court is not inclined to issue formal notice on the Respondents and proceed to dismiss this Application.

Judge of the Court of Appeal

S.U.B. Karalliyadde, J

I agree

Judge of the Court of Appeal