

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

**CA Case No: RII/27/2022**  
**Magistrate Court - Bandarawela**  
**Case No. 99847**

In the matter of an application for a  
*Restitutio in Integrum* under Article 138 of  
the Constitution of the Democratic Socialist  
Republic of Sri Lanka.

J.M. Chandrika Priyadharshani,  
Competent Authority,  
Assistant Director,  
Plantation Industry Monitoring Division,  
Ministry of Plantation, Battaramulla.

**Applicant**

**Vs.**

B.M. Tudor Nishantha,  
Amune Gedara, Gavarawela, Demodara.

**Respondent**

**AND BETWEEN**

B.M. Tudor Nishantha,  
Amune Gedara, Gavarawela, Demodara.

**Respondent- Petitioner**

**Vs.**

1. Wickrama Arachchilage Leelanath  
Wickrama Arachchi,  
Competent Authority,  
Director,  
Plantation Industry Monitoring Division,  
Ministry of Plantation, Battaramulla.

**Applicant 1<sup>st</sup> Respondent**

2. The Registrar,  
Deputy Fiscal,  
Magistrate's Court,  
Bandarawela.

**Added 02<sup>nd</sup> Respondent**

3. The Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Added 03<sup>rd</sup> Respondent**

**Before:** **R. Gurusinghe J.**  
**&**  
**M.C.B.S. Morais J.**

**Counsel:** D.P.L.A. Kashyapa Perera for the Respondent- Petitioner.  
Priyantha Alagiyawanna with Dulmi Jayasinghe instructed by  
Purnima Gnanasekara for the 1<sup>st</sup> Respondent.

**Written Submissions:** By the Respondent- Petitioner – on 16.12.2024  
By the 1<sup>st</sup> Respondent – on 12.12.2024

**Argued on:** 25.10.2024

**Decided On:** **23.01.2025**

### **JUDGMENT**

**M.C.B.S. Morais J.**

This is an application for *restitutio-in-integrum* under Article 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

In this matter, the Respondent-Petitioner, B.M. Tudor Nishantha (hereinafter sometimes referred to as the Petitioner) is challenging the order made by the Magistrate of the Bandarawela in the case No. 99847 dated 8<sup>th</sup> of October 2019. Accordingly, the Petitioner has prayed for the following.

- I. Issue notice on 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents on this petition of Restitutio in integrum in the first instance.
- II. Grant a stay order under and in terms of rule 2(1) of the Supreme Court rules preventing the proceedings of the Bandarawela Magistrate Court case No. 99847 for a period of 14 days or any period of time or until the final determination, of this case at the discretion of the court.
- III. Grant a judgment ordering the Magistrate Court of Bandarawela to issue a commission to ascertain the boundaries and extent of and situation of lands more fully described in the First and second schedules of the petition at the expense of the Petitioner.
- IV. Grant a Judgment on the legal concept of Restitutio in integrum to set aside the order P2A dated 8.10.2019 and P4A order dated 20.12.2022 declaring that P2A and P4A have no bearing on the land more fully described in the 1<sup>st</sup> schedule of the petition.
- V. Grant a judgment against the 2<sup>nd</sup> Respondent and 3<sup>rd</sup> Respondent declaring that the 2<sup>nd</sup> Respondent has no authority to evict the Petitioner from the land more fully described in the 1<sup>st</sup> schedule here to below based on P2A, the order of the learned Magistrate of Bandarawela dated 8.10.2019.
- VI. Grant a judgment that the Petitioner has been wronged by process of law and therefore has a legal right to rectify the miscarriage, and failure of justice caused to him by the orders of the learned Magistrate of Bandarawela, etc.

The tea estate 'Demodara Group' was initially acquired by the Land Reform Commission (LRC). The minister of agricultural development has vested the 'Demodare group' with Janatha Estate Development Board (JEDB) by the Gazette no.183/10 on the 12<sup>th</sup> of March 1982. The JEDB has leased the said 'Demodara Estate' to Hapugastenna Plantation Ltd by deed of lease No.143 dated 21<sup>st</sup> of September 1993 for 99 years. Subsequently, the terms of the deed of lease were amended to reduce the period to 53 years from 11<sup>th</sup> June 1992 to 10<sup>th</sup> June 2045.

The 1<sup>st</sup> Respondent on or around the 20<sup>th</sup> of September 2018 filed an application under and in terms of the provisions of the State Land Recovery of Possession Act No.7 of 1979 as amended, in the Bandarawela Magistrate Court against the Petitioner to obtain an eviction order to evict the Petitioner from the land described in the original application before the Magistrate of Bandarawela in the case No. 99847, based on the opinion that the land mentioned is a state land. Subsequently, the Petitioner has filed a show cause in the Magistrate Court of Bandarawela and both the parties have filed the written submissions respectfully. Accordingly, the learned Magistrate of Bandarawela has ordered to evict the Petitioner from the said land on the 8<sup>th</sup> of October 2019. Aggrieved by the order, the Petitioner had filed a revision application against the 1<sup>st</sup> Respondent in the Badulla Provincial High Court of Uva Province, related to the order of the Bandarawela Magistrate court dated 8<sup>th</sup> of October 2019.

The Petitioner has withdrawn the Badulla High Court case on the ground that the order of the Magistrate court of Bandarawela has no bearing on the land described in the first schedule of the Petition. Therefore, the eviction order made by the learned Magistrate of Bandarawela on the 8<sup>th</sup> of October 2019 stands proper now. On 1<sup>st</sup> of December 2022, the 1<sup>st</sup> Respondent (Registrar/Deputy Fiscal) of Bandarawela Magistrate court executed the eviction order of the learned Magistrate of Bandarawela, on the land described in the first schedule. The Petitioner was informed to remove all the belongings within one week and hand over the premises to the relevant authority.

Consequently, the Petitioner has filed a motion in the Magistrate Court of Bandarawela, requesting the learned Magistrate to enlighten on the issue related to the execution of the eviction order on the land described in the first schedule of the Petition. Accordingly, the Petitioner was requested by the learned Magistrate of Bandarawela to file a fresh motion and notice to be issued to the 1<sup>st</sup> Respondent and recorded that no order was made on the 13<sup>th</sup> of December 2022.

In the meanwhile, the 1<sup>st</sup> Respondent filed a motion on the 20<sup>th</sup> of December 2022 and has moved the court to execute the eviction order on the land mentioned in the first schedule, which the court has allowed. Aggrieved by the said order dated 20<sup>th</sup> of December 2022, the Petitioner has filed the present application in this court alleging exceptional circumstances.

The 1<sup>st</sup> Respondent issued a quit notice on 16<sup>th</sup> of May 2018 against the Petitioner and subsequently sought an eviction order which was issued by the learned Magistrate of

Bandarawela on the land situated in the 'field No.2B of the sauthem division of Demodara Estate, Demodara Yatikidha, Kubalwela Korale in Badulla District of Uva Province, containing an extend of the land of three Rood Twenty Perches (Acres 00 Rood 03 Perches 20.0)'. Respecting the eviction order by the learned Magistrate of Bandarawela, the 2<sup>nd</sup> Respondent exercised the eviction order on the 1<sup>st</sup> of December 2022, which was supposedly to be the land possessed by the Petitioner.

Therefore, this leads us to two possibilities regarding the land in question.

**First possibility:** The 1<sup>st</sup> Respondent may be referring to a different plot of land than the Petitioner, as the 1<sup>st</sup> Respondent's initial application mentions the land in the second Schedule, which is 'the field No.2B of the sauthem division of Demodara Estate, Demodara Yatikidha, Kubalwela Korale in Badulla District of Uva Province (Acres 00 Rood 03 Perches 20.0)' while the Petitioner refers to the land in the first schedule of their Petition which is "Demodara Estate (South Division) situated at No.72 Gawarawela, Grama-niladari Division, Ella Pradeshiya saba and divisional secretariat Division and Kubalwela Korale in the Badulla District of Uva Province (Acres 00 Rood 1 Perches 13.75)' as Lot 1 and containing an extend of the land of within the same boundaries, '( Acres 00 Rood 00 Perches 20.0)' as Lot 2. Therefore, it remains a possibility that there are two different lands. If they are indeed not the same, then the Petitioner cannot contest the order issued by the Learned Magistrate of Bandarawela.

**Second possibility:** The Petitioner's land is entirely or partially included within the area claimed by the 1<sup>st</sup> Respondent. This scenario leads to two further possibilities: if only a portion of the Petitioner's land overlaps with that of the 1<sup>st</sup> Respondent, then only that overlapping section should be returned to the 1<sup>st</sup> Respondent. However this has not been the case here. Conversely, if the entire land claimed by the Petitioner falls within that claimed by the 1<sup>st</sup> Respondent, nothing prevents the Respondent from reclaiming the possession of it. The reason being, that the Petitioner alleged to have acquired the land on the Deed of Transfer No. 9204 on the 15<sup>th</sup> of November 2018 executed by the Land Reform Commission. Nevertheless, the said land is supposedly alienated and leased beforehand. Presently, the 'Demodara Estate' was leased to the Hapugastenna Plantation Ltd until 2054.

As I have discussed before, the LRC has no right whatsoever to execute deeds on which the Petitioner claims title. The rights of LRC already had been alienated before. Thus the deed No. 9204 would have no force in law and would become null & void.

This position is well explained in the case of ***Balangoda Plantation Ltd V. Janatha Estate Development and Others*** 2019 3 SLR 525, Obeyesekere J. held that;

*‘ The Petitioner filed the application seeking a writ of prohibition restraining the Land Reform Commission(LRC) from interfering in any manner with the Petitioner’s lawful possession and occupation of any of the agricultural lands and estate lands referred to in the lease agreement entered into by the petitioner and the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.*

*Held,*

- I. While an order made by the Minister under section 27 A(1) of the Land Reform Law, No.1 of 1972, as amended, subsists, the LRC cannot exercise any power in respect of lands which were vested with it in terms of section 42A of the Law.*
- II. The agricultural and estate lands referred to in orders of the Minister vested with the 1<sup>st</sup> and 2<sup>nd</sup> Respondents together with all rights and liabilities of the LRC in respect of such lands.*
- III. The LRC acted ultra vires when it executed leases after the said orders came into effect.’*

Therefore, I am of the view that the LRC has transferred the said land to the Petitioner while the lease between JEDB and Hapugastenna Plantation Ltd subsists. Thus, the LRC cannot exercise any power over the land when the lease subsists. Moreover, it is apparent from the schedule given by the Petitioner himself, that the land in the first schedule of the petition does constitute a part of the Demodara Estate.

Furthermore, a case has to be decided as of the time it is filed. This application was filed by the 1<sup>st</sup> Respondent before the Magistrate court of Bandarawela on the 16<sup>th</sup> of May 2018, and the land in the first schedule of the Petition was not owned by the Petitioner as of that date. Instead, it was

subsequently owned by the Petitioner on the 11<sup>th</sup> of November 2018 as alleged. Therefore, the order of the learned Magistrate of Bandarawela remains proper in law.

In the case of *Sri Lanka Insurance Corporation Ltd. V. Shanmugam and Another (1995) 1 SLR 55*, Ranaraja J. held as follows;

*“ Relief by way of Restitutio-in-Integrum in respect of judgments of original courts may be sought:*

*(a) where judgments have been obtained by fraud by the production of false evidence, non-disclosure of material facts, or by force; or*

*(b) where fresh evidence has cropped up since judgments, which was unknown earlier to the parties relying on it or which no diligence could have helped to disclose earlier, or*

*(c) where judgments have been pronounced by mistake and decrees entered thereon provided, of course, it is an error which connotes a reasonable and "excusable error.”*

Accordingly, when applied to the facts before us, I do not see any reason to interfere with the orders of the Learned Magistrate of Bandarawela. Further, the Petitioner has failed to satisfy the necessary threshold needed for invoking the jurisdiction of this court under Article 138(1) of the Constitution. Therefore, the Court finds that there is no merit in the Petitioner’s application.

This application is dismissed with a cost of Rs. 50,000 payable by the Petitioner to the 1<sup>st</sup> Respondent.

**Judge of the Court of Appeal**

**R. Gurusinghe J.**

**I agree**

**Judge of the Court of Appeal**