

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

*In the matter of an Application under and in  
terms of Article 140 of the Constitution for a  
mandate in the nature of a Writ of Mandamus.*

**CA/WRIT/20/2021**

1. G.Sumith J. de Silva  
No.36, Dehiwala Road,  
Papiliyana,  
Boralasgamuwa.
2. Jayawardenalage Shiromani Preethika  
Jayawardena  
Horakele Watta, Horagasmulla,  
Divulapitiya.  
Wife of G.J Prasad de Silva,  
(now deceased)
3. G. Nisal I. de Silva  
No.36, Dehiwala Road,  
Papiliyana,  
Boralasgamuwa.
4. G.P.R. de Silva  
4653, Summer Oak Street,  
Apartment 6103, Orlando,  
Florida, 32835, USA.

Represented by his Attorney  
G. Sumith J. De Silva  
36, Dehiwala Road,  
Papiliyana,  
Boralasgamuwa.

5. Gajasinghege Ekna Harshani de Silva  
No.26, Vihara Mawatha,  
Pepiliyana,  
Boralasgamuwa.

**PETITIONERS**

Vs.

1. Land Reform Commission  
No.475, Kaduwela Road,  
Battaramulla.

2. D.K.D Dissanayake  
Executive Director  
Land Reform Commission,  
No.475, Kaduwela Road,  
Battaramulla.

- 2A.Pathmika Mahanama  
Thilakarathna  
Executive Director,  
Land Reform Commission,  
No.475, Kaduwela Road,  
Battaramulla.

3. Nilantha Wijesinghe  
Chairman  
Land Reform Commission,  
No.475, Kaduwela Road,  
Battaramulla.

4. S.M. Chandrasena  
Minister  
Ministry of Lands  
Mihikatha Medura,  
Land Secretariat,

1200/6, Rajamalwatta Avenue,  
Battaramulla.

4A. Harin Fernando

Minister of Tourism and Lands  
Ministry of Lands,  
Mihikatha Medura,  
Land Secretariat,  
1200/6, Rajamalwatta Avenue,  
Battaramulla.

5. The Attorney General

Attorney General's Department,  
Hulftsdorp.

### **RESPONDENTS**

**Before:** Sobhitha Rajakaruna J.

Dhammika Ganepola J.

**Counsel:** Geoffrey Alagaratnam PC with Luwie Ganesathasan for the Petitioner  
Chandana Liyanapatabendi PC with Harshana Ranasinghe for the 1<sup>st</sup> to 3<sup>rd</sup>  
Respondents.

A. Weerakoon SC for the 4<sup>th</sup> and 5<sup>th</sup> Respondents

**Argued on:** 23.09.2022, 14.07.2023

<b>Written submissions:</b>	Petitioners	- 08.09.2023 and 15.11.2023
	1 <sup>st</sup> Respondent	- 04.10.2023

**Decided on:** 21.11.2023

**Sobhitha Rajakaruna J.**

The Petitioner states that the original owners of the subject land called “YakiriyaPellessa” alias “WeerawilaWatte” in extent of (A101-R2-P27) (101 acres 2 roods 21 perches) were Gajasinghege Stephen De Silva and Gajasinghege Charles Edward De Silva (both now deceased). The said Gajasinghege Charles Edward De Silva has made a declaration under the Land Reform Law No.1 of 1972, that he was a statutory lessee who co-owned the above agricultural land to an extent of A59-R3-P38 of which A9-R3-P38 was more than the

stipulated ceiling under the Land Reform Law. Gajasinghege Stephen De Silva, who is the other co-owner, was entitled to A33-R3-P34, which was 1/3<sup>rd</sup> of the said total extent of A101-R2-P27.

The Petitioners are allegedly the heirs of their father- Gajasinghege Stephen De Silva. Moreover, the Petition discloses that the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and the 5<sup>th</sup> Petitioners are the children of the said Stephen De Silva and the current 2<sup>nd</sup> Petitioner is the wife of another child of the same family. The claim of the Petitioners in the instant Application is based on the rights of the said deceased Gajasinghege Stephen De Silva and accordingly the Petitioners contend that the said Land Reform Law does not govern the co-owned portion of the land in the extent of A33-R3-P34.

In regards to the above statutory declaration of Gajasinghege Charles Edward De Silva, the Land Reform Commission ('LRC') released to him the land in extent of A50 (depicted in FVP 621 -Sheet No.1- marked Lot 41) by Gazette No.163/15 dated 16.05.1957. The LRC held the remaining portion of the declared land in the extent of A9-R3-P38 (Lot 42 in FVP 621 -Sheet No.1). The issues relating to the instant Application emanates as a result of the LRC taking over possession of the entirety of the above named, co-owned land in the extent of A101-R2-P27 on the pretext of identifying the vested area of land and releasing the balance.

There is no dispute that the share of the said Gajasinghege Stephen De Silva has not been vested under Land Reform Law. Anyhow, there has been a delay in the LRC returning the said portion of the land to the said Stephen De Silva notwithstanding repeated representations and requests made by one or more of the Petitioners and their mother. The Petitioners assert that the LRC has repeatedly assured that the relevant portion of land or an alternative block would be released. Similarly, the Petitioners allege that the LRC has taken steps wrongfully to hand over the possession of certain portions of the said land, that is not vested in the LRC, to third parties. It is noteworthy that the Petitioners at a subsequent stage have agreed to get the disputes with LRC amicably resolved by taking over the remaining portions of the aforementioned main land and substituting alternate land for the portions that were previously granted to third parties.

In proof of such continuous representations made to the LRC, the letters marked 'X7','X8','X9','X10','X11' and 'X12' are annexed to the Petition. Referring to the letters marked 'X13','X14','X15', 'X16' and 'X17', the Petitioners assert that the LRC has acknowledged the gaining of the possession of the portions of land upon which the Petitioners raise their claims that stem from the rights of the said deceased Gajasinghege Stephen De Silva. Additionally, the Petitioners have annexed letters marked 'X18' to 'X31' in which the correspondence between the relevant authorities and the Petitioners are well reflected. The steps taken by the Petitioners to make further representations to the Chairman and other officers of the LRC to resolve the issues amicably are also viewed through such communications.

The Petitioners further contend that the LRC as a consequence of the aforesaid correspondence has finally conceded to the Petitioners' entitlement limiting it to a portion of land in extent of A17-R3-P23. It is submitted that the LRC has limited the extent as above based on two transfer deeds bearing No.636 and No.637 attested on 22.02.1981 by A.Kakulawala Notary Public. Anyhow, the Petitioners state that the title has never passed due to the said transfer deeds, since the respective transferees had been paid due consideration upon their loss of rights to same/surrendering or the said deeds and disclaiming all rights/title. Likewise, the Petitioners claim that they are entitled to a portion of land in a minimum extent of A17-R3-P23.

Now I must examine the aforesaid correspondence annexed to the Petition of the Petitioner. The letters marked 'X7', 'X15', 'X16' and 'X18' display that the process of contemplating the Petitioner's request has commenced during the year 1985. The Director-Land Ceiling of LRC by a letter marked 'X18' (06.02.1987) has expressed his opinion that the undeclared portion of land belonging to the said Stephen De Silva should be released. The 'X19' and 'X20' also reflect an attempt of the LRC to find an alternate land. The Director-Land Ceiling, even in the year 2005 by his letter marked 'X25' (dated 17.06.2005) has recognized the entitlement of the said Stephen De Silva for a portion of land in extent of A33-R3-P22 within the land called "WeerawilaWatte".

The Chairman of LRC after an inquiry, emphasized by a letter dated 08.08.2005 marked 'X26' that the said Stephen De Silva is entitled to a portion of land in the extent of A33-R3-

P22 in Lot No.09 of “WeerawilaWatte”. Thereafter on 06.04 2006 (‘X27’), a different Chairman who was serving during that time reiterated the above entitlement of Stephen De Silva.

The Working Director of the LRC by a letter dated 19.06.2019 (‘X17’) identifying the entitlement of the Petitioners has divulged that the demarcating boundaries of an alternate land in extent of A17-R3-P23 were under progress. The name of the land identified therein was “WadigalaLebeema” situated in the District of Hambantota. He has further given an assurance in the said letter that the request of the 2<sup>nd</sup> Petitioner can be complied with soon after the completion of making relevant plans. The letter marked "X31" (dated 19.07.2019) is one of several similar ones conveying an assurance that Stephen De Silva's undeclared portion of land will be restored. However, it differs in its description of the extent of such land depicting a similar extent as mentioned in ‘X17’. In the said ‘X31’ the Working Director of LRC, while admitting the entitlement of Stephen De Silva has requested the Director in Hambantota to consider the possibility of allocating a portion of land in extent of A17-R3-P23 from the land called “WeerawilaWatte”.

It appears that the Petitioners also have now limited their claim for a portion of land to the extent of A17-R3-P23 for reasons not very clear to the Court. Nevertheless, the Petitioners at one instance have divulged that they were compelled to accept a lesser portion of land without striving for the total extent due to the reason of LRC transferring several blocks of “WeerawilaWatte” to third parties. Considering the facts and circumstances of this case, the Petitioners rights should not be prejudiced based on the fact that the Petitioners seek a lesser portion than the original amount upon which they have been agitating for a long time. An overall consideration of all communications originating from the relevant officers of the LRC establishes the entitlement of Stephen De Silva in respect of his undeclared portion of land which has been unduly taken over by the LRC along with the land declared by Gajasinghege Charles Edward De Silva in 1972.

It is observed that the LRC does not expressly deny any of those communications which includes both the representation of the Petitioners and the assurances extended by the LRC. Instead, when answering the relevant averments of the Petition, the LRC in its statement of objections have used the phrase- *“correspondence referred to in the Petition may have been written*

*by the officers of LRC*". The stance taken by the LRC in respect of such correspondence is that those letters have originated without arriving at a valid decision as envisaged in section 44 and other provisions in Land Reform Law. I take the view that such a defense raised by the LRC is insufficient justification to overrule the conclusions represented in the letters the LRC exchanged with the parties for more than three decades. A careful consideration of the contents of those communications annexed to the Petition clearly implies that nowhere in the chain of such communications do the authorities of the LRC express their doubt or raise questions on the above-explained entitlement of Stephen De Silva. This position emphatically establishes the entitlement of the said Stephen De Silva and the legitimate expectations of his heirs in respect of the aforesaid land which does not come within a statutory declaration under the Land Reform Law.

His Lordship Justice Yasantha Kodagoda (P.C., J.) with the concurrence of their Lordships Justice E.A.G.R. Amarasekara, and Justice A.H.M.D. Nawaz, in the case of ***Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board and Others SC/FR/172/2017 decided on 20.09.2023*** echoed the principles in detail relating to the doctrine of legitimate expectations and gave an extensive thought to the representations made to the authorities by the members of the public and vice versa. The principles enunciated by the Supreme Court in the said case in respect of 'legitimate expectations' can be directly applied to the instant Application in resolving the related questions. His Lordship Justice Kodagoda in this case observed:

*"The doctrine of public trust inter-alia requires that public authorities who have been vested with statutorily conferred power to discharge public functions vested in them for the benefit of the sovereign of the Republic – the public at large, and for no other purpose. Public authorities must discharge such functions in accordance with the law and they must abide by the expectations generated by their own representations and practices. In a Republic, the trust conferred by the sovereign public on public authorities must be respected, unless there are justiciable reasons developed objectively, diligently and in good faith for the purpose of giving effect to wider public interests, that necessitate deviating from the previous policy based upon which the previous representations had been made."*

*"The rationale of the doctrine of legitimate expectations is also that if a public authority has induced a person to rely upon its representations or practices on the premise that such reliance*

*was a real possibility and would bear fruit, it is under a fiduciary duty to act in such a way that the reliance placed by such person will not result in detrimental outcomes to such person, who in good faith had placed reliance on the representations of a public authority and its practices. Public authorities must be required by law to honour expectations created by its own representations and practice. If unable to do so, the public authority concerned should compensate the person affected by having placed reliance on such representations and practices.”*

Apart from the legitimate expectation of the Petitioners, no substantial material has been submitted for this Court to declare that the original rights of the said Stephen De Silva are unlawful. It cannot be assumed under the Land Reform Law that the LRC has the authority to take over possession of a larger portion of land for the mere purpose of identifying a lesser portion that is depicted in a statutory declaration. Moreover, in line with the precedent laid down by the superior courts, I am not convinced with the proposition of the LRC that the Petitioners are not entitled to a writ of Mandamus. Further, the representations and the practice of the LRC emanated through the communications discussed above outweigh the technical objection raised by the LRC referring to the *locus standi* of the Petitioners.

In light of my above findings, I take the view that a mandate in the nature of a writ of Mandamus should be issued directing the Land Reform Commission to release a portion of land with a minimum extent of A17-R3-P23 from and out of the land described in the 2<sup>nd</sup> Schedule to the Petition or an alternate land with the same extent to the legitimate heirs of Gajasinghe Stephen De Silva without adopting a tedious process that may cause an additional inconvenience to the Petitioners. However, I am not inclined to issue a quashing order as prayed for in paragraph ‘c’ in the prayer of the Petition.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**