

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

In the matter of an Application for mandates in the nature of Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA(Writ) Application No: 294/2015

Ven. Handapangoda Mahinda Thero,
Viharadhipathi and Trustee of the Kiriella
Nadun Raja Maha Viharaya,
Nadun Raja Maha Viharaya, Kiriella.

PETITIONER

Vs.

1. Hon. M.K.D.S. Gunawardane,
Minister of Lands and Land Development.
- 1A. Hon. John Amaratunge,
Minister of Lands.
- 1AA. Hon. Gayantha Karunatilaka,
Minister of Lands and Parliamentary
Reforms.
- 1B. Hon. S.M. Chandrasena,
Minister of Environment, Wildlife, Land
and Land Development.
2. Hon. Karu Jayasuriya,
Minister of Buddha Sasana and Public
Administration.
- 2A. Hon. Dr. Wijedasa Rajapaksha,
Minister of Buddha Sasana.
- 2AA. Hon. Gamini Jayawickrema Perera,
Minister of Buddha Sasana.
- 2B. Hon. Mahinda Rajapaksha,
Minister of Finance, Economic Affairs,

Policy Development and Buddha Sasana.

3. Dr. I.H.K. Mahanama,
Secretary,
Ministry of Lands and Land Development.
 - 3A. R.A.A.K. Ranawaka,
Secretary,
Ministry of Lands and Land Development.
 4. Piyumi Attygalle,
Assistatn Secretary, (Bim Saviya)
Ministry of Lands and Land Development.
 5. Gamini Illangaratne,
Former Commissioner General of Title
Settlement,
Chief Secretary's Office, Kurunegala.
 6. Vijitha Nandana Kumara,
Commissioner General of Title Settlement,
Land Title Settlement Department.
 - 6A. P.M.H. Priyadharshani,
Commissioner General of Title Settlement,
Land Title Settlement Department.
- 1st, 1A, 1AA, 1B, 3rd, 3A, 4th, 6th and 6A
Respondents at 'Mihikatha Medura',
No. 1200/6, Rajamalwatte Avenue,
Battaramulla.
7. Premachandra Gamage,
Commissioner General of Buddhist Affairs.
 - 7A. Sunanda Kariyapperuma,
Commissioner General of Buddhist Affairs,
Department of Buddhist Affairs,
2nd, 2A, 2AA, 2B, 7th and 7A Respondent at
No. 135, Dharmapala Mawatha, Colombo 7.
 8. L.H. Prashan De Silva,
Officer In Charge,
Kiriella Police Station.
 - 8A. W.M.J. Sudath Bandara,

Officer-In-Charge
Kiriella Police Station, Kiriella.

9. K. Ranga Perera,
Officer-In-Charge,
Ayagama Police Station.
- 9A. K. Rangana Kosala Perera.
Officer-In-Charge,
Ayagama Police Station, Ayagama.
- 9B. Rohana Chaminda,
Officer-In-Charge,
Ayagama Police station, Ayagama.
10. D.M. Sumathipala,
Divisional Secretary, Ayagam.
- 10A. Anuradha Jayakody,
Divisional Secretary, Ayagama,
- 10B. Niranjan S. Jayakody,
Divisional Secretary, Ayagama.
11. National Gem and Jewellery Authority.
12. Aruna Gunawardena,
The Chairman/Chief Executive Officer,
National Gem and Jewellery Authority.
- 12A. Asanka Welagedera,
The Chairman/Chief Executive Officer,
National Gem and Jewellery Authority.
- 12B. Dr.Kithsiri Dissanayake,
The Chairman/Chief Executive Officer,
National Gem and Jewellery Authority.
- 12C. Amitha Gamage,
The Chairman,
National Gem and Jewellery Authority,
No. 25, Galle Face Terrace, Colombo 3.
13. R.A.N. Sumanasiri,
Senior Superintendant of Surveys,
District Survey Department, Ratnapura.

- 13A. P.S.N. Nimalaweera,
Senior Superintendant of Surveys,
District Survey Department, Ratnapura.
14. W.P. Shanika Iroshini Perera,
Assistant commissioner.
Land Title Settlement Department,
Divisional Office, Kuruwita.
- 14A. L.K. Premaratne,
Assistant commissioner,
Land Title Settlement Department,
Divisional Office, Kuruwita.
15. N. Rupasinghe,
Secretary, Ministry of Environment and
Renewable Energy,
“Sampathpaya”, No. 82, Rajamalwatte,
1090, Sri Jayawardhanapura Mawatha,
Rajagiriya.
16. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS

Before: Mahinda Samayawardhena, J
Arjuna Obeyesekere, J

Counsel: Gamini Marapana, P.C., with Navin Marapana, P.C., and
Uchitha Wickremasinghe for the Petitioner

Manohara Jayasinghe, Senior State Counsel for the
Respondents

Argued on: 2nd July 2020

Written Submissions: Tendered on behalf of the Petitioner on 3rd March 2020

Tendered on behalf of the Respondents on 14th February
2020

Decided on: 11th September 2020

Arjuna Obeyesekere, J

The Petitioner states that he is the Viharadhipathi and Trustee of the *Kiriella Nadun Rajamaha Viharaya*, which he claims was earlier known as the *Kiriella Viharaya* and prior to that as *Dumbara Viharaya*. The Petitioner claims that pursuant to an Order made by the then King of Kandy, Sri Wickrama Rajasinghe, the *Gilimale Ralahamy*, by a Sannasa / Thudapatha / Seettuwa bearing No. 13 dated 11th February 1801 had gifted and donated as a Sanghika gift, the Dumbara Viharagama to the then Viharadhipathi of the *Dumbara Viharaya*. The Petitioner claims that the said Sannasa / Thudapatha / Seettuwa had been registered under the provisions of the Old Deeds and Sannasas Ordinance No. 6 of 1866.

The Petitioner claims that the said Dumbara Viharagama consisted of 8317A OR 25P, and that since 1801, the Chief Incumbent of the Viharaya and his pupillary successors have exclusively possessed the Bandara / Maruvena lands of the said Viharagama. The Petitioner states that the said Viharagama formed part of the *sanghika* property belonging to the said Viharaya, and that the title of the Viharaya to the said lands have been accepted by the Supreme Court, and other Courts. The Petitioner states further that the fact that the said Viharagama belonged to the said *Kiriella Nadun Rajamaha Viharaya* has been accepted by the Public Trustee and by the 7th Respondent, the Commissioner General of Buddhist Affairs. The Petitioner admits that the said Viharagama is now located and situated in the Grama Niladhari Division No. 191 Dumbara Mahawalawatte, No. 191A Ketepola Ellagawa, No. 191B Dumbara Manana and No. 191D Dekabadakanda.

The dispute that has given rise to this application has arisen as a result of the implementation of the *Bimsaviya* Programme in the aforementioned Grama Niladhari Divisions under and in terms of the provisions of the Registration of Title Act No. 21 of 1998 (the Act). Hence, prior to considering the facts that culminated in this application, it would be appropriate to consider the provisions of the Act.

In terms of Section 2 of the Act, the Commissioner of Title Settlement shall be responsible for the due performance of the duties and functions assigned to him under the said Act.

Section 1 provides that the Act shall apply to such Province, Administrative District or Administrative Division as the Minister may from time to time, by Order published in the Gazette, specify as an area to which the said Act shall apply. In terms of Section 11, on the publication of an Order under Section 1, *'the Commissioner of Title Settlement shall request the Surveyor-General to prepare cadastral maps for the areas specified in such Order and upon such request the Surveyor-General shall cause such cadastral maps to be prepared and certified copies of the same to be issued to the Commissioner of Title Settlement'*. Section 10 provides that, *'The registration of title to every land parcel under this Act shall be in accordance with the cadastral map prepared for that purpose.'*

Section 12 requires the Commissioner of Title Settlement, on receipt of such certified copies of cadastral maps, to publish a Notice in the Gazette, calling for any claimants to the land parcel specified in such Notice to submit their claims to him within a prescribed period from the date of publication of such Notice. Section 13 of the Act requires the Commissioner of Title Settlement to thereafter cause an investigation to be conducted in order to determine the genuineness or otherwise of claims made in response to a Notice under section 12. In terms of Section 21, *'If, during the course of investigations, the Commissioner of Title Settlement forms the opinion that, due to the disputed nature of the claims, it would be more appropriate for the investigations to be carried out by the District Court, the Commissioner of Title Settlement may refer such claims for investigation and determination to the District Court having jurisdiction over the area where the land is situate.'*

Unless a reference is made in terms of Section 21 of the Act, Section 14 requires the Commissioner of Title Settlement upon the conclusion of the investigation in terms of Section 13 to publish in the Gazette his determination thereon. In terms of Section 22, *'Any claimant aggrieved by any Declaration of the Commissioner of Title Settlement under section 14 may prefer an appeal against such declaration within the prescribed period to the District Court having jurisdiction over the area where the land parcel is situate.'*

The starting point of the dispute that has given rise to this application appears to have arisen from a letter dated 20th March 2014 written by the then Secretary, Ministry of Lands, which letter has not been produced before this Court. The 7th

Respondent, the Commissioner General of Buddhist Affairs has replied this letter by his letter dated 17th April 2014, marked 'P15' under the heading, 'අයගම ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ දුම්ර. දුම්රමානාන, කැටේපොල දෙතබ්බකන්ද ග්‍රාම නිලධාරී වසම්වල බිම් සවය වැඩසටහන ක්‍රියාත්මක කිරීම.' By 'P15', the 7th Respondent had informed the Secretary, Ministry of Lands the manner in which the ownership of the aforementioned Viharagama came to devolve on the *Kiriella Nadun Rajamaha Viharaya* and concluded the said letter by stating as follows:

"05. ඉහත සඳහන් කල එම නිවස බෞද්ධ කටයුතු කොමසාරිස්වරයා විසින් එවා ඇති ලිපිය හා අනෙකුත් ලිපි ලේඛන පරීක්ෂාවට අනුව දුම්ර. විහාරගම කිරිඇල්ල විහාරයට අයිති බව පිළිගත හැකි බවත් එසේ හෙයින් ඔබ විසින් මා වෙත එවා ඇති 2014.03.20 දිනැති ලිපියේ දැනුම්දීමට අනුව දුම්ර. විහාරගම තුල පිහිටි ඉඩම් ලියාපදිංචිය අත්හිටුවන ලෙස දන්වා මා විසින් රත්නපුර ඉඩම් ලියාපදිංචි කිරීමේ කාර්යාලයට යවා ඇති ලිපිය බලරහිත කිරීමට නොහැකි බවත් කාරුණිකව දන්වා සිටිමි.

It is clear from 'P15' that the 7th Respondent was interfering with steps being taken in terms of the Act in respect of the Viharagama land which was said to be owned by the Viharaya. Aggrieved by the interference by the 7th Respondent, the Secretary, Ministry of Lands had sent the following letter dated 4th May 2014, marked 'P14' to the Secretary, Ministry of Buddha Sasana:

"02. අයගම ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ දුම්ර. ගමේ ඉඩම් ගැටළු 1998 අංක 21 දරණ නිමකම් ලියාපදිංචි කිරීමේ පනත මගින් විසඳා ගන්නා ලෙස බෞද්ධ විහාර දේවාලගම ඉඩම් වලට අදාල ගැටළු පරීක්ෂා කිරීමේ පනාධිපති කොමිෂන් සභාව තීරණය කර ඇත. ඒ අනුව කටයුතු කිරීමට බාධා කරමින් බෞද්ධ කටයුතු කොමසාරිස් පනරාල් දුම්ර. ගමේ ඉඩම් ලියාපදිංචිය අත්හිටුවන ලෙස දන්වා රත්නපුර ඉඩම් රෙජිස්ට්‍රාර් වෙත ලිපියක් යවා ඇත. එම ලිපිය ඉවත් කර ගන්නා ලෙස මගේ අංක 05/05/03/23 සහ 2014/03/02 දිනැති ලිපිය මගින් දන්වා යැවූවද එසේ කල නොහැකි බවට ඔහු විසින් ඉහත ලිපියෙන් දන්වා ඇත. එම ලිපියෙන් බෞද්ධ කටයුතු කොමසාරිස් පනරාල් ඉදිරිපත් කර ඇති කරුණු පහත සඳහන් හේතූන් මත සාවද්‍ය බව පෙන්වා දෙමි"

The Secretary, Ministry of Lands had thereafter gone onto explain the deficiencies in the title of the *Kiriella Nadun Rajamaha Viharaya* to the said Viharagama and finally taken up the position that the Sannasa / Thudapatha / Seettuwa relied on by the Petitioner is a forged document. The final paragraph of 'P14' reads as follows:

“මෙම කරුණු සියල්ලම සලකා බලා 1909 දී ඉඩම් නිරවුල් කිරීමේ දෙපාර්තමේන්තුව දුම්රට වැසියන්ගේ පරවෙනී ඉඩමක් ලෙස නිරවුල් කරන ලද අක්කර 8317 පරි. 25 ක් කිරිඇල්ලේ නැදුන් විහාරයේ දේපලක් ලෙස ව්‍යාප්ත කිරීමට මත අයිතිය තීරණය කිරීම ඉඩම් නිරවුල් කිරීමේ දෙපාර්තමේන්තුව 1909 දී ගත් තීන්දුව ප්‍රතික්ෂේප කිරීමක් වන අතර එසේ කිරීමට නෛතික බලයක් ද නැත. එම වසම්වල මහජනයාට ද කරන අසාධාරණයකි. දුම්රටගම ඉඩම් හිමිකම් ලියාපදිංචි කිරීම 1998 අංක 21 දරණ පනත යටතේ කළ යුතු බැවින් එසේ කිරීමට බාධා නොකරන ලෙසට බෞද්ධ කටයුතු කොමසාරිස් ජනරාල්ට උපදෙස් දෙන ලෙස කාරුණිකව ඉල්ලමි. තවද ව්‍යාප්ත ලේඛනයක් පදනම් කරගෙන බිම්සවිය වැඩසටහනට බාධා කිරීමෙන් අයගම ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ ග්‍රාම නිලධාරී වසම 04 ක මහජනයා තුළ රජය අප්‍රසාදයට පත්වන වාතාවරණයක් ඇති වීමට ඉඩ තිබෙන බව ද කාරුණිකව දන්වමි.”

By letter dated 9th September 2014 marked ‘**P17**’, the Deputy Commissioner of Title Settlement, Kuruwita, having referred to the representations made on behalf of the Petitioner, had informed the Commissioner of Title Settlement as follows:

“02. එම ලිපිය මගින් දුම්රට හා කැටේපොල ග්‍රාම නිලධාරී වසම තුළ පිහිටි දේපළ කිරිඇල්ල විහාරය සතු සාංඝික දේපල බව ප්‍රකාශ කර ඇති අතර දුම්රට විහාරයට සඳහා කිරිඇල්ලේ විහාරය සතු අයිතිය පිළිගන්නා නඩු තීන්දුව අංක ද සඳහන් කර ඇත. එමෙන්ම ඉහත වසම් වල බිම් සවිය වැඩසටහන් ක්‍රියාත්මක කිරීම තුළින් සාංඝික දේපල විහාරයට අහිමි වීම පිළිබඳව විරෝධය ද පළකර ඇත.

03. එබැවින් ඉහත වසම් වල ඉඩම් කොටස් වල අයිතිය සම්බන්ධයෙන් තීරණ නිර්දේශ ලබා දීමට පෙර බෞද්ධ කටයුතු කොමසාරිස්, නැදුන් රජමත විහාරාධිපති ස්වාමන් වහන්සේ අතුළු අදාළ පාර්ශවයන් කැඳවා ඇමුණුම් ලිපියේ සඳහන් නඩු තීන්දු හා අනෙකුත් අයිතිය සනාථ කරන ලිපි ලේඛන ආදිය පරීක්ෂා කර බැලීමෙන් අනතුරුව වැඩසටහන ක්‍රියාත්මක කිරීම සුදුසු බව යෝජනා කරමි.”

It is observed that the course of action suggested in ‘**P17**’, although conciliatory in tone, may give rise to the impression that the provisions of the Act need not be followed, if the title of the Viharaya to the Viharagama could be established.

Although it appears that surveying of the lands claimed by the Petitioner had commenced, this Court has not been apprised whether the preparation of the cadastral maps has been completed, and if so, whether the notice in terms of Section 12 of the Act calling for claims in respect of the Viharagama has been published, even though the Petitioner states it did submit its claim, out of an abundance of caution.

Unfortunately, the Commissioner of Title Settlement appears to have lost sight of the provisions of the Act he is required to administer, which requires him to cause an investigation to be conducted in order to determine the genuineness or otherwise of claims. I say this for the reason that by letter dated 11th November 2014 marked 'P16', the Commissioner of Title Settlement had informed the Officer-in-Charge of the Kiriella Police Station as follows:

“02. 1909 දී ඉඩම් නිරවුල් කිරීමේ දෙපාර්තමේන්තුව විසින් කුකුල් කෝරලයේ දුමඩර ගම අක්කර 8317 පර්චස් 25 ප්‍රවේණි ඉඩම් ලෙස ගැමියන්ට නිරවුල් කර ඇත. එහි කිසිදු ඉඩමක් දුමඩර විහාරයට හෝ නැදුන් විහාරයට නිරවුල් කර නැත.

03. කිරිඇල්ල නැදුන් විහාරයේ සන්නස **ව්‍යාප ලේඛනයක්** බව ඉඩම් හා ඉඩම් සංවර්ධන අමාත්‍යාංශයේ ලේකම් විසින් බුද්ධගාසන අමාත්‍යාංශයේ ලේකම්ට යැවූ ලිපියකින් **පැහැදිලි වේ.** (පිටපතකින් අමුණා ඇත). මේ අනුව කිරිඇල්ලේ නැදුන් විහාරයට අයත් යයි කියන මෙම ඉඩම සාංඝික දේපලක් වශයෙන් පිළිගෙන ඇතැයි පවතින විශ්වාසය සත්‍යයෙන් තොරය.”

Thus, it is clear that the Commissioner of Title Settlement has been clearly influenced by the contents of 'P14', which prompted the learned President's Counsel for the Petitioner to complain to this Court that the Commissioner of Title Settlement has pre-judged the issue of the title to the Viharagama.

The 4th Respondent, an Assistant Secretary in charge of the *Bimsaviya* programme, by a letter dated 26th May 2015 marked 'P20' had informed the Petitioner's Attorney-at-Law of the following decisions arrived at a meeting held with officials of the Land and Buddha Sasana Ministries, Title Settlement Department and Commissioner General of Buddhist Affairs:

- (a) The land claimed by the Viharaya has already been settled under the Land Settlement Ordinance in 1909;
- (b) Surveying of the lands in terms of the Act must continue without any obstruction;

- (c) Even though '**P14**' has claimed that the Sannasa/ Thudapatha / Seettuwa is a forged document, the Ministry of Lands cannot take a decision in this regard and the matter must be decided by a competent Court of Law.

It is in the above factual circumstances that the Petitioner has filed this application, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the letters marked '**P14**', '**P16**' and '**P20**';
- (b) A Writ of Mandamus directing the 1st and 3rd Respondents to inform officials of the Land Title Settlement Department and all other officials involved with the investigation of title in respect of the Dumbara Viharagama to disregard the contents of '**P14**', '**P16**' and '**P20**' with regard to the authenticity of the said Sannasa / Thudapatha / Seettuwa.

Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**,¹ identified (a) illegality, (b) irrationality and (c) procedural impropriety as the three grounds upon which administrative action is subject to control by judicial review. I shall now consider if each of the said letters are liable to be quashed by a Writ of Certiorari, under any of the above three grounds.

I shall start with '**P14**'. As I have already noted, this letter has been precipitated by the attempts of the 7th Respondent to prevent steps being taken in terms of the Act, and the undue pressure sought to be brought upon the Secretary, Ministry of Lands by the 7th Respondent in that regard. '**P14**' serves two purposes. The first is, it is a factual response by the Secretary, Ministry of Lands to the matters of fact that had been set out in '**P15**'. The second is, it is only requesting the Secretary, Ministry of Buddha Sasana to request the 7th Respondent not to obstruct the steps that are being taken in terms of the Act. I am of the view that the writer of '**P14**' was entitled to write '**P14**'. As pointed out by the learned Senior State Counsel, it is only an inter-governmental letter and was **not meant to affect the rights of the Petitioner**. The Respondents have in fact stated in paragraph 20 of their Statement of Objections that '**P14**' *'was not intended to and does not have the effect of conclusively*

¹ 1985 AC 374

determining the ownership of the Dumbara Village. This is a matter for (the) Commissioner of Title Settlement.'

The problem however arises from the fact that 'P14' has been copied to the Commissioner of Title Settlement and several others, probably since the letter by the 7th Respondent was copied to the Commissioner of Title Settlement. This is where my concerns with 'P14' begin. Although the Respondents have stated in their Statement of Objections that, '*The Commissioner of Title Settlement is not bound by the former Secretary's letter and is free to disregard its contents*', and that '*P14 is merely an interagency communication and not a conclusive determination of the Petitioner's rights..*,' what is worrying, and this is the complaint of the learned President's Counsel for the Petitioner as well, is that the contents of 'P14' have not only been acted upon by the Commissioner of Title Settlement, but he has already arrived at a conclusion that the Sannasa / Thudapatha / Seettuwa is not authentic, a position which is reflected by 'P16'.

In his written submissions, the learned Senior State Counsel has stated that, '*P14 is not intended to and does NOT have the effect of conclusively determining the question as to who has title to the over Eight Thousand Acre property that is the subject matter of this application.*' While 'P14' most certainly will not have the effect of conclusively determining title, the learned Senior State Counsel has stated that the determination of title, '*is a decision that will be made by the Commissioner of Title Settlement after affording the Petitioner an opportunity to explain why the observations in (P14) are untenable.*' I must state that 'P14' cannot be the starting point and/or form the basis of an investigation that is carried out in terms of the Act, and that the Petitioner cannot be placed on the backfoot by requiring him to respond to 'P14'. Such a course of action would clearly be to the disadvantage of the Petitioner.

Thus, I am of the view that 'P14' is not liable to be quashed as it is not illegal or ultra vires the powers of the Secretary, Ministry of Lands to convey his position to another Ministry. The Commissioner of Title Settlement and all other Officers of the Land Title Settlement Department shall however disregard the contents of 'P14' when investigating the claim that the Petitioner may lodge in response to a notice under Section 12, but shall be entitled to call upon the writer of 'P14' or his successors in

office to substantiate the contents thereof, and thereafter arrive at a determination in terms of the Act.

I shall now consider 'P20'. It is only a response to the Attorney-at-Law of the Petitioner, informing him of the decisions taken at a meeting of all relevant Officials with regard to the dispute. 'P20' does not contain any final decisions, except to state that the provisions of the Act must be complied with. This Court cannot determine the entitlement of the Viharaya to the land in issue nor can it determine whether the Sannasa / Thudapatha / Seettuwa is genuine. However, in order to ensure that the claim of the Petitioner is not prejudiced, the Commissioner of Title Settlement shall call upon the relevant Officials to substantiate the matters set out in paragraph one of 'P20'.

I shall now come back to 'P16'. As already expressed, I have a concern with 'P16'. The Commissioner of Title Settlement, acting solely upon the contents of 'P14', has arrived at the conclusion that the land has not been settled in favour of the Viharaya and that the Sannasa / Thudapatha / Seettuwa is a forged document which should not have been acted upon, without conducting an investigation as required by the Act. This is precisely the concern that I had with the Secretary, Ministry of Lands copying 'P14' to the Commissioner of Title Settlement, which of course was prompted by the 7th Respondent copying his letter to the Commissioner of Title Settlement. I am of the view that any conclusion on the authenticity of the Sannasa / Thudapatha / Seettuwa of the Viharaya must be determined only after an investigation is carried out in terms of Section 13 of the Act, and that the conclusion reached prior to that, as reflected in 'P16', on the genuineness of the title of a potential claimant is illegal and therefore liable to be quashed by a Writ of Certiorari.

To my mind, the procedure that should have been followed in terms of the Act is clear. Unfortunately, the unwarranted interference on the part of the Commissioner General of Buddhist Affairs has brought about a situation where the provisions of the Act have not been adhered to. Hence, I am of the view that the Commissioner of Title Settlement shall, acting in terms of Section 12 of the Act, on receipt of certified copies of cadastral maps relating to the Viharagama land publish a Notice in the Gazette (if it has not already been done), calling upon any claimants to the lands

specified in such Notice to submit their claims to him within a prescribed period from the date of publication of such Notice.

The Commissioner of Title Settlement shall thereafter, acting in terms of Section 13 of the Act, cause an investigation to be conducted in order to determine the genuineness or otherwise of claims made in response to the Notice under section 12. In investigating the claims of the Petitioner, the Commissioner of Title Settlement and Officers of the Land Title Settlement Department shall disregard the contents of 'P14', but shall be entitled to call upon the writer of 'P14' or his successors in office as well as the writer of 'P20', to substantiate the contents thereof. The Commissioner of Title Settlement may also have recourse to the procedure set out in Section 21 of the Act, and cause a reference to be made to the District Court if he forms the opinion that, due to the disputed nature of the claims, it would be more appropriate for the investigations to be carried out by the District Court.

In the above circumstances, I issue a Writ of Certiorari quashing 'P16'. I however see no legal basis to grant the other relief prayed for by the Petitioner. Having taken into consideration all the facts of this application, I make no order with regard to costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal