

**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 prohibition  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**CA No: Writ- 126/23**

1. Lanka Green and Eco Produce (Pvt)  
Ltd  
No. 09, Terrace Street, Hambantota  
Beach  
Also of  
No.39, Bagatalle Road,Colombo 03.
2. Andreas Boen Wiik  
Director  
No. 39, Bagatalle Road,  
Colombo 03.

**Petitioners**

**v.**

1. Kaushalya Galappatthi  
Divisional Secretary  
Divisional Secretariat  
Siribopura, Hambantota
2. S.M. Chandrasena  
Hon. Minister of Lands and Land  
Development  
  
'Mihikatha Medura', Land Secretariat  
1200/06, Rajamalwatte Road  
Rajagiriya.

**Respondents**

**Before :** N. Bandula Karunarathna P/CA, J.  
B. Sasi Mahendran, J.

**Counsel:** Ikram Mohamed, PC with Janaka Basuriya and Harish  
Balakrishnan for the 1st and 2<sup>nd</sup> Petitioners  
A.Jayakody, SC for the 1st and 2nd Respondents

**Argued**

**On:** 18.03.2024

**Written**

**Submissions** 02.02.2024 and 29.04.2024 (by the Petitioner)

**On:** 30.04.2024 (by the Respondents)

**Judgment On:** 04.07.2023

**B. Sasi Mahendran, J**

The Petitioners instituted this action praying for the following reliefs as prayed in the Petition dated 2<sup>nd</sup> March 2023.

- (a) Issue Notices on the Respondents;
- (b) Call for and examine the entire record maintained by the 1<sup>st</sup> Respondent pertaining to this application;
- (c) Grant and issue a Mandate in the nature of Writ of Certiorari quashing the said opinion/ decision of the 1<sup>st</sup> Respondent referred to in the purported quit notice dated 18.01.2023 and/ or the said Quit Notice dated 18.01.2023 and/or,
- (d) Grant and issue a Mandate in the nature of a Writ of Prohibition prohibiting the 1<sup>st</sup> Respondent and/ or any person seeking to act under or through her office from taking steps under the State Lands ( Recovery of Possession) Act No. 7 of 1979 ( as amended) in respect of the land and premises morefully described in the second schedule of Deed No. 171 dated 17.01.2016 called “ Galahitiyawawe” alias “Galahitiyawewabadda” in extent of 50 Acres and/ or from taking any steps to evict the Petitioners from the said land on the basis of said Quit Notice dated 18.01.2023 and/ or

- (e) Grant and issue an interim order suspending the operation of the 'Quit Notice' dated 18.01.2023 until the final hearing and determination of this application and / or
- (f) Grant and issue an interim order restraining the 1<sup>st</sup> Respondent and/ or any person claiming to act under or through her office from purporting to act in pursuance of impugned 'Quit Notice' dated 18.01.2023 and/or from taking any steps whatsoever under the State Lands ( Recovery of Possession) Act No. 7 of 1979 (as amended) to evict the Petitioners from the land described in the second Schedule of Deed No. 171 dated 17.01.2016 called " Galahitiyawawe alias "Galahitiyawewabadda" in extent of 50 Acres pending the determination of this Application by Your Lordships' Court
- (g) Grant Costs;
- (h) Grant such other and further reliefs that Your Lordships' Court shall deem meet.

The facts relevant to this case are as follows,

The 1<sup>st</sup> Respondent issued a quit notice to the Petitioner Company on 18.01.2023, pursuant to section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended. This followed a previous quit notice dated 20.12.2021, against which the Petitioner had filed Writ Application No. 36/2022 to quash the notice. The Respondent thereafter withdrew this quit notice, and the Petitioner then moved to withdraw the action. The proceedings were terminated on 26.02.2022. After these proceedings concluded, the Petitioner received another quit notice on 18.03.2023.

The main contention of the Petitioners are that the company acquired the disputed property through Deed of Transfer No. 171, dated 17.01.2016. According to Plan No. 354, dated 27.12.2012, the property encompasses an extent of 50 acres. The said Deed, marked as P9, describes the meets and bounds of the land as follows:

NORTH:- Remaining Part of the Land called " Galahitiyawewa" alias "Galahitiya wewa bedda,

SOUTH:- Remaning Part of the Land called " Galahitiyawewa" alias "Galahitiya wewa bedda,

EAST:- Remaining Part of the Land Called " Galahitiyawewa" alias "Galahitiya wewa bedda,

WEST:- Road reservation and Remaining Part of the Land called “ Galahitiyawewa” alias “Galahitiya wewa bedda,

According to the Petitioner, the land in question is private land. It has been developed for a sustainable and environmentally friendly Cotton and Soybean Cultivation and Processing Plant.

To strengthen their claim, the following documents were submitted as evidence that the land is private:

1. A letter from the District Secretary of the Hambantota District Secretariat, dated 27.05.2016 and marked as P13, confirmed that the land is private, as verified by the Senior Superintendent of Surveyor of Hambantota.
2. An extract from the tenement list, marked P19, issued by the Senior Superintendent of Surveys on behalf of the Surveyor General, dated 08.10.2008, confirms that the land, part of a larger land known as 'Galahitiyawewabedda Jungle,' is private.
3. An extract from the Register of Land Settlement, marked P-19(a), establishes that Lots 1U, 1AA, and 88C are determined to be private lands.
4. A letter from the Land Title Settlement Department, dated 25.05.2015, confirms that, according to the Final Report dated 31.10.1933 in respect of Final Topographical Plan No. 4, Lots 1U, 1AA, and 88C have been declared as paraveni property, with no determination made regarding their ownership.

These documents were filed in Case No. CA/Writ/36/2022. It is pertinent to note that when the Petitioners relied on these documents in the aforementioned case, the Respondents withdrew the specific quit notice. However, three months later, the Respondents issued another quit notice concerning the same land. For ease of reference and to determine whether the land mentioned in the latest quit notice is the same, I would like to reproduce both schedules referred to in the said notices.

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නැගෙනහිරට - රජයේ ඉඩමද	නැගෙනහිරට	: අ.භ.පි. 4හි අතුරු පිඹුරු 10හි ශේෂ ප්‍රදේශයද;
දකුණට - රජයේ ඉඩමද	දකුණට	: අ.භ.පි. 4හි අතුරු පිඹුරු 10හි ශේෂ ප්‍රදේශයද;
බටහිරට හම්බන්තොට-මීගහදුර ප්‍රධාන මාර්ගයද	බටහිරට	: අ.භ.පි 4හි අතුරු පිඹුරු 10හි ශේෂ ප්‍රදේශයද

The Petitioner has primarily relied on a document in which the Respondent expressly acknowledges that Lots 1AA, 1U, and 88C of Final Topographical Plan No. 4 are depicted as private land. The land in question, shown in Plan No. 354 dated 27.12.2012 and marked as P8, clearly indicates that it is part of a portion of Lot 1AA from Final Topographical Plan No. 4. The endorsement on this particular plan reads as follows:

“පවත්නා කැබලිලක් ඡේ සලකා සංවර්ධනය කිරීමට අවසර දෙන ලදී.”

According to P19, the tenement list extract indicates that Lot No. 1AA, as depicted in Plan No. FTB No.4, comprises 160 acres and is acknowledged as private land. These facts have not been disputed by the Respondent. It is important to note that these documents were prepared by the Surveyor General.

Under Section 83 of the Evidence Ordinance, when maps are authenticated and signed by the Surveyor-General, the Court is entitled to presume their accuracy.

Section 83 of the Evidence Ordinance (Chapter XIV) reads as follows:

'The Court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor-General, or an officer acting on his behalf, were duly authorized and are accurate; however, maps, plans, or surveys not bearing a signature must be independently verified for accuracy.'

Similar provision is available in the Section 22 of the Survey Act No 17 of 2002 which reads as follows:

*“Any cadastral map, plan, or any other plan or map prepared in accordance with any written law, purporting to be a true copy of such a plan or map and purporting to be signed by the Surveyor-General or any officer acting on his behalf shall, be admissible in evidence in all cases and for all purposes instead of the original, and may (without proof that the original is not procurable) be taken as prima facie evidence of the truth of the facts stated therein as being that of the original and it shall not be necessary to prove that such copy was in fact signed or authenticated by the Surveyor-General or such officer nor that it is a true copy, nor that the facts*

*reflected therein are accurate, until evidence to the contrary shall have first been given.”*

Both sections indicate that when the aforementioned documents are presented, the Court should consider them as prima facie evidence of the veracity of the facts stated therein until contradicted by other evidence. Thus, these documents establish that the said land is private.

Conversely, the Respondents assert that Lot A, depicted in the referenced plan, is part of Lot 1AA from Plan 4, and that Lot 1AA is delineated as a separate portion of land in survey plan R1. According to the Respondents, the Petitioners occupy a piece of State Land, which they have mistakenly identified as private land. We are cognizant that when the Respondents form an opinion that the land in question is State Land, the Court must ensure that such an opinion is founded on a rational basis. In this case, the Petitioners have established through the Surveyor General's plans that the land in question is private. No evidence has been presented to suggest that the land is State Land.

The central question before us is whether the Respondent acted illegally, unreasonably, or irrationally in forming the opinion that the land is State Land. Our courts have ruled that the exercise of powers must be reasonable and within the conferred jurisdiction.

Arjuna Obeysekara J in Udagedara Waththe Anusha Kumari Nikaathagoda, Ambagasdowa V Jayasinghe Mudiyanseelage Chamila Indika Jayasinghe CA Writ Application No. 293/2017 decided on 18.11.2019 has referred the Dicta of Lord Diplock in Council of civil service union v Minister for Civil Service 1985 AC 374 held that,

“This brings this Court back to the issue that arises for determination - i.e. did the Respondent act illegally or unreasonably or irrationally when he formed his opinion that the land which is the subject matter of the said quit notice is State land.

Further held that;

As observed at the outset, the starting point of the steps that are initiated under the Act is Section 3(1), which clearly requires the Competent Authority to form an opinion that

the land in respect of which he is going to put in motion the procedures laid down in the Act, is land to which the State is lawfully entitled. When one considers the detailed provisions of the Act, which has been outlined above, and the objective that is sought to be achieved, which is the expeditious recovery of State land from persons who are in unauthorised occupation of such State lands, it is the view of this Court that the Competent Authority is only required to form an opinion that the impugned land is land to which the State is lawfully entitled to, and that the possession or occupation is unauthorized.”

In the present case, the Petitioner is contesting the legitimacy of the quit notices through a Writ of Certiorari, arguing that the land described in P7 is not state-owned but private property. This action challenges the competent authority’s assessment. The disputed quit notice was issued under Section 3(1) of the aforementioned Act.

The Petitioner has established, via the final report of the Final Topographical Plan No. 4 prepared on 31.10.1993 under the Land Settlement Ordinance No. 20 of 1931, as amended, that Lot 1A is private land. This is supported by a letter dated 25.05.2015 from the Land Settlement Department. These documents were not contested by the Respondent. It was further established that the land depicted in Plan No. 354 is part of Lot 1AA. Conversely, the Respondents failed to present the surveyor plan and argued that the documents filed by the Petitioner do not pertain to the land in question. Their main argument is that the impugned quit notice pertains not to Lot 1AA but to an adjacent Lot A, as shown in R1, without providing evidence to contradict the Petitioner’s version. Upon reviewing P7, no survey plan specific to this quit notice is present, and no survey plan was indicated previously, demonstrating that the Respondent formed an opinion without a Survey Plan or any other documents and have to come to conclusion that it is State Land.

We hold that the Respondents have not established any rational basis for their opinion that the property is state property, nor is there justification for such an opinion.

We recognize that when a competent authority, having determined that the land is state land, issues a quit notice and the individual fails to vacate, the Respondent may apply before the Magistrate Court. However, the Learned Magistrate is not empowered to question the legality of this opinion. Under the act, the scope of inquiry before the

Magistrate is limited to whether the Respondent has a valid permit or written authority. If the answer is negative, the Magistrate must issue an order for ejection.

Therefore, our Courts have evaluated whether the opinions formed by the Competent Authorities are Ultra Vires. We hold that the Respondent, in forming his opinion as required by Section 3(1) of the act, acted illegally and unreasonably.

Accordingly, this Court issues a Writ of Certiorari in terms of paragraph 'C' of the prayer to the petition, quashing the decision of the 1st Respondent which was marked as P7, and issues a writ of prohibition in terms of paragraph 'D' of the prayer to the petition, restraining the Respondents from taking steps to evict the Petitioner from the said land.

The application is allowed with costs.

**JUDGE OF THE COURT OF APPEAL**

**N. Bandula Karunarathna (P/CA), J.**

**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**