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

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

**CA (Writ) Application No. 298/2018**

1. Muhandiram Arachchige Kamalawathie Weerasinghe.

2. Uditha Laksiri Weerasinghe.

   Both of No. 59, Nuwara Eliya Road, Welimada.

**PETITIONERS**

Vs.

1. Ceylon Petroleum Corporation.

2. Chandana Kumara Jayasinghe Bandara.

   Both of No. 609, Dr. Danister De Silva Mawatha, Colombo 9.

**RESPONDENTS**

**Before:** **Arjuna Obeyesekere, J**

**Counsel:** Jayampathy Wickramaratne, P.C., with Ms. Pubudini Wickramaratne for the Petitioners

Vikum De Abrew, Senior Deputy Solicitor General for the Respondents

**Argued on**: 18th June 2019 and 30th July 2019

**Written Submissions:** Tendered on behalf of the Petitioners on 12th September 2019.

Tendered on behalf of the Respondents on 18th September 2019.

**Decided on:** 30th June 2020

**Arjuna Obeyesekere, J**

The issue that arises for the determination of this Court is whether the 2nd Respondent acted reasonably and in terms of the law when he formed his opinion that the land which is the subject matter of the quit notice served on the Petitioners in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979, is State land.

Material facts

The Petitioners state that the 1st Petitioner is the owner of an allotment of land bearing assessment No. 107, Nuwara Eliya Road, Welimada, situated in the Welimada Town. The Petitioners state that the said land formed part of a larger land called '*Uda Demodara*', in extent of 1A 1R which had been owned by K. Don Peter Perera. The said K. Don Peter Perera had transferred the said land to K. Don Wilmot Perera by Deed of Gift bearing No. 51447 dated 8th September 1965. Although a copy of the said Deed has not been produced, an extract of the Register maintained by the Land Registrar has been annexed to the petition marked '**P4A**'.

This Court has examined '**P4A**' and observes the following:

(a) The property gifted by the said Deed is inclusive of the land leased for a *Petrol Shed*;

(b) The extent of the land has been given as "5 *pelas* paddy", being the equivalent of 1A 1R;

(c) The land has been referred to as Udu Demodara, Kambikanuwa Kumbura, and Reraawa Kumbura;

(d) Even though the Northern, Eastern and the Western boundaries have been specified, there is no reference to the survey plan depicting the said land.

The Petitioners state that K. Don Wilmot Perera had transferred an extent of 3.63P of the above land to Karunasiri Serasinghe by Deed of Transfer No. 3666 dated 21st October 1979, annexed to the petition marked '**P1**'. The Petitioners state further that Karunasiri Serasinghe had undisturbed and uninterrupted possession of another portion of land out of the aforementioned larger land '*Uda Demodara*', in extent of 1.47P, which he had transferred to Dayawathie Serasinghe by Deed of Transfer No. 40504 dated 4th May 2005, annexed to the petition marked '**P3**'.

Soon after the execution of '**P3**', Karunasiri and Dayawathie Serasinghe have transferred the aforementioned lands in extent of 3.63P and 1.47P, to the 1st Petitioner, by Deed of Transfer No. 3476 dated 19th June 2005, annexed to the petition marked '**P4**'. The Petitioners state that having obtained approval of

the local authority, they constructed a five storey building on the said land. This Court must observe that even though '**P3**' refers to Plan No. 346 dated 4th March 1982, and the Non-vesting certificate '**P5D**' refers to Plan No. 3476 dated 14th September 2005, copies of such Plans have not been produced to this Court.

The Petitioners admit that a fuel service station owned by the 1st Respondent, and operated by the Welimada Multi-Purpose Cooperative Society is situated on the Northern boundary of their land. The Petitioners have stated further that the said service station has been in existence for a long period of time and that there is a boundary wall constructed in 1980 demarcating the boundary between the 1st Petitioner's land and the service station, and that the said boundary wall was in existence at the time the 1st Petitioner purchased the said land in 2005. The Petitioners have produced marked '**CA2**', and '**CA3**' respectively, the affidavits of Gunapala De Silva and Nimal Gamini Perera to confirm the existence of an embankment (ගල් බැමිම) running alongside the boundary up to the main road. This Court must observe that Gunapala De Silva owns a property which is situated on the Eastern boundary of the Service Station and the Petitioners land, with, the 1st Respondent alleging that Gunapala De Silva has encroached 6.37P of the land owned by the 1st Respondent.[1]

The Petitioners state that the 2nd Petitioner received a letter dated 15th August 2014, annexed to the petition marked '**P7**' from the Chief Legal Officer of the 1st Respondent, informing that he has encroached on an extent of 3.6P of land belonging to the 1st Respondent, and therefore to vacate the said premises in

[1] Vide Plan No. 4592 marked 'P8A'.

30 days. The 2nd Petitioner states that pursuant to representations made to the Chief Legal Officer, the 1st Respondent did not pursue the said matter thereafter.

In August 2018, the 2nd Respondent, an Assistant Manager at the 1st Respondent, had issued the 1st Petitioner a notice in terms of Section 3(1)(b) of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, (the Act) directing the Petitioners to deliver vacant possession of the said land on or before 2nd October 2018.

Aggrieved by the issuance of the said notice, annexed to the petition marked '**P8**', the Petitioners filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the decision to issue the said quit notice;

b) A Writ of Prohibition restraining the Respondents from taking steps under the Act.

The learned President's Counsel for the Petitioners submitted two principle arguments. The first argument was that the land occupied by the Petitioners is private land and not State land, and for that reason, the issuance of the Notice '**P8**' is *ultra vires* the powers of the Respondents. The second argument was that the land claimed by the Respondents is different to the land claimed by the Petitioners, in that the name of the land claimed by the Petitioners is different to the land claimed by the 1st Respondent, and that in any event, the 1st Respondent continues to have the extent of land that it is supposed to own.

Procedure to evict a person in unauthorised occupation of State Land

The objective of the Act is the expeditious recovery of State land from persons who are in unauthorised possession or occupation of such State land.[2] Section 3(1) of the Act requires the Competent Authority to form an opinion that the land in respect of which he is going to put in motion the procedure laid down in the Act, is State land or in other words, land to which the State is lawfully entitled[3] and that the possession or occupation of the person against whom the process is to be set in motion, is unauthorised. This is the starting point of the entire process that is initiated under the Act to evict a person who is in unauthorized occupation of State land.

The jurisdiction of this Court to consider whether the above opinion formed by the Competent Authority is *ultra vires*, illegal, unreasonable or irrational has not been circumscribed by the provisions of the Act, unlike the limited remedies available under Section 9 to a person against whom action has been instituted in the Magistrate's Court for ejectment.[4]

In arriving at his opinion that the impugned land is State land, the Competent Authority is not required in terms of the Act to carry out an inquiry of the title of the person who is in unauthorized possession of such land. This position has

[2] Section 18 of the Act has defined 'State land' to mean land to which the State is lawfully entitled or which may be disposed of by the State together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto, and includes land vested in or owned by or under the control of the 1st Respondent.

[3] Vide Section 3(1)(a).

[4] Section 9 of the Act reads as follows: (1) At such inquiry the person on whom summons under section 6 has been served shall not be entitled to contest any matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.; (2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5.

been clearly laid down in **Farook v. Gunewardena, Government Agent, Ampara**[5] where it was held as follows:

> "*Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land*."

The fact that the Competent Authority is not required to carry out an investigation of the title of the person in unauthorised possession of such land is fortified by the provisions of Section 12 of the Act, which provides a mechanism for a person against whom an order for ejectment has been made to vindicate his title.[6] In fact, in addition to vindicating title and thereby regaining possession of the land, in terms of Section 13 of the Act, a person could also obtain compensation for any damages sustained by being compelled to deliver up possession.

However, it is the view of this Court that the legislature could not have intended for the Competent Authority's opinion, which can have far reaching

[5] [1980] 2 Sri L.R. 243.

[6] Section 12 reads as follows: "Nothing in this Act contained shall preclude any person who has been ejected from a land under the provisions of this Act or any person claiming to be the owner thereof from instituting an action against the State for the vindication of his title thereto within six months from the date of the order of ejectment." See Jayawardana Mudiyanselage Sumanawathie vs. Hon. Attorney General and Others [CA 994/2000(F); CA Minutes of 5th September 2019] for an analysis of the remedies available to a person against whom an order for ejectment has been issued.

consequences on one's proprietary rights, to be baseless. The Competent Authority's opinion must therefore be formed on a rational basis. What constitutes a rational basis would depend on the facts and circumstances of each case.

Therefore, when considering the legality and /or the reasonableness of the opinion of the Competent Authority in the course of an application filed under Article 140 of the Constitution, this Court will require the Competent Authority to present the material on which he formed the opinion that the State is lawfully entitled to the said land, so that this Court can consider whether the Competent Authority has acted legally and/or reasonably. This Court must state that in doing so, it is not the function of this Court to consider the title of the State, or for that matter the title of the person sought to be ejected, to the said land. That is the function of the District Court under Section 12 of the Act or in an *Actio Res Vindicatio*. This Court wishes to state however that merely because a person who is to be ejected or against whom an order for ejectment has been made, has a remedy by way of Section 12, does not absolve the Competent Authority from his obligation to act reasonably and legally, when forming the all important opinion in terms of Section 3.

The principle then is that while no investigation or inquiry is needed to form the opinion that the State is lawfully entitled to the land, such opinion must satisfy the *Wednesbury* test of reasonableness. What then is the 'reasonable basis' on which the 2nd Respondent formed the opinion that the 1st Respondent is lawfully entitled to the land referred to in the notice marked '**P8**'?

Material on which the opinion of the 2nd Respondent has been formed

The Petitioners have produced marked '**P9**', Town Survey Plan No. 38 prepared in April 1937. According to the Tenement List attached thereto marked '**P9A**', Lot Nos. 104 – 108 which are contiguous lots, are claimed by K. Don Peter Perera. '**P9A**' goes on to mention that Lot No. 106 in extent of 3.71P and Lot No. 107 in extent of 8.43P have been leased to the Shell Company Ceylon Limited (Shell Company) and that the Welimada Petrol Depot is situated on Lot No. 107. Thus, the total extent of land leased to Shell Company as at 1937 was 12.14P.

The Respondents state that K. Don Peter Perera executed Indenture of Lease No. 21092/491 dated 15th December 1959 in favour of Shell Company. This Court has examined the said Indenture marked '**R1A**', and observes the following:

(a) By an Indenture of Lease No. 15539/458 dated 29th July 1952, K. Don Peter Perera had leased to Shell Company, Lots 1 – 3 of Plan No. 4/1952 for a period of ten years;

(b) The Third Schedule contains the following description of the land:

"*All that allotment of land called **Ethulhirekumbura** situated at Welimada Town aforesaid and bounded on the North by Bank and ridge, South by Path, East by Channel and ridge and West by Main Road, containing in extent one acre one rood and nine perches (A1 R1 P9) according to the aforesaid Plan No. 91 and which said **Ethulhirekumbura** and premises are described in the Title deeds thereof as follows:*

*All that field called **Uda Demodara** situated at Agampodigama in Udapalata in the Udakinda Division B Badulla District Province of Uva and bounded on the North by the field belonging to Kahawekorallage Don Peter Perera and barbed wire fencing separating the land belonging to the Government Medical Department, East by the Ima niyara of the field belonging to Kahawekorallage Don Peter Perera, on the South by Ela and on the West by High Road containing in extent two pelas of paddy sowing.*"

(c) Indenture of Lease No. 15539/458 has been cancelled prematurely by '**R1A**' and the parties have entered into a fresh lease for a period of ten years commencing 1st August 1959, as evidenced by '**R1A**', in respect of the following land:

"*All those three continuous allotments of land depicted as Lots 1, 2 and 3 in the Plan hereinafter referred to of the land called **Ethulhirekumbura** bearing assessment No. 105 situated at Welimada within the Town Council limits of Welimada in Uda Palata Korale in the Uda Kinda division in the District of Badulla in the Province of Uva and bounded on the North East and South by the remaining portion of **Ethulhirekumbura** claimed by K. Don Peter Perera and on the West by Main Road leading from Nuwara Eliya to Badulla containing in extent Thirty Two decimal eight eight perches (A0 R0 32.88P) according to Plan No. 347 dated 25th August 1957 made by W.M.Perera, Licensed Surveyor and Leveller, which said three allotments of land are divided and refined portions of the land in the Third Schedule hereto fully described.*"

Thus, by December 1959, K. Don Peter Perera had leased an extent of 32.88 perches to the Shell Company of a land known as *Ethulhirekumbura* or *Uda Demodara*.

It is not in dispute that all filling and service stations owned or leased by Shell Company were vested in the 1st Respondent that was established by the Ceylon Petroleum Corporation Act No. 28 of 1961 (the CPC Act). By an Order dated 15th January 1964[7] made in terms of Section 35(1) of the CPC Act, which has been annexed to the petition marked '**P10**',[8] the Minister of Commerce and Industries had vested in the 1st Respondent the properties referred to in the Schedule to such Order including the following land:

> "*All those three contiguous allotments of land depicted as Lots 1, 2 and 3 in Plan No. 347 dated 25th August 1957 made by W.M.Perera, Licensed Surveyor, bearing assessment No. 105, Nuwara Eliya Road, situated at Welimada within the Town Council limits of Welimada, Badulla District, Uva Province, bounded on the North, East and South by the remaining portion of Ethulhirekumbura claimed by K.D.Peter Perera and West by main road from Nuwara Eliya to Badulla and containing in extent Nil Acres Nil Roods Thirty Two decimal eight eight perches (0 A 0 R 32.88P)*"

In terms of Section 35(3) of the CPC Act, "*A vesting Order shall have the effect of giving the Corporation absolute title to any property specified in the Order with effect from the date specified therein and free from all encumbrances.*"

[7] Order has been published in Gazette No. 13923 dated 15th January 1964.

[8] Section 35(1) of the Ceylon Petroleum Corporation Act reads as follows: "The Minister may, by Order (hereafter in this Act referred to as a "vesting Order") published in the Gazette, vest in the Corporation, with effect from such date as shall be specified in the Order, any such notified property ...."

Part IV of the CPC Act contains provisions relating to the payment of compensation to the owner of the land where Shell Company was not the owner. The Respondents have claimed that compensation has in fact been paid to K. Don Wilmot Perera in 1984, and has produced marked '**R1**' the award. This Court has examined the said award and observes the following:

> "*He said that the property vested belonged to his father Kahawekorallage Don Peter Perera who leased it for 10 years to the Shell Company by Indenture of Lease No. 21092/491 attested by Julius and Creasy, N.P., dated 15th December 1959. He produced the lease bond marked C1.*
>
> *The property is described in the First Schedule in the lease bond; before the full period of the lease lapsed, the property was vested in the Petroleum Corporation. His father died in 1975. Before his death, his father gifted this property which formed a larger land bearing assessment No. 30 and called and known as Uda Demodara Kumbura alias Kambikanuwa Kumbura alias Rereawa Kumbura in extent of 1A 1R 0P. The deed was produced marked C2. He produced the Plan No. 347 dated 25th August 1957 made by W.P.Perera. Licensed Surveyor, which has been referred to in Indenture of Lease No. 21092/491 above referred to marked C3.*
>
> *He further stated that this property had also been known as* ***Ethulhire Kumbura****.*"

Therefore, with the Vesting Order '**P10**', the 1st Respondent became the owner of the aforementioned 32.88P of land that K. Don. Peter Perera had leased to the Shell Company by '**R1A**'.

There can be no doubt that the origin of the lands claimed by the Petitioners and the Respondents emanate from the same source, namely the 1A 1R property owned by K. Don Peter Perera. The photographs that have been produced by the 2nd Petitioner with his Counter Affidavit, marked '**CA1**' clearly establish that the land claimed by the Petitioners and the land on which the Service Station is situated are adjoining lands, and that the Northern boundary of the Petitioners' land is the Service Station or in other words, the Southern boundary of the Service Station is the land claimed by the Petitioners.

The learned Senior Deputy Solicitor General submitted that a survey of the land on which the Service Station is situated was carried out in 1993 by M.A.Wadood, Licensed Surveyor. A copy of Survey Plan No. 632 prepared by M.A.Wadood has been produced marked '**P11**'. This Court has examined '**P11**' and observes that the extent of the total land depicted therein is 32.88 perches. The learned Senior Deputy Solicitor General however claimed that '**P11**' is not a genuine document and has tendered to this Court marked '**R5**', a copy of the said Plan No. 632 prepared in 1993. While the extents and boundaries in both '**P11**' and '**R5**' are the same, the significant difference is that while '**P11**' shows a wall separating the Petitioners' property from the land of the 1st Respondent, no such wall is depicted in '**R5**'. Instead '**R5**' only shows boundary stones and therefore contradicts the contents of '**CA2**' and '**CA3**'. Whether the boundary is demarcated by a wall or by boundary stones, this Court must observe that there is a significant distance between the building depicted therein and the boundary, and that this would have been the situation on the ground as at 1993.

The Respondents state that in 2012, a fresh survey was obtained of the land vested in the 1st Respondent. The plan prepared pursuant to the said survey is Plan No. 4592, marked '**P8A**' as well as '**R3**'. The surveyor who prepared this plan has superimposed the boundaries in Plan No. 632 (R5) and depicted the boundaries of '**R5**' in red.

The lot on which the filling station is presently situated is Lot No. 2 in extent of 17.20P. To the south of Lot No. 2 is Lot No. 5. The southern boundary of Lot No. 5 on '**R3**' is the southern boundary of the land depicted in Plan No. 632 ('**R5**'). In other words, Lot No. 5 in extent of 3.60P is the lot that the 1st Respondent claims has been encroached by the Petitioners.

This Court must observe that if the southern boundary of Lot No. 2 in '**R3**' is taken to be correct, the building of the filling station is almost at the edge of the boundary. However, if the southern boundary of the filling station is taken as the southern boundary of Lot No. 5, to the naked eye, the distance between the building and the boundary in Plan No. 4592 ('**P3**') is the same or if not, almost the same as the distance in Plan No. 632 ('**R5**').

The Respondents have therefore clearly explained the manner in which the land in extent of 32.88P on which the Service Station is situated was vested in the 1st Respondent, and the manner in which encroachments of the said property have taken place.

It is in this factual background that this Court shall now consider the two deeds by which the immediate predecessor-in-title of the Petitioners acquired title to the land purchased by the 1st Petitioner. This Court has examined Deed No.

3666 annexed to the petition marked '**P1**' and observes that the said land is depicted in Plan No. 607 dated 20th October 1979, marked '**P2**'.

The boundaries of the said land are as follows:

| **North** | **Lanka Service Station** |
|---|---|
| East | Part of same land |
| South | Central Clinic premises claimed by Dr. Eric Mendis |
| West | Reservation for Road |

This Court has examined '**P3**', which is the Deed by which Dayawathie Serasinghe acquired title in respect of 1.47P and observes the following:

(a) Karunasiri Serasinghe is claiming ownership to the said land by way of long term possession since 1979;

(b) The boundaries of the said land are as follows:

| **North** | **Lanka Service Station** |
|---|---|
| East | Part of same land |
| South | Lot No. 1 of Plan No. 607 (i.e. '**P2**') |
| West | Reservation for Road |

This Court therefore observes the following:

(a) The western boundary of both lots is the reservation for the road;

(b) The southern boundary of the 1.47P land is the plot of land in extent of 3.63P;

(c) The northern boundary of the land in Plan No. 607 and the northern boundary of the land in '**P3**' are one and the same, namely the Lanka Service Station.

Thus, there has been a shifting of the northern boundary of the land owned by Karunasiri Serasinghe by virtue of '**P1**', when he claimed prescriptive title to the strip of land in extent of 1.47 perches. Thus, it appears that the land in '**P3**' is situated between the land referred to in '**P1**' which is depicted in Plan No. 607, and the land occupied by the Lanka Service Station. Thus, going by the Petitioners own documents, there has been a shifting of the Northern boundary resulting in the encroachment of the land owned by the 1st Respondent.

Issue with the names of the land claimed by the Petitioners and the Respondents

This Court shall now consider the first aspect of the second argument of the learned Presidents Counsel for the Petitioners, which is that the names of the two lands are different.

The learned Presidents Counsel for the Petitioners submitted that the land occupied by the Petitioners is known as *Uda Demodara* whereas the land occupied by the Service station is known as *Ethulhirekumbura*. It is clear that K. Don Peter Perera owned a land in extent of approximately 1A 1R, and that the land in extent of 3.63P that was transferred to Karunasiri Serasinghe by Deed marked '**P1**' was part of the main land. Similarly, it is clear that the 32.88P that was leased by K. Don Peter Perera to Shell Company and which subsequently vested in the 1st Respondent was also part of the same land. The Petitioners

have in fact submitted marked '**P11**' extracts relating to several other parts of the said larger land owned by K. Don Peter Perera. Although '**P1**' gives the name of the *land* as *Uda Demodara*, the extract relating to '**P1**', namely '**P4**', states that the land is also known as *Kambikanuwa Kumbura* alias *Rerawa Kumbura*. The Tenement List marked '**P9A**' gives the name of the land as *Uda Demodara watte* as well as *Uda Demodara Kumbura*. What is significant is that: (a) the First Schedule of the Indenture of Lease of '**R1A**' refers to this same land as *Ethulhirekumbura*; while (b) the Third Schedule of '**R1A**' refers to this land as *Ethulhirekumbura* and refers further to the fact that this land is also called *Uda Demodera*.

Furthermore, in the award marked '**R1**', none other than K. Don Peter Perera's son, who is a predecessor in title of the 1st Petitioner, refers to the fact that the land on which the filling station is situated is known by the names of *Uda Demodara, Kambikanuwa Kumbura, Rerawa Kumbura* and *Ethulhirekumbura*.

In these circumstances it is the view of this Court that the argument of the learned Presidents Counsel for the Petitioners that the land claimed by them and the land owned by the 1st Respondent are two different lands, has no merit.

Issue with the extent of the land owned by the 1st Respondent

This Court shall now consider the argument of the learned President's Counsel for the Petitioners that the extent of land that the 1st Respondent owns is only 12.16P, whereas according to Plan No. 4592, the extent of land occupied by the filling station is greater – i.e. 17.20P – and therefore, the Respondents

cannot claim more than what they actually own. The learned Senior Deputy Solicitor General submitted that although the extent of the land leased to Shell Company in 1937 was only 12.16P, by 1959, K. Don Peter Perera had increased the extent of the land leased to Shell Company to 32.88P, and that the Indenture of Lease marked '**R1A**' was in force at the time the said property was vested in the 1st Respondent. He therefore submitted that the 1st Respondent is the owner of a land in extent of 32.88P on which the Filling Station operated by the Welimada Multi-Purpose Cooperative Society is situated. The extent that is owned by the 1st Respondent is confirmed further by the Survey Plan No. 632 drawn in 1993. In these circumstances, it is clear to this Court that the extent of land vested in the 1st Respondent is 32.88P.

Is the opinion of the Competent Authority reasonable?

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 notice '**P8**' is State land. In considering this question, it would be useful to bear in mind the description given by Lord Diplock in **Council of Civil Service Unions v. Minister for the Civil Service** to the phrases 'illegality' and irrationality:[9]

> "*By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by*

[9] 1985 AC 374.

*those persons, the judges, by whom the judicial power of the state is exercisable*."

"*By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness.'*[10] *It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."*

The test routinely applied when ascertaining if a decision taken by a public authority meets the standards of reasonableness, is set out in **Associated Provincial Picture Houses Limited v. Wednesbury Corporation**,[11] which is commonly referred to as '*Wednesbury unreasonableness'*. In this case, Lord Greene defined unreasonableness as '*something so absurd that no sensible person could ever dream that it lay within the powers of the authority*.' The famous example of the red-haired teacher who was dismissed due to the colour of her hair, illustrates the high threshold for "*unreasonableness*" that was expected to justify judicial intervention on this ground. [12]

In **Regina v. Hull University Visitor, Ex parte Page**[13] Lord Browne-Wilkinson, after considering the aforementioned passage of Lord Diplock, observed as follows:

[10] Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223
[11] Ibid.
[12] Courts also may view a decision in light of the test contained in Secretary of State for Education and Science v.Tameside Metropolitan Borough Council [1977] AC 1014, where the circumstances warrant it, which is considered a less tortuous test than Wednesbury unreasonableness: "*In public law, "unreasonableness" as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt*."
[13] [1993] AC 682 at page 701.

"*Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle [of judicial review] is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision-maker on the underlying assumption that* ***the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense reasonably****. If the decision-maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully*." (emphasis added)

Conclusion

Taking into consideration the totality of the material that is available to this Court, it is the view of this Court that:

(a) The opinion of the 2nd Respondent that the land referred to in the notice '**P8**' is State land is reasonable in light of the evidence placed before him and presented to this Court, and is therefore an opinion that a *sensible person who had applied his mind to the question to be decided could have arrived at*;

(a) The 2nd Respondent therefore acted lawfully when he formed the opinion that the land referred to in the notice '**P8**' is State land to which the 1st Respondent is lawfully entitled.

In the above circumstances, this Court does not see any merit in the application of the Petitioners. The application of the Petitioners is accordingly dismissed, without costs.

**Judge of the Court of Appeal**