

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

In the matter of an application for Orders in
the nature of Writs of Certiorari, Prohibition
and Mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

M. I. M. Safiyulla,
25, Handiramulla,
Panagamuwa.

PETITIONER

C.A. Case No. WRT/0293/20

Vs.

Divisional Secretary,
Ridigama.

RESPONDENT

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Lakshman Perera, PC, with Thishya Weragoda, Anusha N.
Fernando and Tharika Jinadasa, instructed by Niluka
Dissanayake, for the Petitioner.

Prabhashanee Jayasekera, SC, for the Respondents.

ARGUED ON : 26.09.2025

DECIDED ON : 24.10.2025

JUDGEMENT**K. M. G. H. KULATUNGA, J.**

1. The petitioner, by this application, is seeking to quash letter A-11 dated 21.05.2020, issued by the respondent Divisional Secretary of Ridigama. According to A-11, the petitioner is informed that a particular land on which an ancient *ambalama* was situated had been surveyed by the surveyor of the Department of Land Commissioner, and the petitioner is said to be in unauthorised occupation of the same. Accordingly, the petitioner has been informed to vacate the said identified and demarcated land situated at Ilukpitiya Junction, Maspotha, within 7 days. The petitioner's main ground urged is that the said plot of land *inter alia* was also a fact in issue in the District Court of Kurunegala Case No. 3642/L, and the predecessor of the petitioner obtained a declaration of title in his favour on the basis of prescriptive possession, and the respondent is estopped from reagitating the same.
2. The said District Court action was in respect of Lot No. 2 of Plan No. 2483A made by Gunasoma Ratnayake, Licenced Surveyor. The petitioner does claim that the said land also included the *ambalama* at the Ilukpitiya Junction. The said District Court action had been initially between the said predecessor of the petitioner, namely, his father, and the defendant A. M. Gunarath Banda. In the course of litigation, as it was alleged that a portion was State Land, the Hon. Attorney General had intervened as the 2nd respondent, and issues were also framed. The said issues and answers are as follows:

“දෙවන විත්තිය වෙනුවෙන් විසඳිය යුතු ප්‍රශ්න

10. මෙම නඩුවට අදාළ විෂය වස්තුව වන්නේ අංක 816 දරන අවසාන ගම් සිටියෙමේ කැබලිංක 816 දරන අවසාන ගම් සිතියමේ කැබලි අංක 86 වේද?

- ඔප්පු කර නැත.

11. ඉහත සඳහන් අංක 816 දරණ අවසාන ගම් සිතියමේ කැබලි අංක 86 1942.12.11 වෙනි දින දරන ඉඩම් නිරවුල් කිරීමේ නියෝගය අංක 672 යටතේ ශ්‍රී ලංකා ජනරජය සතුව ඇත්ද?

- ඔප්පු කර නැත.

12. 1930.03.12 වෙනි දින දරන අංක 10516 දරන ඔප්පුයි උපලේඛනය සඳහන් වන්නේ අස්වැද්දුම් පිටිය නැමැති ඉඩමද?

- ඔව්.

13. අවසාන ගම් සිටියම් අංක අටසිය දාසයෙහි කැබලි අංක 86 සඳහන් ඉඩම සියඹලා ගොඩ ඇල්ලේ කුඹුර නම්වේද?

- ඔප්පු කර නැත.

14. වෙත දොළොස් වැනි විසඳිය යුතු ප්‍රශ්නයේ සඳහන් ඉඩම දහතුන් වන විසඳිය යුතු ප්‍රශ්නය සඳහන් ඉඩමට භාත්පසින්ම අදාළ නොවන ඉඩමක් වන්නේද?

- පැන නොනගී.

15. පළවන විත්තිකරු විසින් රිදීගම උපදිසාපති කොට්ඨාසයේ පිහිටි උප තැපැල් කාර්යාල ගොඩනැගිල්ල 1989 පහළොස් වැනි දින විනාශ වීම මත රිදීගම උපදිසාපති නියෝගය ප්‍රකාර එකී තැපැල් කාර්යාලය පවත්වාගෙන යාම සඳහා මෙම නඩුවේ විෂය වස්තුවේ සඳහන් රජයේ ඉඩමෙන් පර්චස් 2.8 ප්‍රමාණයක් පළවන විත්තිකාරවට රජය විසින් බාර දී ඇත්ද?

- විෂය වස්තුව රජයේ ඉඩමක් බව ඔප්පු කර නැත.

16. 1993 දහයයි 26 දිනට මිනුම්පතිගේ කු/92/611 ඉංග්‍රීසි a b c සහ e කොටස් රජයරජය සතුවේද?

- ඔප්පු කර නැත. (එම පිඹුර ලකුණු කරද නැත.)

17. ඉහත විසඳනාවේ සඳහන් මිනුම්පතිගේ කු/92/611 හි සඳහන් ඉඩම තුළ කොටසක පැමිණිලිකරු ගොඩනැගිල්ලක් සාදා ඇද්ද ?

- ඔප්පු කර නැත. (එම පිඹුර ලකුණු කරද නැත.)

18. මෙම නඩුවට අදාළ දේපළ ශ්‍රී ලංකා ජනරජයට අයිතිද?

- ඔප්පු කර නැත.

19. එසේ රජයට අයිති නම් රජයේ ඉඩම් ආඥා පනතේ එකසිය තුන්වැනි වගන්තියේ ප්‍රකාර පැමිණිලිකරුට කාලාවරෝ ආඥා පනතේ විධිවිධාන බල නොපායිද?

- පැන නොනගී.

20. ඉහත විසඳනාවන් විත්තිකරුගේ වාසියට තීන්දුවේ නම් එකී නඩුව පවරා පවත්වා ගෙන යාමට හැකිද?

- පවත්වාගෙන යා හැකිය.”

3. Thus, the learned District Judge answered the said issues in the negative as aforesaid on the basis that the State failed to prove, and judgement was pronounced in favour of the plaintiff, the petitioner's father. According to the said judgement A-4(e), the learned District Judge found that the respondents have failed to prove that Lot No. 86 in the Final Village Plan ("FVP") bearing No. 816 is situated within the

corpus depicted in Plan P-1 and accordingly held that issue no. 10 had not been proved. The sum total of the learned District Judge's finding is that the State failed to tender certified copies or originals of the relevant plans in evidence and thus failed to establish that Lot No. 86 is State Land and also failed to tender a superimposition to establish that it is within the corpus (Lot No. 2 of Plan No. 2483A).

4. At pages 22 and 23 of the said judgement, the learned District Judge has further found that the FVP bearing No. 816, depicting Lot No. 86, produced as 2V1A and 2V1B, are photocopies of which neither certified copies nor originals have been produced. Further, the learned District Judge has concluded that even if it is determined that Lot No. 86 is Siyambalagodella, depicted in Plan No. 816, yet for all, the respondents have failed to prove that the said Lot is within the boundaries of the corpus as depicted in P-1. The relevant portion appears as follows:

“අවසන් ගම් පිඹුරු 816 හි අංක 86 විස්තරවන 2වීළු හා 2වීළු ලේඛණ දෙකම ඡායා පිටපත්ය. සහතික හෝ මුල් පිටපත් ඉදිරිපත් කර නැත. සහතික පිටපත් ඉදිරිපත් කිරීමට නියම කර ඇත්ත්, එය ඉටු කර නැත. ඡායා පිටපත් ද්විතීක ලෙස බාර ගැනීම සඳහා පදනමක්ද පෙන්වා දී ඇත. මෙම තත්ත්වය තුළ 13 වන විසඳනාවට ‘ඔප්පු කර නැත’ ලෙස පිළිතුරු දෙමි.

13 වන විසඳනා වට දෙන පිළිතුර අනුව 14 වන විසඳනාවට දෙන පිළිතුර ‘පැන නොනගි’ වේ. අනෙක් අතට 816 පිඹුරේ ලොට් 86 සියඹලාගොඩැල්ල යැයි තීරණය කළත් එය පැ. 1 හි සීමා තුළ පිහිටි බව ඔප්පු කර නැත.”

5. It is primarily on this basis the learned District Judge has decided, determined, and answered the issues raised by the State. Accordingly, a decree had been entered in favour of the plaintiff. The said judgement was delivered as far back as 27.08.2002. It is common ground that neither the State nor any other party appealed therefrom, and the said judgement remains unassailed up until today. The petitioner thus argues that in view of the declaration of title made by the learned District Judge, which is unassailed, the State is not entitled to proceed under the State Lands (Recovery of Possession) Act as the State is estopped and/or the matter is now *res judicata*, as the State is bound

by the said judgement. As opposed to that, the position of the respondent is that the notification P-11 is in respect of Lot No. 86 of FVP No. 816 and that it is State Land. The respondents have, by way of objection, motion, and affidavit, tendered to this Court that the land in respect of which the said notice was issued is State Land and had been resurveyed in 2010 and has now been gazetted under the Registration of Title Act, No. 21 of 1998. The relevant Gazette Notification published in Extraordinary Gazette No. 1677/17, dated 27.10.2010, is annexed as “A”.

6. The relevant cadastral map bearing No. 420132 is annexed as ‘B’, and the tenement list is annexed as document ‘C’, according to which Lots No. 142 and No. 143 of the said tenement list marked ‘C’ and Lot No. 86 of FVP No. 816 is depicted as consisting 5.8 perches, and Lot No. 143, the balance portion of Lot No. 86 of FVP No. 816, as consisting 4.7 perches. The name of the said land is referred to as ‘*aswaddume pitiya kumbura*’, now ‘*watte*’, and the land used is depicted as *ambalama*, and the claimant is the State. Accordingly, it is argued that in view of the said registration of lands effected by and under the Registration of Title Act, No. 21 of 1998, Lot No. 86 of FVP No. 816 is proved conclusively to be State Land. Further, in support, a certified copy of FVP 816 is marked and produced as ‘D’, which confirms that Lot No. 86 contains an *ambalama*. Further, according to the land settlement order marked ‘F’ and the register of settlement, the said Lot No. 86 is depicted as an abandoned paddy land containing an *ambalama* and has been settled in favour of the Crown, of which the extent is 15 perches.
7. The petitioner filed the counter-affidavit dated 10.09.2025. However, there is no denial or a different position taken in respect of documents “A” - “H” tendered along with the objections. Especially, the petitioner is silent on the publication of the Gazette Notification (“A”) under Section 12 of the Registration of Title Act.

8. According to the said material placed before this Court, the respondents have satisfied this Court that the original Lot No. 86 of FVP No. 816 was settled in favour of the state and remains so up until today. Subsequently, with the implementation and enactment of the title registration under the Registration of Title Act, No. 21 of 1998, the said Lot No. 86 has been depicted and registered as Lots 142 and 143 in the cadastral map bearing No. 420132 as State Land.
9. That being so, it is now necessary to consider the effect of the District Court judgement and if a District Court by declaration of title can change the character of State Land into private land. As I observe, once the land is settled in favour of the State, under the provisions of the Land Settlement Ordinance, a declaration by the District Court in favour of a private party cannot in law change such character. This will be so even if the State has appeared as a party, and due to the default or failure to produce and prove the relevant plan, has resulted in entering judgement in favour of the private party. The learned District Judge in Case No. 3642/L has answered the issues raised by the State in the negative due to the failure to prove and produce the relevant plans and the absence of a superimposition. As I observe, the said judgement of the District Court has not made any positive pronouncement or finding in respect of Lot No. 86 of FVP No. 816. Therefore, the said judgement will have no application, relevance or bearing as to the nature of Lot No. 86 depicted therein. That being so, the issue of estoppel or *res judicata* will not be relevant or applicable when steps are taken under the State Lands (Recovery of Possession) Act in respect of Lot No. 86 of FVP No. 816 or part thereof. If I may further clarify, if FVP No. 816 was proved along with a superimposition, then a declaration or a finding would have been made in respect of the said Lot No. 86. In such circumstances, the aforesaid judgement of the learned District Judge may have had a relevance on the current application as asserted by the petitioner.

10. Even taking and considering the argument of the petitioner at its face value, namely that the petitioner has the benefit of the District Court judgment and declaration made in favour of his father, yet for all, the District Court has declared the title of Lot No. 2 of Plan No. 2483A. It is specifically mentioned and observed by the learned District Judge that no superimposition of Lot No. 86 of FVP No. 816 has been made on the said Plan No. 2483A. To that extent, even in the District Court there has not been a superimposition to establish or conclude that Lot No. 86, consisting of the *ambalama*, is within the corpus. Similarly, the petitioner in this application, has not provided any evidence to establish that the subject matter of P-11 is situated within the corpus District Court Case No. 3642/L. To that extent, a relevant and important fact in this application is in dispute. In **Attorney General vs. Sandresh Ravindra Karunanayake** (SC/Appeal/104/2024, decided on 03.06.2025) at page 37, Samayawardhena, J., cited the case of **St. Helens Borough Council vs. Manchester Primary Care Trust & Another** [2008] EWCA Civ. 931, at para 13, where Lord Justice May stated as follows:

“Judicial review is a flexible, but not entirely unfenced jurisdiction. This stems from certain intrinsic features. The court’s relevant function is to review decisions of statutory and other public authorities to see that they are lawful, rational and reached by a fair and due process. The public authority is normally the primary decision maker with a duty to apprehend the facts underlying the decision by a fair procedure which takes properly into account all relevant facts and circumstances. If the public authority does this, the court will not normally examine the merits of the factual determination. Accordingly, a court hearing a judicial review application normally receives evidence in writing only, and does not set about determining questions of disputed fact.”

In this regard, Ranasinghe, J. (as his Lordship then was), in **Thajudeen vs. Sri Lanka Tea Board and Another** (1981) 2 SLR 471, held as follows:

“Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the

questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”

11. Accordingly, both at the District Court as well as in this Court, neither the petitioner nor his predecessor has placed any material to establish the fact that the land depicted as Lot No. 86 in FVP No. 816 is in fact within the corpus of the District Court judgement. This remains so even now. Unless the petitioner is able to satisfy this Court of that fact, he cannot succeed in this application. Accordingly, I hold that a vital fact is in dispute and the petitioner is not entitled to relief as prayed for.

12. In the event an adverse order is made under the State Lands (Recovery of Possession) Act No. 07 of 1979, and the petitioner is ejected from the said portion, still for all, Section 12 of the said Act provides for the petitioner to vindicate his title. Section 12 provides as follows:

“12. 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.”

Thus, the petitioner has an effective remedy to vindicate his title within six months of such an ejectment.

13. However, it is relevant at this juncture and critical that the respondent has placed before this Court that a Gazette Notification has been published under Section 12 of the Registration of Title Act (document “A”). The said Gazette Notification provides for any person to dispute or make any claim on or before a date specified therein, namely

20.11.2010. The said Gazette Notification has been published on 27.10.2010. By virtue of the said proceedings and steps taken under the Registration of Title Act, the title of the land bearing Lot No. 86 in FVP No. 816, on which the *ambalama* is situated, even if it be assumed to be within the corpus of the District Court case, is now statutorily declared that the title is in the State and is State Land. That being so, the said process of registration of title, under Act No. 28 of 1998, has now superseded the said District Court judgement. To that extent, the judgment of the District Court relied upon will not have the same effect and would not be applicable as argued by the petitioner. In these circumstances, the said argument advanced by the petitioner is untenable, erroneous and misconceived, in view of the said change of circumstances. There is no illegality, irrationality, or procedural impropriety established. Accordingly, I hold that the ground urged for the issuance of the writ is misconceived and untenable.

14. For the aforesaid reasons, I hold that the petitioner has failed to establish any ground that entitles him to the relief as prayed for. Accordingly, this application is dismissed. However, I make no order as to costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL