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

In the matter of an Application for Special Leave to Appeal to the Supreme Court in terms of Article 128(2) of the Constitution from the Order of the Court of Appeal dated 27.06.2013.

S.C. Appeal No:
162/2013

SC (Spl) LA No:
173/2013

C.A. Writ No: 427/2005

D.C. Ratnapura No:
9152/L

1. W.H.M. Gunaratne,
   251/1, Dharmapala Mawatha,
   Colombo 7. (Deceased)
2. Vishwa Jayawardena,
   251/1, Dharmapala Mawatha,
   Colombo 7. (Deceased)
3. Udage Gayan Wijeypala,
   Allington Estate,
   Rambukkana.
4. K. Karthigesan,
   Allington Estate,
   Rambukkana.

PETITIONERS

Vs.

1. Land Reform Commission,
   C 82, Gregory's Road,
   Colombo 7.

2. Vidura Wikcramanayke,
   Chairman,
   Land Reform Commission,
   C 82, Gregory's Road,
   Colombo 7.

RESPONDENTS

AND BETWEEN

1. W.H.M. Gunaratne,
   251/1, Dharmapala Mawatha,
   Colombo 7.
2. Vishwa Jayawardena,
   251/1, Dharmapala Mawatha,
   Colombo 7.
3. K. Karthigesan,
   Allington Estate,
   Rambukkana

PETITIONER-APPELLANTS

Vs.

1. Land Reform Commission,
   C 82, Gregory's Road,
   Colombo 7. **(Previously)**
   No. 475, Kaduwela Road,
   Battaramulla. **(Now)**
2. Vidura Wikcramanayke,
   Chairman,
   Land Reform Commission,
   C 82, Gregory's Road,
   Colombo 7.

2A. T. A Sumanathissa
Thambugala,
Chairman,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

2B. Sampath Subasinghe
Arachchi,
Chairman,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

2C. Sirimewan Dias,
Chairman,
Land Reform Commission,
No. 475, Kaduwela Road,
Battaramulla.

2D. Nilantha Wijesinghe,
Chairman,
Land Reform Commission,
No. 475, Kaduwela Road,
Battaramulla.

RESPONDENT-RESPONDENTS

Udage Gayan Wijeypala,
Allington Estate,
Rambukkana.

PETITIONER-RESPONDENT

Before	**:** P. Padman Surasena, C.J.
	: Janak De Silva, J.
	: Sampath B. Abayakoon, J.
Counsel	**:** Ikram Mohamed, PC for Charitha Jayawickrema for Petitioner-Appellants instructed by Sanjeewa Kaluarachchi.
	: Chathura Galhena with Ms. Sachini Handapangoda for 1st and 2nd Respondent-Respondents instructed by Rajapaksha.
Argued on	**:** 22-05-2025
Written Submissions	**:** 28-01-2014 (By the 1st Respondent-Respondent)
	: 26-12-2013 (By the Petitioner-Appellants)
Decided on	**:** 08-09-2025

Sampath B. Abayakoon, J.

The petitioner-appellants (hereinafter referred to as the appellants) initiated proceedings before the Court of Appeal seeking a Writ in the nature of a Writ of Certiorari in order to quash the notices to quit dated 13-01-2005, issued by the 2nd respondent-respondent on the appellants in terms of State Lands (Recovery of Possession) Act No. 07 of 1979 as amended.

The Court of Appeal of the judgment dated 27-06-2013 dismissed the said application with costs on the basis that it finds no merit in the application.

Being aggrieved of the said decision, the appellants preferred an application for Special Leave to Appeal, and having considered the said application, this Court granted Leave to Appeal on 18-11-2013 in respect of questions of law set out in paragraph 11 subparagraph (a) to (f) of the petition dated 08-07-2013.

The said questions of law upon which Leave to Appeal was allowed read as follows,

a. Did the Court of Appeal err in holding that the petitioner-petitioners were in unauthorized occupation of the said land when the 1st respondent-respondents had accepted the title of the 2nd petitioner-petitioners as a statutory lessee of 50 acres and co-owner of the balance.
b. Has the Court of Appeal erred by determining matters which were not in issue and taking into account irrelevant circumstances.
c. Did the Court of Appeal err in holding that a course could be had to the provisions of the State Lands (Recovery of Possessions) Act in instances where there is serious title dispute.
d. Did the Court of Appeal err in failing to take cognizance of the fact that there was no material of which the 2nd respondent-respondents could have formed the opinion that the corpus to which the notices relate is State land as contemplated by the State Land (Recovery of Possession) Act as such the notices were ultra vires the said act.
e. Did the Court of Appeal err in failing to take cognizance of the fact that there was inconsistency on the part of the 1st respondent-respondents for the reason that in the previous Writ Application bearing No. CA 366/91 the 2nd respondent-respondents had categorically stated that the corpus was not State land, and in the present application bearing the LRC has taken an opposite position that the land is vested in the LRC.
f. Did the Court of Appeal err in failing to take cognizance of the fact that there was no material on which the 2nd respondent-respondents could have formed the opinion that the petitioners were in "unauthorized occupation" of such land, as contemplated by section 3 of the State Land (Recovery of Possession) Act as amended by Act No. 29 of 1983, which is the subject matter of this application.

This is a matter where the 2nd respondent-respondents, namely, the Chairman of the Land Reforms Commission, being a Competent Authority in terms of section 3 of the State Lands (Recovery of Possessions) Act, have issued quit notices dated 13-01-2005. In the said quit notices which have been marked as P-11, P-12, and P-13 before the Court of Appeal, the Competent Authority has expressed the opinion that the land morefully described in the schedule of the said quit notices is a State land, and that the appellants are in unauthorized occupation of the same, requiring them to vacate the said land.

It is against the said quit notices that the appellants have gone before the Court of Appeal seeking a Writ in the nature of Certiorari and other incidental reliefs.

The Court of Appeal, after considering the positions taken up on behalf of the appellants to argue that the Competent Authority had no basis to come to an opinion that the land in question is a State land, and the appellants are the owners of the land, and also having referred to other factual matters, had decided by the judgment dated 27-06-2013 to dismiss the application.

It has been observed that the petitioners do not have a basis to claim ownership as they claim, and the question of alleged ownership is in dispute; hence, the Court will not exercise Writ jurisdiction based on disputed facts. It has been observed further, that this is a matter where the appellants should obtain remedy by pursuing their rights in a competent Court and not by invoking the Writ jurisdiction of the Court of Appeal.

At the hearing of this appeal, this Court heard the submissions of the learned President's Counsel who represented the appellants, also had the benefit of listening to the submissions of the learned Counsel who represented the respondent-respondents as to their respective stands.

Having considered the arguments placed before the Court and the relevant documents submitted in support of the arguments, I find the following as the relevant facts that need to be considered.

The questioned land for which the Chairman of the Land Reforms Commission issued quit notices is a land called Allington Estate situated at Rakwana, containing about 290 acres in extent.

The appellants have claimed co-ownership to the said land based on a deed of declaration and a District Court judgment which was in their favor, where it has been declared that the land mentioned in the schedule of the said plaint is owned by the plaintiffs by possession.

The appellants have claimed rights to the land in question on the basis that the original owner of the land sold it to them, although no deed of formal transfer has been executed.

They appear to have relied on the statutory declaration made by the said original owner of the land who has the paper title in terms of section 18 of the Land Reform Law No. 01 of 1972, where the said original owner of the land, namely, one A.M. Ismail had declared in the statutory declaration sent to the Land Reforms Commission in terms of the above section 18 declaration that he sold the property to one W.S.S. Jayawardena and Don William Wanigaratne on 25-05-1966, but did not execute the deed of transfer as a balance sum of Rs. 17, 500/- is still due to him. (the document marked R-01 before the Court of Appeal).

The documents marked R-02 and R-03 before the Court of Appeal which are also statutory declarations in terms of Land Reform Law by the mentioned Don William Wanigaratne and W.S.S. Jayawardena respectively, show that they have also claimed rights to the property.

The document marked P-01, which is the decree entered in the District Court of Ratnapura case No. 9152/L reveals that it was an action instituted without the Land Reforms Commission or the earlier mentioned Wanigaratne or the original owner Ismail being made parties. It is a judgment where only a declaration has been given, stating that the plaintiffs in the action are entitle for possessory ownership.

The documents marked P-01A, is a deed of declaration prepared among the parties to the deed to claim rights to the land where the quit notices have been issued by the Land Reforms Commission.

Having considered the factual matrix as above, I will now proceed to consider whether the appellants being the petitioners before the Court of Appeal had established a basis upon which the Court could have issued a Writ in the nature of a Writ of Certiorari as sought by them.

Since it was the argument of the learned President's Counsel that there was no basis for the 2nd respondent to issue a quit notice in terms of section 03 of the State Land (Recovery of Possession) Act, and there was no basis for him to form an opinion that the land mentioned in the schedule of the quit notice is a State land, I will now proceed to consider the said argument.

There cannot be any argument that the 2nd respondent-respondents named in this appeal, being the Chairman of the 1st respondent-respondent, the Land Reforms Commission, is a person statutorily authorized to function as a Competent Authority in terms of the State Land (Recovery of Possession) Act No. 07 of 1979 (The Act).

Section 3 of the Act provides for a notice to be issued to a party in unauthorized possession or occupation of State land.

The relevant section 3(1) of the Act reads as follows,

3(1). Where a competent authority is of the opinion

a. That the land is state land; and

b. That any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service in practicable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependence, if any, and to

deliver vacant possession of such land to such competent authority or other authorized person as maybe specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than 30 days from the date of the issue or the exhibition of such notice.

Section 3(1) of the Land Reform Law, provides for ceiling on holding agricultural land a person can own. If the land consists exclusively of paddy land, it would be 25 acres, or if such land does not consist exclusively of paddy land, it would be 50 acres.

If a person owned more than the above ceiling at the commencement of the law, namely, 26-08-1972, any agricultural land in excess would be deemed to be vested in the Land Reforms Commission.

The relevant section 3(2) of the Land Reform Law reads as follows,

3(2). Any agricultural land owned by any person in excess of the ceiling on the date of the commencement of this law shall as from that date –

a. Be deemed to vest in the Commission, and
b. Be deemed to be held by such person under a statutory lease from the Commission.

It was undisputed that one A.M. Ismail of No. 85, Rosmead Place, Colombo 07 was the owner of the land mentioned in the schedule of the quit notice when he submitted the statutory declaration, which needs to be submitted by a statutory lessee once the excess land is vested with the Commission in terms of section 18 of the Act.

Although he has claimed that he sold the land to W.S.S. Jayawardena and Don William Wanigaratne, in view of the absence of any deed of transfer, for all intended purposes, it would be the said Ismail that will have to be considered as the statutory lessee in terms of section 18.

Therefore, I do not find merit in the argument that there was no basis for the Competent Authority to form an opinion that the land in question was State land.

It is my view that once a land is vested with the Land Reform Commission by the operation of law, anyone other than a statutory lessee in terms of the law can be considered as a person holding the land without authorization for the purposes of the implementation of the provisions of the Land Reform Law. Hence, I am of the view that the respondent-respondents were well within the law when the Competent Authority issued the contended quit notices against the appellants.

It is quite clear from the material placed before the Court that when the Writ Application preferred by the appellants was taken into consideration, it had been revealed as to a dispute in relation to the statutory lessee of the property. The actual statutory lessee, in his statutory declaration itself, has stated that he has already sold the land to one Jayawardena and Wanigaratne, although he has not executed a deed of transfer. The said persons have also submitted statutory declarations to the Land Reform Commission claiming them to be the statutory lessees of the land.

As correctly observed in the judgment of the Court of Appeal, the occupiers of the land have obstructed the Land Reform Commission from carrying out their legitimate duties by objecting to a land survey being conducted in relation to the property.

The Court of Appeal has also correctly observed that the deed of declaration upon which the appellants had claimed title is a self-serving document, and the District Court judgement produced before the Court to claim title was a judgment obtained without the necessary parties being named. It is also clear that the earlier mentioned Wanigaratne has also disputed the claims by the appellants as to the title in relation to the land in question.

It was under these circumstances the Court of Appeal has come to a finding that the land where the appellants, as petitioners of the action, have come before the Court of Appeal seeking a Writ, is a matter based on disputed facts.

It has been determined that the alleged title as claimed was doubtful and was based on documents that are incomplete, lacking in authority, and self-serving. Therefore, the review procedure would not be well suited for the determination of disputed facts.

In the case of **Thajudeen Vs. Sri Lanka Tea Board and Another 1981 2 SLR 471** it was held that; where the major facts are in dispute, and the legal results of the facts are subject to controversy, it is necessary that the said questions should be canvased in a suit where parties would have ample opportunity of examining the witnesses so that Court would be better able to judge which version is correct, a Writ will not issue.

Ranasinghe, J. cited **CHOUDRI** in his book on the **Law of Writs and Fundamental Rights (2nd Ed.) Vol. 02**, at page 381:

> *"The rule has been stated that mandamus will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts, or where the legal result of the facts is subject to controversy. If the right is in serious doubt the discretionary power rests with the officer to decide whether or not he will enforce it, till the right shall have been established in some proper action, and discretion fairly exercised in such circumstances cannot be controlled by mandamus,"*
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> Held further at page 449:
>
> *"Where facts are in dispute and in order to get at the truth it is necessary that the questions should be canvased in a suit where parties would have ample opportunity of examining their witnesses and the Court would be able to judge which version is correct, a writ will not issue."*

In the Indian Supreme Court case of **D. Parraju Vs. General Manager, B.N. Railway and Others AIR 1952 CAL 610** it was stated,

> *"It also appears to me that in the facts of this case the remedy by way of a suit is more convenient and effective. As I have stated the parties are in dispute on several questions, namely, the authority by which the petitioner was appointed, the natures on inquiry if any made in the*

present case, the denial of a right of appeal, the alleged imperfect nature of the inquiry and the alleged arbitrary conduct of certain offices of the railway administration. It is difficult in my opinion, to arrive at a satisfactory conclusion on these matters on mere affidavits. In order to get at truth, it is necessary that the questions referred to above should be canvased in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct."

In the case of **Aselro Financial Services (Private) Limited Vs. M.A. Wasantha Chandrasiri and Others CA/Application No. 797/2007**

Per Sriskandrajah, J.

"On careful consideration of the facts placed by both parties, now the issued before this Court is to decide whether 'Kanibi Kotuwe Kumbura' is situated within the land called 'Polkotuwewatta Deniya' or not. This factual position falls within the ambit of Court of first instance to decide after an inquiry or trial. In such an inquiry or trial, the petitioner will also get an equal opportunity to contest the trial. As factual matters are in issue this application is not amendable to the writ jurisdiction of this Court."

I find that the appellants have gone before the Court of Appeal claiming co-ownership of the land, and their plea for a Writ of Certiorari had been based on very much disputed facts as contemplated above.

Hence, I do not find any reason to disagree with His Lordship Justice of the Court of Appeal on his refusal to issue the Writ as sought for the reasons stated in the judgement.

As considered in the said judgment, once a Competent Authority forms the opinion that the land in question is a State land, and decides to issue a quit notice under section 3 of the Act, the purpose of issuing such a notice is to obtain the possession of the State land without any delay.

Once an occupier issued with a notice is allowed to show cause as to why an application made under the Act should not be allowed, a scope of an inquiry that can be held has been defined in section 9 of the Act. In such an inquiry, it is up to the person who is in occupation of the State land to establish that he is in such possession or occupation upon a valid permit or other written authority of the State, granted in accordance with any written law and such permit or authority is in force.

In the case of **Muhandiram Vs. Chairman, No. 111, Janatha Estate Development Board (within 1992) 1 SLR 110** it was held that in an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that he is in possession or occupation upon a valid permit or under written authority of the State, granted according to any written law. If this burden is not discharged, the only option open to the Magistrate is to order ejectment.

Besides that, in terms of section 12 of the Act, a statutory provision has been laid down, where a person who has been ejected from a land under the provisions of the Act or any person claimed to be the owner of the land thereof is to institute an action against the State for compensation for the loss of his rights.

In the case of **Farook Vs. Gunawardena, Government Agent Ampara (1980) 2 SLR 243,** which was a case relating to a State land recovery of possession action, it was held,

> *"The structure of the Act would also make it appear that where the competent authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion. Alternate relief is given by section 12 which empowers any person claiming to be the owner of a land to institute action against the State for the vindication of his title within 6 months from the date of the order of ejectment and section 13 is to the effect that where action is instituted by a person, if a decision is made in favor of that person, he will be entitled to recover*

reasonable compensation for the damage sustained by reason of his having been compelled to deliver possession of such land."

It is my considered view that the appellants who are seeking to claim ownership of the land have the option of going before a competent Court, where the said Court could have gone into their claim of ownership, and the claim of the State in terms of the Land Reform Law in deciding the matter. Apart from the above remedy, the petitioners will also have the remedy of filing action against the State in terms of section 12 of the State Land (Recovery of Possession) Act even if they were ejected from the land.

For the reasons as considered as above, I am of the view that there needs no disturbance of the judgment pronounced by the Court of Appeal in this regard.

Accordingly, I answer all the questions of law in the negative.

The appeal is dismissed as I find no merit in the same.

The appellants shall pay Rs. 50,000/- as costs to the respondent-respondents.

Judge of the Supreme Court

P. Padman Surasena, C.J.

I agree.

Chief Justice

Janak De Silva, J.

I agree.

Judge of the Supreme Court