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

SC Appeal No. 55/2012
SC Spl. LA No. 232/2010
CA Writ No. 533/2007

In the matter of an Appeal with Special Leave to Appeal obtained from this Court.

JAYAKODI KURUNDUPATABENDIGE PERLY TISSA DE SILVA
No. 109, Jayasiripura, Anuradhapura.
PETITIONER

VS.

1. **DIVISIONAL SECRETARY, NORTH NUWARAGAMPALATHA**
   Divisional Secretariat, North Nuwaragampalatha, Anuradhapura.

2. **HERATH BANDA RATNAYAKA**
   No. 577, Bulankulama Dissawa Mawatha, Anuradhapura.

3. **THE MUNICIPAL COUNCIL, ANURADHAPURA**
   Town Hall, Anuradhapura.

RESPONDENTS

AND NOW

JAYAKODI KURUNDUPATABENDIGE PERLY TISSA DE SILVA
No. 109, Jayasiripura, Anuradhapura.
PETITIONER-PETITIONER/ APPELLANT

VS.

1. **DIVISIONAL SECRETARY, NORTH NUWARAGAMPALATHA**
   Divisional Secretariat, North Nuwaragampalatha, Anuradhapura.

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   Town Hall, Anuradhapura.

RESPONDENTS-RESPONDENTS

BEFORE:	Prasanna Jayawardena, PC, J. P. Padman Surasena, J. S. Thurairaja, PC, J.
COUNSEL:	Dr. Sunil Cooray with Heshan Pietersz for the Petitioner-Petitioner/Appellant. Rajitha Perera, SSC, for the 1st Respondent-Respondent. Vishwa de Livera Tennakoon with Lilani Ganegama instructed by Maheshika Patabendi for the 2nd Respondent-Respondent. Rasika Dissanayake for the 3rd Respondent-Respondent.
ARGUED ON:	26th February 2019.
WRITTEN SUBMISSIONS FILED:	By the Petitioner-Petitioner/Appellant on 22nd May 2012 and 04th April 2019. By the 1st Respondent-Respondent on 16th September 2013 and 01st April 2019. By the 2nd Respondent-Respondent on 31st May 2012 and 14th June 2019.

DECIDED ON: 12th December 2019.

Prasanna Jayawardena, PC, J

This appeal is with regard to the right to occupy an allotment of land [”the land”] which now bears Assessment No. 396/5, Bandaranaike Mawatha, Anuradhapura. There is a canal reservation within the land, along its western boundary.

In the year 1991, the land was within the territorial limits of the Urban Council of Anuradhapura. On 06th February 1991, the then Chairman of the Urban Council and the Petitioner-Petitioner/Appellant [“the petitioner”], who is a businessman living in Anuradhapura, entered into a written agreement marked “P1” in terms of which the petitioner agreed to construct a drain within the canal reservation and the Chairman of the Urban Council agreed that, upon satisfactory completion of that work, the Urban Council would consider a request made by the petitioner that he be permitted to occupy the land.

Soon after the agreement marked “P1” was executed, the petitioner entered into occupation of the land. This led the 2nd Respondent-Respondent [“the 2nd respondent”], who is an attorney-at-law, to institute Case No. 14087/L in the District Court of Anuradhapura against the petitioner. In his plaint, the 2nd respondent pleaded that the Provincial Land Commissioner of the North Central Province had, by his writing dated 06th February 1991 marked “R2(d)”, granted the 2nd respondent the right to possess the same land upon a temporary lease and that the petitioner had entered into wrongful occupation of the land on 10th February 1991. The 2nd respondent prayed for a declaration that he is the lawful lessee of the land, and for the ejectment of the petitioner from the land. In his answer, the petitioner denied that the 2nd respondent was the lessee of the land and pleaded that the petitioner was in lawful occupation of the land under “P1”. At the end of the case, the learned District Judge held that the Urban Council of Anuradhapura had the lawful authority to enter into “P1” and that the petitioner was in lawful occupation of the land. The 2nd respondent’s case was dismissed.

One week after the judgment was delivered, the then Chairman of the Urban Council, acting on behalf of the Urban Council, and the petitioner entered into a written agreement dated 27th January 1993 and marked “P7” in terms of which the Urban Council leased the land to the petitioner and the petitioner agreed to construct a drain and secure the canal reservation and also erect a commercial building on the land. Thereafter, the petitioner submitted the building plan marked “P8” to the Urban Council. “P8” was approved. The petitioner constructed a single storied shop premises on the

land. Upon the completion of the construction of the shop premises and drain, the petitioner received the Certificate of Conformity, marked “P9”. After completion of the construction, the petitioner commenced carrying on a business in the shop premises.

The 2nd respondent had appealed to the Court of Appeal from the aforesaid dismissal of his action in the District Court. On 04th November 1998, the Court of Appeal dismissed the 2nd respondent’s appeal. That decision is reported - *vide:* RATNAYAKE vs. DE SILVA [1999 3 SLR 57]. The petitioner appears to have remained in occupation of the land during the pendency of the appeal in the Court of Appeal.

Several years later, the petitioner received a Quit Notice dated 17th November 2003 marked “P10” issued by the Divisional Secretary of Nuwaragam Palatha - East, which stated that the land was State Land and that the petitioner was in unauthorized occupation. “P10” stated that the Divisional Secretary was acting under and in terms of section 3 of the State Lands (Recovery of Possession) Act No.07 of 1979, as amended, and required the petitioner to hand over vacant possession of the land on or before 31st December 2003. The petitioner replied by the letter marked “P11” sent by his Attorney-at-Law stating that he is in lawful occupation of the land under and in terms of a lease granted by the Urban Council and that the aforesaid judgments of the District Court and the Court of Appeal had affirmed this position. There was a further exchange of correspondence during which the petitioner appears to have continued to be in occupation of the land.

However, the petitioner does not appear to have challenged the validity of the Quit Notice marked “P10” by filing an appropriate application in Court, at any stage.

Subsequently, the petitioner became aware that the Divisional Secretary of Nuwaragam Palatha - East had issued a writing dated 01st November 2006 marked “P14” authorising the 2nd respondent to occupy the land on payment of a lease rental, pending the issue of a formal lease. “P14” is signed by the Divisional Secretary of Nuwaragam Palatha - East and bears a seal with the name of that officer and his aforesaid office. “P14” was to the effect that the 2nd respondent was given permission to occupy the land pending the issue of a formal lease and subject to payment of a lease rental. Thus, Condition 6 of “P14” expressly stated that a due and proper `lease permit’ would be issued to the 2nd respondent in due course [“*මෙම බද්ද වෙනුවෙන් නියමිත බදු බලපත්‍රයක් යතා කාලයේදී ඔබ වෙත නිකුත් කරනු ලැබේ*”]. “P14” states that the intended lease which was to be executed, would be for a period of 30 years. “P14” also specifies that the 2nd respondent must build a `lawyer’s office’ on the land.

“P14” does not state the enactment under which the proposed `lease permit’ was to be issued. However, the statement by the Divisional Secretary in “P14” that he was authorising the 2nd respondent to occupy the land pending the issue of a formal `lease permit’ [“*බදු බලපත්‍රය*”] and subject to payment of a lease rental, leads to the inference that

the intended 'lease permit' was to be issued under section 2 of the State Lands Ordinance No. 8 of 1947, as amended, which, *inter alia*, empowers the President to lease State Land. In this connection, it is to be noted that the Divisional Secretary was not been acting under and in terms of the Land Development Ordinance No. 19 of 1935, as amended, since that enactment does not appear to provide for the *lease* of State Land in consideration for the payment of *lease* rentals.

On 11th June 2007, the petitioner filed an application in the Court of Appeal naming the Divisional Secretary, the 2nd respondent, and the Municipal Council of Anuradhapura as the 1st to 3rd respondents respectively [The previous Urban Council had been declared to be a Municipal Council sometime after "P7" was entered into]. It should be mentioned here that the petitioner had erroneously named the *"Divisional Secretary, North Nuwaragampalatha"*, as the 1st respondent. However, there is no Divisional Secretariat by that description. The 1st respondent should have been correctly named as the "Divisional Secretary of Nuwaragam Palatha - East", as stated in "R2(d)" and "P14".

In his application to the Court of Appeal, the petitioner prayed for a writ of *certiorari* quashing "P14" by which the 1st respondent permitted the 2nd respondent to occupy the land pending the issue of a formal `lease permit' and subject to payment of a lease rental.

In support of his application for the writ of *certiorari*, the petitioner pleaded that the land belongs to the Municipal Council of Anuradhapura and that the Divisional Secretary had no power or authority to issue "P14" since this is not State Land. The petitioner went on urge that, even if the land was vested in the State, the alienation or disposition of State Land within a Province can only be effected by the President of the Republic on the advice of the Provincial Council, and that "P14" was null and void since it had not been issued by the President. Thus, the petitioner contended that the Divisional Secretary [the 1st respondent] had no power or authority to have issued "P14".

A statement of objections was filed in the Court of Appeal by the 1st respondent supported by his affidavit, in which he states he is the Divisional Secretary of Nuwaragam Palatha - East. By doing so, the aforesaid error in the caption of the petition has been recognised and the Divisional Secretary of Nuwaragam Palatha - East [the 1st respondent] has, nevertheless, entered an appearance and resisted the application.

The 1st respondent pleaded that the land is State Land and that the Urban Council of Anuradhapura had no authority to enter into the agreements marked "P1" and "P7" with the petitioner. In this connection, the 1st respondent stated that *"the State is the owner of the land in question"*. The 1st respondent averred that the petitioner is in unauthorized possession of State Land and that, in these circumstances, the Quit Notice marked "P10" had been duly issued under the provisions of section 3 of the State Lands (Recovery of Possession) Act. The 1st respondent [the Divisional Secretary] admitted

that he had issued "P14" to the 2nd respondent. However, the 1st respondent did not state the basis on which he issued "P14". He also did not state the effect of "P14" or maintain that "P14" was validly issued.

In his statement of objections, the 2nd respondent too stated that the land was State Land and that the Urban Council had no right to the land. The 2nd respondent pleaded that "P14" issued by the 1st respondent in favour of the 2nd respondent, was a *"lawful permit"* issued to him.

The 3rd respondent [the Municipal Council of Anuradhapura] filed a statement of objections supported by an affidavit affirmed by the Municipal Commissioner. The 3rd respondent stated that the land is vested the Municipal Council of Anuradhapura and that the Urban Council had lawfully leased the land to the petitioner by "P7". The 3rd respondent averred that the 1st respondent had no right, power or authority to have issued "P14" to the 2nd respondent since this is not State Land.

In his judgment, Sri Skandarajah J held that the land is State Land. His Lordship held that the Divisional Secretary had lawfully issued "P14" granting the 2nd respondent the right to occupy the allotment of land pending the issue of a formal instrument of lease signed by the President and subject to payment of a lease rental. Accordingly, the Court of Appeal dismissed the petitioner's application.

The petitioner sought special leave to appeal to this Court from that judgment of the Court of Appeal and obtained special leave to appeal on two Questions of Law. The first was framed by the petitioner and the second was framed by the 2nd respondent. These two Questions of Law are:

(i) When there is a judgment of the District Court affirmed by the Court of Appeal, that the land which is relevant to the present application is a land belonging to the Municipal Council, can the Court of Appeal in a writ application hold that this is not a land belonging to the Municipal Council but land belonging to the State ?

(ii) Whether the substantive relief sought by the petitioner in the Court of Appeal could have been granted having particular regard to the fact that the petitioner has failed to seek a writ of *certiorari* quashing the relevant quit notice marked as "P10" ?

When this case was taken up for argument before this Court, learned counsel for the petitioner sought the Court's permission to raise an additional [third] Question of Law. That application was not objected to by the other parties, and was allowed by Court. Accordingly, the following third Question of Law was formulated by the petitioner:

(iii) Is the alleged lease set out in the document dated 01/11/2006 marked "P14"/"2R1" null and void by reason of the Divisional Secretary having no power or authority in law to grant a lease of State Land for a period of 30 years ?

Thereafter, learned counsel for the petitioner stated that in light of the newly framed Question of Law No. (iii), he will no longer pursue Question of Law No. (i). As a result, we are now required to determine only Questions of Law No. (ii) and (iii).

Since the sole Question of Law pursued by petitioner is Question of Law No. (iii), it will be considered first.

In this regard, the Court of Appeal held that the land in issue is State Land. There is no Question of Law to be decided by us on whether that determination is correct. Thus, it appears to be undisputed that this particular allotment of land is State Land. Further, when one reads the sole Question of Law No. (iii) relied on by petitioner, it is apparent that it has been framed in a manner which implicitly recognises that the land in issue is State Land. Next, in his written submissions dated 04th April 2019 filed in this Court, learned counsel for the petitioner has merely mentioned that the case for the petitioner includes the contention that the land in issue is not State Land but has not made any submissions in support of that contention. Instead, his written submissions are on the footing that that the Divisional Secretary had no power or authority to lease State Land to the 2nd respondent. In paragraph [13] of these written submissions, learned counsel for the petitioner has stated that the written submissions to be filed by the 3rd respondent [the Municipal Council of Anuradhapura] will address the position of whether the land in issue is State Land. However, the 3rd respondent had not filed any written submissions in this Court or in the Court of Appeal. In these circumstances, I will proceed on the basis that the parties do not dispute in these proceedings that the particular allotment of land which is in issue, is State Land.

I should now move on to determine Question of Law No. (iii) - *ie:* whether the Divisional Secretary had the power and authority to issue the writing marked "P14".

Before doing so, it should be mentioned here that the Crown Lands Ordinance No. 8 of 1947, as amended, is now designated the State Lands Ordinance and that the powers of the Governor General under the Crown Lands Ordinance are now vested in the President under and in terms of the State Lands Ordinance. When the term "Crown Land" is used in this judgment in relation to Orders and Regulations made by the Governor General under Crown Lands Ordinance, that term refers to State Land.

With regard to Question of Law No. (iii), learned counsel for the petitioner submits that the provisions of section 2 of the State Lands Ordinance confer upon the President the

power and authority to lease State Land; that *"no statutory provision has empowered"* the President to delegate that power to another; and that, accordingly, *"no statutory provision has conferred any power at any time"* on a Divisional Secretary to lawfully lease State Land. Learned counsel seeks to buttress this contention by citing Article 33 (d) of the Constitution [as it stood at the times material to this appeal, prior to the 19th Amendment to the Constitution] which states that the President shall keep the Public Seal and have the power to make and execute under the Public Seal, grants and dispositions of State Lands as he is by law required or empowered to do. Thus, learned counsel submits that the Divisional Secretary of Nuwaragam Palatha - East [*ie:* the 1st respondent] had no power or authority to issue the writing marked "P14" and that Question of Law No. (iii) should be answered in the affirmative.

In contrast, learned Senior State Counsel submits that, while the provisions of section 2 of the State Lands Ordinance empower the President to lease State Land, section 105 of that Ordinance expressly empowers the President to delegate that power. He then refers to Regulation 24 of the `Crown Lands Regulations,1948' made by the Minister under the provisions of the State Lands Ordinance and draws our attention to the subsequent Order dated 22nd August 1949 made by the Governor-General under section 105 of the Ordinance read with Regulation 24 and published in Government Gazette No. 10,103 dated 02nd September 1949. Senior State Counsel states that, by this Order, the Governor-General has delegated his power to lease State Land to, *inter alia*, the Government Agent of an Administrative District. In this connection, learned Senior State Counsel states *"Gazette No 10,103 dated 02nd September 1949 contains the order dated 22nd August 1949 marked WS2 issued by the Secretary to the Governor General and the Schedule under column II (b) lists the Government Agent and gives the power in Clause (2) of section 2 to sell, lease or otherwise dispose of Crown Land"*. Senior State Counsel goes on to submit that, following the enactment of the Transfer of Powers [Divisional Secretaries] Act No. 58 of 1992, that delegated power conferred on a Government Agent to lease State Land under the provisions of the State Lands Ordinance, is now vested in the Divisional Secretary of the relevant Divisional Secretariat. On that basis, learned Senior State Counsel states *"Thus it is clear that the Divisional Secretary has the power to Lease State Land"*. Next, he points out that it is admitted that the land in issue is situated within the Divisional Secretariat of Nuwaragam Palatha - East. Thus, learned Senior State Counsel concludes by submitting that, in terms of the aforesaid provisions of law, Regulation 24 of the Crown Lands Regulations,1948 and the Governor-General's Order dated 22nd August 1949 referred to above, the Divisional Secretary of Nuwaragam Palatha - East [*ie:* the 1st respondent] had the power and authority to lawfully issue the writing marked "P14" authorising the 2nd respondent to occupy the land pending the issue of a formal `lease permit' ["*බදු බලපත්‍රය*"] and subject to payment of a lease rental. Learned Senior State

Counsel states *"Thus it is clear that the Division* [sic] *Secretary has the authority to Lease State land and the Argument of the Petitioner has to fail."*.

In this regard, a perusal of the State Lands Ordinance establishes that section 2 (2) to empowers the President to sell, lease or otherwise dispose of State Land, section 2 (3) empowers the President to enter into agreements for the sale, lease or other disposition of State Land and section 2 (4) empowers the President to issue permits for the occupation of State Land. The first three lines of section 2 make it clear that the President may exercise these powers and authority only *"subject to the provisions of this Ordinance and of the regulations made thereunder"*. I should mention that sections 2 (2), 2 (3) and 2 (4) are the only sub-sections of the six sub-sections of section 2 of the State Lands Ordinance, which may be relevant to this appeal.

Thereafter, section 95 of the State Lands Ordinance authorises the Minister to make Regulations for the purpose of giving effect to the principles and provisions of the Ordinance. Section 96 provides that such Regulations can be made with regard to any matter stated in or required by the Ordinance to be prescribed, including the *"forms"* to used: when granting leases or other dispositions of State Land and permits to occupy State Land; and the *"conditions to be attached"* to such leases, dispositions and permits.

Next, section 105 of the State Lands Ordinance specifically authorises the President to delegate, "*in such manner and in such cases as may be prescribed",* to the Minister or to the Land Commissioner or to any *"other prescribed officer"*, any power, duty, authority, discretion or function which is conferred or vested or entrusted or assigned or entrusted or assigned to the President, by or under the Ordinance.

As submitted by learned Senior State Counsel, the Minister has, in the exercise of his aforesaid authority under sections 95 and 96 of the Ordinance, made the *"Crown Land Regulations,1948"* which are dated 09th October 1948 and were published in the Government Gazette No. 9,912 dated 15th October 1948. Thereafter, the Minister has made an additional Regulation 22nd October 1963, which has been published in the Government Gazette No. 14,204 dated 23rd October 1964. That additional Regulation is referred to later on in this judgment.Our attention has not been drawn to any subsequent Regulations made under the Ordinance.

Although learned Senior State Counsel has not referred to section 8 (1), section 110 (1) and section 22 of the State Land Ordinance, those provisions are also relevant to the question before us.

Section 8 (1) of the Ordinance specifies that any *"disposition"* of State Land under the State Lands Ordinance *"must be effected **by an instrument of disposition** executed in such manner as may be prescribed."* [emphasis added by me].

Section 110 (1) defines the term ***"disposition"*** by declaring that the term "*with its grammatical variations and cognate expressions, means any transfers of whatever nature affecting land or the title thereto and includes any conveyance, transfer, grant, surrender, exchange, lease or mortgage of land"*. Section 110 (1) goes on to define an ***"instrument of disposition"*** to mean *"any instrument or document whereby any disposition of State land is effected and includes a grant, lease, permit or license relating to State land."*. The use of the word *"includes"* in the definition of the term *"disposition"* makes it clear that the term is not limited to the aforementioned seven types of *"transfers"* which are specifically mentioned in that definition. Next, the inclusion of the words *"permit or license relating to Crown land"* in the definition of the term *"instruments of disposition"*, leads to the conclusion that a written `permit' or `license' affecting State Land, is a *"disposition"* within the meaning of the State Lands Ordinance.

Next, section 22 of the Ordinance states that every instrument of disposition whereby any State Land *"is granted or sold or leased"* for a term *"exceeding the prescribed period"*, shall be signed and executed by the President, while every other instrument of disposition for a lesser period, *"shall be signed and executed by the prescribed officer"*.

The fact that section 8 (1) specifies that an instrument of disposition made under the State Lands Ordinance must be executed *"in such manner as may be prescribed."* and the fact that section 22 specifies that every such instrument of disposition for a period which exceeds the *"prescribed period"* must be signed and executed by the President while other instruments of disposition for periods which lesser periods *"shall be signed and executed by the prescribed officer"*, makes it necessary to examine the Crown Lands Regulations,1948 to ascertain the prescribed *manner* in which instruments of disposition should be executed and the related prescribed *periods*.

With regard to the prescribed *manner* in which an instrument of disposition made under section 6 of the State Lands Ordinance [which provides for *"Special Grants and Leases"* to be made at a nominal price or nominal rent or gratuitously for charitable purposes etc.] should be executed, Regulations 3 (1) and 3 (2) of the Crown Lands Regulations,1948 specify that `Special Grants' and `Special Leases' made under section 6 of the Ordinance shall be in the format set out in the `Form A' and `Form B' in the First Schedule to the Crown Lands Regulations,1948.

However, with regard to the prescribed *manner* in which instruments of disposition made under the several sub-sections of section 2 of the State Lands Ordinance should

be executed, the Crown Lands Regulations,1948 do not specify the format in which such instruments of disposition are to be made. Thus, there appears to be no prescribed format for instruments of disposition made under any of the sub-sections of section 2 of the Ordinance.

With regard to the prescribed *periods* for which instruments of disposition can be made under the State Lands Ordinance, Regulation 4 (1) and 4 (2) of the Crown Lands Regulations,1948 state:

"4 (1) The period to be prescribed for the purposes of section 22 of the Ordinance shall be fifty years.

(2) Each officer designated in column I of the Second Schedule hereto shall be the officer who shall sign and execute the instrument of disposition described in the corresponding entry in column II of that Schedule.".

Thereafter, the Second Schedule to the Crown Lands Regulations,1948 states:

"

SECOND SCHEDULE

(Regulation 4)

	I ***Designation of the Officer***	***II*** ***Description of the instrument of disposition***
1.	*Governor-General*	*Special lease under section 6 of the Ordinance.*
2.	*Land-Commissioner*	*Lease, for a period not exceeding fifty years of the right to mine or gem in any Crown land.....*
3.	*Government Agent*	*License or permit to mine or gem in any Crown land …… for a period not exceeding one year*
4.	*Government Agent*	*Disposition for a period not exceeding five years of Crown land in the charge of the Government Agent, other than a disposition referred to in item 1 or item 2 of the Schedule*
5.	*General Manager of Railways*	*.....*
6.	*Chairman of the Colombo Port Commission*	*.....*
7.	*Governor-General or Land Commissioner*	*Disposition of Crown land for any period not exceeding fifty years, other than a disposition referred to in item 1 of the Schedule*

The other Regulation which is relevant to the question before us is Regulation 24 of the Crown Land Regulations, which was relied on by learned Senior State Counsel. Regulation 24 is titled *"Delegation of Governor General's powers (Section 105)"* and states:

"24 (1) Every delegation under section 105 of the Ordinance shall be by order published in the Gazette and may be subject to such conditions and limitations as may be specified in that order.

(2) The power or duty conferred or imposed upon the Governor-General or the authority vested in him, or the discretion or function entrusted or assigned to him, by or under the provisions of this Ordinance specified in column I of the Third Schedule hereto may be delegated by him to the officer or officers specified in the corresponding entry in column II of that Schedule.".

Thereafter, the Third Schedule to the Crown Lands Regulations,1948 states:

" *THIRD SCHEDULE*
(Regulation 24)

	I	***II***
	Provisions of the Ordinance	***Officer or Officers***
1.	*Clauses (2) and (3) of section 2*	*The Settlement Officer* *The Government Agent* *…….*
2.	*Clauses (4) and (5) of section 2*	*The Government Agent* *…….*
3.	*Clause (6) of section 2 ……..*	*The Government Agent*
4.	*....."*	

It may be mentioned here that Items 4 to 9 of the Third Schedule provide for the Governor-General to also delegate, to the Minister, Land Commissioner and some other specified officers, the powers vested in him by sections 3,4,5,6,7,13,14,15, 24 (1),60,61 and 100 of the State Lands Ordinance.

Thus, as far as is relevant to this appeal, section 105 of the State Lands Ordinance together with Regulations 24 (1) and 24 (2) of the Crown Lands Regulations,1948 provided that the Governor-General may delegate his aforesaid powers under section 2 (2), 2 (3) and 2 (4) of the State Lands Ordinance to, *inter alia*, the Government Agent. However, that was subject to: (i) the specification in section 22 of the Ordinance read with Regulation 4 (1) that an *"instrument of disposition"* of State Land for a period exceeding the *"prescribed period"* of fifty years can only be signed and executed by the President; (ii) the specifications in Regulation 4 (2) read with the Second Schedule which describes the types of instruments of disposition which may be signed and executed by each of the *"prescribed officers"* listed in Column I of the Second Schedule; (iii) the specifications in Regulations 24 (1) and 24 (2) read with the Third Schedule

which specified the powers and duties which the Governor-General was authorised to delegate and the officers to whom such delegation could be made; and (iv) the specification in Regulations 3 (1) and 3 (2) read with `Form A' and `Form B' in the First Schedule to the Regulations that a `Special Grant' or `Special Lease' made under section 6 of the Ordinance has to be signed by the President or his Secretary on his behalf.

However, it has to be kept in mind that, although section 105 of the State Lands Ordinance empowered the Governor-General to delegate his powers as explained earlier, section 2 of the Ordinance statutorily empowered only the Governor-General to make instruments of disposition of State Land under the several sub-sections of section 2 of the Ordinance. Therefore, the aforesaid schemes of delegation set out in Regulation 4 (2) read with the Second Schedule to the Crown Lands Regulations,1948 and in Regulations 24 (1) and 24 (2) read with the Third Schedule to the Crown Lands Regulations,1948 remained inoperative until the Governor-General proceeded to make an Order delegating the powers or duties or authority conferred or imposed upon him by the State Lands Ordinance.

That delegation took place when the Governor-General made the Order dated 22nd August 1949, which learned Senior State Counsel has relied on. That Order was made by the Governor-General under section 105 of the Crown Lands Ordinance read with Regulation 24 of the Crown Lands Regulations,1948 and was published in the Government Gazette No. 10,013 dated 02nd September 1949. The Order states:

"

Order

The powers, duties and functions of the Governor-General referred to in column I of the Schedule hereto are hereby delegated to the officer or officers specified in the corresponding entry or entries in column II of that Schedule, subject to such conditions and limitations as are set out in the appropriate entries in column III of that Schedule.

Schedule

I	*II*	*III*
1. The power in clause (2) of section 2 to sell, lease or otherwise dispose of Crown land	*(a) The Settlement Officer* *(b) The Government Agent*	_____ _____
2.		
3.		
4. The power in clause (3) of section 2 to enter into	*(a) The Settlement Officer* *(b) The Government Agent*	_____ _____

	an agreement for the sale, lease or other disposition of Crown land		
5.	.....		
6.	*The power in clause (4) of section (2) to issue a permit for the occupation of Crown land and the . power in clause (5) of that section to issue a license to take or to obtain any substance or any thing found in Crown land*	*(a) The Government Agent* *(b) The General Manager of Railways* *(c) The Chairman of the Colombo Port Commission*	*that each of the officers referred to in this item exercises that power only in respect of land in his charge*
		.....	
7.	.....		
8.	……*”.*		

Thus, the aforesaid Order dated 22nd August 1949 establishes, *inter alia*, that the Governor-General had delegated the powers, duties and functions vested in him by section 2 (2) and section 2 (3) of that Ordinance to sell, lease or otherwise dispose of State Land or to enter into agreements for sale, lease or other disposition of State Land to, *inter alia*, Government Agents - *vide:* Items 1 and 4 of the Schedule to the Order. It is also evident from a reading of the Order that any *“conditions and limitations”* placed on that delegation would be specified in Column III of that Schedule. Consequently, the fact that Column III of Items 1 and 4 of the Schedule has been left blank, establishes that no *“conditions and limitations”* have been placed on the delegation, to Government Agents, of the power, functions and duties vested in the Governor-General by section 2 (2) and section 2 (3) of the Ordinance to sell, lease or otherwise dispose of State Land or to enter into agreements for the sale, lease or other disposition of State Land.

Further, it is seen from Item 6 of the Schedule to the Order that the Governor-General had also delegated the powers, duties and functions vested in him by section 2 (4) of the Ordinance to issue permits for the occupation of State Land to, *inter alia*, Government Agents, subject only to the *“condition and limitation”* specified in Column III of Item 6 that the Government Agent may issue such permits for the occupation of State Land *“only in respect of (State) land in his charge”*.

As highlighted by learned Senior State Counsel, the position which is set out above is reflected in section 191 in Chapter III of the Land Manual, which was published on 14th July 1985 - *vide:* Parts 6, 7 and 8 listed in the Index to the Land Manual. Thus, section 191 summarises the position set out above and states:

"191. රජයේ ඉඩම් බැහැර කිරීමට බලයලත් පුද්ගලයෝ. -

1 රජයේ ඉඩම් නොයෙක් ආකාරයෙන් බැහැර කිරීමේ බලතල ආඥාපනතේ 2 වැනි වගන්තියෙන් ජනාධිපතිවරයා වෙත පැවරී තිබේ, මෙම බලතලවලින් වැඩි කොටසක් ජනාධිපතිවරයා විසින් දැනට අමාත්‍යවරයා වෙතද, ඉඩම් කොමසාරිස් වරයා වෙතද, වෙනත් නියමිත නිලධාරීන් කිහිප දෙනෙකුවෙතද පවරා දී තිබේ. එසේ පවරා දී ඇත්තේ ආඥාපනත යටතේ පනවන ලද පහත දැක්වෙන රෙගුලාසි හා ආඥා මගිනි: -

(1) 1949 සැප්තැම්බර් 2 දින අංක 10,013 දරන ගැසට් පත්‍රයේ පළකරන ලද 1949 අගෝස්තු 22 දරන ආඥාව,
(2) 1950 ජූලි 21 දින 10,127 දරන ගැසට් නිවේදනය.
(3) 1962 ඔක්තෝබර් 19 දින දරන ගැසට් නිවේදනය.
(4) 1965 නොවැම්බර් 26 දින දරන අංක 14,569 ගැසට් නිවේදනය. .....

2. ආඥා පනත යටතේ රජයේ ඉඩම් දීමට බලයලත් නිලධාරීන් මෙසේය :

(අ) නිරවුල් කිරීමේ නිලධාරී
(ආ) ආණ්ඩුවේ ඒජන්ත .
(ඇ) ……..."

It should be mentioned here that, as stated in section 191 (1) of the Land Manual, the aforesaid Order dated 22nd August 1949 was amended by three subsequent Orders made by the Governor-General. These three Orders are: the Order dated 10th July 1950 published in Government Gazette No. 10,127 dated 21st July 1950, the Order dated 11th October 1962 published in Government Gazette No. 13,354 dated 19th October 1962 and the Order dated 25th November 1964 published in Government Gazette No. 14,569 dated 26th November 1965. These subsequent Orders deal with the delegation of the Governor-General's powers, in specified circumstances, to the Gal Oya Development Board, to the General Manager of Railways or Lands Officer of the Railway Department and to the Commanders of the Security Forces, respectively. These subsequent Orders are not relevant to the present appeal. I have also seen another Order dated 22nd August 1949 published in Government Gazette No. 10,013 dated 02nd September 1949. That Order deals with specified aspects of the Definition of Boundaries Ordinance No. 01 of 1844, as amended, and the Land Development Ordinance. It is also not relevant to the present appeal. Our attention has not been drawn to any other Orders made under the State Lands Ordinance.

It is also relevant to state here that the term *"Government Agent"* for the purposes of the State Lands Ordinance has been defined in section 110 (1) of the Ordinance to include Additional or Assistant Government Agents and *"any other prescribed officer"*. Further, the additional Regulation made by the Minister on 22nd October 1963, which I mentioned earlier, specifies that any District Land Officer is also a *"prescribed officer"*

who is to be regarded as a Government Agent for the purposes of the Ordinance. That position is also mentioned Item 189 (4) in Chapter III of the Land Manual.

Before parting with the Regulations and Orders made under the State Lands Ordinance, it may be said in passing that a comparison of Regulation 4 (2) read with the Second Schedule of the Crown Lands Regulations, 1948, on one hand, and Regulation 24 (2) read with the Third Schedule of the same Regulations, on the other hand, raises something of an anomaly. That is because, as set out above: Regulation 4 (2) read with Item 4 of the Second Schedule contemplates that, in the event of the Governor-General delegating his powers under the Ordinance, a Government Agent would *"sign and execute"* an instrument of disposition of State Land including those made under sections 2 (2), 2 (3) and 2 (4) of the Ordinance only in respect of State Land which is in his charge and that any such instrument of disposition can only be for a period not exceeding five years; however, Regulation 24 (2) read with Items 1and 2 of the Third Schedule provides that the Governor-General is entitled to *delegate* to the Government Agent, the entirety of the powers, duties and authority vested in the Governor-General by sections 2 (2), 2 (3) and 2 (4) of the State Lands Ordinance, without any limitation with regard to the location of the State Land or the period of any such instrument of disposition.

Thereafter, although Items 1, 4 and 6 in the Schedule to the aforesaid Order dated 22nd August 1949 state that the Governor-General has delegated his powers under sections 2 (2) and 2 (3) of the Ordinance to Government Agents without any restriction and delegated his powers under sections 2 (4) of the Ordinance to Government Agents without any restriction as to period of the permit, it has to be kept in mind that section 105 of the Ordinance empowers the Governor-General to delegate his powers, duties and authorities only *"in such cases as may be prescribed"* by the Minister.

Consequently, since Regulation 4 (2) read with Item 4 of the Second Schedule to the Crown Lands Regulations, 1948 specifically prescribes that a Government Agent could sign and execute an instrument of disposition only in respect of State Land which is in his charge and that any such instrument of disposition can only be for a period not exceeding five years, it appears that, the aforesaid delegation, made by the Order dated 22nd August 1949, of the Governor-General's powers under sections 2 (2), 2 (3) and 2 (4) of the State Lands Ordinance to Government Agents, would have to be read as being subject to the prescribed restriction that the power and authority to sign and execute an instrument of disposition was delegated to a Government Agent only in respect of State Land which is in his charge and subject to the restriction that any such instrument of disposition could only be for a period not exceeding five years. This is said

only by way of an observation as this question does not arise for determination in the present appeal.

The next step is to look at the Transfer of Powers [Divisional Secretaries] Act, No. 58 of 1992 which is referred to by learned Senior State Counsel. By way of background, it should be mentioned that, prior to the enactment of this statute, there were several Assistant Government Agent Divisions, each headed by an Assistant Government Agent, within each of the Administrative Districts of Sri Lanka. The administrative head of the public service in each Administrative District was the Government Agent. The Assistant Government Agents of each Division within the District, reported to the Government Agent. Section 2 of the aforesaid Act, empowered the Minister to establish Divisional Secretaries' Divisions within each Administrative District. In practice, these Divisional Secretaries Divisions broadly corresponded with the previous Assistant Government Agent Divisions. Section 3 (1) of the same Act specified that each Divisional Secretaries Division shall be assigned a Divisional Secretary. Next, section 4 (1) of the Act provided, *inter alia*, that wherever the words *"Government Agent"* occur in any written law or in any notice, permit, instrument or document issued, made, required, executed or authorised by or under any written law, such words *"shall be substituted therefor"* by the expression *"the Divisional Secretary of the Divisional Secretary's Division".* Thus, by the enactment of the Transfer of Powers [Divisional Secretaries] Act, the powers, functions and duties vested in Government Agents and Assistant Government Agents within a newly created Divisional Secretaries Division, were vested in the Divisional Secretary of that Division.

Thus, subsequent to the Transfer of Powers [Divisional Secretaries] Act coming into operation, the powers, duties and functions vested in the President by, *inter alia*, sections 2 (2), 2 (3) and 2 (4) of the State Lands Ordinance which had been delegated to Government Agents by the aforesaid Order dated 22nd August 1949, were held by the Divisional Secretary of the Divisional Secretariat within which such State Land is situated.

It should next be mentioned that Article 21 (h) of Republican Constitution of 1972 declared that the President had the power and function of making and executing grants and dispositions of State Land under the Public Seal. However, section 21 of the State Lands Ordinance specifically declares that an instrument of disposition under the Ordinance *"need not be issued under the Public Seal of the Island except in such cases and in such instances as may be prescribed".* A perusal of the State Lands Ordinance and the Crown Lands Regulations, 1948 shows no instance where it has been prescribed that the Public Seal is to be placed on any type of instrument of disposition made under the Ordinance. Consequently, it would appear that Article 21 (h) of the Republican Constitution of 1972 would not have affected the validity of the aforesaid

delegation of the Governor-General's powers [President's powers consequent to the Republican Constitution of 1972] under the State Lands Ordinance.

However, with the promulgation of the 1978 Constitution, Article 33 (d) of the Constitution [as it then stood] stated that the President shall have the power to keep the Public Seal and *"to make and execute under the Public Seal, ….. such grants and dispositions of lands and immovable property vested in the Republic as he is by law required or empowered to do, ….."*. Subsequently, the 13th Amendment to the Constitution which established Provincial Councils, stipulated in Item 18 of List I of the Ninth Schedule [the Provincial Councils List] that: Land, that is to say, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvements are matters in respect of which Provincial Councils have legislative authority, to the extent set out in Appendix II to List I. Thereafter, Item 1:1:3 of Appendix II declared that *"Alienation or disposition of the State land within a Province to any citizen or to any organization shall be by the President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter."*.

In view of the aforesaid constitutional provisions which now prevail after the 13th Amendment to the Constitution, the general rule that has been followed since the enactment of the 13th Amendment to the Constitution appears to be that the President would sign and execute grants and leases of State Land under the State Lands Ordinance. Thus, in the aforesaid decision in RATNAYAKE vs. DE SILVA [which was the 2nd respondent's appeal from the judgment entered against him in the aforesaid D.C.Anuradhapura Case No.14087/L], Jayasinghe J, then in the Court of Appeal, referred to the aforesaid document marked "R2(d)" which was signed by the Divisional Secretary and which the 2nd respondent claimed was a lease of State Land under the State Lands Ordinance [it was marked "P1" in that case], and stated *"….. P1* [*ie:* "R2(d)"] *does not purport to be made by or under the hand of the President as required by section 1 : 3 of the appendix II of the Constitution and therefore is not a valid conveyance and is of no force or avail in law. This submission cannot be assailed."*. On the same lines, in the present case, Sri Skandarajah J in the Court of Appeal took the view that the President would, in due course, sign and execute a formal lease of the land to the 2nd respondent.

However, the issue before us is the validity of "P14" and not the *intended* instrument of lease, which the Court of Appeal stated is to be signed by the President.

A perusal of "P14" establishes that it authorises the 2nd respondent to occupy the land prior to the signing and execution of an instrument of lease. Thus, Condition 6 of "P14" expressly states that a formal `lease permit' would be issued to the 2nd respondent in due course. Accordingly, "P14" cannot be regarded as constituting an instrument of

lease. Instead, “P14” is a granting of permission to temporarily occupy the land until the formal instrument of lease is signed and executed by the President.

In these circumstances and as mentioned earlier, the Court of Appeal held that the Divisional Secretary had the power and authority to issue “P14” permitting the 2nd respondent to occupy the land pending the President signing and executing the instrument of lease. In this regard, the learned judge of the Court of Appeal upheld the submission made by the learned Senior State Counsel who appeared for the 1st respondent in the Court of Appeal that, under and in terms of the State Lands Ordinance read with the Regulations made thereunder, *“Divisional Secretaries are empowered to execute the approval papers for long term lease”* pending the President signing the final instrument of lease or grant *“in terms of the State Lands Ordinance and the Constitution”* and that *“The time between the President’s signature and the approval the lessee occupies the State land leased out”*.

In this regard, it is evident from the provisions of the State Lands Ordinance, the Crown Lands Regulations,1948 and Chapter III of the Land Manual that the procedure followed in the case of leases of State Lands under the State Lands Ordinance after the enactment of the 13th Amendment to the Constitution, is for the Divisional Secretaries to carry out the preparatory work of the selection of the prospective lands to be leased, the selection of the prospective lessees, and the preparation of the intended lease for the President to sign and execute it etc. Thereafter, the President will, in due course, sign and execute the instrument of lease.

However, a scrutiny of the provisions of the State Lands Ordinance, the Crown Lands Regulations,1948 and Chapter III of the Land Manual establishes that there is no statutory or regulatory provision which authorises a Divisional Secretary or any other *“prescribed officer”* to place a prospective lessee in occupation or in possession of a State Land prior to the signing and execution of the intended instrument of lease by the President.

Further, in my view, it cannot be correctly said that a function of placing a prospective lessee in occupation or in possession of a State Land prior to the signing and execution of the instrument of lease by the President, is incidental to or consequential to a Divisional Secretary’s aforesaid duties under the State Lands Ordinance read with the Crown Lands Regulations,1948 and Chapter III of the Land Manual - *ie:* the duties of the selection of the prospective lands to be leased and prospective lessees and the preparation of the intended lease for the President to sign and execute it, etc.

In these circumstances, the resulting conclusion has to be that the 1st respondent did not have the statutory authority to issue “P14” placing the 2nd respondent in occupation

or in possession of the land prior to an instrument of lease being duly signed and executed under the provisions of section 2 of the State Lands Ordinance.

In ENVIRONMENTAL FOUNDATION LTD vs. THE LAND COMMISSIONER [1993 2 SLR 41], the Court of Appeal has taken a similar view. In that case, the Court considered an interim order which sought to restrain the Secretary to the Ministry of Lands, Irrigation and Mahaweli Development from placing the prospective `preferential lessee' of State Land under a `preferential lease', in possession of the land to be leased, prior to the publication of a notice inviting objections from the public as required by Regulation 21 (2) of the Crown Lands Regulations,1948. Silva J [as he then was] issued the interim order stating [at p.45] *"Certainly, there is no provision in the Crown Lands Ordinance or the Regulations made there under that empower the Secretary to take administrative action to place any party in possession of state land pending grant of a lease. Such action militates against the provisions of Regulation 21 (2) which requires a notice to be published inviting objections. No useful purpose will be served by such a Regulation if the Secretary could arrogate to himself the power to place a private party in possession of state land pending the completion of statutory procedures."*. No doubt, the fact that the requirements of Regulation 21 (2) of the Crown Lands Regulations, 1948 had not been complied with, loomed large in that decision of the Court of Appeal. But, the observation by Silva J that there is no provision in the State Lands Ordinance which authorises a prescribed officer to place an intended lessee in possession of State Land pending the signing and execution of the lease, would hold true with regard to any instrument of disposition made under section 2 of the State Lands Ordinance.

Further, a perusal of Chapter III of the Land Manual shows that section 195 stipulates that the usual requirement is that leases of State Land under the State Lands Ordinance can be granted only through a process of selecting the lessees by means of a public auction or, in special circumstances, by calling for tenders. Thereafter, sections 196 and 197 specify, in detail, the procedures which should be adhered to before a lease of State Land is granted for commercial purposes or for residential purposes. Section 199 makes it clear that a `preferential lease' which is to be granted without a competitive bidding process, can be proceeded with only after obtaining the Minister's written prior approval and then too, only after publication of the notice required by Regulation 21 (2) of the Crown Lands Regulations, 1948.

The respondents placed no material before the Court of Appeal which would suggest that these necessary steps were taken before the 1st respondent issued "P14" and authorised the 2nd respondent to occupy and take possession of the land prior to the signing and execution of the instrument of lease. This raises the inference that, in addition to the 1st respondent having no statutory authority to place the 2nd respondent

in possession of the land prior to the signing and execution of the lease, “P14” was improperly issued by the 1st respondent. Perhaps, these observations indicate the reason why the 1st respondent refrained from defending “P14”, in his affidavit.

For the reasons set out above, Question of Law No. (iii) is answered, as follows: the 1st respondent did not have the statutory authority to issue “P14” which has the effect of permitting the 2nd respondent to occupy and possess State Land prior to the signing and execution of a due and proper instrument of lease under the provisions of the State Lands Ordinance.

With regard to Question of Law No. (ii) raised by the 2nd respondent, the petitioner, who was in occupation and possession of the land relying on the agreement marked “P7” between him and the Urban Council of Anuradhapura, was aggrieved by the issue of “P14” to the 2nd respondent since “P14” threatened his occupation and possession of the land. As a result, the petitioner is no `mere stranger’ and he had the standing to make this application to the Court of Appeal seeking a writ of *certiorari* to quash “P14”. Further, it appears that no action has been taken for the ejectment of the petitioner from the land despite the issue of the Quit Notice dated 17th November 2003 marked “P10”. The fact that the petitioner has failed to challenge the Quit Notice marked “P10” may be relevant only if any fresh proceedings are taken for the ejectment of the petitioner from the land. Accordingly, Question of Law No. (ii) is answered in favour of the petitioner.

Before concluding, it may be mentioned that, since section 21 of the State Lands Ordinance read with the Crown Lands Regulations, 1948 specifies that the Public Seal need not be placed on instruments of disposition made under the Ordinance and since Item 1:1:3 of Appendix II to List I of the Ninth Schedule states that alienation or disposition of State Land shall be by the President *“in accordance with the laws governing the matter.”*, a question arises as to whether: (i) in view of the existing delegation of the President’s aforesaid powers under section 2 of the State Lands Ordinance [which was set out earlier and which remains in force unless and until the aforesaid Order dated 22nd August 1949 published in Government Gazette No. 10,013 dated 02nd September 1949 is amended or cancelled or revoked by the relevant authorities]; and (ii) in view of the fact that the exercise of those delegated powers by the *“prescribed officers”* would always be in the name of and for and on behalf of the President; those *“prescribed officers”* continue, after the enactment of the 13th Amendment to the Constitution, to be lawfully empowered to exercise those delegated powers and sign and execute instruments of disposition ? In this connection, it has to be also kept in mind that section 22 of the Ordinance specifically declares that all instruments of disposition [other than those for a period exceeding the prescribed period of fifty years which can only be signed by the President] *“shall be signed and executed by the prescribed officer”*. In these circumstances and as mentioned earlier, learned

Senior State Counsel has submitted to us that the Divisional Secretary has the delegated power and authority to grant a lease of State Land. However, the aforesaid question cannot be decided here since it does not arise for determination in this appeal which has been decided on the limited ground that the Divisional Secretary did not have the statutory power to place the 2nd respondent in possession and occupation of the land before the due execution of an instrument of lease under the provisions of the State Lands Ordinance. The aforesaid question will have to await consideration by this Court, if it arises on another occasion. In this connection, I should mention for the sake of completeness, that, in KUSUMAWATHIE vs. DIVISIONAL SECRETARY, NUWARAGAM PALATHA EAST [CA Writ Application No. 241/2014 decided on 28th November 2016], the Court of Appeal referred to the Crown Lands Regulations, 1948 and took view that the Government Agent of Anuradhapura was empowered in terms of the authority delegated to him by the President, to grant a valid long term lease of State Land to the petitioner under the State Lands Ordinance.

For the reasons I have set out earlier, the judgment dated 03rd November 2010 of the Court of Appeal is set aside.

A writ of *certiorari* is hereby issued, as prayed for in prayer (d) of the petition dated 08th December 2010 filed in the Court of Appeal, quashing the writing dated 01st November 2006 marked “P14” signed by the Divisional Secretary of Nuwaragam Palatha - East and addressed to the 2nd respondent. In the circumstances of the case, the parties will bear their own costs.

Judge of the Supreme Court

P. Padman Surasena, J.
I agree.

Judge of the Supreme Court

S. Thurairaja, PC, J.
I agree.

Judge of the Supreme Court