

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

In the matter of an application under Article 17 read with Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Kegalle Plantation PLC
No. 310, High Level Road,
Nawinna, Maharagama.

Appearing on behalf of;

2. Sriyan Eriagama,
Director (Operations) Kegalle Plantation PLC,
No. 310, High Level Road,
Nawinna, Maharagama.
3. S.D. Munasinghe,
The Superintendent,
Etna Estate, Warakapola.

Petitioners

SC FR 442/2016

Vs,

1. L.D. Kumara Tennakoon,
Divisional Secretary, Warakapola.
- 1A. Laxmendra Damayantha Kumara Tennakoon,
Divisional Secretary, Warakapola.
2. W.M.A.Wanasuriya,
Divisional Secretary- Kegalle District, Kegalle.
3. Hon. John Amaratunga,
Minister of Lands, Ministry of Lands,
Mihikathamedura, 1200/6, Rajamalwatta Road,
Battaramulla.

- 3A. Hon. Gayantha Karunathilala,
Minister of Lands, Ministry of Lands,
1200/6, Rajamalwatta Road, Battaramulla.
- 3B. Hon. S.M.Chandrasena,
Minister of Lands, Ministry of Lands,
Mihikatha Medura, 1200, Rajamalwatta Road,
Battaramulla.
4. Commissioner of Lands,
Land Commissioner's Department, 1200/6,
Rajamalwatta Road, Battaramulla.
5. Upali Marasinghe,
Secretary, Ministry of Lands, 11th Floor,
Sethsiripaya, 2nd Stage, Battaramulla.
- 5A. J.A. Jagath, Secretary, Ministry of Lands,
11th Floor, Sethsiripaya, 2nd Stage, Battaramulla.
- 5B. Ravindra Hewavitharana,
Secretary Ministry of Plantation Industries,
11th Floor, Sethsiripaya, 2nd Stage, Battaramulla.
6. State Timber Corporation,
No.82, Sampathpaya, Rajamalwatta Road,
Battaramulla.
7. Land Reform Commission,
No. C 82, Hector Kobbekaduwa Mawatha,
Colombo 12.
8. Hon. Attorney General,
Attorney General's Department, Colombo 12.

Respondents

Before: **Hon. Justice Vijith K. Malalgoda PC**
Hon. Justice Janak de Silva
Hon. Justice Mahinda Samayawardhena

Counsel: Shantha Jayawardena with Pasindu Silva, Hiranya Damunupola, Azra Basheer and Thishya Jayasundera for the Petitioners

Ganga Wakishta Arachchi, DSG, for the 1st to 6th and 8th Respondents

Saman Galappatthi for the 7th Respondent

Argued on: 21.11.2022

Decided on: 20.07.2023

Vijith K. Malalgoda PC J

Petitioners to the instant application, Kegalle Plantation PLC, Sriyan Eriyagama, Director (Operations) Kegalle Plantation PLC, and S.D. Munasinghe, The Superintendent Etna Estate Warakapola came before this Court alleging that their Fundamental Rights guaranteed Under Article 12 (1) had been violated by the Action of the 1st to 7th Respondents, by evicting them from the land referred to in the document produced marked P-12.

As submitted by the Petitioners, the 1st Petitioner had entered into a Lease Agreement with Janatha Estate Development Board (hereinafter referred to as JEDB) on or about 4th May 1995 which was amended by Amendment of lease dated 25th July 1995 to lease out the land referred to in the schedule including Etna Estate and the said land has been more fully disrobed in the schedule to the above Lease Agreements. Part H referred to Etna Estate and includes 5 divisions namely, Etna Division, Northland Division, Talawatta Division, Monrovia Division, and Penihela Division.

The initial Lease Agreement was entered between the parties for a period of 99 years, but as per the amendment agreement, it was reduced to 53 years and the agreement is valid until 2045.

As revealed before us, with the introduction of the Land Reform Law in the year 1972, a large volume of agricultural land was vested with the state and those were devolved with the Land Reform Commission. According to the Petitioners, the management of those lands was given to the State Plantation Corporation (hereinafter referred to as SPC) and the JEDB. In the said process the management of Etna Estate was given to JEDB and the said decision was Gazetted in Government Gazette Extraordinary No. 183/18 dated 12th March 1982.

A policy decision was taken with regard to the agricultural land Managed by the two Government owned institutions namely SPC and JEDB under the provisions of conversion of Government-owned business undertakings into Public Corporations Act No. 22 of 1987 to privatize the management of those land, and in the said process the lands which were managed by SPC and JEDB were leased out to private plantation companies. It is in this process only Etna Estate, which was managed by JEDB was leased out to Kegalle Plantations PLC the 1st Petitioner before this Court as per the documents marked P-1 and P-2.

According to the Petitioners, after the relevant leases were executed, Etna Estate was handed over to the 1st Petitioner by the JEDB and what was handed over to them were the land, buildings, and machinery that were part and parcel of Etna Estate. As already referred to in this judgment, Etna Estate consists of 5 divisions, and the total extent of the estate is 1219 acres 1 rood, and 1.6 perches.

As submitted by the Petitioners, from the time the estate referred to in the indenture of lease 336 (P-2) and the amendment of lease 1525 (P2A) were executed the lands referred to in part 'H' to the schedule were occupied by the 1st Petitioner and was developed without any objection until P-12 was issued by the 1st Respondent in the year 2016. i.e., 21 years after handing over the estate to the 1st Petitioner. By this time the 1st Petitioner had invested a large sum of money in developing the land and in fact, the portion of land referred to in P-12 had been re-planted with rubber investing a large sum of money.

As submitted by the Petitioners, they have received a letter dated 30th April 2016 somewhere around the 4th May 2016, requesting them to attend a meeting on 16th May at the Land Reform Commission.

At the said meeting, the 1st Petitioner was represented by the 3rd Petitioner and it was informed to the 3rd Petitioner by the Executive Director of Land Reform Commission who presided over the said meeting, to hand over an extent of 50 acres from Penihelawatta to the Divisional Secretary Warakapola which is one of the 14 fields from the Penihela Division of Etna Estate, for a Housing Project.

However, the 3rd Petitioner objected to the said request and informed that the 1st Petitioner is the lawful lessee of the said land and refused to comply with the said request. On or around 30th May 2016 the Manager of Etna Estate was served with a copy of a letter dated 23rd May 2016, addressed to the Senior Superintendent of the Kegalle District Survey Department office by the 1st Respondent requesting him to prepare a block plan in order to distribute a portion of land from Penihela Estate occupied by the 1st Petitioner since the said portion of land had already been acquired by the state in the year 1973.

The second Petitioner once again objected to the said decision of the 1st Respondent, on the ground that the 1st Petitioner is occupying Penihela Division of Etna Estate based on a valid agreement signed between the 1st Petitioner with JEDB and conveyed the said position to the 1st Respondent. In the meantime, the Petitioner obtained a copy of the Gazette Extraordinary 65/10 dated 28.06.1973 (P3B) and learned that four portions of land from Penihelawatte were acquired by the said Gazette under section 38 (2) of the Land Acquisition Act No 09 of 1950 (as amended) by the then Minister of Land, but had taken up the position that in the absence of a proper mechanism to manage the lands vested with the state, the lands were given to SPC and JEDB in the year 1982 and the lands acquired by the said order too was handed over as one single estate to JEDB. It was also the position of the Petitioners before this Court that, the Penihela Division of Etna Estate including the portion called 'Penihelawatte' was since then managed under JEDB and on a policy decision of the Government, leased out to the 1st Petitioner as one single estate namely Etna Estate. The 1st Respondent or any other agent of the 1st Respondent or his predecessors had never entered into those lands and in fact, it was managed until 1995 by the JEDB and since then by the 1st Petitioner as one single estate. It was the position of the Petitioners before this Court that they never encroached into private or state-owned land other than the land legally handed to them by JEDB after entering into the lease agreements.

Whilst referring to P-7, the Petitioners have further taken up the position that until a state minister of the area had shown an interest in this well-maintained portion of Rubber land to the extent of 50 acres the land was managed by the 1st Petitioner and it had uninterrupted possession for the said land for more than two decades.

On the other hand, the Petitioners argued further, that the change of the purpose for which the land is going to be used is another factor that shows the *mala fides* of the Respondents. In this regard on behalf of the Petitioners, our attention was drawn to the 1st paragraph of the document produced marked P-7 which reads as,

“නිවාස යෝජනා ක්‍රමයක් සඳහා පැණිහෙල වත්ත මැනුම් කිරීම”

“උක්ත කරුණට අදාළව කර්මාන්ත හා වානිජ කටයුතු රාජ්‍ය අමාත්‍ය _____ මැතිතුමාගේ යෝජනාවකට අනුව වරකාපොල ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ පැණිහෙල ග්‍රාම නිලධාරී වසමේ පිහිටි දැනට කැණු වැවිලි සමාගම විසින් භුක්ති විදිනු ලබන ඉඩම් කොටසක් හඳුනාගෙන ඇත”

and paragraph 25 of the affidavit filed by the 1st Respondent to the effect that,

25. I state further that there is a shortage of land in the Kegalle District due to the risk of landslides and there is an urgent requirement to allocate land for a housing scheme in order to evacuate persons from areas that have been identified as posing a landslide risk.

The position taken up by the Petitioners was challenged by the Respondents and on behalf of the Respondents the 1st and the 7th Respondents have submitted affidavits objecting to the grant of any relief to the Petitioners along with documents to support their argument.

Out of the two Respondents, the 7th Respondent Land Reform Commission had submitted the statement of objection along with an affidavit of its chairman W.M.N. Wijesinghe giving the following details of the land in question.

- a) Etna Estate which was leased by JEDB to Kegalle Plantation in the extent of 462 acres 01 rood and 09 perches had been devolved on the Land Reform Commission and the management of the same was assigned to JEDB by the LRC.
- b) Penihelawatte is a separate and distinct entity, which is not part of the said Etna Estate
- c) By operation of Land Reform Law, the land called Penihelawatte which is 225 acres 3 roods and 23 perches in extent was vested with the LRC by a statutory declaration submitted on behalf of the late Walter Seton Scott by Francis Seton Scott and Cobhan Scott. (7R1 and 7R2)

- d) By statutory determination, 100 Acres of the said estate were devolved on the heirs namely Francis Seton Scott and Cobhan Scott, 50 acres each but none of them were interested in having Land in Sri Lanka since they were living in Australia at that time. Out of the said 100 acres, 50 acres had already been distributed among the needy public and it is the balance of 50 acres that was acquired under section 38 (a) acquisition order made by the Minister but has not been regularized by the 1st Respondent since the said land was occupied by the 1st Petitioner.
- e) Remainder of Penihela Estate which is 125 acres 3 roods and 23 perches has been illegally occupied by the 1st Petitioner, but Penihela Estate which is not a part of Etna Estate is still vested with the 7th Respondent and the said land was never handed over to JEDB under Gazette Extraordinary 183/10 dated 12th March 1982 and therefore JEDB was not empowered to lease out the said estate to the 1st Petitioner in the year 1995.
- f) As per the two Surveyor General Plans produced marked 7R4 and 7R5 two lots of Land of Penihela Estate had been clearly identified. 7R4 refers to a portion of 51 acres and 36 perch Block and 7R5 refers to a 113 acres 1 rood and 11 perch Block.
- g) Out of 51 acres and 36 perch Block (7R4) 50 acres had been identified as the portion of Land subject to the statutory determination of Francis C. Scott, Darlin Point Sydney Australia which was subsequently acquired by P3B dated 28th June 1973.

When filing the objections by way of an affidavit dated 22nd January 2020, the incumbent additional Secretary Warakapola had produced marked 1R1 the Gazette Extraordinary 183/10 dated 12.03.1982 and submitted that,

- a) Gazette Extraordinary dated 12.03.1982 by which lands were vested in the JEDB categorically stipulates that the extent of Etna Estate which is vested in JEDB is 324.43 hectares, which is approximately 801.43 acres
- b) As the Petitioners claim that they are in possession of 1219 acres of the Etna Estate, it is apparent that the Petitioners are occupying over 418 acres in excess of what they are entitled to occupy of the Etna estate

Whilst submitting the above, on behalf of the 1st Respondent it was further submitted that the Minister of Lands by order made under section 38 (1) of the Land Acquisition Act No 28 of 1964 acquires 237 acres 01 rood and 05 perches from Penihela Estate including a portion of 51 acres and

36 perches, which is situated in the village of Penihela and the said land which is now occupied by the 1st Petitioner had been properly identified by the Surveyor General by Plans produced as 1R2-1R4.

The 1st Respondent had further produced a document marked as 1R7 to show that as per the acquisition order, the Penihela Estate had been handed over to the District Revenue Officer (DRO) of Beligal Korale on 4th July 1973 by its previous managing agents "Penihela wathu Hawula Ltd".

When considering the material submitted by the parties before this Court, it appears that the parties before this Court had taken up three different versions when submitting their respective cases. Even though the 1st and the 7th Respondents before this Court had taken up a contradictory position with regard to the main Penihela Estate, both parties admit that by Gazette Extraordinary 65/10 dated 23.06.1973 the subject matter, 50 acres from Penihela Estate had been acquired under section 38 (a) of the Land Acquisition Act 28 of 1964 and the said land had been properly handed over by its managing agents to the Divisional Revenue officer in the year 1973.

However, the story of the Petitioner begins in the year 1995 and the 1st Petitioner had taken up the position that the lands vested with the state under Land Reform law were handed over to JEDB in the year 1982 and on a policy, decision taken by the state in 1995, Etna Estate which was managed by JEDB was leased out to 1st Petitioner for the period of 53 years in 1995.

Even though there were no plans prepared or referred to any plans in the lease agreement, the Petitioner had taken up the position that, what was leased to them was the land occupied and /or released to the JEDB for the management of the said land.

There is no doubt that agricultural land that was vested with LRC when the Land Reform Law came into force, was entrusted with SPC and JEDB by a decision of the State. However, the Petitioners have failed to challenge the Government Gazette Extraordinary 183/10 dated 12.03.1982 by which the lands that were vested with JEDB were identified.

According to the said Gazette Etna Estate from Kegalle District with the extent of 324.43 Hectares had been vested with the JEDB. According to the 7th Respondent, the JEDB was given Etna Estate only. Penihela Estate or any other Estate in the vicinity were not given to JEDB and therefore it was the argument of the Respondents that JEDB could not have leased out any land which was not vested

with JEDB to a third party. The Petitioners had decided not to make JEDB a Respondent to the instant case.

If JEDB was before us, the JEDB could have explained how the above discrepancy had taken place but this Court is deprived of any explanation with regard to the above position. Neither the Petitioners nor the Lessor, the JEDB, had surveyed Etna Estate prior to it being leased to the 1st Petitioner and therefore the Petitioners, are not in a position to establish the exact extent of Etna Estate.

As it is revealed before us, the extent of Etna Estate,

- a) According to LRC it was 462 acres 01 rood, and 09 perches;
- b) According to the Gazette Extraordinary 183/10 dated 12.03.1982 Etna Estate consist of 324.43 Hectares (Approx. 801.43 Acres); and,
- c) According to the lease agreements P-2 and P-3 Etna Estate consists of Approximant 1219 acres

Even though the 7th Respondents had taken up the position that Etna Estate which consists of only 462 acres was vested to the JEDB. The 7th Respondent had failed to submit any documentation to support this position. The said position is contradictory to the decision in the Government Gazette Extraordinary 183/10 under which 324.43 hectares (approx. 801.43 acres) were vested to the JEDB. In these circumstances, this Court is reluctant to act on the submission placed on behalf of the 7th Respondent.

However, the discrepancy between the extent referred to in the Gazette and the two deeds by which the 1st Petitioner was entrusted with Etna Estate has not been explained by the Petitioners before us. The failure by the Petitioners to bring before this Court the lessor who leased out Etna Estate which consists of 1219 acres, is a vital lapse on the part of the Petitioners. The Petitioner has failed to bring a necessary party before this Court.

In the case of *Senaweera and others V. Vocational Training Authority of Sri Lanka and Others 2011 BLR 93* Suresh Chandra J whilst referring to the decisions in *Dr. K.D.G. Wimalarathne V. Secretary to the Ministry of Public Administration SC Application 654/95* SC minute dated 09.06.1997 and *H.A.S. Hettiarachchi V. Secretary of Public Administration and Home Affairs Sc Application 780/1999* SC minute dated 25.01.2001 had concluded that,

- a) a party coming into Court must decide as to who should be made necessary parties to such application and it is not for a party to surmise what objections would be taken up by the opposing party and then decide to add parties to the application when it becomes necessary.
- b) When it comes to a situation where the proper and necessary parties have to be brought in at the time of filing the application is a mandatory requirement, reserving a right to add parties would not be sufficient and would amount to a fatal defect in the maintaining of such an application.
- c) The promotions that are complained of have been made after a recommendation had been made by the Political Victimization Committee and after obtaining Cabinet approval. In such a situation the Political Victimization Committee and the Cabinet of Ministers would be necessary parties to the application at the time of filing the application.
- d) Failure to cite the Cabinet of Ministers as a necessary party at the time of filing an application has been held to be a fatal defect in several judgments of this Court.

On the other hand, it was the position of the 1st Respondent that 237 acres from Penihela Estate had been acquired in the year 1973 under section 38 (a) of the Land Acquisition Act No 09 of 1950 (as amended). When the said order was made by the Minister, in the Government Gazette Extraordinary 65/10 dated 28.06.1973, he had identified four separate lots from Penihela Estate including the lot in question, 51 acres and 36 perches in extent. This was clearly identified by the Surveyor General who submitted his reports which were produced marked 1R2-1R5.

Part 'H' to the Schedule of the two deeds that were produced by the Petitioners, identified Etna Estate and according to the said schedule Etna Estate Consist of 05 divisions and they have been identified in the schedule as follows;

- a) Etna division 462 acres 01 rood and 08 perches
- b) Northland division 259 acres and 27.2 perches
- c) Talawatta division 228 acres 4.6 perches
- d) Monrovia division 47 acres 02 roods and 30.4 perches
- e) Penihela division 222 acres and 11.2 perches

The total extent of the Estate comes to 1219 acres 01 rood and 1.4 perches

In the said schedule, each division too had been separately identified and the divisions referred to above consist of several lots. As per the said schedule Penihela division consist of 25 lots and they have been identified in the schedule from (a) –(y).

The extent of each lot is identified under the above schedule and among the 25 lots identified under ‘Penihela’, there are lots ranging from 244 acres to 1.5 perch. As already referred the entire Penihela division contains only 222 acres and 11.2 perches but the lot identified as “Kathurukandehenayaya” consists of 244 acres 3 roods and 33 perches (under ‘x’) According to the schedule the 25 lots referred under ‘Penihela’ totally consist of 560 acres 02 roods and 18.5 perches. The Petitioners have failed to give an explanation for this discrepancy, but in their submissions, before this Court, they have taken up a position that, apart from the Penihela division that was handed over to them by P2 and P3, another portion of land called Penihela Estate too was included to the said division and therefore Penihela Estate is also a part of Etna Estate. However, they have failed to explain how they got 560 acres 02 roods, and 18.5 Perches instead of 222 acres and 11.2 perches of Penihela division.

The only party who could have explained this discrepantly is the lessor, JEDB, but the Petitioners have failed to make them a party to the instant case and I have already concluded that the Petitioners have failed to bring a necessary party before this Court.

As further observed by this Court by 1R1 JEDB had been vested with 324.43 Hectares from Etna Estate and the JEDB is not legally entitled to lease out any land over and above the said extent to a third party. However, the Petitioners before this Court were of the opinion that they had a legitimate expectation to possess Etna Estate for a period of 53 years as per the two-lease agreements produced marked P2 and P3 but a question arises whether the Petitioners could entertain a legitimate expectation to possess land in excess of the extent referred to in the lease agreement under which the land was entrusted to them.

In the case of ***Ginigathgala Mohandiramlage Nimalsiri V. Colonel P.P.J. Fernando and others SC 256/2010*** SC minute dated 17.09.2015, it was observed that,

“An expectation the fulfillment of which results in the decision maker making an unlawful decision cannot be treated as a legitimate expectation. Therefore, the expectation must be within the powers of the decision-maker for it to be treated as a legitimate expectation case.

It was also decided in the case of *Tokyo Cement Company (Lanka) Ltd V. Director General Customs and four Others SC Appeal 23/2004 2005BLR 24* that a legitimate expectation has to be taken in the sense of expectation which will be protected by law.

Considering the matters already discussed in this Judgment, I conclude that,

- a) The Petitioners had failed to bring JEDB a necessary party to the instant application which is a fatal lapse on the part of the Petitioners that warrants dismissal of the instant application
- b) The Petitioner could not have entertained a legitimate expectation to possess the entire extent of Etna Estate handed over to them for a period of 53 years. Since the Petitioners have failed to establish that the lessor was entitled in law to lease out any extent beyond 324.43 Hectares to a third party.

I therefore dismiss the application with cost fixed at Rs. 200000/-

Application is dismissed with cost.

Judge of the Supreme Court

Hon. Justice Janak de Silva,

I agree,

Judge of the Supreme Court

Hon. Justice Mahinda Samayawardhena,

I agree,

Judge of the Supreme Court