

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the matter for an application for Special Leave to Appeal under and in terms of Article 128 of the Constitution.

Kotagala Plantations Limited of 760, Baseline S.C. Road, Colombo 09 (and presently of 53 1/1, Baron Jayathilake Mawatha, Colombo 01).

SC Appeal No. 61/2008  
Special LA No. 350/2007  
CA/Writ No. 164/99

PETITIONER

**Vs.**

1. Ratnasiri Wickramanayake,  
Minister of Public Administration,  
Home Affairs and Plantation  
Industries, Ministry of  
Administration, Home Affairs and  
Plantation Industries, Colombo.
2. Land Reform Commission, 82C,  
Gregory's Road, Colombo 07.
3. State Plantations Corporation,  
55/75, Vauxhall Lane, Colombo  
02.
4. Hon. Rajitha Senaratne, Minister of  
Lands, Ministry of Lands, 'Govijana  
Kendraya', Rajamalwatte,  
Battaramulla. **RESPONDENTS**
5. Hon. Anura Priyadharshana Yapa,  
Minister of Plantation Industries,

Ministry of Plantation Industries,  
55/75, Vauxhall Lane,  
Colombo 02.

**ADDED RESPONDENT**

6. Hon. Milroy Fernando,  
Minister of Plantation Industries,  
Ministry of Plantation Industries,  
55/75, Vauxhall Lane,  
Colombo 02.

7. Hon. Chamal Rajapakse,  
Minister of Agricultural  
Development, Ministry of  
Agricultural Development,  
'Govijana Kendraya',  
Rajamalwatte, Battaramulla.

**ADDED 6<sup>th</sup> and 7<sup>th</sup> RESPONDENTS**

**AND BETWEEN**

Kotagala Plantations Limited of  
760, Baseline S.C. Road, Colombo  
09 (and presently of 53 1/1, Baron  
Jayathilake Mawatha, Colombo  
01).

**PETITIONER-PETITIONER**

**Vs.**

1. Land Reform Commission, 82C,  
Gregory's Road, Colombo 07.
2. State Plantations Corporation,  
55/75, Vauxhall Lane, Colombo  
02.

3. Hon. D. M. Jayaratne,  
Minister of Plantation Industries,  
Ministry of Plantation Industries,  
55/75, Vauxhall Lane,  
Colombo 02.

4. Hon. Jeevan Kumarathunga,  
Minister of Land and Land  
Development, Ministry of Land  
and Land Development, 85/5,  
'Govijana Kendraya',  
Rajamalwatte, Battaramulla.

**RESPONDENT-RESPONDENTS**

**AND BETWEEN**

Kotagala Plantations Limited of  
760, baseline Road, Colombo 09  
(and presently of 53 1/1, Sir Baron  
Jayathilake Mawatha, Colombo 10)

**PETITIONER – PETITIONER**

1. Land Reform Commission, 82 C,  
Gregory's Road Colombo 07
2. State Plantations Corporation,  
55/75 Vauxhall Lane, Colombo  
02
3. Hon. D.M Jayaratne, Minister of  
Plantation Industries, Ministry  
of Plantations Industries, 55/75  
Vauxhall Lane, Colombo 02

4. Hon. Kumaratunga Minister of Land and Land Development, 85/5 “Govijana Mandiraya”, Rajamalwatte, Battaramulla

**RESPONDENT-RESPONDENTS**

5. Hon. Mahinda Samarasinghe, Minister of Plantation Industries, Ministry of Plantation Industries, 55/75, Vauxhall Lane, Colombo 02.

6. Hon. Janaka Bandara Tennakoon, Minister of Land and Land Development, Ministry of Land and Land Development, 85/5, ‘Govijana Kendraya’, Rajamalwatte, Battaramulla.

7. Hon. P. Dayaratne, Minister of State Resources and Enterprise Development, No. 561/3, Elvitigala Mawatha, Colombo 05.

**ADDED RESPONDENT-RESPONDENTS**

**AND BETWEEN**

Kotagala Plantations Limited of 760, Baseline Road, Colombo 09 (and presently of 53 1/1 Sir Baron Jayathilake Mawatha, Colombo 01)

**PETITIONER-PETITIONER**

**Vs.**

1. Land Reform Commission 82 C,  
Gregory's Road, Colombo 07
2. State Plantations Corporation,  
55/77, Vauxhall Lane,  
Colombo 02
3. Hon. D.M Jayaratne, Minister of  
Plantation Industries, Ministry  
of Plantations Industries,  
55/75, Vauxhall Lane,  
Colombo 02
4. Hon. Jeewan Kumaratunga,  
Minister of Land and Land  
Development, Ministry of Land  
and Land Development, 85/5  
"Govijana Mandiraya",  
Rajamalwatte Battaramulla

**RESPONDENTS-RESPONDENTS**

5. Hon. Mahinda Samarasinghe,  
Minister of Plantation  
Industries, Ministry of  
Plantation Industries, 55/75,  
Vauxhall Lane, Colombo 02
6. Hon. Janala Bandara  
Tennakoon, Minister Land and  
Land Development, 85/5,

“Govijana Mandiraya”  
Rajamalwatte, Battaramulla

7. Hon. P. Dayaratne, Minister of  
State Resources and Enterprise  
Development No.561/3,  
Elvitigala Mawatha, Colombo  
05

**ADDED RESPONDENT-RESPONDENTS**

8. Hon. Anton Dayashritha Tisseraa,  
  
Minister State Resources and  
Enterprise Development, No.  
561/3, Elvitigala Mawatha,  
Colombo 05.

**ADDED RESPONDENT-RESPONDENT**

**AND NOW BETWEEN**

Kotagala Plantations Limited of  
760, Baseline Road, Colombo 09  
(and presently of 53 1/1 Sir Baron  
Jayathilake Mawatha, Colombo 01)

**PETITIONER-PETITIONER**

**Vs.**

1. Land Reform Commission 82 C,  
Gregory's Road, Colombo 07

2. State Plantations Corporation,  
55/77, Vauxhall Lane,  
Colombo 02
3. Hon. D.M Jayaratne, Minister of  
Plantation Industries, Ministry  
of Plantations Industries,  
55/75, Vauxhall Lane,  
Colombo 02
4. Hon. Jeewan Kumaratunga,  
Minister of Land and Land  
Development, Ministry of Land  
and Land Development, 85/5  
“Govijana Mandiraya”,  
Rajamalwatte Battaramulla

#### **RESPONDENTS-RESPONDENTS**

5. Hon. Mahinda Samarasinghe,  
Minister of Plantation  
Industries, Ministry of  
Plantation Industries, 55/75,  
Vauxhall Lane, Colombo 02
6. Hon. Janala Bandara  
Tennakoon, Minister Land and  
Land Development, 85/5,  
“Govijana Mandiraya”  
Rajamalwatte, Battaramulla
7. Hon. P. Dayaratne, Minister of  
State Resources and Enterprise  
Development No.561/3,

Elvitigala Mawatha, Colombo  
05

**ADDED RESPONDENT-RESPONDENTS**

8. Hon. Anton Dayashritha  
Tisseraa, Minister State  
Resources and Enterprise  
Development, No. 561/3,  
Elvitigala Mawatha, Colombo  
05.

**ADDED RESPONDENT-RESPONDENT**

9. Hon. Navin Dissanayake,  
Minister of Plantation  
Industries, Ministry of  
Plantation Industries, 55/75,  
Vauxhall Lane, Colombo 03
10. Hon. John Amaratunga,  
Minister of Land and Land  
Development,  
Ministry of Land and Land  
Development, 85/5,  
'Govijana Kendraya',  
Rajamalwatte, Battaramulla.

**ADDED RESPONDENTS-  
RESPONDENTS**



11. Hon. Gayantha Karunatileka,  
Minister of Lands and  
Parliamentary Reforms,  
Ministry of Lands and  
Parliamentary Reforms,  
'Mihikatha Medura',  
Land Secretariat, No. 1200/6,  
Rajamalwatte Avenue,  
Battaramulla.

ADDED RESPONDENT-  
RESPONDENT

**BEFORE:** Buwaneka Aluwihare, PC, J.  
Vijith Malalgoda PC, J.  
Murdu Fernando PC, J.

**COUNSEL:** Manohara De Silva PC, for the Petitioner- Petitioner-Appellant.  
Sanjay Rajaratnam, PC, SASG for the 1<sup>st</sup>, 9<sup>th</sup> and 10<sup>th</sup> Respondent-  
Respondents.

**ARGUED ON:** 18.02.2019.

**WRITTEN SUBMISSIONS:** For the Petitioner-Petitioner-Appellant on 19.03.2019.  
For the 1<sup>st</sup> Respondent on 25.02.2019.

**DECIDED ON:** 10.11.2023

## Judgement

**Aluwihare PC. J.,**

This is a case related to the vesting, and subsequent revocation of land taken over by the Land Reform Commission under the Land Reform Law. The Petitioner-Petitioner-Appellant [hereinafter the Appellant] seeks to impugn the decision of the Minister to revoke the vesting of the disputed land in the State Plantations Corporation, which had leased the said land to the Appellant. This court granted Special Leave to Appeal against the Order of the Court of Appeal dated 01.11.2007 on the following questions of law.

- (a) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal made only an observation on the bare denial of the Respondents that the DEEGALA DIVISION is not part of the VOGAN ESTATE as against the strong documentary evidence placed by the Petitioners to the contrary?
- (b) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal considered Section 27A(4) of the Land Reform Law in isolation and having no regard to the material circumstances as set out in detail by the Petitioner, which contentions were supported by documentation?
- (c) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that principles of natural justice would have warranted a hearing and/or notification to the Petitioner prior to making of the Revocation Order 'P10' by Gazette Extraordinary No. 1059/16 dated 24.12.1998?
- (d) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that Revocation order 'P10' itself gives no reason as to why the said Revocation Order was made?
- (e) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that the Petitioner is not only the Lessee of the entirety of VOGAN ESTATE including the said extent of 94A:2R:14P for a period of 99 years as stated above, but also holds a Power of Attorney No. 345 dated 4<sup>th</sup> May 1995 from the State Plantations Corporation, 2<sup>nd</sup> Respondent- Respondent and that the Petitioner would suffer grave prejudice and loss if the said extent of

land vests in the Land Reform Commission by virtue of the said Revocation Order?

(f) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that the Revocation Order 'P10' has been made by the 1<sup>st</sup> Respondent despite being well aware that the Petitioner had sought judicial recourse against the sub lessee for non-payment of the rentals and moreover without any notice to the Petitioner of the said Revocation order? Thus had the 1<sup>st</sup> Respondent acted arbitrarily, *ultra vires*, with *mala fides*, in an unreasonable manner and had been made for an ulterior motive?

(g) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal considered the Revocation Order 'P10' having no regard to the commercial complexities applicable to the said VOGAN ESTATE and especially the DEEGALA DIVISION?

(h) Did the Court of Appeal fail to consider the letter dated 27<sup>th</sup> February 2003 ('X15') by the Land Reform Commission sent to the Petitioner marked 'P12', by which letter the Land Reform Commission clearly stated that no further steps would be taken under and in terms of the Gazette Extraordinary No. 1059/16 dated 24.12.1998 to re-vest the DEEGALA DIVISION in the Land Reform Commission as per the said Gazette notification?

(1) It would be prudent to mention the facts of the case before addressing the questions of law which warrant determination by this Court. 'DEEGALA DIVISION' is a division of the 'VOGAN ESTATE' situated in Kalutara and described in Schedule 'A' to the Petition. By and under virtue of the provisions of the Land Reform Law, No. 1 of 1972 the VOGAN ESTATE was duly vested in the Land Reform Commission. Thereafter, the Minister of Forestry, Irrigation and Mahaweli Development acting under and by virtue of the powers vested under Section 27A of the Land Reform (Special provisions) Act, No. 39 of 1981, by order published in the Gazette Extraordinary of 21<sup>st</sup> April 1994 vested the 'VOGAN ESTATE' in the Sri Lanka State Plantations Corporation. Subsequently, by and upon Indenture of Lease No. 344 dated 4<sup>th</sup> of May 1995 attested by D.C. Pieris Notary Public, the State Plantations Corporation leased the said land, estate, plantations and premises of VOGAN ESTATE for a period of 99 years commencing 22<sup>nd</sup> of June 1992 and ending 31<sup>st</sup> December 2091 to the Appellant.

- (2) One Mrs. Gunawardane and family, who were the original owners of the portion of land-94A.2R.14P comprising part of DEEGALA DIVISION prior to it being vested in the Land Reform Commission, requested the Ministry of Public Administration, Home Affairs, Plantation industries and Parliamentary Affairs that an extent of 94A:2R:14P be leased to them. The Ministry directed the land Reform Commission to lease the said extent of land out of DEEGALA DIVISION to Mrs. Gunawardane and family.
- (3) At this point, the Appellant [Kotagala Plantations Ltd] objected to the lease, maintaining the position that the aforementioned land, by virtue of being part of the VOGAN ESTATE was duly vested in the Sri Lanka State Plantations Corporation, which had in turn, leased the entirety to the Appellant. A letter dated 23.07.1996 sent by the Director of Land Alienation of the Land Reform Commission to the Director of the Land Reform Authority of Kalutara directed that possession be taken of the said extent of 94A:2R:14P out of DEEGALA DIVISION for the purpose of leasing it to Mrs. Gunawardane and family. The Appellant, having been compelled to seek legal recourse due to the aforementioned letter, instituted Case No. 4696/Spl in the District Court of Colombo on 6<sup>th</sup> August 1996 against the Land Reform Commission, Sri Lanka State Plantations Corporation and Mrs. Gunawardane. In that case, the Appellant claimed relief in the form of a declaration that the Appellant is the lawful lessee of VOGAN ESTATE including DEEGALA DIVISION, a permanent injunction and interim injunction restraining the Land Reform Commission from entering and/or taking possession of VOGAN ESTATE including DEEGALA DIVISION, and an interim injunction restraining Mrs. Gunawardane from entering and/or taking possession of VOGAN ESTATE including DEEGALA DIVISION.
- (4) The Case was fixed for trial in the District Court. In the interim, the Land Reform Commission and the Ministry agreed that the Appellant should lease the said extent of 94A:2R:14P to Mrs. Gunawardane and family. DC Colombo Case No. 4696/Spl was settled and in or around 8<sup>th</sup> April 1997, the Appellant, by indenture of Lease No. 1594 dated 8<sup>th</sup> April 1997 attested by Gilbert Somasiri Herath Gunaratne Notary Public, in pursuance of the authority under the Indenture of Lease No. 344, sub-leased to Mrs. Gunawardane and her children the allotment of land, estate, plantations and premises in extent 94A:2R:14P of DEEGALA DIVISION of the VOGAN ESTATE with the buildings for a period of 50 years commencing 1<sup>st</sup> November 1996. The Land Reform

Commission refunded to the Appellant the sum of Rs. 400,000 paid to it by Mrs. Gunawardane for the lease rental and the amount was given as credit in favour of Mrs. Gunawardane and utilised by the Appellant as the first year's rental from Mrs. Gunawardane. A Receipt of Rs. 453,600 received by the Appellant, was provided to Mrs. Gunawardane.

- (5) The terms of the said indenture of lease were such that the Gunawardanes shall pay a rental of Rs. 453,600 during the first year of the said term, that an yearly rental would be paid in the manner set out in the lease, that if the yearly rental or any part of it was unpaid for 60 days after becoming payable, or if any covenant on the part of the Gunawardanes contained in the indenture were not performed or observed, it shall be lawful for the Appellant at any time thereafter to re-enter the premises or any part of it, and that if at any time, any question, dispute or difference of opinion in relation to or in connection with the lease, or in the interpretation of any provision arises during the continuance of the lease term, which cannot be amicably settled by the Parties, it shall be referred to Arbitration.
- (6) Having entered into possession of the land, the Gunawardanes failed or neglected to make payment of rental due as per the lease agreement for the period between 1<sup>st</sup> November 1997 to 30<sup>th</sup> October 1998. Due to the failure of the Arbitration proceedings which followed as a result of the dispute, the Appellant instituted an action in the District Court of Colombo bearing No. 5222/Spl against Mrs. Gunawardane and family seeking inter alia an enjoining order restraining the Gunawardanes from removing or using any produce of the land. On 27<sup>th</sup> October 1998, the Court issued the said Enjoining Order prayed for along with notice of Interim Injunction for the same purpose.
- (7) Thereafter, the Minister of Plantation Industries, the relevant Minister at that time; by Gazette Extraordinary No.1059/16 dated 24.12.1998, acting under Section 27A(4) of the Land Reform Law, revoked the vesting order made by him in the Gazette Extraordinary of 21<sup>st</sup> April 1994 vesting land extent 94A:2R:14P of the DEEGALA DIVISION of the VOGAN ESTATE in the State Plantations Corporation. **It is the validity of this Revocation Order that was canvassed before the Court of Appeal by the Appellant.**

- (8) It is the Appellant's position that by the vesting order published in the Gazette Extraordinary of 21<sup>st</sup> April 1994, the Sri Lanka State Plantations Corporation became vested with the title to and ownership of the said land, estate, plantations and premises of VOGAN ESTATE and that as per Section 27A(4) of the Land Reform Law as amended by Land Reform (Special Provisions) Act, No.39 of 1981, the Vestee must have failed to comply with any term or condition in relation to the vesting Order for the Minister to revoke the vesting Order. The Appellant notes that the said revocation order provides no reason as to why the revocation order was made, and by virtue of holding Power of Attorney to the State Plantations Corporation, the Appellant was entitled in law to be noticed and provided an opportunity of being heard as to why the Revocation Order was issued. Therefore, the Appellant contends that the said Revocation Order is arbitrary, *mala fide*, *ultra vires* and unreasonable. On this premise, the Appellant contended before the Court of Appeal that it was entitled in law for an Order in law in the nature of a Writ of Certiorari quashing the said Revocation Order.
- (9) It must be mentioned that **no notice of revocation order** was provided to the Appellant until a copy of the said order was produced by the Attorney-at-Law for the Minister of Plantation Industries in DC Colombo Case No. 4696/Spl on 27<sup>th</sup> January 1999.
- (10) Furthermore, the Appellant contends that in any event, the Revocation Order is not valid as the Land Reform Commission, in a letter dated 27<sup>th</sup> February 2003 (X 15), states that no further steps would be taken under and in terms of the Gazette Extraordinary No. 1059/16 dated 24.12.1998 for the re-vesting of the DEEGALA DIVISION in the Commission. The Appellant prays that the of the Court of Appeal dated 01.11.2007 be set aside and for the issuance of a Writ of Certiorari quashing the Revocation Order.
- (11) The 1<sup>st</sup> Respondent- Respondents, the Land Reform Commission [LRC] maintains that the DEEGALA DIVISION was and is not part of the VOGAN ESTATE, that it was vested separately in the Land Reform Commission, that it was not vested in the State Plantations Corporation and that the State Plantations Corporation merely managed the DEEGALA DIVISION- of which the Title Ownership was vested in the Land Reform Commission. The LRC further submits that the DEEGALA DIVISION was not included in the Indenture of Lease No. 344 dated 4<sup>th</sup> May 1995 attested by D.C. Pieris Notary Public whereby the State Plantations Corporation leased the land, estate, plantations

and premises of the VOGAN ESTATE for a period of 99 years commencing 22<sup>nd</sup> June 1992 and ending 31<sup>st</sup> December 2091 to the Appellant, and that the State Plantations Corporation has offered no explanation as to how it considered (if at all) the DEEGALA DIVISION to be part of the VOGAN ESTATE. The LRC submits that the above matters are factual disputes and would be best resolved by the District Court, and not by way of a Writ of Certiorari as prayed by the Appellant. It is of significance to note that when the Appellant, the LRC and the 2<sup>nd</sup> Respondent -Respondents, State Plantation Corporation [SPC] entered into a settlement in the District Court case referred to above, based on which the Appellant leased DEEGAL DIVISION to Gunawardenas, LRC or the SPC never took up the position that the DEEGALA DIVISION was not a part of the Vogan Estate.

(12) Moreover, the LRC submits that, in any event, the terms of condition of the vesting Order which was breached for the Minister to publish the Revocation Order by the Extraordinary Gazette is clear as the Vesting Order mentions that the State Plantations Corporation is bound to pay the Land Reform Commission the nominal value of lands referred to in the schedule – which the State Plantations Corporation failed to fulfil as it had not paid the Land Reform Commission the nominal value of the lands amounting to Rs. 14,412,000. The above explanation, the LRC contends, was also made clear in the affidavit submitted by the then Minister of Plantation Industries. Additionally, the LRC notes that the duty of diligence to seek out clarity in terms of payments and documentation on the part of the State Plantations Corporation prior to entering into a Lease agreement falls upon the Appellant.

(13) The Appellant, during the hearing, took up the position that if non-payment of consideration for the entire VOGAN ESTATE was the reason for revocation, the Minister should have revoked the entire estate, not merely the disputed land of extent 94A:2R:14P. The LRC then proceeded to take up a novel position in response. In the written submission dated 25<sup>th</sup> February 2019, the LRC argues as follows: that Section 27A(4) offers the relevant Minister the power to revoke the vesting of small portions of selected land of a vested Estate, and this form of part-vesting and part-revocation of an estate or land is permitted under Section 27A(1) read together with Section 27A(4) of the Land Reform Law, and that the above is apparent when considering how part-vesting and part-revocation conforms with the policy and scheme of the Act whereby lands vested in the Land Reform Commission may be utilised for multiple purposes and

different portions of the same land may be utilised differently.

**Is the DEEGALA DIVISION including the land of extent 94A.2R.14P part and parcel of the VOGAN ESTATE?**

(14) Section 27A(1) of the Land Reform (Special provisions) Act, No. 39 of 198 states:  
*“At the request of the Commission, the Minister may, where he considers it necessary in the interest of the Commission to do so, subject to Sections 22, 23 and 42H, by Order published in the Gazette, vest, in any State corporation specified in the Order, with effect from a date specified in that Order, any agricultural land or estate land or any portion of the land vested in the Commission under this Law, and described in the Order, subject to terms and conditions relating to consideration for the vesting of that land in such corporation as may be agreed upon between the Commission and such Corporation.”*

(15) It is by virtue of the above provision that by order published in the Gazette Extraordinary of 21<sup>st</sup> April 1994 (marked ‘P3’) by the Minister, the ‘VOGAN ESTATE’ was vested in the Sri Lanka State Plantations Corporation.

(16) The Hectarage Statement submitted by the Appellant marked ‘P2’ notes the DEEGALA DIVISION comprising 81.15 hectares to be part of the total hectarage of the VOGAN ESTATE of 847.43 hectares. The Vesting Order which vests the VOGAN ESTATE in the State Plantation Corporation, marked ‘P3’, also states the total hectarage of the VOGAN ESTATE as 847 hectares. It is also conceded that the 94A:2R:14P leased to the Gunawardenas, is part of the DEEGALA DIVISION. Even the Court of Appeal had acknowledged [pages 4 and 5 of the Order] that Board of Directors of the Appellant Company on a request made by the Ministry of Plantation and Industry, leased out 94A:2R and 14 P to the Gunawardena family the original owners of Deegala Division which indicates that Deegala Division was part and parcel of the Vogan Estate.

**Was the disputed land vested in the State Plantations Corporation?**

(17) In addition to the conclusion determined above, I am also of the view for the purpose of this case, that the LRC cannot maintain the position that DEEGALA DIVISION was not vested in the State Plantations Corporation while also maintaining



the argument that the Revocation Order revoked the vesting of the same land ‘in any event’. This, in essence, as pointed out by the learned President’s Counsel for the Appellant, constitutes an admission that the disputed extent of land was in fact vested in the State Plantations Corporation since **that which has not been vested cannot be revoked.**

#### **Is the Revocation Order bad in law?**

(18) The determination of the court in this regard is whether part-vesting and part-revocation is permissible in law as per Section 27A(1) and Section 27A(4) of the Land Reform Act, and if so, whether the order for part-revocation in the present case was lawful.

(19) Section 27A(4) of the Land Reform (Special provisions) Act, No. 39 of 1981 states: *“Where any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any State Corporation by an Order under subsection (1) is not complied with, the Minister may by Order published in the Gazette, revoke the Order under subsection (1) relating to that land and thereupon that land shall revert in the Commission.”*

(20) It is by virtue of the above provision that by order published in the Gazette Extraordinary No.1059/16 dated 24.12.1998 (marked ‘P10’) the Minister revoked the vesting order made by the former Minister in the Gazette Extraordinary of 21<sup>st</sup> April 1994 vesting land extent 94A:2R:14P of the DEEGALA DIVISION of the VOGAN ESTATE in the State Plantations Corporation. It is to be noted that this is the exact extent of land that was leased to Gunawardenas by the Appellant.

(21) It is the LRC’s contention that the ‘*term or condition relating to consideration*’ for the vesting Order which the State Plantations Corporation has failed to comply with is the payment of a nominal value of Rs. 14,412,000 for the lands, premises and estate of the VOGAN ESTATE. This is the pith and substance on which the Court of Appeal refused to quash the vesting order. To appreciate that no material was placed before this Court supporting the failure of payment as reason for revocation besides the affidavit of the Minister himself dated 20<sup>th</sup> July 1999 which states that the State Plantations Corporation failed to pay due consideration of Rs. 14,412,000 as the

nominal value of the entire estate. This allegation was strenuously disputed by the Appellant as well as the State Plantations Corporation. The monies were due to the LRC, and consequently, it was incumbent upon the LRC and not the Minister to complain about the non-payment. The Vesting Order “P 3” does not require the payment of consideration within a stipulated time and therefore it follows that even if the State Plantations Corporation had failed to pay, the revocation could not have been done without providing an opportunity to pay. In any case, it must be borne in mind that the Minister’s allegation is that that the State Plantations Corporation failed to pay due consideration of Rs. 14,412,000 as the *nominal value of the entire estate*. **The succeeding question then, is why the specific land of extent 94A.2R.14P of the DEEGALA DIVISION *alone* was revoked and re-vested in the Land Reform Commission, and not the entire Division or Estate. Therefore, even if partial revocation may be permissible, for the present Revocation Order to stand it must be proven that the State Plantations Corporation failed to provide consideration of a defined amount for the specific extent of land.**

(22) There is no mention of consideration being apportioned and assigned for the specific extent of land to the State Plantations Corporation, and **the Respondents have failed to provide any reason for the partial revocation as divorced from the non-payment of nominal fees for the entire Estate.** This is a pertinent consideration since the LRC, in the written submission dated 25<sup>th</sup> February 2019 submits that the policy, and underlying reasoning behind the part-revocation was that there were various utilities in different portions of lands held for the State. Although the LRC’s argument does conform to the purpose of the act spelled out in the the preamble to the Land Reform Law- which provides *inter alia* “...to prescribe the purposes and the manner of disposition by the commission of agricultural lands vested in the commission so as to increase productivity and employment,...”, **no such reasoning, as applicable for the disputed portion of land of extent 94:A:2R:14P has been offered, and no specific use or viability of purpose the land possesses that other lots of land in the VOGAN ESTATE do not hold has been noted either by the Respondents.**

(23) Therefore, even if it could be established that the Minister was entitled to revoke the vesting order due to the State Plantations Corporation’s alleged failure to pay consideration for the entire state, and part-revocation is permissible under Section 27A(1) and Section 27A(4) of the Land Reform Act, it cannot be established that the

Minister was entitled to revoke the specific extent of land pertinent to the present dispute.

(24) The exact portion of land that was revoked i.e. 94A:2R:14P was the extent of the land which was sub-leased to the Gunawardenas by the Appellant. This reality, considered with the fact that no reasoning was provided for the exclusive revocation could only lead to the conclusion that the revocation was effected for the collateral purpose of benefiting the Gunawardenas alone.

(25) In *Sugathapala Mendis Vs. Chandrika Kumaratunga* [2008] 2 Sri LR 339, Her Ladyship Justice Shiranee Tilakawardane, in determining whether the acts impugned in that case constituted a “public purpose”, held [at page 360] that the primary object of “public purpose” is the general interest of the community. Though in achieving the public purpose the individual or individuals may be benefited, the benefit to such individual or individuals must only be indirect.

(26) While 27A(4) of the Land Reform (Special provisions) Act, No. 39 of 1981 does not expressly restrict the Minister’s power to revoke lands vested for “public purposes”, I am of the view that any actions taken under the Act must conform to the policy considerations contemplated by the legislature in enacting such act. This view was also taken by five Lordships of this Court in *Jayanetti Vs. The Land Reform Commission & Others* [1984] 2 SLR 172, where the Court, referring to the preamble of the Land Reform Law stated that “*alienations should be strictly confined to purposes which would ensure productivity or utilization of manpower, and not for other reasons. All activity of the Commission is subsumed under overriding policy considerations...*” [at page 189]. Revocation of the portion of land which constitutes the exact portion of land the Gunawardenas have sought does not in any way contribute to effecting the purposes of the Land Reform Law or the Land Reform (Special provisions) Act. Therefore, it is evident that the Minister published the Revocation Order for an arbitrary, collateral purpose and is therefore bad in law and liable to be quashed.

**Was the Minister bound to provide the Petitioner notice in advance and/or a hearing prior to publishing the Revocation Order per Principles of Natural Justice?**

(27) No administrative body or executive organ exercising an administrative function

is entitled to escape the requirements of Natural Justice. The jurisprudence of our courts has not wavered in this conviction; therefore, I do not find it necessary to reproduce dicta in this regard. The Appellant was not provided notice in advance of the revocation; neither was the Appellant granted a hearing before the revocation order was published. This is not disputed by the Respondents. Therefore, it is *ex facie* evident that the Minister, being a creature of the Constitution and exercising an administrative function bound to adhere to the immutable principle of *audi alteram partem*, had lamentably failed in such adherence.

- (28) This failure is further aggravated by the manner in which the resort to judicial recourse by the Appellant for the non-payment of rentals by the sub-lessee (Gunawardenas) was neglected in publishing the revocation order particularly where letter dated 27<sup>th</sup> February 2003, states that no further steps would be taken under and in terms of the Gazette Extraordinary No. 1059/16 dated 24.12.1998 for the re-vesting of the DEEGALA DIVISION in the Commission.

### **Conclusion**

For the aforementioned reasons, I answer the questions of law upon which leave was granted in the following manner.

- (a) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal made only an observation on the bare denial of the Respondents that the DEEGALA DIVISION is not part of the VOGAN ESTATE as against the strong documentary evidence placed by the Petitioners to the contrary?

Yes.

- (b) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal considered Section 27A(4) of the Land Reform Law in isolation and having no regard to the material circumstances as set out in detail by the Petitioner, which contentions were supported by documentation?

Yes.

- (c) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that principles of natural justice would have warranted a hearing and/or notification to the Petitioner prior to making of the

Revocation Order 'P10' by Gazette Extraordinary No. 1059/16 dated 24.12.1998?

Yes.

(d) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that Revocation order 'P10' itself gives no reason as to why the said Revocation Order was made?

Yes.

(e) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that the Petitioner is not only the Lessee of the entirety of VOGAN ESTATE including the said extent of 94A:2R:14P for a period of 99 years as stated above, but also holds a Power of Attorney No. 345 dated 4<sup>th</sup> May 1995 from the State Plantations Corporation, 2<sup>nd</sup> Respondent- Respondent and that the Petitioner would suffer grave prejudice and loss if the said extent of land vests in the Land Reform Commission by virtue of the said Revocation Order?

Yes.

(f) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal failed to consider that the Revocation Order 'P10' has been made by the 1<sup>st</sup> Respondent despite being well aware that the Petitioner had sought judicial recourse against the sub lessee for non-payment of the rentals and moreover without any notice to the Petitioner of the said Revocation order? Thus had the 1<sup>st</sup> Respondent acted arbitrarily, *ultra vires*, with *mala fides*, in an unreasonable manner and had been made for an ulterior motive?

Yes.

(g) Did the Court of Appeal err in fact and in law when the Learned Justice of the Court of Appeal considered the Revocation Order 'P10' having no regard to the commercial complexities applicable to the said VOGAN ESTATE and especially the DEEGALA DIVISION?

Yes.

(h) Did the Court of Appeal fail to consider the letter dated 27<sup>th</sup> February 2003 ('X15') by the Land Reform Commission sent to the Petitioner marked 'P12', by

which letter the Land Reform Commission clearly stated that no further steps would be taken under and in terms of the Gazette Extraordinary No. 1059/16 dated 24.12.1998 to re-vest the DEEGALA DIVISION in the Land Reform Commission as per the said Gazette notification?

Yes.

In view of the conclusions reached, and considering the facts and circumstances of this case a writ in the nature of certiorari is allowed quashing the Revocation Order 'P10' published in the Gazette Extraordinary No. 1059/16 dated 24.12.1998 and I direct that no steps or measures are taken under such Order. Accordingly, the Order of the Court of Appeal dated 01.11.2007 is set-aside.

*Appeal allowed.*

Judge of the Supreme Court

Vijith K. Malalgoda PC, J.  
I agree.

Judge of the Supreme Court

Murdu Fernando PC, J.  
I agree.

Judge of the Supreme Court