

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

In the matter of an Appeal

A.D. Hemachandra Perera,
No. 233,
“Ajantha”,
Bambarakele,
Nuwara Eliya.

Petitioner

**SC Appeal No. 72/2014
SC (Spl) LA No. 40/2012
CA (Writ) Application
No. 27/12**

Vs.

1. Lal Sumanasena,
Director,
District Land Reform Commission,
Badulla Road,
Nuwara Eliya.
2. Nimal G. Punchihewa,
Attorney-at-Law,
Chairman,
Land Reform Commission,
P.O. Box 1526, No. C 82,
Hector Kobbekaduwa Mawatha,
Colombo 7.
3. Land Reform Commission,
P.O. Box 1526, No. C 82,

Hector Kobbekaduwa Mawatha,
Colombo 7.

4. Rev. Meepanawe Sugathadhamma Thero,
Chief Incumbent,
Sri Maha Viharaya,
Bambarakele,
Nuwara Eliya.

Respondents

AND NOW BETWEEN

A.D. Hemachandra Perera,
No. 233,
“Ajantha”,
Bambarakele,
Nuwara Eliya.

Petitioner-Appellant

Vs.

1. Lal Sumanasena,
Director,
District Land Reform Commission,
Badulla Road,
Nuwara Eliya.

ADDED 1A. Nimal Hathurusinghe,
Director,
District Land Reform Commission,
I.R.D.B. Building,
Udapussellawa Road,
Nuwara Eliya.

2. Nimal G. Punchihewa,
Attorney-at-Law,

Chairman,
Land Reform Commission,
P.O. Box 1526, No. C 82,
Hector Kobbekaduwa Mawatha,
Colombo 7.

ADDED 2A. T.A. Sumanathissa Thambugala,
Chairman,
Land Reform Commission,
P.O. Box 1526, No. C 82,
Hector Kobbekaduwa Mawatha,
Colombo 7.

ADDED 2B. Sampath Subasinghe Arachchi,
Chairman,
Land Reform Commission,
No. 457,
Kaduwela Road,
Battaramulla.

ADDED 2C. Sirimewan Dias,
Chairman,
Land Reform Commission,
No. 457,
Kaduwela Road,
Battaramulla.

ADDED 2D. Pandukabaya Harsha Keerthinanda,
Chairman,
Land Reform Commission,
No. 457,
Kaduwela Road,
Battaramulla.

3. Land Reform Commission,
P.O. Box 1526, No. C 82,

Hector Kobbekaduwa Mawatha,
Colombo 7.

4. Rev. Meepanawe Sugathadhamma Thero,
Chief Incumbent,
Sri Maha Viharaya,
Bambarakele,
Nuwara Eliya.

Respondents-Respondents

Before: **Justice P. Padman Surasena**
 Justice A.L. Shiran Gooneratne
 Justice Achala Wengappuli

Counsel: W. Dayaratne, PC with Ranjika Jayawardene instructed by C.
Dayaratne for the **Petitioner-Appellant.**

Dr. Sunil Coorey with Sudarshani Coorey instructed by Udayasiri
Rajapakse for the **3rd Respondent-Respondent.**

Aravinda R.I. Athurupane with Indika I. Weragoda instructed by
Roshani Rodrigo Weragoda for the **4th Respondent-Respondent.**

Argued on: 16/10/2024

Decided on: 11/11/2024

A.L. Shiran Gooneratne J.

- [1] The Petitioner-Appellant filed this Writ Application against the 1st to 4th Respondents-Respondents praying *inter-alia*, to the grant of a writ of *certiorari* to quash the notice to quit (marked 'X36') issued by the 2nd Respondent, directing the Petitioner to vacate the land depicted in Plan No. 4356 N marked 'X1', and to the grant of a writ of *mandamus* directing the 2nd Respondent to transfer the land bearing assessment No. 325, Bambarakele, Nuwara Eliya, morefully depicted in the said Plan No. 4356 N, to the Petitioner.
- [2] This application was filed on the basis that the land in dispute was possessed and cultivated by the parents of the Petitioner since 1970, which was once part of Oliphant Estate, Nuwara Eliya. It is submitted that the Petitioner continued to possess and cultivate the said land for well over 40 years.
- [3] The Petitioner submits that the 2nd Respondent acting in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, has acted arbitrarily and unreasonably in the issuance of the notice to quit, which tantamount to an abuse of statutory process.
- [4] The Petitioner supports the above position *inter alia*, with the following marked documents, attached to his Application to the Court of Appeal dated 27/01/2012.
- I. The 3rd Respondent's letter dated 26/08/1996, addressed to the Secretary Ministry of Plantation Industries and copied to the Petitioner, informing that steps would be taken by the Land Reform Commission to release the said land to the Petitioner, marked 'X20'.

- II. The 3rd Respondent's letter dated 12/05/1997, requesting the Petitioner to prepare a private survey plan depicting the land in question, following the rules set out in the aforementioned letter, marked 'X22'.
 - III. The 1st Respondent's letter dated 02/08/2010, requesting the Petitioner to pay Rs. 1,138,561.00 as consideration for 15 perches of the disputed land and to make the said payment before 15/08/2010, marked 'X33'.
 - IV. Letter dated 25/01/1996 by the Secretary, Ministry of Plantation Industries to the Land Reform Commission stating that the land in dispute does not fall within the property owned by Oliphant Estate and therefore, to inquire into this issue and to find out whether the said land is owned by the Land Reform Commission and if so, to take necessary steps to consider the request made by the Petitioner, marked 'X14'.
 - V. Letter dated 04/04/1996 by the Secretary, Ministry of Plantation Industries to the Land Reform Commission requesting to transfer the land in dispute to the Petitioner, with a copy to the Petitioner, marked 'X19'.
- [5] The Court of Appeal by its Judgment dated 08/02/2012, having acknowledged communications between the Petitioner and the Respondents, and the document marked 'X22', held that, *"No steps were taken to alienate the said land to the Petitioner."*
- [6] Accordingly, on the basis that *"the Petitioner has not established any ground to quash the said quit notice"* the Court dismissed the Application without the issuance of notice on the Respondents.
- [7] The Petitioner by Application dated 03/09/2012, is before this Court, primarily to have the said Judgment of the Court of Appeal set aside and for a direction given to

the Court of Appeal to determine this matter with notice of this Application to the 1st to 4th Respondents named above.

- [8] When this matter was taken up for hearing before this Court, the learned President's Counsel for the Petitioner, submitted that when the Land Reform Commission had decided to alienate the land in dispute to the Petitioner, the 2nd Respondent's arbitrary decision to send the notice to quit (X36), was in violation of the principles of natural justice and is in breach of the Petitioners legitimate expectations of the land being alienated to him.
- [9] We have perused the documents attached to this Application, and specially the abovementioned documents relied upon by the Petitioner in support his legitimate expectations arising in the facts and circumstances of this case.
- [10] However, the Court of Appeal has based its decision to refuse issuance of notice on the Respondents solely on the document marked 'X22' only. This is clearly reflected in its order dated 08/02/2012. The said order also clearly reveals that the Court of Appeal has failed to take into consideration any other document other than X22. In our view Court of Appeal should have considered the other documents as well.
- [11] We are of the view that the Court of Appeal should have investigated whether the communications between the Petitioner, the Secretary, Ministry of Plantation Industries, and the Land Reform Commission, in more detail, after issuing notices on the Respondents.
- [12] Accordingly, we set aside the Judgment dated 08/02/2012 since there is a prima facie case to be looked into, we direct the Court of Appeal to issue notice on the 1st to 4th Respondents and have an early date for hearing, in order to dispose of this application.

[13] Appeal allowed; we make no order for costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree

Judge of the Supreme Court

Achala Wengappuli, J.

I agree

Judge of the Supreme Court