

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

In the matter of an appeal under and in terms of
Article 128(2) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

SC Appeal No: 193/2018

CA (Writ) Application No: 383/2014

Thumpale Gedara Don Anthony Wijeratne,
No. 14, Moragolla Junction,
Nuwara Eliya Road, Gampola.

PETITIONER

- Vs -

1. U.P. Indika Anuruddha Priyadasa,
Divisional Secretary,
Udawalatha, Gampola.
2. Commissioner General of Lands,
Department of Land Commissioner,
Rajamalwatta Road, Battaramulla.
3. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

And now between

1. U.P. Indika Anuruddha Priyadasa,
Divisional Secretary,
Udawalatha, Gampola.
- 1A. R.A.D.T.N. Tennakoon,
Divisional Secretary,
Udawalatha, Gampola.

2. Commissioner General of Lands,
Department of Land Commissioner,
Rajamalwatta Road, Battaramulla.

RESPONDENTS – APPELLANTS

Vs.

Thumpale Gedara Don Anthony Wijeratne,
No. 14, Moragolla Junction,
Nuwara Eliya Road, Gampola.

PETITIONER – RESPONDENT

1. Thayaga Miyurin Kaluarachchi,
Ariadness 05, Mouttagika,
(Opposite Metro Supermarket),
Lemass OL, 4531 Mouttagiaka,
Tourist area, Limassoi, Cyprus.
2. Don Kushmal Hasantha Jayawickrama
Wijeratne,
No. 60B, Siyabalagahawela, Wahakotte.
3. Don Sudesha Kalhari Jayawickrama
Wijayarathne,
No. 209/4, Nelum Place,
Kalapaluwawa, Rajagiriya.
4. Anne Sudarshana Dulakshi Jayawickrama
Wijeratne,
No. 60B, Siyambalagaswewa, Wahakotte.
5. Chamarika Shane Rose Jayawickrama
Wijeratne,
No. 25/10, Juse Vass Mawatha, Puttalam.

SUBSTITUTED PETITIONER – RESPONDENTS

Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENT – RESPONDENT

Before: Arjuna Obeyesekere, J
Dr. Sobhitha Rajakaruna, J
M. Sampath K.B. Wijeratne, J

Counsel: Ganga Wakishtaarachchi, Deputy Solicitor General for the 1A and 2nd Respondents – Appellants

Dr. Sunil Abeyratne for the Substituted Petitioner – Respondents

Argued on: 15th October 2025

Written Submissions: Tendered on behalf of the 1A and 2nd Respondents – Appellants on 4th December 2018 and 7th November 2025

Tendered on behalf of the Substituted Petitioner – Respondent on 17th October 2022

Decided on: 24th September 2026

Obeyesekere, J

- (1) The primary issue that needs to be determined in this appeal is whether the Court of Appeal erred in law when it held that the Petitioner – Respondent [the Petitioner] had a legitimate expectation of receiving from the State on a long term lease the extent of land from which the Divisional Secretary of Udapalatha, who is the 1st and 1A Respondent – Appellant in this appeal [the 1st Respondent] was seeking to evict the Petitioner in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended.

Sequence of events

- (2) The Petitioner, who was attached to the Sri Lanka Army, had informed the Provincial Land Commissioner of the Central Province by letter dated 31st January 1992 [P1] that he has been in occupation of a State land situated on the Gampola – Nuwara Eliya Road in extent of 3R 4P for a period of 18 years and requested that his occupation be regularised by the issuance of a long term lease in his favour in accordance with the applicable law.

- (3) Acting on the said request, the predecessor of the 1st Respondent whom I shall also refer to as the 1st Respondent for convenience, had initiated the process by letter dated 4th December 1992 [P3] and requested the Kachcheri Surveyor to survey the land occupied by the Petitioner. P3 had been followed by letter dated 16th February, 1993 [P4] by which the 1st Respondent had requested the Chief Valuer, Kandy to assess the developed and undeveloped value of the said land and to inform the 1st Respondent.
- (4) By letter dated 6th July 1993 [P6], the 1st Respondent had submitted to the Provincial Land Commissioner the documents that were necessary to process the request of the Petitioner, together with an undated sketch of the entire land occupied by the Petitioner [P5]. There are two matters that are evident from P5, they being (a) the extent of the land has been given as 1R 28P, and (b) the land is surrounded by three roads to its North, East and South.
- (5) It is common ground that the main road adjacent to the said land, situated on the Eastern boundary of the land, was to be widened by the Road Development Authority. For this reason, by his letter dated 20th November 1996 [P8] the Provincial Land Commissioner had requested the Chief Engineer of the Road Development Authority to identify the extent of land that needs to be set aside as the road reservation.
- (6) P8 had been replied by letter dated 25th March 1998 [P9] where the Chief Engineer of the Road Development Authority had informed that while a final survey plan had not been prepared and hence the extent of land required as the road reservation cannot be determined, a distance of 40 feet must be maintained to the edge of the land from the centre of the road.
- (7) The Provincial Land Commissioner had thereafter requested the Government Surveyor to prepare a sketch setting out the road reservation of 40 feet. The said sketch dated 15th November 1999 [P12] contain two lots. The first is the area identified as the road reservation in respect of which there is no dispute between the parties. The second lot on P12 is an area marked as 'A' in extent of 27.67P. Lot 'A' is surrounded by two roadways on its Northern and Southern boundaries, with

the main road that was earlier on the Eastern boundary being replaced by the land identified as the road reservation. It is the demarcation of Lot 'A' and the extent thereof being specified as 27.67P that has culminated in this appeal.

- (8) By letter dated 16th November 2001 [R8], the Commissioner General of Lands [the 2nd Respondent] has informed the 1st Respondent that the Minister of Lands has approved the execution of a long term lease in favour of the Petitioner with the extent of the land being 27.67P and that the decision of the Minister has been published in the Gazette.
- (9) By letter dated 20th June 2002 [P11], the predecessor of the 1st Respondent had informed the Kachcheri Surveyor as follows:

“උඩපළාත ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ අමුණුපුර වසමේ අංගම්මන ගමේ මු.පි.මහ 1486 පිඹුරේ කැබලි අංක: 02 දරණ පර්චස් 27.67 (හෙක්ටයාර් 0.0700) පමණ වූ රජයේ ඉඩම් කොටස නේවාසික කටයුත්තක් සඳහා ටී.ඩී ඇන්ටන් විජේරත්න නැමති අය සඳහා දීර්ඝ කාලීන බදු පදනම මත ලබාදීමට අනුමැතිය ලැබී ඇත. දැනට තක්සේරු බදු මුදල් අය කර ඇති බැවින් ඉඩමේ හතර මායිම් පෙත්වා ඉඩමේ භුක්තිය විධිමත් ලෙස බදු ගැනුම්කරු වෙත භාර දී මා වෙත වාර්තා කරන ලෙස කාරුණිකව දන්වමි. මු. පි. 1486 පිඹුරේ පිටපතක්ද මේ සමග එවමි.”

- (10) P11 was copied to the Petitioner and thus put the Petitioner on notice that the extent of the land that was proposed to be granted to him was 27.67P. It does not appear from the correspondence that the Petitioner raised any objection with regard to the extent of the land that was proposed to be granted to him, even though the Petitioner had stated right at the beginning of the process that the total extent of the land occupied by him was 3R 4P.
- (11) Pursuant to the issuance of an 'Order to Survey' [මැනුම් නියෝග][R1] to demarcate an extent of 0.070 hectares [27P], the District Survey Office had carried out a survey of the land and identified in its survey plan [P14/R3] three lots of land marked as Lot Nos. 109, 110 and 111. According to the Tenement List attached to R3 dated 29th December 2002, Lot No.109 in extent of 27P and Lot No. 111 in extent of 12.5P were occupied by the Petitioner. It is perhaps at this point of time that it transpired that the extent of land remaining of the State land occupied by the Petitioner after making provision for the road reservation was greater than the 27.67P referred to in P11 and P12, or in other words, that Lot 'A' was greater in extent than 27.67P.

- (12) There is a deafening silence from both parties as to what transpired after P11, until September 2014 when the Petitioner wrote letter dated 21st September 2014 [P15] to the 1st Respondent, stating that the extent of the land given to him on a long term lease had been reduced to 27P and requesting that the balance extent of 12P too be given to him.
- (13) There are three matters that I wish to advert to at this stage. The first is, with P11 being copied to him, the Petitioner was aware as far back as 2002 that the entire land occupied by him was not being leased to him but the Petitioner opted to remain silent. The second is, P15 was triggered by a request made by another party through the Minister of Land and Land Development that the balance area of land [i.e. Lot No. 111] be given to the said third party. This is borne out by (a) letter dated 17th February 2014 written by the Minister to the 1st Respondent [R4], (b) letter dated 19th June 2014 written by the 2nd Respondent to the 1st Respondent to report to him on the request of the Minister [R5], and (c) letter dated 25th November 2014 written by the 1st Respondent to the 2nd Respondent [R7].
- (14) The third matter that I wish to advert to is that the Petitioner too complained to the Minister of Land and Land Development that steps are being taken to hand over Lot No. 111 to a third party and the Minister in turn had directed the 2nd Respondent by letter dated 20th October 2014 [P18] to inquire into the said complaint and act in terms of the law. On the same date as P18, the Provincial Land Commissioner too had directed the 1st Respondent by his letter marked P19 to inquire into the complaint of the Petitioner and submit a report. This had been followed by a directive by the 2nd Respondent to the 1st Respondent by letter dated 23rd October 2014 [P20] to submit a report on the complaint of the Petitioner.
- (15) Thus, by 23rd October 2014, the 1st Respondent was fully aware that a dispute was brewing over Lot No. 111 and that he had been directed by the Provincial Land Commissioner and the 2nd Respondent to report on the said dispute. The 1st Respondent did not comply with the said direction, probably for the reason that by then, the 1st Respondent had issued a quit notice [P21] under the State Lands (Recovery of Possession) Act, No. 7 of 1979 seeking to evict the Petitioner from Lot

No. 111. I must perhaps state that P21 only relates to Lot No. 111 in extent of 12P and that Lot No.109 that was given on a long term lease to the Petitioner did not form part of P21.

- (16) P21 prompted the Petitioner to invoke the writ jurisdiction of the Court of Appeal on the basis that the 1st Respondent has abused his power and acted mala fide by taking steps to evict the Petitioner. The Petitioner had accordingly sought a Writ of Certiorari to quash P21, a Writ of Prohibition preventing the 1st Respondent from taking any steps to evict the Petitioner from Lot No. 111, and a Writ of Mandamus to grant the Petitioner a lease in respect of Lot No. 111

The judgment of the Court of Appeal

- (17) Even though the Petitioner had not pleaded that he had a legitimate expectation of receiving on a long term lease the entire land that he was occupying and not only 27.67P as conveyed to him by P11, the argument before the Court of Appeal appears to have proceeded on that basis. Thus, the question before the Court of Appeal was whether the State had represented to the Petitioner that it would give a lease in respect of the lot marked 'A' in P12 as argued by the Petitioner or whether the representation, as argued by the Respondents, was that the extent of the land that was to be leased was only 27.67P as depicted in P12.
- (18) Having considered the aforementioned material, by its judgment delivered on 4th November 2016, the Court of Appeal granted the Petitioner the relief prayed for. The basis for its decision is as follows:

“When considering the submission of the learned State Counsel I see no reason to reject the position taken by the State since there is a decision by the predecessor of the 1st Respondent to allocate 0.07 hectares to the Petitioner, but what is important to consider at this stage is when reaching the said decision, was he aware of the existence of any excess land which was left to be blocked out separately at that time.

In this regard the Respondents have further argued that there is a dispute between the extent of the land claimed by the Petitioner and the extent of the

land granted by the Respondents and that cannot be resolved by way of a writ application. In support of this argument the Respondents relied on the decision in the case of Thajudeen V. Sri Lanka Tea Board 1981 2 SLR 471.

*But I see no relevance of this decision to the case in hand, in the absence of any dispute with regard to the decision taken by the predecessors to the 1st Respondent to allocate the land occupied by the Petitioner leaving only the road reservation out. This fact is well established before this Court by documents produced marked P-3, P-4, P-7, P-8, P-9, P-10 and **P-11**.*

In the said circumstance it is understood that there was a clear decision taken by the 1st Respondent's predecessors to grant a long term lease to the land occupied by the Petitioner for nearly 18 years up to 1996 and since then up to year 2002 June when the land was officially handed over to him. The boundaries referred to in P-12 and the boundaries referred to by the Grama Niladhari in the year 1996 are also the same except the road reservation referred to in P-12.

The conduct of the 1st Respondent's predecessors discussed above clearly demonstrates that the practice they have adopted had given a legitimate expectation to the Petitioner that what was promised by them was the entire land occupied by the Petitioner for a period of more than 20 years. In these circumstances this court is of the view that the Petitioner is entitled in law to be considered under the doctrine of Legitimate Expectation to grant the relief he has claimed in the petition before us."

Questions of Law

- (19) Aggrieved with the judgment of the Court of Appeal, the Respondents sought and obtained special leave to appeal on 1st June 2018 on the following questions of law:
- (a) Did the Court of Appeal err in law when it held that Lot No. 111 in extent of 0.0368 hectares formed part of the same block of land approved to be released to the Petitioner on a long term lease by P11?
 - (b) Did the Court of Appeal err in law when it held that a legitimate expectation has arisen in favour of the Petitioner in respect of the land subject to the quit

notice, when no promise or representation whatsoever regarding that land had been made by the Respondents?

- (20) The starting point in determining this appeal is P12. While P12 at its best was only a sketch, Lot 'A' has been demarcated as 27.67P in extent and its boundaries extended from the roadway in the North to the roadway in the South. However, according to the formal survey plan that was prepared by the Surveyor General's Department thereafter, the extent of land from the roadway in the North to the roadway in the South that was demarcated in P12 as Lot 'A' was almost 13P more than what was specified in P12.
- (21) The question to be decided is whether the Respondents had represented to the Petitioner that the entire extent of land demarcated as 'A' in P12 would be given as a long term lease to the Petitioner in which event the Petitioner is entitled to Lot Nos. 109 and 111, or whether the Respondents had represented that only 27.67P out of the land occupied by the Petitioner depicted as Lot 'A' would be given as a long term lease.
- (22) That the representation made must be clear and unequivocal has been emphasised in **Public Law: Text, Cases and Materials** by Lisa Webley & Harriet Samuels [2nd edn; at page 566] where the authors have pointed out that, *"One of the issues that the courts will consider when deciding upon whether a legitimate expectation has arisen is the extent to which the statement or representation made was clear and unequivocal. This is important because the item or the procedure that is being relied upon will need to be clear and it will need to be similar to a promise in order for a public authority to be required to fulfil it. The statement or conduct relied on as constituting a representation must be clear and precise. If it is vague or ambiguous, then it will not be sufficient."*
- (23) In **Paponette v. Attorney General of Trinidad and Tobago** [(2012) 1 AC 1] Lord Dyson stated that, *"The initial burden lies on the applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant*

qualification... Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation."

- (24) In my view, the dispute between the parties came about due to what I would call a misunderstanding arising from P12. I agree with the Court of Appeal that what the Petitioner initially sought was a lease in respect of the entire extent of land occupied by him and that the process initiated by the 1st Respondent was also in respect of the entire land. While it may have been the intention of the Respondents to have given a lease in respect of the entire land, that is not to say that the Respondents had agreed during this process to grant a lease over the entire land since several steps had to be taken in consultation with other Government agencies as borne out by the correspondence that I have referred to.
- (25) The most important document in determining the issue before me is P11 to which I have referred to in paragraph 9. By P11, the Petitioner was clearly informed that the extent of the land that was to be leased to him was 27.67P. That, to my mind, is the first formal representation made by the Respondents to the Petitioner. As correctly submitted by the learned Deputy Solicitor General, the Respondents have not resiled from P11. Thus, whatever may have been the intention of the Respondents at the outset, the process crystallised once P11 was issued. What is critical is that the Petitioner did not raise any concern with P11 nor did the Petitioner complain when the formal lease agreement was issued to him in respect of 27.67P.
- (26) In the above circumstances, I am of the view that:
- (a) The Court of Appeal erred when it held that P11 establishes that the Petitioner was to be given the entire land leaving aside only the road reservation;
 - (b) The principal finding of the Court of Appeal that the conduct of the Respondents have given rise to a legitimate expectation in the mind of the Petitioner that a lease will be given over the entire land occupied by the Petitioner is incorrect; and
 - (c) The Petitioner had no legal right to receive Lot No. 111 on a long term lease nor were the Respondents under a legal duty to grant a lease. Hence, the Court

of Appeal erred when it granted the Writ of Mandamus directing that a lease be executed in respect of Lot No. 111.

(27) I would therefore answer the two questions of law in the affirmative.

(28) However, I am not inclined to set aside the judgment of the Court of Appeal in its entirety since I am of the view that the Writ of Certiorari issued to quash P21 must stand. I say so for the following reasons:

- (a) It is not disputed that the Petitioner had been in occupation of the entire land for 18 years at the time he submitted P1 in January 1992 and that his application for a long lease was considered in light of that fact and in view of the fact that he had developed the entire land;
- (b) Once the Petitioner realised that Lot No. 111 was to be given to a third party, he submitted an appeal to the 2nd Respondent who in turn directed the 1st Respondent to inquire into the grievance of the Petitioner and submit a report. That, however, did not take place since by then, P21 had been issued;
- (c) The Petitioner was entitled to a full consideration of his appeal to the Respondents and the issuance of P21 was therefore premature; and
- (d) An application for ejectment can be made only after the Respondents have considered the appeal of the Petitioner.

(29) I therefore direct the 1st and 2nd Respondents to inquire into the complaint of the Petitioner and consider his application for a long lease in respect of Lot No. 111 in the same manner that it considered the request of the Petitioner in respect of Lot No. 109. If the Respondents decide in favour of the Petitioner who has passed away since the filing of this appeal, they may execute a long term lease in favour of his heirs. If however the decision is not in favour of the Petitioner, the Respondents may take steps under the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended.

Conclusion

(30) In the above circumstances, I vary the judgment of the Court of Appeal by setting aside (a) its findings with regard to legitimate expectation that I have referred to in paragraph 18, and (b) the Writs of Mandamus and Prohibition that have been issued. Subject to the said variation, I affirm the judgment of the Court of Appeal including the finding that the Petitioner is entitled to a Writ of Certiorari to quash P21 for the reasons that I have set out in paragraph 28.

(31) I make no order for costs.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K.B. Wijeratne, J

I agree.

JUDGE OF THE SUPREME COURT