

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

In the matter of an application for special leave to appeal made in terms of Article 128 of the Constitution.

SC / APPEAL / 84 / 2019

SC / SPL / LA / 65 / 2017

CA / WRIT / 70 / 2015

MC: Nuwara Eliya / 53335

Kelani Valley Plantation PLC.,

(Formally Kelani Valley Plantation Limited),

400, Deans Road,

Colombo 10.

PETITIONER

-Vs-

1. Nimal G. Punchihewa,

Chairman,

Land Reform Commission,

C 82, Hector Kobbekaduwa Mawatha,

Colombo 07.

RESPONDENT

2. S. Thambugala,
Chairman,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 07.

SUBSTITUTED RESPONDENT

AND NOW BETWEEN

1. Nimal G. Punchihewa,
Chairman,
Land Reform Commission,
C 82, Hector Kobbekaduwa Mawatha,
Colombo 07.

RESPONDENT – APPELLANT

2. S. Thambugala,
Chairman,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 07.

**SUBSTITUTED RESPONDENT –
APPELLANT**

3(A). Sampath Subasinghe Arachchi,

Chairman,
Land Reform Commission,
475, Kaduwela Road,
Battaramulla.

**SUBSTITUTED RESPONDENT –
APPELLANT**

3(B). Sirimevan Dias,

Chairman,
Land Reform Commission,
475, Kaduwela Road,
Battaramulla.

**SUBSTITUTED RESPONDENT –
APPELLANT**

3(C). Nilantha Wijesinghe,

Chairman,
Land Reform Commission,
475, Kaduwela Road,
Battaramulla.

**SUBSTITUTED RESPONDENT –
APPELLANT**

-Vs-

Kelani Valley Plantation PLC.,
(Formally Kelani Valley Plantation
Limited),
400, Deans Road,
Colombo 10.

PETITIONER – RESPONDENT

Before: A.H.M.D. Nawaz, J.
Kumudini Wickremasinghe, J. &
A.L. Shiran Gooneratne, J.

Counsel: Dr. Sunil F.A Coorey with Sudharshani Coorey for the Substituted
Respondent – Appellants.

Ikram Mohamed, PC with Neomal Senatilleke for the Petitioner –
Respondent.

Argued on: 13.11.2025

Decided on: 31.03.2026

A.H.M.D. Nawaz, J.

1. The Kelani Valley Plantations PLC (hereinafter referred to as "KVP PLC" or "the Respondent") instituted proceedings before the Court of Appeal on or about 06 February 2015, seeking a mandate in the nature of a writ of *certiorari* quashing the Notice to Quit dated 22 July 2014 issued by the Land Reform Commission

(hereinafter referred to as "the LRC" or "the Appellant"), and quashing all proceedings in the Nuwara Eliya Magistrate's Court Case No. 53335.

2. The Respondent also sought a Writ of Prohibition prohibiting the LRC from acting upon the said Notice to Quit dated 22 July 2014 and from proceeding with any application under the State Lands (Recovery of Possession) Act No. 7 of 1979, and prohibiting the LRC and its servants and agents from proceeding with the application made to the Nuwara Eliya Magistrate's Court or from initiating any such application for the ejection of the Respondent from the ***Scrubs Division*** of Pedro Estate or from any part thereof.
3. The Court of Appeal, by its judgment dated 17 February 2017, delivered by Justice Thurairaja with the concurrence of Justice Malalgoda allowed the application and issued a writ of *certiorari* quashing the said Notice to Quit, holding inter alia that the said land had vested in the Sri Lanka State Plantations Corporation (hereinafter referred to as "SLSPC") by operation of the Order made in the Gazette Extraordinary bearing No. 815/10 dated 21 April 1994, and that accordingly the Notice to Quit issued by the LRC was *ultra vires*.
4. Being aggrieved and dissatisfied by the said judgment, the LRC moved for special leave to appeal to this Court. Special leave to appeal was granted on 06 May 2019 on the following two questions of law;

a) Is the Land Reform Commission the owner of the lands in question?

b) Does a writ lie in this case?

5. The tea plantation known as "Pedro Estate" situated in Nuwara Eliya became vested in the Land Reform Commission in 1975 under the Land Reform Law. The management and control of the entirety of the said Pedro

Estate was thereafter handed over to the Sri Lanka State Plantations Corporation (SLSPC).

6. Subsequently, by Gazette Extraordinary bearing No. 815/10 dated 21 April 1994, the Minister in charge of the relevant subject made Order vesting Pedro Estate in the SLSPC under Section 27A (1) of the Land Reform Law (as introduced by Amendment No. 29 of 1981). Item No. 38 of the Schedule to that Gazette identifies the extent of Pedro Estate as **358 hectares**.
7. Thereafter, the SLSPC, by indenture of lease bearing No. 448 dated 30 April 1996, purported to lease "Pedro Estate" to the Respondent KVP PLC for a period of 53 years commencing from 18 June 1992. The Schedule to that indenture of lease identifies the leased land as comprising the following four divisions with an aggregate extent of **443.56 hectares**:

1) Pedro and Lovers Leap Divisions: 221.27 Ha

2) Naseby and Moonplains Division: 135.19 Ha (excluding certain enumerated fields)

3) Section of Moonplains Division (within municipal limits of Nuwara Eliya): 20.46 Ha

4) Scrubs Division: 66.46 Ha

8. The LRC, on 22 July 2014, issued a Notice to Quit to the Manager of Pedro Estate and all persons under him, requiring them to vacate a part of Scrubs Division of the Oliphant Estate described in the Schedule to the said notice on or before 30 August 2014, and to deliver possession thereof to the LRC. Thereafter, the LRC made application to the Nuwara Eliya Magistrate's Court in Case No. 53335 under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979, for the ejectment of those occupying the said land. It is this Notice to Quit that was

quashed by the Court of Appeal, and it is against that order of quashing that the present appeal is preferred.

9. I would set forth Section 27A of the Land Reform Law (introduced by Amendment No. 29 of 1981) the operative provision that provides for the vesting of LRC lands.

***27A (1):** 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 such 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.*

***27A (2):** An Order under subsection (1) shall have the effect of vesting in such State Corporation specified in the Order such right, title and interest to the agricultural land or estate land or portion thereof described in that Order, as was held by the Commission on the day immediately preceding the date on which the Order takes effect.*

***27A (3):** Where any agricultural land or estate land or any portion thereof is vested in a State Corporation by an Order made under subsection (1), all the rights and liabilities of the Commission under any contract or agreement, express or implied, which relate to such agricultural land or estate land*

or portion thereof, and which subsist on the day immediately prior to the date of such vesting, shall become the rights and liabilities of such State Corporation.

27A (4): Where any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any such 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.

10. The Respondent, relying on Section 27A (2), contends that by the Gazette Order of 21 April 1994, all right, title and interest held by the LRC in Pedro Estate vested in the SLSPC and that accordingly, the LRC ceased to hold any title or interest in the said estate from that date. I proceed to assay this argument next.

Whether the Scrubs Division was Vested in the SLSPC?

11. The pivotal question for determination is whether the Scrubs Division, which is the subject matter of the impugned Notice to Quit, was ever validly vested in the SLSPC by the Gazette Extraordinary bearing No. 815/10 dated 21 April 1994, and consequently whether the LRC retained ownership of the said Scrubs Division.

12. The Respondent's entire case rests on the premise that the Scrubs Division formed part of Pedro Estate as described in the Gazette, and that therefore the vesting of Pedro Estate in the SLSPC by the said Gazette also operated to vest the Scrubs Division in the SLSPC. The Respondent further contends that the SLSPC, as the owner of Pedro Estate including the Scrubs Division, validly leased the entirety

thereof to the Respondent by lease No. 448 dated 30 April 1996, and that accordingly the Respondent is the lawful lessee of the Scrubs Division under the SLSPC.

13. For reasons set out below I am not fortified in my belief that the LRC lost its title to scrub division. This becomes lucid and lucent from the following discourse. I would say that the discrepancy in extent is decisive. Item No. 38 of the Schedule to the Gazette Extraordinary bearing No. 815/10 dated 21 April 1994 identifies the extent of Pedro Estate as **358 hectares**. The Schedule to lease No. 448 dated 30 April 1996, on the other hand, identifies the total extent of the land leased as **443.56 hectares**, comprising the four divisions I have set out in paragraph 7 of this judgement.
14. The aggregate extent of the land as described in the lease exceeds the extent specified in the Gazette by no less than **85.56 hectares**. This discrepancy alone raises profound doubt as to whether the Scrubs Division (66.46 Ha) and the Section of Moonplains Division (20.46 Ha) specified as items (3) and (4) in the Schedule to the lease form part of the land described in the Gazette.
15. When items (3) and (4) are excluded from the Schedule to lease No. 448, that is when the Scrubs Division (66.46 Ha) and the Section of Moonplains Division (20.46 Ha) are excluded, the remaining extent is **356.46 hectares**, which approximates very closely to the **358 hectares** identified in Item No. 38 of the Gazette Extraordinary. This mathematical correspondence is not a coincidence. It compels the conclusion that the land vested in the SLSPC by the Gazette Extraordinary was Pedro Estate in the extent of approximately 358 hectares, comprising only items (1) and (2) of the lease Schedule namely, the Pedro and Lovers Leap Divisions and the Naseby and Moonplains Division, and that the Scrubs Division and the Section of Moonplains Division were not part of the land so vested.
16. The force of this arithmetic is, as submitted by learned counsel for the Appellant Dr. Sunil Coorey, unmistakable: if the vesting order described a property of 358

hectares, it could not have operated to vest in the SLSPC a property of 443.56 hectares. The excess was not the LRC's to give, for it had not described those excess lands in the Gazette Order. A statutory vesting order vests only what is described within its four corners, no more and no less. The Scrubs Division, not being described in the Gazette Order, was therefore never vested in the SLSPC.

17. The conclusion that the Scrubs Division was never vested in the SLSPC finds further support in the very documents filed by the Respondent itself and in the objections of the Appellant before the Court of Appeal.
18. The LRC produced in its objections filed before the Court of Appeal the following contemporaneous official documents;

***R1:** A letter dated 11th February 1983 addressed to the Chairman of the SLSPC at Nuwara Eliya, stating that the Scrubs Division is a part of the Oliphant Estate and not Pedro Estate.*

***R2:** A letter addressed to the Chairman of the LRC by the Secretary of the Ministry of Plantation Industries, similarly stating that the Scrubs Division is a part of the Oliphant Estate.*

***R3:** A Plan of Pedro Estate.*

***R4:** Statutory Declaration of Pedro Estate and prior registration folio.*

***R5:** Statutory Declaration of Oliphant Estate (Prior Registration of Boundaries).*

19. These documents which are contemporaneous official communications from the relevant State authorities conclusively establish that the Scrubs Division is not a part of Pedro Estate but is rather a part of the Oliphant Estate. Several independent estates, including Naseby and Scrubs, were administratively treated as mere divisions of Pedro Estate when possession of Pedro Estate was handed over to the Respondent on or about 18 June 1992. However, neither the SLSPC nor the Respondent had any legal authority whatsoever to amalgamate lands of which the absolute ownership was lawfully vested in the LRC. Administrative convenience in management does not and cannot alter the legal position as to ownership.

20. The Schedule to Item (4) of lease No. 448 itself describes the Scrubs Division as situated within the municipal limits of Nuwara Eliya and bounded on the North by Mr. Ramanathan's land and Kelegola, on the East by a road, on the South by Crown Jungle and Kalukee, and on the West by Crown Jungle; a description that identifies it as a discrete and separate parcel of land with its own distinct boundaries. It is axiomatic that a land with its own independent boundaries constitutes a distinct parcel and cannot properly be treated as a mere subdivision of another estate.

The SLSPC could not have validly leased the Scrubs Division.

21. The Respondent places great reliance on Section 27A (2) of the Land Reform Law and contends that by virtue of the Gazette Order, all right, title and interest of the LRC in Pedro Estate passed to the SLSPC, and that the SLSPC thereafter became fully competent to lease Pedro Estate including the Scrubs Division to the Respondent.

22. This Court has found, for the reasons set out above, that the Scrubs Division was never described in the Gazette Order and was therefore never vested in the

SLSPC. The SLSPC accordingly never acquired any right, title or interest in the Scrubs Division. This being so, the SLSPC had no title to lease the Scrubs Division to the Respondent under lease No. 448, regardless of how the said lease described or scheduled the land.

23. It is trite law that no person can convey a better title than what he himself holds, a principle aptly described under the latin tag *nemo dat quod non habet*. The SLSPC, having no title to the Scrubs Division, could not have conveyed or leased such title to the Respondent.

24. This position finds clear support in the well-established common law principle recognized in the South African decision of *Glatthaar v. Hussan*¹, where Wessels J. stated;

"It is true that I may lease to you another's land and if I do so you cannot question my title nor can I deny to you the right to holding the land against me, but this in no way prejudices the right of the true owner. The true owner is entitled to have the letting declared null and void and to an order evicting the person in occupation who claims to be the tenant. But, between the parties to the letting, the lease is binding, and they acquire the rights and become subject to obligations of landlord and tenant respectively."

25. To like effect is the principle recognized in *Imbuldeniya v. De Silva*², which establishes that it is not necessary for the landlord to be the owner of the property. lease No. 448 granted by the SLSPC to the Respondent is therefore binding as between those two parties *inter se*. However, it does not and cannot bind the true owner of the Scrubs Division namely the LRC who was not a party to that lease and who had never divested itself of title to the Scrubs Division.

¹ [1912] T.P.D. 127

² [1987] 1 Sri.L.R. 367

26. It follows inexorably that the LRC, as the true owner of the Scrubs Division, was fully entitled to issue the Notice to Quit dated 22 July 2014 to the Respondent in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, and to take steps for recovery of possession through the Nuwara Eliya Magistrate's Court. In doing so, the LRC acted entirely *intra vires* and within the full authority vested in it by law.
27. I would juxtapose at this juncture the arguments advanced by the Respondent as regards the prior orders made by the Court of Appeal in CA (Writ) No. 323/06 and CA (Writ) No. 647/11.
28. The Court of Appeal by Order dated 27 September 2007 quashed a notice to quit issued by the Chairman of the **National Housing Development Authority (NHDA)** against the Respondent in relation to a portion of Scrubs Estate. In, CA (Writ) No. 647/11, the Court of Appeal by Order dated 02 September 2013 quashed a second such notice to quit issued by the NHDA.
29. This Court observes that those proceedings concerned notices to quit issued by the NHDA and not by the LRC. The LRC was not a party to either of those proceedings. The question of the LRC's title as against the SLSPC was not placed before the Court of Appeal in either of those cases, and was not the subject of judicial investigation therein. The observations made by the Court of Appeal in those cases as to the title of the SLSPC were made on the basis of limited material available in those proceedings and did not constitute a binding determination on the question of title as between the LRC and the SLSPC.
30. Those earlier judgments cannot operate as *res judicata* against the LRC in the present proceedings. The LRC is entitled to have the questions of its title and its competence to issue the present Notice to Quit adjudicated afresh on the totality of the material now before this Court. The earlier Court of Appeal judgments are accordingly no bar to the findings made in this judgment.

31. In any event, I have chanced upon the judgment given by this Court in *Nuwara Eliya District Housing Development Co-operative Society Ltd v. Kelani Valley Plantations PLC and the Chairman, National Housing Development Authority*³, where the judgement of the Court of Appeal dated 2 September 2013 in CA (Writ) No. 647/11 was set aside and that judgement unambiguously establishes that the LRC continued to have title to the scrubs division.
32. The Respondent contended before this Court and the Court of Appeal itself observed that without a proper plan, the exact identity of the land cannot be determined, and that the boundaries described in the Notice to Quit are different from those described in the lease agreement.
33. This Court does not accept that this contention, even if established, would suffice to quash the Notice to Quit by Writ of Certiorari. The identity of the land and the precise boundaries thereof are factual matters that can properly be ventilated and resolved before the Magistrate's Court in proceedings under the State Lands (Recovery of Possession) Act, a forum specifically constituted to deal with exactly such questions. Any dispute as to the precise boundaries of the land is a matter to be resolved by the Magistrate's Court and not a ground for the intervention of the Court of Appeal by way of prerogative writ.
34. Moreover, the LRC's position throughout these proceedings has been entirely consistent; the subject matter is the Scrubs Division of the Oliphant Estate, which was never vested in the SLSPC and in respect of which the LRC remains the absolute owner. The Notice to Quit contains a schedule describing the land in question. Any residual factual dispute as to the precise boundaries is a matter for the Magistrate's Court.

³ SC / APPEAL / 70 / 15 Decided on 03.04.2024

35. The Respondent also contended that the LRC issued the Notice to Quit *mala fide*, with full knowledge that the Respondent's occupation was lawful, and that the LRC sought to abuse the process of law by instituting action in the Magistrate's Court on a false basis.
36. This Court categorically rejects this allegation. The LRC is the true owner of the Scrubs Division. As this judgment has established, the LRC had legitimate and sound legal grounds for asserting its title and for issuing the Notice to Quit. No element of bad faith or abuse of process has been established on the material before this Court. This allegation is accordingly dismissed in its entirety.
37. Further, the Respondent contended that it would suffer irreparable loss and damage if evicted from the Scrubs Division, given that it has been in exclusive possession thereof since 1992 and has developed and maintained the said land as a tea plantation.
38. This contention cannot avail a party who is not entitled to possess the land in question. As correctly submitted by the Appellant, this defence is usually taken by any person who receives a Notice to Quit, and cannot by itself constitute a ground for quashing such a notice by writ of *certiorari*. The averment as to irreparable loss is therefore rejected as a ground for granting the writs prayed for.
39. This Court observes the Appellant's preliminary objection that the SLSPC was not made a party to the writ application before the Court of Appeal, although the Respondent's entire case is dependent on the title and authority of the SLSPC to lease the Scrubs Division. The Respondent's answer was that the SLSPC was not a necessary party as the Respondent would always defend the title of the SLSPC.
40. This Court finds that the absence of the SLSPC as a party before the Court of Appeal was a significant omission. The questions of the SLSPC's title and its authority to lease the Scrubs Division were central to the entire proceedings. A complete and proper adjudication of those questions required the SLSPC to be

before the Court. This objection further militated against the grant of relief by way of prerogative writ.

41. This Court accepts the submission of the Appellant that no writ ought to have issued in this case. The proceedings before the Court of Appeal involved extensive disputed questions of fact and title. The ownership of the Scrubs Division was, and remains, a contested question involving disputed documentary and factual material. The identity of the corpus namely the land itself was also in dispute, with conflicting descriptions in the Gazette, the lease agreement, and the Notice to Quit.

42. It is settled law, as stated in *Thajudeen v. Sri Lanka Tea Board*⁴, that:

"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining witnesses so that the Court would be better able to judge which version is correct, a writ will not issue."

43. The proper forum to prove title to land is the District Court, and questions of the identity of the corpus are to be resolved by oral evidence and examination of witnesses and not by affidavits alone. The Respondent had, and continues to have, an adequate alternative remedy available through proceedings in the District Court. Furthermore, Sections 12 and 13 of the State Lands (Recovery of Possession) Act No. 7 of 1979 provide a mechanism by which a person who claims a right to the land including a right to possess as lessee may raise such claims before the Magistrate's Court. The availability of this alternative remedy further militated against the grant of prerogative writs.

⁴ (1981) 2 Sri.L.R. 471

44. The Court of Appeal accordingly erred in entertaining the writ application and in issuing the writ of *certiorari* in circumstances where disputed questions of fact and title were centrally involved and where adequate alternative remedies were available to the Respondent.

45. For the foregoing reasons, this Court finds and holds as follows:

- i. The Gazette Extraordinary bearing No. 815/10 dated 21 April 1994 vested Pedro Estate in the extent of 358 hectares in the SLSPC. The Scrubs Division, with an extent of 66.46 hectares, was not described in the said Gazette and was accordingly never vested in the SLSPC.*
- ii. The Scrubs Division is a distinct and independent parcel of land forming part of the Oliphant Estate but not part of Pedro Estate. This is confirmed by official correspondence (R1 and R2) and the Statutory Declarations (R4 and R5) produced on behalf of the Appellant.*
- iii. The LRC never lost title or ownership of the Scrubs Division. Its title to the said division subsisted notwithstanding the vesting of Pedro Estate in the SLSPC by the Gazette Order.*
- iv. The SLSPC had no title to the Scrubs Division and accordingly had no authority to include the Scrubs Division in lease No. 448 granted to the Respondent. The inclusion of the Scrubs Division in the said Lease did not and could not vest any title in the Respondent as against the LRC.*

- v. The Respondent's occupation of the Scrubs Division is, as against the LRC, without lawful authority.*

- vi. The LRC, as the absolute owner of the Scrubs Division, was fully competent to issue the Notice to Quit dated 22 July 2014 in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979. The said Notice was lawful, intra vires, and is not vitiated by any illegality or Wednesbury unreasonableness.*

- vii. A writ of certiorari does not lie in this case, given the existence of disputed facts and title and the availability of adequate alternative remedies.*

46. The Court of Appeal fell into a fundamental error when it quashed the Notice to Quit dated 22 July 2014 by its judgment dated 17 February 2017. The Court of Appeal failed to appreciate the decisive significance of the discrepancy in extent between the land described in the Gazette Extraordinary No. 815/10 dated 21 April 1994 and the land purportedly included in lease No. 448. The Court of Appeal further failed to appreciate that the Scrubs Division was never vested in the SLSPC and that the LRC accordingly remained the true and absolute owner thereof, fully competent to issue the impugned Notice to Quit.

47. For all the reasons set out in this judgment, the judgment of the Court of Appeal dated 17 February 2017 is hereby set aside and vacated, and the appeal of the Appellant - the Land Reform Commission is allowed.

48. The Notice to Quit dated 22 July 2014 issued by the Chairman of the Land Reform Commission is declared to be valid and lawful in all respects. The Nuwara Eliya

Magistrate's Court is accordingly directed to proceed with Case No. 53335 in accordance with the law.

49. The question of law raised on behalf of the Respondent – Appellant is answered in its favor. In the circumstances, I allow the appeal of the Appellant with cost.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

Judge of the Supreme Court

I agree.

A.L. Shiran Gooneratne, J.

Judge of the Supreme Court

I agree.