

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

In the matter of an Application in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC (FR) Application No. 19/2009

Diyunuge Seetha Mathew,
No. 116B, Rosmead Place,
Colombo 7.

PETITIONER

Vs.

1. Land Reform Commission
2. Nimal G. Punchihewa
- 2A. Sampath Subasinghe Arachchi
- 2B. Nilantha Wijesinghe

Chairman,
Land Reform Commission

1st – 2B Respondents at
No. 475, Kaduwela Road,
Battaramulla.
3. Hon. D. M. Jayaratne
- 3A. Hon. John Amaratunga
- 3B. Hon. Gayantha Karunathilaka
- 3C. Hon. Harin Fernando

Hon. Minister of Lands
4. Indrani Sugathadasa
- 4A. I.H.K. Mahanama

4B. R.A.K.K. Ranawaka

4C. R.A.N. Kumari

Senior Assistant Secretary (Lands)
Ministry of Lands

3 – 4C Respondents at
Ministry of Lands,
“Mihikatha Medura”,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

5. Hon. D.M. Jayaratna

5A. Hon. Lakshman Kiriella

5B. Hon. Navin Dissanayake

5C. Hon. Dr.Ramesh Pathirana

Hon. Minister of Plantation Industries,
Ministry of Plantation Industries,
C Wing, 11th Floor,
Sethsiripaya 2nd Stage,
Battaramulla.

6. A.L. Hewage

6A. Thilak Mahanama

6B. Srimal Wijesekara

Chairman,
State Plantations Corporation,
No.21, Miraneeya Street,
Colombo 12.

7. S.K. Rajapakse

7A. Danasiri De S. Daluwatte

7B. Wg. Cmdr. Buwaneka Abeysuriya

Chairman, Janatha Estate Development Board,
No. 55/75, Vaxuhall Lane,
Colombo 2.

8. Chairman,
Metropolitan Resource Holdings PLC.,
Bogawanthalawa Tea Estate PLC.,
No. 02,85, Braybrook Place,
Colombo 2.

9. R.D.S.A.W. Wickremasuriya

9A. Priyanka De Alwis

9B. Sumith Jayarathna

Chairman,
Elkaduwa Plantations Ltd.,
“Janawatu Piyasa”
No. 320, T.B. Jaya Mawatha,
Colombo 10.

10. Sumith Abeysinghe

10A. Mahinda Siriwardana

Secretary to the Treasury,
Ministry of Finance and Planning,
Secretariat,
Colombo 1.

11. Lalith Weeratunga

11A. E.M.S.B. Ekanayake,

Secretary to the President,
Presidential Secretariat,
Colombo 1.

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

RESPONDENTS

Before: S. Thurairaja, PC, J
Achala Wengappuli, J
Arjuna Obeyesekere, J

Counsel: Uditha Egalahewa, P.C., with Amaranath Fernando for the Petitioner

Dr. Sunil Cooray for the 1st and 2nd Respondents

Yuresha De Silva, Deputy Solicitor General for the 3rd – 7th and 10th – 12th Respondents

Sanjeeva Jayawardena, PC with Dr. Milhan Ikram Mohammed for the 9th Respondent

Argued on: 3rd June 2024

Written Submissions: Tendered on behalf of the Petitioner on 28th May 2013 and 8th October 2024

Tendered on behalf of the 1st and 2nd Respondents on 9th April 2013

Tendered on behalf of the 3rd – 7th and 10th – 12th Respondents on 11th September 2024

Tendered on behalf of the 9th Respondent on 4th July 2024

Decided on: 20th February 2026

Obeyesekere, J

- (1) The Petitioner filed this application on 12th January 2009 complaining that the refusal by the Land Reform Commission [the 1st Respondent] to release to her 30 acres [A] of land from a larger land known as the Bandarapolawatte – Muwandeniya Group is violative of her fundamental rights guaranteed by Article 12(1) of the Constitution. Leave to proceed for the alleged violation of Article 12(1) was granted on 22nd January 2009.

Facts in brief

- (2) The Petitioner is the youngest of the eight children of the late D. Samson Rajapakse. Together with another person by the name of Sena Kavikara, Samson Rajapakse owned and possessed the land known as the Bandarapolawatte – Muwandeniya Group in extent of 880A by virtue of Deed No. 412 dated 30th March 1968.
- (3) The Land Reform Law No. 1 of 1972 [the LRC Law] introduced in August 1972 imposed a ceiling on the extent of agricultural land that a person could own. As provided in Section 3(1) thereof, the maximum extent of agricultural land which may be owned by any person if such land consists exclusively of paddy land was twenty-five acres or if such land does not consist exclusively of paddy land, was fifty acres, so however that the total extent of any paddy land, if any, comprised in such fifty acres shall not exceed the ceiling on paddy land.
- (4) Section 3(2) provided that any agricultural land owned by any person in excess of the ceiling of fifty acres on the date of commencement of the LRC Law shall as from that date be deemed to vest in the 1st Respondent and be deemed to be held by such person under a statutory lease from the 1st Respondent.
- (5) In terms of Section 18(1) of the LRC Law, the owner of the land who by then had become a statutory lessee was required to make a statutory declaration setting out the details of the land/s that he own/s and the land/s that he wishes to retain. It is admitted that the Petitioner's father made a statutory declaration in respect of an extent of 427A 1R 29P of land out of the Bandarapolawatte – Muwandeniya Group.
- (6) Based on such declaration and acting in terms of Section 19 of the LRC Law, the 1st Respondent made a statutory determination published in Gazette Extraordinary No. 314/4 dated 25th April 1978, by which the Petitioner's father was allotted an extent of 43A 1R 12P out of the Bandarapolawatte – Muwandeniya Group and a further extent of approximately 7A from three other lands owned by him.

Section 14 of the LRC Law

(7) In terms of Section 14(1) of the LRC Law:

*“Any person who becomes a statutory lessee of any agricultural land under this Law may within three months from such date make an application to the Commission in the prescribed form for the transfer by way of sale, gift, exchange or otherwise of the entirety or portion of such agricultural land **to any child who is eighteen years of age or over** or to a parent of such person.”* [emphasis added].

(8) This mechanism provided for in Section 14 which enables a statutory lessee to make an application to the 1st Respondent seeking the approval of the 1st Respondent to transfer land that formed part of the statutory declaration made by such statutory lessee to his children who are over 18 years of age or to his or her parent/s was commonly referred to as inter-family transfers.

(9) The Petitioner stated that she made an application dated 24th November 1972 under Section 14 [P3] seeking the transfer of fifty acres out of the said land in her name. I must state that such an application by the Petitioner was misconceived in law since the Petitioner was neither the owner of the land nor its statutory lessee. Be that as it may, it is admitted that the Plaintiff’s father had made an application under Section 14 within the time period stipulated therein.

(10) In terms of Section 14(2), *“**The Commission may by order made under its hand grant or refuse to grant approval for such transfer. Such order shall be made within one year of the date of application under subsection (1). Every such order shall be sent by registered post to the applicant under subsection (1). Any such applicant aggrieved by the order may appeal to the Minister within three weeks of the receipt of such order. The receipt of the order shall be deemed to be effected at the time at which letters would be delivered in the ordinary course of post.**”* [emphasis added]

(11) It is clear that Section 14(2) did not provide for either a minimum or maximum extent of land that the 1st Respondent could approve to be transferred to children who were over the age of eighteen on the appointed date and/or to parent/s, with the discretion in that regard clearly being with the 1st Respondent. However Section

14(2A) introduced by the Land Reform (Special Provisions) Act, No. 39 of 1981, which reads as follows, imposed an upper limit:

“From and after the date of enactment of this subsection, no statutory lessee shall be granted approval by the Commission under subsection (2) to transfer under subsection (1) any agricultural land in excess of one hundred and fifty acres in the aggregate;

Provided that the preceding provisions of this subsection shall not apply in respect of any agricultural land the possession of which, notwithstanding anything in this Law, has been handed over to any declarant or any member of the family of the declarant, under this section prior to the enactment of this subsection.”

- (12) Samson Rajapakse passed away on 19th April 1984 pending the decision of the 1st Respondent on his application under Section 14(1). The Petitioner admits that the 1st Respondent had granted approval by an Order dated 25th July 1986 to transfer an extent of 120A among the eight children of Samson Rajapakse. However, since Samson Rajapakse had passed away by then, the 1st Respondent had granted approval for his eldest son, who had obtained probate in his father’s testamentary case, to effect the said transfer among all eight children. Accordingly, Deed No. 996 had been executed on 3rd March 1993.
- (13) In terms of Section 14(3), *“Any transfer effected in accordance with the provisions of an order made under subsection (2) or such order as amended, varied or modified on appeal shall have the effect of transferring right, title or interest in property so transferred free of the statutory lease.”* Thus, the Petitioner and her seven siblings became the owners of 15A each out of the Bandarapolawatte – Muwandeniya Group.
- (14) There are three matters that I wish to advert to at this stage.
- (15) The first is that by the time approval was granted in 1986 to effect the inter-family transfer, Section 14(2A) was in force, and thus, the maximum extent of land that could have been given to the children of Samson Rajapakse was 150A. The 1st Respondent has not however divulged its reasons to have restricted its approval to

120A. The second matter is that the decision of the 1st Respondent to grant approval for only 120A was not challenged either by way of an appeal to the Minister or through action filed in Court. Instead, the Petitioner and her siblings took steps to effect a transfer of their respective shares in their names. The final matter that I wish to advert to is that the 1st Respondent has deposited the compensation due on the balance extent of land [264A 00R 29P] to the credit of the testamentary case of Samson Rajapakse. Thus, by 1986, the 1st Respondent had finalized its decisions on the extent of land in the Bandarapolawatte – Muwandeniya Group that was declared by Samson Rajapakse.

Claim for additional land

- (16) In 1997, that is eleven years after the Order under Section 14(2) was made by the 1st Respondent and four years after the deed relating to the inter-family transfer had been executed, the Petitioner claimed that she was entitled to receive 50A of land from the Bandarapolawatte – Muwandeniya Group as she was over 18 years of age at the time the LRC Law came into being but had only received 15A. She stated further that the 1st Respondent had in fact allotted land parcels in extent of 50A to similarly circumstanced persons, but did not provide any further details in that regard.
- (17) I must state that much water has flowed under the bridge since 1972. Having released 163A 1R 12P to Samson Rajapakse and his family and a further extent of 56A for village expansion out of the extent of land of the Bandarapolawatte – Muwandeniya Group that was vested with the 1st Respondent, the balance extent of land appears to have been transferred to the Janatha Estates Development Board in terms of Section 27A of the LRC Law, who in turn has thereafter executed a long term lease in favour of the 9th Respondent, Elkaduwa Plantations Limited. Thus, by the time the Petitioner requested that she be granted an additional 35A, the said land was no longer owned by the 1st Respondent. In any event, the 1st Respondent had paid compensation for the land vested with it, leaving the Petitioner with no right to claim the land.

(18) The Petitioner had thereafter made representations to the Ministry of Plantations who in turn had informed the Petitioner by letter dated 1st June 1998 that the maximum extent of land that could have been given to the children of Samson Rajapakse was 150A and if the Petitioner is able to obtain the written consent of her seven siblings, a further extent of 30A can be released to the Petitioner. The Petitioner admits that she was able to secure the written approval of her siblings only on 25th June 2007. The Petitioner had thereafter demanded that 30A be transferred to her but since the 1st Respondent did not accede to such request, the Petitioner invoked the jurisdiction of this Court complaining that her fundamental rights guaranteed by Article 12(1) has been violated by the 1st Respondent and the State.

Is the Petitioner entitled to an additional 30 acres

(19) This brings me to the core issue in this case, that being whether the Petitioner, either on her own right or together with her siblings, is entitled to an additional 30A of land. The principle argument presented at the hearing of this case by the learned President's Counsel for the Petitioner was twofold. The first was that since the Petitioner was over 18 years of age on the date of the LRC Law coming into force, she was entitled to 50A of land from the Bandarapolawatte – Muwadeniya Group. The second was that in any event, she had a legitimate expectation arising from the correspondence that the Ministry of Plantations had with her that she would be allotted a further 30A, and that the refusal by the 1st Respondent to allot her the said extent of land is arbitrary.

(20) With the total extent of land declared by Samson Rajapakse being 427A 1R 29P and with 43A 1R 12P having been released to Samson Rajapakse, the remaining extent of land was 384A 0R 7P. Thus, even on a best case scenario, the Petitioner could not have been given 50A as Samson Rajapakse had eight children and each of them were eligible to claim 50A. Be that as it may, if the Petitioner was aggrieved by the decision of the 1st Respondent in 1986 to allot only 120A, she ought to have resorted to the remedy provided in Section 14(2) of the LRC Law of making an appeal to the Minister, and if the necessity arose, of invoking the jurisdiction of this Court or the Court of Appeal. The Petitioner did neither and instead acquiesced with such decision by

executing a deed of transfer and accepting compensation for the balance extent of land. I am therefore of the view that not only is there no legal basis for the Petitioner to challenge such decision under Section 14(2) or to claim any further land, the Petitioner is also estopped from challenging the decision of the 1st Respondent, and/or claiming any further land from the Bandarapolawatte – Muwandeniya Group.

- (21) With regard to the present claim for 30A, I am of the view that the correspondence that the Ministry of Plantations exchanged with the Petitioner cannot give rise to any form of legitimate expectation on the part of the Petitioner. I say so for two reasons. The first is the land in issue was vested by operation of law with the 1st Respondent and it is only the 1st Respondent that can give an assurance that 30A of land can be released. The second is that the balance land out of the Bandarapolawatte – Muwandeniya Group is no longer with the 1st Respondent and hence, even the 1st Respondent could not have given any assurance to the Petitioner that 30A of land out of the Bandarapolawatte – Muwandeniya Group can be released to the Petitioner.
- (22) Even if one accepts the position of the Petitioner that the Ministry of Plantation Industries held out that 30A of land can be released to her, that was in 1998 and the Petitioner complied with the requirement of obtaining the consent of her siblings and conveyed that position to the Respondents in June 2007. With no action having been taken by the 1st Respondent, the Petitioner acting through her Attorney-at-Law formally demanded that 30A be transferred through her letter dated 27th November 2008. This application has been filed in January 2009, which is outside the one month period stipulated in Article 126(2) of the Constitution. Thus, I am in agreement with the submission of the learned Counsel for the Respondents and the learned Deputy Solicitor General that this application is liable to be dismissed on the ground that it has been filed outside the one month time period.
- (23) There is one matter that I wish to advert to prior to concluding. The seven siblings of the Petitioner filed SC (FR) Application No. 381/2009 claiming that they too are entitled to 50A each. However, when this matter was taken up for hearing together with the said Application, the learned President's Counsel for the Petitioner informed that he would not be proceeding with that application. I must state that

had that case been proceeded with, the reasoning in this judgment would apply in respect of the alleged entitlement claimed by the petitioners in that application, in addition to that application being liable to be dismissed for non-compliance with the provisions of Article 126(2).

Conclusion

(24) In the above circumstances, I am of the view that the fundamental rights of the Petitioner guaranteed by Article 12(1) have not been infringed by the Respondents. This application is accordingly dismissed without costs.

JUDGE OF THE SUPREME COURT

S. Thurai Raja, PC, J

I agree

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J

I agree

JUDGE OF THE SUPREME COURT