

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA.**

Pussallawa Plantation Limited,
168, Entomb Road, Peliyagoda.

Petitioner

Court of Appeal Case No.
CA 228/2012 Writ

Vs.

1. Minister of Plantation industries,
55/75, Vauxall Street, Colombo 2.
2. Land Reform Commission,
C8, Gregory Road, Colombo 7.
3. Janatha Estate Development Board,
55/75, Vauxall Street, Colombo 2.
4. The Hon Attorney General,
Attorney General's Department,
Colombo 12.
5. Samastha Lanka Medaperadiga Sewa
Samithiya
403, Waragoda Road, Kelaniya.

Respondents

Before : L.T.B. Dehideniya J.

Counsel : Thishya Weeragoda with Mahela Liyanage for the Petitioner.
S.S. Sahabandu PC. With S. Rajapakse for the 2nd Respondent
Malinda Gunathilake DSG for the 1st, 3rd and 4th Respondents.
5th Respondent absent and unrepresented.

Argued on : 30.09.2015

Decided on : 14.06.2016

L.T.B. Dehideniya J.

The Petitioner presented this application seeking a mandate in the nature of writ of *certiorari* to quash an order of the 1st Respondent Minister dated 26-06.2005 divesting a part of the land, a writ of *prohibition* against the 1st and 2nd Respondents prohibiting from taking any step towards re-vesting the land, a writ of *mandamus* compelling the 3rd Respondent to perform his legal obligation, a writ of *prohibition* against the 3rd Respondent prohibiting the termination of the lease agreement, and seeking interim orders. The Petitioner is a company incorporated under sec 15 (1) of the Companies Act No. 17 of 1982 read together with section 2(2) of the Conversion of Public Corporations or Government Owned Business Undertakings in to Public Companies Act No.23 of 1987.

The land Called Penrith Estate was vested in the 2nd Respondent Land Reform Commission under the Land Reform Law No. 1 of 1972. The Minister in charge of the subject of agriculture published an order in the Gazette Extraordinary No. 183/10 dated 12.03.1982 under section 42H read together with section 27 A (1) of the Land Reform Law vesting several the lands, including the Penrith Estate, in the 3rd Respondent JEDB (marked A2). The Minister has not imposed any condition on consideration. Thereafter the Petitioner entered in to a 99 year lease agreement with the 3rd Respondent. The 1st Respondent, thereafter, by order published in the Gazette No. 943/20 dated 03.10.1996 re-vested 43 acres in the 2nd Respondent (marked A4). The Petitioner has not objected to this re-vesting. The reason given is that it was done for a “greater public good”. The 1st Respondent thereafter published another order under section 27 A (4) of the Land Reform Law in the Gazette Extraordinary No. 1406/5 dated 26.06 2005 (marked A8) re-vesting a portion of land in extent 10.7625 Hectares.

The Petitioner challenge the order of the 1st Respondent marked A 8 on the basis that the 1st Respondent has no authority to re-vest the land under section 27 A (4) as there is no any condition on consideration was imposed in the vesting order published under section 27 A (1) marked A2.

By virtue of the order published in the gazette marked A2, the land in question was vested in 3rd Respondent and the Petitioner is the lessee of the 3rd Respondent. The Petitioner's entitlement is only the leasehold rights of the land. Even after re-vesting a small portion of the land such as 10.7625 Hectares, the balance major portion is still vested in the 3rd Respondent and the Petitioner is entitle to enjoy the leasehold rights of the said remaining portion of the land. Under these circumstances can the Petitioner have and maintain this action? The Petitioner has entered in to a lease agreement with the 3rd Respondent. If the Petitioner is ousted from any part of the land, its being a breach of contract, he may have a remedy against the 3rd Respondent in private law. The lease agreement has provided a procedure for the dispute settlement. The Petitioner has no any statutory right to possess the land and therefore he cannot seek judicial review.

The case of *Bogawantalawa Plantations Ltd. V Minister of Public Administration and Plantations Affairs and others* [2004] 2 Sri L R 329 is a case of similar nature. In that case the Minister has made an order re-vesting the entire land and the Petitioner who was in possession on a memorandum entered into with the JEDB, instituted action. His Lordship Saleem Maesoof J observed "*This Court finds that the petitioner, who is admittedly in possession of the lands in question and has expended enormous sums of money for the development of the estates, is a person affected by the Order P7, and is therefore entitled to seek redress from this Court by way of prerogative relief.*" In the case before me the Petitioner aver in paragraph 27 that he effected considerable improvements to the Penrith Estate and

invested a considerable amount of money in development work. In paragraph 34 the Petitioner aver that he spend more than Rs. 300 million in developing and improving the Salawa Estate. The re-vested portion by the impugned gazette is only 10.7625 Hectares. There is no material to substantiate the truth of the averment that he has spent such an amount of money. Even if it is conceded that such a large amount of money was spent, there is no any evidence to show the developments and improvements effected by the Petitioner to the portion of land that was re-vested and the amount of money that has been spend on that portion. The full amount of Rs 300 million was not spend on the 10.7625 Hectares that has been re-vested by the Minister. Therefore, the basis that His Lordship Saleem Marsoof J. considered in the case of Bogawanthalawa Plantetion Ltd. (supra) to hold that the Petitioner is a effected party, cannot be applied to this case. The Petitioner's remedy is in the private law, not by way of judicial review of an administrative decision. The Petitioner has no *locus standi*.

It is not necessary to consider the merits of this case as the Petitioner lacks the *locus standi*, but for the completeness of the judgment, I will consider the merits. The section 27 A (4) of the Land Reform Law gives authority to the Minister to re-vest the land by publishing an order in the gazette. The section reads thus;

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.

It has been held in the case of Bogawanthalawa Plantation Limited (supra) that the Minister can revoke the order made under sub section (1) only if the condition relating to consideration is not complied with. It is held that;

In the absence of any evidence of any agreement or arrangement between the Land Reform Commission and the 6th respondent Janatha Estate Development Board relating to consideration for the initial vesting of title in the Board, this Court is unable to hold that there has been any non-compliance which could justify the making of an order to re-vest the estates in question in the Commission. In the circumstances, this Court holds that an important pre-condition for the Minister to make an order of re-vesting under section 27 (A) (4) of the Land Reform Law does not exist, and the order P7 is clearly ultra vires.

His Lordship Sriskandarajah J took a deferent view in the case of Namunukula Plantation Ltd and another v. Minister of Lands and others CA Writ Application 38/2003 CA Minutes dated 2.05.2008. His Lordship held that *“the Minister’s power under section 27 A (4) is discretionary.”* His Lordship further held that *“On the other hand if certain portions of such estates are needed for other purposes which are considered as more useful and important purpose the Minister could use his discretion and revoke only that portion of estate needed for that purpose. Such a decision to revoke the vesting of a portion of a land in the estate which was vested is not ultra vires to the provisions of section 27 A (4).”*

In the present case the Petitioner also acted in the same manner. The Minister, before the impugned re-vesting order was made, has made an order re-vesting another portion of 43 acres of the same land by the gazette marked A4. The Petitioner did not object to this re-vesting order because the

Petitioner considered that it was for a “greater public good”. (Paragraph 18, 19 and 20 of the petition) This is the view taken by His Lordship Sriskandarajah J. in the case cited above. I incline to agree with His Lordship Sriskandarajah J. on the view that the Minister could use his discretion and revoke a portion of the land vested, if it is needed for other purpose of public importance. Alienation under section 22 (1) (f) is also of public importance because the law provided for such alienation.

Under these circumstances, I dismiss this application. No costs.

Judge of the Court of Appeal