

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

In the matter of an Application for Writs
of Certiorari and Mandamus under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka

C.A (Writ) Application No: 373/2016

G. H. Jagath Kantha De Silva
No. 11, Hill House,
Rureva Road, Welimada.

PETITIONER

Vs.

1. Divisional Secretary
Welimada.
2. District Secretary,
Badulla.
3. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

**Before: P. Padman Surasena, J/ President of the Court of Appeal
Arjuna Obeyesekere, J**

Counsel: R.M.N.Ratnayake for the Petitioner

Ms. Udeshi Senasinghe, State Counsel for the Respondents

Argued on: 29th June 2018

Written Submissions: Tendered by the Petitioner on 9th July 2018

Tendered by the Respondents on 13th July 2018

Decided on: 20th July 2018

Arjuna Obeyesekere, J

The Petitioner has filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision of the 1st Respondent to evict the Petitioner from the land set out in the schedule to the petition;¹
- b) A Writ of Prohibition preventing the 1st Respondent from evicting the Petitioner from the land set out in the Schedule to the petition.

The Petitioner claims that the land in question, situated in Welimada, was vested in the Sanitary Board of the Province of Uva by the then Governor of Ceylon in terms of an order made in 1923 under Section '9L' of the Small Towns Sanitary Ordinance No. 18 of 1892. The Petitioner has annexed to the petition, marked 'P1', an extract of the relevant folio evidencing same. According to the Petitioner, by operation of law, the said land had subsequently vested in the Welimada Town Council, the Badulla District Development Council² and the Welimada Pradeshiya Sabha³.

¹ Vide the Quit Notice dated 27th April 2016, annexed to the petition marked 'P12'.

² Established under the Development Councils Act No. 35 of 1980.

³ Pursuant to the provisions of Section 16(3) of the Pradeshiya Sabha Act No. 15 of 1987

The Petitioner states that the Acting Secretary of the Badulla District Development Council had executed a lease in respect of the said land in his favour, a copy of which has been annexed to the petition marked 'P6'. The Petitioner states that the said lease expired in 2011 and that the Welimada Pradeshiya Sabha is in the process of executing a fresh lease in his favour.

The crux of the Petitioner's complaint to this Court is that the land belongs to the Welimada Pradeshiya Sabha and therefore, the 1st Respondent Divisional Secretary is not the Competent Authority to institute proceedings under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended (the Act). On this basis, the Petitioner claims that the decision of the 1st Respondent to issue the Quit Notice annexed to the petition marked 'P12' is arbitrary and bad in law.

The learned State Counsel has taken up the position that the Petitioner has no entitlement to the said land and does not have a legal right to have and maintain this application. This Court has examined the lease agreement marked 'P6' and note that the period of the lease had expired on 30th June 2011. The Petitioner has produced several letters to demonstrate that the Welimada Pradeshiya Sabha has agreed to extend the said lease. By a letter dated 26th October 2017,⁴ the Welimada Pradeshiya Sabha had requested the Petitioner to pay a sum of Rs. 2,476,110 being the lease rental due until 1st November 2017 and that steps would be taken to execute a fresh lease thereafter. However, the Petitioner has not produced any material to prove that he has paid this sum of money or that a fresh lease has been executed. Thus, at this point of time, irrespective of who is the owner of the said land,

⁴ Annexed to the Counter Affidavit of the Petitioner marked 'P15', issued after this application was filed.

the Petitioner is in unlawful occupation of this land. This Court is therefore in agreement with the submission of the learned State Counsel that the Petitioner has no legal right or standing to maintain this application.

The Respondents have denied the Petitioner's claim that the land from which he is to be evicted belonged to the Sanitary Board of the Uva Province and presently belongs to the Welimada Pradeshiya Sabha. The Respondents state that the relevant land forms part of the larger land depicted in Lot No. 75 of Final Village Plan 517, in extent of 1 rood 24 perches and that the said land had been acquired by the State on 8th June 1922, as reflected in the Register of Settlements dated 4th June 1947, produced with the Statement of Objections marked 'R2'. 'R2' does not reflect the fact that this land had been vested in the Sanitary Board. On this basis, the Respondents categorically state that the land occupied by the Petitioner is state land and that the 1st Respondent has the power to issue the Quit Notice 'P12'.

This Court notes that in terms of the extract marked 'P1', the total extent of the land said to have been vested in the Sanitary Board is 1 rood 9.1 perches. However, according to Plan No 1650 dated 12th November 1986 annexed to the petition marked 'P7' and referred to in the lease agreement 'F6', the total extent of land leased to the Petitioner is only 39 perches. Thus, there is a discrepancy in the extent of land between 'P1', 'P7' and 'R2'. No explanation has been offered by the Petitioner with regard to this discrepancy. This Court also notes that the western boundary in 'P1' does not tally with the western boundary set out in 'P7'. Thus, there appears to be a doubt with regard to the identity of the land.

The Petitioner has not established to the satisfaction of this Court that the land occupied by him is not state land. In these circumstances, this Court has no basis to hold that the land referred to in the Quit Notice annexed to the petition marked 'P12' is not state land. This Court has consistently taken the view that where the facts are disputed, this Court will not exercise its writ jurisdiction. Therefore, the Petitioner's position that the 1st Respondent has acted outside her jurisdiction in issuing the said quit notice is without any legal basis.

This Court must note that the Petitioner has failed to name the Welimada Pradeshiya Sabha or any of its office bearers as a Respondent to this application. If this Court is to look into the claim of the Petitioner that the land belongs to the Welimada Pradeshiya Sabha and the claim of the Petitioner that a fresh lease was to be executed in his favour, the Petitioner ought to have named the Welimada Pradeshiya Sabha as a respondent to this application, as the Pradeshiya Sabha may have been able to shed more light on these issues and produce the necessary documents including the vesting order said to have been made by the Governor of Ceylon in favour of the Sanitary Board. This Court is of the view that a failure to name as a respondent, a party necessary for the effective determination of an application is fatal to the maintainability of the said application.

The Petitioner has claimed further that the 1st Respondent has acted in bad faith on the influence of the Grama Niladhari, Welimada Town. This Court notes at the outset that the Petitioner has not named the said Grama Niladhari as a party to this application nor has the Petitioner referred to the 1st Respondent by name. This Court has consistently held that where malice is

alleged, the relevant party must be referred to by name and made a party. Furthermore, details relating to the malicious conduct must be set out in the petition. Mere allegations will not suffice. The Petitioner has done neither and therefore, this Court is not inclined to consider the allegations of malice.

On the basis of the above factual positions, it is not difficult for this Court to form the view that the Petitioner has chosen an easy way out to possess this land by invoking the jurisdiction of this Court instead of making the requisite payments. During the argument, in response to a question posed by this Court, the Petitioner confirmed that he has not paid even a part of the sum he had been asked to pay. Thus, it appears to this Court that the filing of this application is an attempt on the part of the Petitioner to abuse the process of this Court.

Taking into consideration all of the above circumstances, this Court is of the view that the application of the Petitioner is misconceived in fact and in law. Hence, this Court sees no basis to exercise its writ jurisdiction. The Application of the Petitioner is accordingly dismissed, without costs.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal