

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

Samaraweera Mudalige Deeksha  
Senika Wijegunaratna  
Samaraweera,  
No. 50/1/C,  
Mayura Place,  
Colombo 6.  
Petitioner

**CASE NO: CA/WRIT/117/2016**

Vs.

1. Chairman,  
Urban Development Authority,  
Sethsiripaya,  
Battaramulla.
2. Director General,  
Urban Development Authority,  
Sethsiripaya,  
Battaramulla.
3. Urban Development Authority,  
Sethsiripaya,  
Battaramulla.
4. District Registrar,  
Land Registry Colombo,  
Sir Marcus Fernando Mawatha,  
Colombo 7.

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

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Shavindra Fernando, P.C., with Ruchindra  
Fernando for the Petitioner.

Anusha Fernando, D.S.G., for the Respondents.

Decided on: 28.01.2019

Samayawardhena, J.

The petitioner filed this application seeking to quash by certiorari the Notice to Quit marked P9 issued by the competent authority of the Urban Development Authority under the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended, to recover possession of the premises described in the said Notice.

The basis of filing this application by the petitioner in short was that "*the competent authority of the UDA had no legal basis to form an opinion that the premises belonging to the petitioner is State land*".

The 1<sup>st</sup>-3<sup>rd</sup> respondents filed objections stating *inter alia* that "*The petitioner is an unauthorized occupant of premises 50/1C Mayura Place (the premises in question) which is a State Land made out to the 3<sup>rd</sup> respondent (UDA) by way of a Grant (marked 2R1) dated 30<sup>th</sup> May 2000 (by Her Excellency the President) under*

*the State Lands Ordinance, No.8 of 1947 as amended read with Plan CO/8021 (marked 2R2) dated 4<sup>th</sup> June 1999.”*

In the counter affidavit the petitioner takes up the position that “*2R1 and 2R2 are absolute nullities since the President of the Republic could not transfer a title that she did not possess to the UDA.*”

According to the petitioner she is the owner of the premises by Deed P1, which is an Executive Conveyance prepared after her mother’s testamentary case on the basis that the petitioner’s deceased mother was the purported owner of the premises. That cannot in my view confer clear title to the petitioner as anybody can include any number of properties in the inventory in a testamentary case as belonging to the deceased unknown to the true owners.

The position of the petitioner that she is the owner of the premises is belied by her own letters marked by the respondents compendiously as 2R4 wherein she has admitted directly and/or indirectly the ownership of the premises with the State or at least that the petitioner is not the owner of the premises.

A party seeking a discretionary relief from Court such as writ shall come with clean hands and act with *uberrima fides*.

The order delivered by the Magistrate’s Court marked P8 in favour of the petitioner in proceedings instituted (by a different party and not by the UDA) under Government Quarters (Recovery of Possession) Act, No.7 of 1969, as amended, (and not under State Lands Recovery of Possession Act) cannot operate as *res judicata* as *inter alia* the parties are different and the causes of action are different. In addition, the Grant 2R1 by HE the

President in favour of the UDA is after the said order of the Magistrate's Court.

Application of the petitioner is dismissed. No costs.

Judge of the Court of Appeal