

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

Shanthi Kothalawala,  
No. 2661,  
Kasyapa Mawatha,  
Step III,  
Anuradhapura.  
Petitioner

**CASE NO: CA/WRIT/8/2016**

Vs.

R.P.R. Rajapaksha,  
The Commissioner General of  
Lands,  
“Mihikatha Madura”,  
Land Secretariat,  
No. 1200/06,  
Rajamalwatta Road,  
Baththaramulla.  
And 4 Others  
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Nimal Jayasinghe for the Petitioner.  
Suranga Wimalasena, S.S.C., for the 1<sup>st</sup>-3<sup>rd</sup>  
Respondents.  
Ernest Silva for the 4<sup>th</sup> Respondent.

Decided on: 21.03.2019

Samayawardhena, J.

The petitioner, according to the petition, had been in possession of the State land relevant to this case, i.e. Lot 2997 in Step (iii) in Nuwaragampalatha East, Anuradhapura, with a permanent house constructed in it, until she was “unlawfully dispossessed” by the deceased husband of the 4<sup>th</sup> respondent in 1999. She says that this dispossession took place when she was hospitalized after a motor traffic accident on 06.07.1999. Thereafter several inquiries have unsuccessfully been held by the 2<sup>nd</sup> respondent Provincial Land Commissioner to settle the matter between the petitioner and the deceased husband of the 4<sup>th</sup> respondent—vide *inter alia* P10, P12. Then the petitioner has complained to the 1<sup>st</sup> respondent the Commissioner General of Lands, who, after an inquiry, has, by P16 dated 12.01.2012, decided to divide the land into two—20 perches each—and give the land to both of them. The petitioner has filed this application on 08.01.2016 about 4 years after the said decision seeking to quash P16 by way of writ of certiorari and to compel the 1<sup>st</sup>-3<sup>rd</sup> respondents to issue a Permit in respect of the entire land by way of writ of mandamus.

The petitioner, in my view, does not tell the truth regarding her assertion on “unlawful dispossession”. According to her, she had been living on the land (with her family) when she met with an accident on 06.07.1999. According to the Diagnosis Card marked P6, she had been hospitalized only for two days, i.e. from 06.07.1999-08.07.1999. If the deceased husband of the 4<sup>th</sup> respondent forcibly entered into the possession of the land as the petitioner now says, she would have definitely complained it to the police and thereafter the police would have filed a Section

66 Application under the Primary Courts Procedure Act if they could not have settled the dispute. There is no police complaint up to now.

Even though the petitioner alleges to have been dispossessed in 1999, she has written to the 2<sup>nd</sup> respondent Provincial Land Commissioner and the 3<sup>rd</sup> respondent Divisional Secretary more than 10 years after the alleged dispossession—vide P7-P9 dated 05.08.2009 and 07.07.2010. If she was unlawfully dispossessed, would she have waited for 10 long years?

More importantly, even in P7-P9, she does not talk a word about unlawful dispossession by the late husband of the 4<sup>th</sup> respondent. In P7 and P8 she says that during the time she was ill, it had been given to somebody else to look after, but they stake a claim to the land; and in P9 she says that one Chandrakanthi Kelegama is living in the premises with her family as tenants.

It is the position of the 4<sup>th</sup> respondent that they came into possession of the land in 1999 not unlawfully but peacefully upon payment of money to the petitioner's husband—vide paragraph 4 of P14 and P17.

In the facts and circumstances of this case, that version is more probable than that of the petitioner.

If the petitioner had not been truthful to the Court, she is not entitled to succeed even if there are some matters favourable to her. Writ is a discretionary relief. The party seeking a discretionary relief shall act in *uberrima fides* and come to Court with clean hands.

The petitioner has participated in the Land Katchcheri held in 1998 to regularize the unauthorized occupants of the State Lands—vide P11. However she (together with her husband) has thereafter in 1999 surrendered possession to the 4<sup>th</sup> respondent (and her late husband).

The petitioner cannot, in the facts and circumstances of this case, base his case on P11 and P13 on the ground of Legitimate Expectation. In any event, the decision of the 1<sup>st</sup> respondent Commissioner General of Lands in P16 supersedes any other earlier findings. P16 decision was made by the Commissioner General of Lands upon the complaint made to the Commissioner General by the petitioner herself by P15B. There exists no statutory duty on the part of the Commissioner General to grant a Permit to the petitioner in respect of the entire land, which the former has withheld to perform unreasonably. Hence mandamus cannot be issued to that effect.

Application of the petitioner is dismissed. No costs.

Judge of the Court of Appeal