

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

1. 88th Developers (Pvt) Ltd.,
No.15/5, Circular Road,
Sapumal Place,
Rajagiriya.
2. M.S.C. Perera,
Director,
88th Developers (Pvt) Ltd.,
No.15/5, Circular Road,
Sapumal Place,
Rajagiriya.
Petitioner

CASE NO: CA/WRIT/85/2018

Vs.

1. Urban Development Authority
of Sri Lanka,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.

2. Jagath Munasinghe,
Chairman,
Urban Development Authority
of Sri Lanka,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.
 3. S.S.P. Ratnayake,
Director General,
Urban Development Authority
of Sri Lanka,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.
- Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Faisz Musthapha, P.C., with Ranjan Mendis,
Faisza Markar and Asoka Kandamby for the
Petitioner.
Milinda Gunathilaka, S.D.S.G., with Nayomi
Kahawita, S.C., for the 1st-3rd Respondents.

Argued on: 27.08.2020

Decided on: 28.09.2020

Mahinda Samayawardhena, J.

The Petitioners filed this application against the Urban Development Authority (UDA) seeking to quash by a writ of certiorari the Quit Notice marked P1 issued by the Director General of the UDA in terms of section 3 of the State Lands (Recovery of Possession) Act.

By this Quit Notice, the UDA seeks to eject the 1st Petitioner from Lots 1 and 14 of Plan No.5534 marked R2.

The pivotal argument of learned President's Counsel for the Petitioners is that the State has no title to the said two lots to summarily eject the Petitioners therefrom by utilising the State Lands (Recovery of Possession) Act.

The UDA relies on the Grant dated 11.10.1985 marked R1, issued under the Crown Lands Ordinance, to claim title to the land.

Learned President's Counsel for the Petitioners, citing *Silva v. Bastian (1912) 15 NLR 132* where it was held "A Crown grant by itself creates no presumption of the title of the Crown to the land which it conveys", submits that a Grant itself is not conclusive proof of ownership.

Learned President's Counsel, tracing the history of the State Lands (Recovery of Possession) Act and submitting that the legislative ancestor of the present Act is the old Forest Ordinance enacted in 1907, also formulates the argument based on the Full Bench decision of the Supreme Court in *Weerakoon v. Ranhamy (1921) 23 NLR 33* that the impugned Quit Notice is

contrary to the objective sought to be achieved by the Act and therefore *ultra vires*.

I think, I need not, in this case, embark upon consideration of the validity of these two important legal arguments advanced by learned President's Counsel for the Petitioners, in his ingenuity, as this case can be conveniently disposed of purely on the merits.

After the Grant had been issued in favour of the UDA, the UDA was not in possession of this land for even a single day. This is acknowledged by the officer of the UDA who gave evidence at the inquiry before the acquiring officer into payment of compensation for the portions of lands acquired under the Land Acquisition Act for the road widening.¹

Let me briefly outline what this compensation inquiry was all about. The Road Development Authority wanted to acquire some portions of lands for the widening of the road named Dr. N.M. Perera Mawatha in Rajagiriya. There is no complaint that the proper procedure was not followed in the acquisition of lands for this purpose.

According to the Gazette marked P5, Lot 89 of Plan No.8703 marked R23 was also acquired for this purpose. The Assessment Number of the said Lot 89, as per the Gazette, is 1177. The said Gazette further discloses that both the State and a person by the

¹ *Vide* page 91 of X, which is a copy of the case record in the District Court Case No.32/DLA/09, tendered with the counter objections of the Petitioners.

name of Wilson Perera claimed the land as owners. Wilson Perera is a predecessor in title of the Petitioners.²

As seen from the plaint in Case No.32/DLA/09 filed by the acquiring officer as the Plaintiff, at the inquiry before the acquiring officer into payment of compensation for the said Lot 89 of Plan No.8703, four claimants had come forward to claim compensation on the basis of ownership of the said lot.³ Those four claimants were made Defendants in the said District Court case. One of the claimants, the 1st Defendant in the District Court case, was the UDA. The 2nd Defendant was a third party. The 3rd and 4th Defendants were the predecessors in title of the Petitioners.⁴

At the inquiry before the District Court, several witnesses gave evidence and a large number of documents were tendered. The predecessors in title of the Petitioners tendered voluminous documentary evidence to show their long-continued possession. If I may refer to one of them, the Electoral Register for the year 1969 shows that Wilson Perera was in possession of the said lot even in 1969.⁵

The UDA tendered to the District Court *inter alia* the Grant and the Plan No.5534 to establish its title.⁶

² *Vide* P2(d).

³ *Vide* paragraph 5 at page 59 of X.

⁴ *Vide* P2(d).

⁵ *Vide* page 519 of X.

⁶ *Vide* the answer at pages 61-63 of X.

In the answer filed in the District Court, the UDA took up the position that Lot 89 of Plan No.8703 is a part of Lot 1 in Plan No.5534.⁷

However, in the written submissions tendered before the District Court, the UDA took up the position that the said Lot 89 of Plan No.8703 is a part of Lot 14 of Plan No.5534.⁸

The officer of the UDA who gave evidence before the District Court stated that Lot 89 of Plan No.8703 falls into Lot 14 of Plan No.5534, and Lots 1 and 14 in Plan No.5534 are contiguous lots.⁹ It is the same officer who gave evidence before the acquiring officer as well.¹⁰

This goes to show that parts of Lots 1 and/or 14 in Plan No.5534 were the subject matter of the said District Court case. It may be recalled that (a) the lands described in the Quit Notice P1 is also Lots 1 and 14 of Plan No.5534, and (b) the UDA claimed compensation on the basis of ownership of those two lots relying on the Grant R1.

What was the Judgment of the District Court? The District Court by the Judgment dated 07.02.2018 decided that the 3rd and 4th Defendants and their predecessors in title are entitled to Lot 89 of Plan No.8703 by Deeds as well as prescription. The claim of the UDA was refused, and compensation for the

⁷ *Vide* paragraph 6(a) of the answer at page 63 of X.

⁸ *Vide inter alia* paragraphs 27, 28, 31 at pages 275-276 of X.

⁹ *Vide* pages 175-176 of X.

¹⁰ *Vide* page 91-92 of X.

acquisition was ordered to be paid to the 3rd and 4th Defendants who are the predecessors in title of the Petitioners.¹¹

The UDA did not appeal against this Judgment. Instead, what did the UDA do? The UDA made use of the provisions of the State Lands (Recovery of Possession) Act to send the impugned Quit Notice. When was this Quit Notice signed? After the inquiry in the District Court case but before the Judgment was delivered. The long drawn out inquiry in the District Court case was concluded on 25.04.2017.¹² The Quit Notice is dated 28.12.2017. The District Court Judgment was delivered on 07.02.2018.

Upon receipt of the Quit Notice, the Petitioners came before this Court on 19.02.2018 challenging the same.

The UDA, in paragraph 25(e) of the statement of objections dated 19.07.2018, takes up the position that “*Since the title of the lot 89 of the Preliminary Plan No.8703 was in dispute, the same was referred to the District Court by the RDA under the provisions of section 10(1) of the Land Acquisition Act and the said action is still pending in the District Court, which is the competent Court to decide the title of a land.*”

However, when the UDA filed this statement of objections, it knew or ought to have known that the District Court, which the UDA says is the competent Court to decide the title of the land, held against the UDA and in favour of the predecessors in title of the 1st Petitioner.

¹¹ *Vide*, in particular, pages 265-266 of X.

¹² *Vide* page 258 of X.

In my view, the 2nd Respondent, the Director General of the UDA, abused the provisions of the State Lands (Recovery of Possession) Act in order to eject the 1st Petitioner from the land in suit summarily. He cannot do so. The very fact that the Quit Notice was issued after the inquiry but before the delivery of the Judgment of the District Court amply demonstrates *mala fides* on the part of the UDA. The summary procedure of ejection laid down in the Act cannot be allowed to be abused to achieve ulterior motives. That is not the intention of the legislature. I quash the Quit Notice P1 by certiorari.

I grant the reliefs to the Petitioners as prayed for in paragraphs (b) and (e) of the prayer to the petition.

The application of the Petitioners is allowed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal