

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

1. Chelliah Sabaraththenam,
2. Sabaraththenam Easwary,

Both of:

No.70, Thondaman Nagar,
Anthoniyar Kovilady,
Kilinochchi.

Petitioners

CASE NO: CA/WRIT/33/2017

Vs.

1. Northern Provincial Land
Commissioner,
Department of Land
Administration,
Northern Province,
No.80, Kandy Road,
Chundukuli,
Jaffna.
2. The Land Commissioner,
Land Commissioner General's
Department,
No.1200/6,
Rajamalwatta Road,
Battaramulla.

3. G. Pranavan,
Assistant Land Commissioner
(LLRC),
No.1200/6, Rajamalwatta Road,
Battaramulla.
4. The Divisional Secretary,
Karachchi,
Kilinochchi.
5. L.B.S.B. Dayaratne,
Additional Secretary,
Land and Land Development
Ministry,
“Mihikatha Medura”,
No.1200/6, Rajamalwatta Road,
Battaramulla.
6. Minister of Land and Land
Development,
“Mihikatha Medura”,
No.1200/6, Rajamalwatta Road,
Battaramulla.
7. The Attorney General,
Attorney General’s Department,
Colombo 12.
8. Jeyasiri Sivagowry,
No.69, Thondaman Nagar,
East Kilinochchi.

Respondents

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

Counsel: Shakthiyaraji Kamalanathan for the
Petitioners.
Anusha Fernando, D.S.G., for the 1st-7th
Respondents.
Ershan Ariaratnam for the 8th Respondent.

Argued on: 09.09.2020

Decided on: 20.10.2020

Mahinda Samayawardhena, J.

The pleadings of the Petitioners are awfully prolix and it has been quite a stressful and daunting task for me to separate the wheat from the chaff and come to a correct conclusion. To justify my complaint, suffice it to say the Petitioners' unnumbered counter objections alone contains 58 pages!

To reproduce verbatim, the Petitioners seek the following main reliefs in the prayer to the petition:

- (a) Writ of certiorari to quash the decision of the mobile service dated 11.07.2014 to issue permit to the 8th Respondent for lots 69 and 70;*
- (b) Writ of certiorari to quash the permit dated 20.10.2016 for the lots 69 and 70 to the 8th Respondent;*
- (c) Writ of mandamus on the Respondents to issue permit of lots 69 and 70 to the Petitioners.*

The lot numbers the Petitioners refer to is from the Plan marked P1.

The Petitioners have not tendered a copy of the said decision nor a copy of the said permit with the petition.

The 4th Respondent, the Divisional Secretary of Kilinochchi, has tendered the said decision marked 4R4 with his affidavit. According to this decision, the disputed portion of land was to be given to three residents living on the land at that time. One of them seems to be the 8th Respondent; the identity of the other two is unclear. However, one thing is clear: without making the other two residents parties to this application and without giving them a hearing, the Court cannot quash the decision 4R4.

According to 4R5, which is a tracing prepared by the Government Surveyor accompanied by a report, Lots 69 and 70 of the Plan P1 are in the occupation of or reserved for the 8th Respondent, the Christian Missionary Church and the Road Development Authority. According to this report, the Petitioner is in occupation on permit No. KR/LB/KN-17/158. The Petitioners say 4R5 shall be disregarded, as it has been prepared after the filing of this application. However, it is not the position of the Petitioners that what is contained in 4R5 is incorrect. Even if the Court is to disregard 4R5, the Court cannot disregard 4R4. The main relief sought by the Petitioners is to quash the decision 4R4 by certiorari. As I have already said, 4R4 states “the decision has been taken to grant the land for three residents who are living there”. Needless to say, the other two residents are necessary parties to this application.

This application shall be dismissed *in limine* on failure to make necessary persons parties to the application.

The Petitioners produce a copy of the permit issued to the 8th Respondent marked B with the motion dated 30.01.2018.

Let me state the grievance of the Petitioners in the manner I understand it. The Petitioners say they had been in possession of Lots 69 and 70 since 1977 until they were forced to leave in 2008 due to the civil war, and when they returned in 2010 they found that the 8th Respondent was in possession of the land.

The Petitioners rely on a list of names attached to the Plan P1, wherein the name of the mother of the 1st Petitioner is mentioned against Lot 69 and the name of the 2nd Respondent is mentioned against Lot 70. This list is undated although P1 is dated 20.09.1995.

According to this list, it appears Lots 69-75 (i.e. seven lots) are claimed by the Petitioners' family. It is also seen that Lot 80 is claimed by the 1st Petitioner.

The 8th Respondent has tendered with his statement of objections documents to say the 1st Petitioner had claimed Lots 60 and 61 on long possession in another case filed before the Kilinochchi Magistrate's Court.

The Petitioners contend in their counter affidavit that permits in respect of the said Lots 60, 61 and 80 have been issued in the names of other persons. This goes to show that the Petitioners have claimed different lots at different times without confining

their claim to one lot. It appears to me their claims are irresponsible.

The Petitioners rely heavily on P4 and P5 issued in 1994 to the mother of the 1st Respondent and the 2nd Respondent, respectively, to say the Divisional Secretary of Kilinochchi had promised them Lots 69 and 70. There is however no mention of lot numbers in P4 and P5.

The Divisional Secretary rightly states in his affidavit that in view of multiple claims to several lots in Thondaman Nagar by the Petitioners and their family members, there is no clarity as to which lots these documents relate to.

The Divisional Secretary has tendered 4R1 to say the 1st Petitioner has already been nominated as the successor to another land located within the limits of his division, on a permit issued to the 1st Petitioner's mother for land in extent of 1 rood and 23.4 perches. The 1st Petitioner's mother died in 2002. This nomination was not disclosed by the Petitioners to Court. The Petitioners say in response that the nomination has not been registered in the Land Registry and is therefore invalid in terms of section 60 of the Land Development Ordinance. The 1st Petitioner does not say the said land is in the possession of someone else nor does he say a permit in respect of the land was issued to someone else after the demise of his mother. The 1st Petitioner shall understand that this is a writ application and writ is a discretionary remedy.

The Divisional Secretary says that the Petitioners being husband and wife are not entitled to more than one permit in respect of State land. This position is not challenged by the Petitioners.

The Petitioners' principal submission is that they were permit-holders in terms of section 2 of the Land Development Ordinance when the permit was issued to the 8th Respondent. According to section 2, "permit-holder" means any person to whom a permit has been issued and includes a person who is in occupation of any land alienated to him on a permit although no permit has been actually issued to him. The Petitioners' submission is on the premise that they were in occupation of the land. But this is a disputed fact, not an admitted fact. Therefore, this argument is bound to fail. The 8th Respondent has tendered with his statement of objections a large number of documents to show long possession of Lots 69 and 70. This Court exercising writ jurisdiction cannot hold a fresh inquiry into possession of the disputed portion of land. That is clearly outside the purview of this Court. Hence, I am not in a position to conclude whether or not the Petitioners were permit-holders within the meaning of the Land Development Ordinance at the time the permit was issued to the 8th Respondent.

The Petitioners say the decision 4R4 is in violation of the circular 4R2 issued in 1995. After this circular, a new detailed circular 4R3 was issued in 2013. The decision 4R4 was taken on the latter circular. Even assuming without conceding that the Petitioners' submission on possession is correct, the Petitioners have not taken any meaningful steps to regularise their unauthorised possession on the circular 4R3. Therefore,

the Petitioners cannot find fault with the authorities for acting in terms of the new circular 4R3.

I dismiss the Petitioners' application but without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal