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

In the matter of an application for writs of Certiorari, Prohibition and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Pussellawa Plantations Limited
Level 11, FLC Tower,
19, Dudley Senanayake Mawatha,
Colombo 8.

PETITIONER

Case No. : CA / WRIT/ 132/2015

Vs.

1. Hon. Minister of Plantation Industries
55/75, Vaxuhall Lane,
Colombo 2.

1A. Hon. Gayantha Karunathillake, MP
Minister of Lands and Paliamentary Reforms,
"Mihikatha Medura" Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,
Baththaramulla.

1B. Hon. (Dr) Ramesh Pathirana, MP
Minister of Plantation Industries and Minister of Industries

11th Floor, Stage II
"Sethsiripaya"
Battaramulla.

1C. Hon. Mahinda Amaraweera, MP
Ministry of Agriculture And
Plantation Industries
11th Floor, Stage II
"Sethsiripaya"
Battaramulla.

2. Land Reform Commission
C 82, Gregory's Road,
Colombo 07.

3. Janatha Estate Development Board
55/75, Vaxuhall Lane,
Colombo.

4. Hon. The Attorney General
Attorney General's Department,
Colombo 12.

5. Delgollalage Sandasiri Lakshman
Weeraratne
"MalaniWasa", Navgala,
Warakapola.

6. Delgollalage Induka Tissa Kumara
Weeraratne
"MalaniWasa", Navgala,
Warakapola.

RESPONDENTS

Before : Dhammika Ganepola, J.

Adithya Patabendige, J.

Counsel	:	Manohara De Silva, P.C. with Thishya Weragoda instructed by Thamila Dinushi for the Petitioner. Dr. Sunil Cooray with Neminda Kariyawasam instructed by Sudharshani Cooray for the 2nd Respondent. N. Kahawita, S.S.C. for all Respondents except the 2nd, 5th and 6th Respondents.
Argued on	:	2025.07.02, 2025.07.25
Written Submissions tendered on	:	Petitioner : 2025.09.11
Decided on	:	2025.12.02

Dhammika Ganepola, J.

Factual matrix

The Agricultural Lands and Estate Lands, including Penrith Estate, which the 2nd Respondent owned, had been vested with the 3rd Respondent by virtue of an Order published in the Gazette Extraordinary No. 183/10 dated 12th March 1982 marked A2 issued by the 1st Respondent acting in terms of Section 42H read together with 27A of the Land Reform Law No.1 of 1972. Thereafter, the 3rd Respondent executed a 99-year lease, No. 127, dated 29th June 1993, marked A3, granting leasehold rights in respect of the Penrith Estate in favour of the Petitioner. The Petitioner states that the 1st Respondent, by an Order made under Section 27A(4) of the Land Reform Law dated 20th September 1996, published in the Gazette Extraordinary No. 943/20 dated 3rd October 1996 marked A4, revested an extent of 43 acres of Penrith Estate with the 2nd Respondent. However, the Petitioner had not objected to or challenged the said re-vesting, as the re-vested property had been allocated for the construction of a sports complex for

the general public of the Avissawella area. It is stated that the balance portion of the land so re-vested was continued to be in possession of the Petitioner.

Thereafter, in or about August 2005, the Petitioner had come to know that the 1st Respondent was intending to transfer an extent of 22 acres and 30 perches to the 5th and 6th Respondents, respectively. In 2009, the Petitioner had received a letter from the 5th and 6th Respondents indicating that the 2nd Respondent had transferred such land to them by Deed of Transfer No. 2572 dated 4th March 2009 marked as A7(a). The Petitioner avers that the above Deed A7(a) is null and void. Thereafter, the Petitioner had been informed by the 2nd Respondent by letter dated 11th March 2014 that 22 acres and 30 perches of the Penrith Estate had been transferred to the 5th and the 6th Respondents by said Deed A7(a).

The Petitioner states that, despite any change of ownership, the rights of the Petitioner as a lawful lessee under Lease Agreement A3 cannot be hindered or interrupted. Accordingly, it is claimed that revesting the allotment of 43 acres from Penrith Estate to the 2nd Respondent or any other person by the 1st Respondent is *ultra vires*. Accordingly, the Petitioner seeks, *inter alia*, Writs of Certiorari to quash the Order dated 20th September 1996 made under Section 27A(4) of the Land Reform Law, published in the Gazette marked A4, and the decision to transfer 22 acres and 30 perches to the 5th and 6th Respondents; Writs of Prohibition to prevent the 1st to 3rd Respondents from taking any steps towards revesting Penrith Estate, prohibit the termination of the Indenture of Lease marked A3 and Writs of Mandamus to compel the 3rd Respondent to perform its obligations under the aforementioned Indenture of Lease.

Applicability of Section 27A(4) of the Land Reform Law

The land in issue, Penrith Estate, which the 2nd Respondent owned, had been vested with the 3rd Respondent by the Order published in the Gazette marked A2 made under Section 27A of the Land Reform Law No.1 of 1972. Subsection (1) of Section 27A stipulated that the Minister may, by Order, vest in a State Corporation, agricultural or estate land vested with the

Commission, subject to terms and conditions relating to consideration for the vesting of that land. Above Section 27A (1) is reproduced below:

> *27A(1) At the request of the Commission, the Minister may, where he considers it necessary in the interest of the Commission to do so, subject to sections 22, 23 and 42H, by Order published in the Gazette, vest, in any State Corporation specified in the Order, with effect from a date specified in that Order, any agricultural land or estate land or any portion of the land vested in the Commission under this Law, and described in the order, subject to such terms and conditions relating to consideration for the vesting of that land in such Corporation as may be agreed upon between the Commission and such Corporation.*

The 1st Respondent, revested an extent of 43 acres of Penrith Estate with the 2nd Respondent by an Order made under Section 27A(4) of the Land Reform Law dated 20th September 1996, published in the Gazette marked A4. However, the Petitioner contends that neither the 1st Respondent nor the 2nd Respondent could exercise the powers granted to the 1st Respondent under Section 27A (4) of the Land Reform Law in the absence of any breach of a term or condition by either the 3rd Respondent or the Petitioner, as outlined in Section 27A (4). Section 27A (4) stipulates as follows:

> *27A(4) Where any term or condition relating to consideration for the vesting of any agricultural land or estate land or portion thereof in any such State Corporation by an Order under subsection (1) is not complied with, the Minister may by Order published in the Gazette, revoke the Order under subsection (1) relating 'to that land and thereupon that land shall revert in the Commission.*

It is observed that no terms or conditions had been specified as regards the consideration in the Order made under Section 27A published in the Gazette marked A2 by which the 1st Respondent had vested the Penrith Estate, with the 3rd Respondent. Said alienation was free from any terms and conditions. In the absence of any such term or condition under the Order published in the Gazette, there could not have been any breach of such term or condition. Further, the 1st Respondent, in his statement of

objections, has admitted that there is no complaint of a breach of the terms and conditions regarding the land described in A2. Therefore, no order could have been lawfully published by the 1st Respondent in the Gazette(A4), by revoking the Order(A2) made under subsection 27A(1) of the Land Reform Commission Law relating to that land and revert in the Commission.

Said Order A2 is reproduced below:

> *"Pursuant to a request of the Land Reform Commission, having considered it necessary in the interest of the Commission to do so, estate lands specified in the Schedule hereto are hereby vested under Section 27A read with Section 42H of the of the Land Reform Law, No. 1 of 1972, as amended by Law, No. 39 of 1975, Act No. 14 of 1981 and Act No. 39 of 1981 in the Janatha Estates Development Board established under the State Agricultural Corporation Act No. 11 of 1972. No terms or Conditions are laid down as regards consideration."* [emphasis added]

Hence, the Petitioner submits that although the Gazette marked A4 stipulated that the vesting orders are revoked as per the terms and conditions specified in the orders under Section 27A(1) of the Land Reform Law, the absence of any breach of such terms or conditions in the Order A2, the revesting Order published in the Gazette marked A4, is bad in law.

The Gazette marked A4 states that the vesting orders published in the Gazette Extraordinary No. 183/10 dated 12th March 1982, marked A2, are revoked in accordance with the terms and conditions specified in the Order under Section 27A (1) of the Land Reform Law. The 2nd Respondent conceded fact that Gazette No. 943/20, marked A4, was lawfully made. The Order made under Section 27A(4) by Gazette A4 states as follows:

> *"1975 අංක 39, 1981 අංක 14, 1981 අංක 39, 1986 අංක 14 සහ 1986 අංක 16 දරන පනත් වලින් සංශෝධිත 1972 අංක 1 දරන ඉඩම් ප්‍රතිසංස්කරණ නීතියේ 27අ(4) වගන්තියෙන් මා වෙත පැවරී ඇති බලතල ප්‍රකාර, රාජ්‍ය පරිපාලන, ස්වදේශ කටයුතු, වැවිලි කම්කර්ාන්ත අමාත්‍ය රත්නසිරි වික්‍රමනායක වන මම, එකී සංශෝධිත ඉඩම් ප්‍රතිසංස්කරණ නීතියේ දැක්වෙන ප්‍රතිපාදනවලට අනුකූලව 1972 අංක 11 දරන රාජ්‍ය කෘෂිකාමර්ක සංස්ථා පනත යටතේ පිහිටුවන ලද ජනතා වතු සංවධර්න මණ්ඩලයට මෙහි 1වැනි උපලේඛනයේ දැක්වෙන ඉඩම් පවරා දෙමින් ශ්‍රී ලංකා*

ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ 1 වැනි කොටස: (1) වැනි ඡේදය සාමාන්‍ය 1982.03.12 වන දිනැති 183/10 දරන අති විශේෂ ගැසට් පත්‍රවල පළ කරන ලද 1972 අංක 1 දරන ඉඩම් ප්‍රතිසංස්කරණ නීතියේ 27අ(1) වගන්තිය යටතේ වන නියෝගවල දැක්වෙන නියමයන්ට සහ කොන්දේසිවලට අනුව එම පැවරුම් නියෝගයන් මෙහි පහත 11 වැනි උපලේඛනයේ දැක්වෙන ඉඩම් ප්‍රමාණයන්ට අදාලව මෙයින් ප්‍රත්‍යාදිෂ්ඨ කරමි." [emphasis added]

In the case of **Kelani Valley Plantations PLC v. Janatha Estate Development Board and others, CA/Writ/657/2011, Court of Appeal minutes 21.11.2014**, it is observed that the Minister in charge is only permitted to exercise his powers under Section 27A(4) of the Land Reform Law only where any term or condition relating to the consideration of the vesting of land is not complied with.

In a similar application, **Bogawantalawa Plantations v. Minister of Public Administration and Plantations Affairs and Others** (2004) 2 Sri LR Page 329 at pp. 332-333, where the applicability of Section 27A(4) was in issue, Marsoof J., observed that

> *"Having examined the material produced in this case by the parties, it is clear that there is absolutely no evidence of any terms or conditions relating to the consideration being laid down either in the Order marked P3 or in any other agreement or arrangements between the parties. In the absence of any evidence of any agreement or arrangement between the Land Reform Commission and the 6th Respondent, Janata Estate Development Board relating to consideration for the initial vesting of title in the board, this Court is unable to hold that there has been any non-compliance which could justify the making of an order to reverse the estates in question in the Commission. In the circumstances, this Court holds that an important precondition for the Minister to make an order of reinvesting under Section 24A(4) of the land reform law does not exist and the order P7 is clearly ultra vires."*

In view of the aforesaid circumstances and the judicial pronouncements cited above, this Court is of the view that in the absence of any term or condition as to consideration in the Order marked A2 and in the absence

of breach of any such term or condition, issuance of the revesting Order published in the Gazette marked A4 is *ultra vires* and bad in law.

Then the question arises whether an Order made without jurisdiction becomes automatically null and void, or where there arises a need for the Court to issue an Order nullifying such Order.

Ab Initio Void or Voidable

The Petitioner argues that the purported Order published in Gazette marked A4 has been issued by the 1st Respondent without authority/jurisdiction, and the purported re-vesting was *ultra vires* and *ab initio void*. The Petitioner relies on the statement made by **Lord Denning in Mac Foy v. United Africa Company (1961) 3All ER 1169 at p.1172**, which is as follows:

> *"If an act is void, then it is, in law, a nullity. It is incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."*

Nevertheless, it is important to consider the judgement in **Kelani Valley Plantations PLC (formerly Kelani Valley Plantations Limited) v. Chairman of the National Housing Development Authority and Others S.C. Appeal No. 70/2015 decided on 03.04.2024,** where the Court of Appeal considered the effect of the above statement made by Lord Denning in the Sri Lankan context. In the aforesaid case, the Supreme Court, in addition to addressing the primary issue therein, has considered whether the Gazette Notification in subject, in the said case (No.1145/19), could be impugned during its proceedings by way of a collateral challenge. His Lordship Justice Janak De Silva (concurring with their Lordships Justice Vijith K. Malalgoda, P.C. and Justice Arjuna Obeyesekere) in the said case has referred to the cases of **Rajakulendran v. Wijesundera** (1 Sriskantha's Law Reports 164 at 168) and **Bandahamy v. Senanayake** (62 NLR 313) in which cases, the statement referred above made by Lord Denning in **Macfoy v. United Africa Company**

Limited [(1961) 3 All E.R. 1169 at 1172], had been adopted. Accordingly, his Lordship Justice Janak De Silva has observed that:

> *"Nevertheless, the position in English law is different. This was examined by a divisional bench of 5 judges in the Colombo Port City Economic Commission Bill Special Determination [Decisions of the Supreme Court on Parliamentary Bills, 2021, Vol. XVI, page 23 at 33] where it was held:*
>
> *"However, the Court observes that Clive Lewis, Judicial Remedies in Public Law, 5th ed., South Asian Edition (2017), in discussing the meaning of null and void in Administrative Law states (page 185):*
>
> > *"The primary concern here is the meaning of nullity or voidness solely in the context of the remedies granted by courts. The concept of nullity has been used to solve other problems arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of producing legal effects. Once its illegality is established, and if the courts are prepared to grant a remedy, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as incapable of ever having produced legal effects." (emphasis added)*
>
> *.....In fact, Wade and Forsyth (supra, page 305) state that the statement of Lord Denning in MacFoy v. United Africa Co. Ltd.(supra) is not the correct position of the law. Wade and Forsyth, Administrative Law, (supra, page 304), after restating the above statement of Lord Radcliffe, state as follows:*
>
> > *"This must be equally true even where the brand of invalidity is plainly visible, for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly [F Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295 at 366], saying that;*

It leads to confusion to use such terms as 'voidable', 'voidable ab initio', 'void', or 'a nullity', as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced on by a court of competent jurisdiction."

This approach is consistent with the presumption of validity, according to which administrative action is presumed to be valid unless or until it is set aside by a court [Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295]. However, this presumption of validity exists pending a final decision by the court [Lord Hoffmann in R v. Wicks (1998) AC 92 at 115, Lords Irvine LC and Steyn in Boddington v. British Transport Police (1999) 2 AC 143 at 156 and 161, and 173-4]."

In view of the rationale upheld in the above case, I opine that although the purported Order published in Gazette marked A4 had been made *ultra vires* by the 1st Respondent, the purported re-vesting does not become *ab initio void* automatically. Hence, I am not inclined to accept the stance of the Petitioner that the purported re-vesting Order published in the Gazette marked A4 is *ab initio void*. Until such re-vesting Order is set aside by a competent court, the validity of such Order will stand.

Collateral Challenge

However, the Petitioner in the instant application collaterally challenges the Gazette A4, in which the said re-vesting Order had been published. His Lordship Justice Janak De Silva, in Kelani Valley Plantations PLC case (Supra) has even referred to a judgement pronounced by His Lordship in the Court of Appeal in McCallum Brewing Company (Private) Limited v. Commissioner General of Excise and Another [C.A. Writ 469/2008, C.A.M. 18.12.2019] where it was held (at page 5) that an ultra vires act can be challenged in two ways including by way of a collateral challenge. Nevertheless, finally, the Appeal Court, for the reasons given therein, rejected the contention of the Respondent that the validity of the order in issue can be impugned in those proceedings by way of collateral challenge.

Accordingly, it is my view that even in the instant application, there is no bar to challenge such an ultra vires act in collateral proceedings. However, the court could give effect to such cancellation only after consideration of the circumstances of each case.

Conduct and Undue Delay

The Respondents state that since the Petitioner did not object to the re-vesting of a portion of land by Order (A4) in 1996, the Petitioner is estopped from challenging it under the instant application. However, the doctrine of estoppel cannot be invoked in an instant where a public authority acted ultra vires. Professor Wade views that "*in public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers which it does not in law possess. In other words, no estoppel can legitimate action which is ultra vires*" [H.W.R. Wade and C.F.F. Forsyth in 'Administrative Law- eleventh edition @ page 197]. In the case in hand, the Court has come to a conclusion that since the revesting Order published in the Gazette marked A4 is *ultra vires* and bad in law, the defence taken up by the Respondents in relation to estoppel cannot stand.

In the instant application, the Respondents state that the Petitioner's application is belated and constitutes laches. The purported re-vesting of the land by the impugned Gazette marked A4 had been published on 3rd October 1996, and the instant application was filed in 2015, i.e. 19 years after such publication. The Petitioner avers that the Petitioner didn't challenge the validity of the revesting Order published in the Gazette dated 03.10.03 marked A4, as said revesting was for the greater public good and the betterment of the residents of the area, for the construction of a sports complex (public purpose). However, once the Petitioner came to know of the decision of the 2nd Respondent to transfer 22 acres and 30 perches by Deed of Transfer No. 2572 dated 04.03.2009 marked A6 to the 5th and 6th Respondents, the Petitioner had informed the Secretary of the 1st Respondent that the said Deed is null and void.

Nevertheless, delay alone shall not prevent a person from receiving the relief to which they may be entitled. It has to be decided upon the facts of

each particular case. The Petitioner submits that delay would not defeat the application of the Petitioner as the purported re-vesting Order is *ultra vires*. In Biso Menika v Cyril de Alwis and others [1982] 1 SLR 368, it was held that,

> *"……When the Court has examined the record and is satisfied that the Order complained of is manifestly erroneous or without jurisdiction, the Court would be loath to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically…"*

In Dr. (Ms.) Fathima Shemoon Marleen Vs. University of Colombo, CA (Writ) Application No. 54/2017, Decided on 03.06.2021, His Lordship Justice Arjuna Obeysekara stated that if the act complained of is manifestly illegal, such as a decision of a statutory authority made in excess of jurisdiction, the delay can be ignored.

Accordingly, in the instant application also, I am of the view that since the revesting Order published in the Gazette marked A4 is bad in law, the delay should be considered sympathetically could be ignored.

The Petitioner further submits that they did not object to the re-vesting of a portion of land because the re-vested property was designated for the construction of a sports complex for the benefit of the public in the area.

Considering the rationale upheld in the aforementioned cases, I am not inclined to accept the argument of the Respondents that the Petitioner is guilty laches in making the instant application.

Locus standi

The Respondents claim that the Petitioner has no *locus standi* to maintain the application. It is the argument of the Respondents that as the

Petitioner's rights emanate from the Indenture of Lease marked A3, such rights are contractual in nature, meaning that public law remedies do not lie. However, the Petitioner contends that their right to initiate these proceedings (*locus standi*) against the 1st and 2nd Respondents arises not only from their leasehold rights, which are based on the lease agreement A3, but from their uninterrupted possession of the land, and the significant amount of money that the Petitioner has invested in developing the property. The Petitioner submits that the Petitioner will incur a financial loss if the property for which the Petitioner invested for is taken away. Therefore, the Petitioner claims that the Petitioner is a "person interested" in the decision marked A4 and is entitled to institute the proceeding to quash the Order published in the Gazette marked A4.

A "person aggrieved" is entitled to seek a remedy by way of a writ. A person has locus standi to file a writ petition if he is personally affected by the impugned order, or there is an imminent danger of his rights being affected. The Petitioner, in the instant application, has averred that the Petitioner has incurred financial expenses amounting to Rs. 250,000,000/- in developing the said Penrith Estate. The property in dispute in the instant application is part of the Penrith State. Therefore, it is my view that the Petitioner has sufficient interest to file a Writ application.

The Petitioner, *inter alia,* relies on the decision of the Bogawantalawa Plantation Ltd. v. Minister of Public Administration and Plantations Affairs and Others, (2004) 2Sri LR 329, which is a case of a similar nature. In the said case, the Minister has made an order re-vesting the entire land, and the Petitioner, who was in possession on a memorandum entered into with the JEDB, instituted action. Saleem Marsoof J observed that,

> *"This Court finds that the petitioner, who is admittedly in possession of the lands in question and has expended enormous sums of money for the development of the estates, is a person affected by the Order P7, and is therefore entitled to seek redress from this Court by way of prerogative relief."*

High-flown technical objections regarding locus standi have no place in the modern administrative law. (Vide Wijesiri v. Siriwardene [1982] 1 Sri LR

171, Perera v. Central Freight Bureau of Sri Lanka [2006] 1 Sri LR 83, Jathika Sevaka Sangamaya v. Sri Lanka Ports Authority [2003] 3 Sri LR 146, Premadasa v. Wijewardena [1991] 1 Sri LR 333, Vasudeva Nanayakkara v. Governor, Central Bank of Sri Lanka [2009] BLR 41). On the above premise, I am not inclined to accept the argument advanced by the Respondents that the Petitioner has no locus standi to maintain the instant action.

Availability of an Alternative Remedy

The right of the Petitioner to hold the Penrith Estate emanate from the Indenture of Lease marked A3 entered into between the Petitioner and the 3rd Respondent. The Respondents submit that the above Indenture of Lease provides an arbitration clause for dispute settlement and therefore the Petitioner is not entitled to seek Writ jurisdiction of this Court. Nevertheless, the 2nd Respondent is not a party to Indenture of Lease marked A3. Further, Legality of an administrative action such as the issuance of the revesting Order published in the Gazette dated 03.10.03 marked A4 is not one which is capable of determination by arbitration. Such determination as to legality of an administrative act of the State or a State Agencies has to be exclusively determined by this Court exercising writ jurisdiction. As such, I am of the view that the Petitioner could not have obtained the reliefs prayed under the instant application before an Arbitral Tribunal. Thus, in the given instance, I do not view that the arbitration as agreed by the parties is an equally effective alternative remedy.

Conclusion

In the circumstances and the reasons given above, I hold that the Petitioner is entitled to the reliefs (b) and(c) prayed for in the prayer of the Petition. I make no order on cost.

The Petitioner has waived its rights to challenge the validity of the revesting order marked A4 in the interest of the greater public good i.e. for the construction of a sports complex for the general public. Therefore, this

Court observed that this judgement shall not stand to derogate the public interest of the residents of that area as affirmed by the Petitioner itself.

application is partly allowed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal