

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

*In the matter of an Application for orders  
in the nature of Writ of Certiorari under  
and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

Case No:

CA (Writ) - 300/2019

Talawakelle Tea Estates PLC  
No. 400, Deans Road,  
Colombo 01.

Petitioner

Vs.

1. Land Reform Commission  
No. 475, Kaduwela Road,  
Battaramulla.
  
2. Sirimewan Dias  
Chairman,  
Land Reform Commission,  
No. 475, Kaduwela Road,  
Battaramulla.
  
- 2(A). Nilantha Wijesinghe  
Chairman,  
Land Reform Commission,  
No. 475, Kaduwela Road,  
Battaramulla.

- 2(B). Panduka Keerthinanda  
Chairman,  
Land Reform Commission,  
No. 475, Kaduwela Road,  
Battaramulla.
- 2(C). R.K. Nihal  
Chairman,  
Land Reform Commission,  
No. 475, Kaduwela Road,  
Battaramulla.
3. Upali Marasinghe  
Secretary,  
Ministry of Plantation Industries,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
- 3(A). Ravindra Hewavitharana  
Secretary,  
Ministry of Plantation Industries,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
- 3(B). Janaka Dharmakeerthi  
Secretary,  
Ministry of Plantation Industries,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
- 3(C). Prabath Chandrakeerthi  
Secretary,  
Ministry of Plantation and Community  
Infrastructure,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,

Battaramulla.

4. Mr. Navin Dissanayaka  
Hon. Minister,  
Ministry of Plantation Industries,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
  
- 4(A). Hon. Ramesh Pathirana  
Hon. Minister of Plantation Industries,  
Ministry of Plantation Industries and  
Export Agriculture,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
  
- 4(B). Hon. K.V. Samantha Vidyarthna  
Hon. Minister of Plantation and  
Community Infrastructure,  
Ministry of Plantation and Community  
Infrastructure,  
8<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.
  
5. State Plantations Corporation  
No.21,  
Meeraniya Street,  
Colombo 12.
  
6. Don Hemachandra Dissanayaka  
Hirikumbura Road,  
Pahala Walpola,  
Imaduwa.

7. Don Jagatha Darshana Dissanayaka  
No. 12A/1, Hirikumbura Road,  
Pahala Walpola,  
Imaduwa.
8. Hon Attorney General  
Attorney General's Department,  
Colombo 12.

Respondents

**Before** : Dhammika Ganepola, J.  
Adithya Patabendige, J.

**Counsel** : Senaka de Seram with Nirosch Bandara,  
Instructed by Shyamali Liyanage for the  
Petitioner.  
Thisath Wijeyagunawardene, P.C., with  
Amrith Edirisooriya for the 1<sup>st</sup> and 2A  
Respondents, instructed by  
Mallawarachchi Associates.  
Ganga Wakishta Arachchi, D.S.G. for the  
3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> for the Respondents.

**Argued on** : 29.09.2025

**Ordered on** : 18.12.2025

**Dhammika Ganepola, J.**

The Petitioner in the instant application seeks a Writ of Certiorari quashing the decision of the 1<sup>st</sup> Respondent, Land Reform Commission, dated 10<sup>th</sup> August 2018, to issue Deeds to the 6<sup>th</sup> Respondent in respect

of Item 3 of the Schedule to said decision as reflected in the document marked P10.

The Moragalla Estate, the land in dispute, had been vested with the 1<sup>st</sup> Respondent by virtue of the Land Reform Law No. 01 of 1972. Subsequently, it had been vested with the 5<sup>th</sup> Respondent by virtue of the Extraordinary Gazette Notification bearing No. 181/12 dated 27.02.1982, marked P3, issued by the 1<sup>st</sup> Respondent. Thereafter, the Petitioner, which had been incorporated under the provisions of the Conversion of Public Corporations of Government Owned Business Undertakings into Public Companies Act No.23 of 1987, had entered into an indenture of Lease bearing No. 920 dated 05.09.2001 marked P1 with the 5<sup>th</sup> Respondent, and the functions and conduct of the business activities of the said Moragalla Estate were handed over to the Petitioner. Therefore, the exclusive possession and the management of the said land had been vested with the Petitioner.

The Petitioner complains that the 1<sup>st</sup> Respondent, by its decision dated 10<sup>th</sup> August 2018 bearing Commission Paper No. 10434 (marked "P8"), had decided to issue deeds to 730 persons, including the 6<sup>th</sup> Respondent. Accordingly, Lot 1 and Lot 2 in extent of A:1 R:3 P:17.61 demarcated in plan No. 1189A dated 26.11.2017, prepared by Licensed Surveyor A.J. Jayasekara, have been sold to the 6<sup>th</sup> Respondent by Deed bearing No.11256 dated 17.08.2018 marked P6.

The Petitioner claims that the said Deed marked P6 has not conveyed any title on the following grounds. First, the plan No. 1189A referred above is, per se, erroneous as it had been made without properly identifying the aforementioned Moragalla Estate depicted in the survey plan No.3048 dated 22.10.2013 marked as P7. Second, the 1<sup>st</sup> Respondent did not have any title to the land in question to transfer it to the 6<sup>th</sup> Respondent, as said land had already been vested with the 5<sup>th</sup> Respondent, State Plantation Corporation, in terms of the Gazette marked P3. Without revoking the previous Gazette P3 under the authority of Section 27A of the Land Reform Law, the disputed land cannot be given to the 6<sup>th</sup> Respondent. Third, the said transfer by Deed P6 had been executed in violation of Section 22 1(c) of the Land Reform Law and the Internal

Circular No.2005/4 dated 27.05.2005 marked P8(A). Hence, the Petitioner claims that the decision to transfer the land in dispute to the 6<sup>th</sup> Respondent by the 1<sup>st</sup> Respondent, as reflected in the Commission Paper P8, is illegal, arbitrary and unlawful.

The 5<sup>th</sup> Respondent, State Plantation Corporation, states that the Moragalla Estate had been vested with the 5<sup>th</sup> Respondent by virtue of the Gazette P3, and the Petitioner is the lawful lessee of the 5<sup>th</sup> Respondent. It is claimed that the 1<sup>st</sup> Respondent has no right whatsoever to the land in dispute in view of the publication of Gazette P3. Hence, it is submitted that no title could be alienated by the 1<sup>st</sup> Respondent, and no title devolves on the 6<sup>th</sup> Respondent in the given instance. In the given circumstances, the 6<sup>th</sup> Respondent moves that the reliefs claimed by the Petitioner be granted.

The 1<sup>st</sup> and the 2B Respondents primarily take up the position that the Gazette P3 has been published in an *ultra vires* manner without due completion of the statutory requirements under Section 27A(1) of the Land Reform Law, and no agreement has ever been formed between the 1<sup>st</sup> Respondent and the 5<sup>th</sup> Respondent. Therefore, it is claimed that the 1<sup>st</sup> Respondent is the absolute title owner of the land in issue. Hence, it is stated that the 5<sup>th</sup> Respondent cannot lawfully lease an extent in excess of 50 Acres of Estate land in terms of Section 42H(1)b of the Land Reforms Law. The 1<sup>st</sup> and the 2B Respondents further state that the subject land of the Deed No. 11256, P6, is a portion of the Moragalla Estate which the 6<sup>th</sup> Respondent and his father occupied for over 3 decades, but does not form part of the Estate Plantation of the said Estate, and the 1<sup>st</sup> Respondent has executed the said Deed P6 in terms of Section 22(1)(c) of the Land Reform Law.

The 6<sup>th</sup> Respondent filed an affidavit stating that he and his predecessors have been in possession for a long time, and upon a request made to the 1<sup>st</sup> Respondent, Deed No. 11256 P6 has been granted.

The Petitioner is challenging the decision made by the 1<sup>st</sup> Respondent on 10<sup>th</sup> August 2018, as documented in P8. This decision involved issuing a Deed for Lot 1 and Lot 2 of Plan 1189A to the 6<sup>th</sup> Respondent under

Section 22(1) of the Land Reform Law. The Petitioner argues that this action is ultra vires, as the 1<sup>st</sup> Respondent lacks the title or interest in the land to issue such a decision. The 1<sup>st</sup> Respondent, as well as the 5<sup>th</sup> Respondent, admits that the above land in issue [depicted in the Deed No. 11256, P6] is a portion of the Moragalla Estate. The 1<sup>st</sup> Respondent claims that the Deed was lawfully executed under Section 22(1) of the Land Reform Law. Section 22(1) provides that any agricultural land vested with the Land Reform Commission may be used for any of the purposes laid down therein. The Said Section is as follows.

*22(1) Any agricultural land vested in the Commission under this Law may be used for any of the following purposes :*

- (a) alienation for agricultural development or animal husbandry by way of sale, exchange, rent, purchase or lease to persons who do not own agricultural land or who own agricultural land below the ceiling;*
- (b) alienation by way of sale, exchange, rent, purchase or lease to a person for agricultural development or animal husbandry, or for a cooperative or collective farm;*
- (bb) alienation, by way of sale or lease with the approval of the Minister, for non-agricultural purposes; and*
- (c) alienation by way of sale in individual allotments to persons for the construction of residential houses;*
- (d) for a farm or plantation managed by the Commission;*
- (e) utilization for any public purpose;*
- (f) alienation, by way of sale to any person who:*
  - (i) owned agricultural land on the day immediately preceding the date of commencement of this Law, or*
  - (ii) was deemed, by reason of the operation of section 7 or section 8, to own agricultural land on the date of commencement of this Law.*

The Petitioner contends that since the land in issue, which is a portion of the estate (Lot 1 and 2 of plan No.1189A) called Moragalla Estate, had

been vested with the 5<sup>th</sup> Respondent by Gazette 181/12 dated 27.02.1982 marked P3, the 1<sup>st</sup> Respondent has had no ownership to the land to transfer the said land in issue to the 6<sup>th</sup> Respondent. However, the 1<sup>st</sup> and 2<sup>nd</sup>B Respondents have advanced the argument that the said Gazette P3 is *ab initio void* and therefore, incapable of creating rights or altering legal relations since it has been published in an *ultra vires* manner contrary to the mandatory statutory requirements set out in Section 27(A)(1) of the Land Reform Law. The 1<sup>st</sup> and 2<sup>nd</sup>B Respondents state that the 1<sup>st</sup> Respondent has not requested the Minister to vest such land with the 5<sup>th</sup> Respondent, and no valuation has ever been obtained to ascertain the consideration due for such vesting as specified in the above Section. Aforesaid Section 27(A)(1) is as follows.

*27(A)(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.*

Nevertheless, it is noteworthy that although the 1<sup>st</sup> and 2<sup>nd</sup>B Respondents challenge the validity of the Gazette P3, the publication of such Gazette is not in dispute. Since the Petitioner argues that the Gazette P3 is *ab initio void*, it is important to consider whether an order published in the Gazette P3 would become *ab initio void* automatically without more ado.

**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**, is a case where the Court of Appeal considered the matters in relation to the above legal position. In the above case, 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)*

*Thus, even where an act of a public authority is ultra vires and a nullity, for remedial purposes, the illegality must be established before a court. As stated by Wade and Forsyth, Administrative Law, 9<sup>th</sup> ed, Indian Edition, page 281:*

*"...the court will treat an administrative act or order invalid only if the right remedy is sought by the right person in the right proceedings."*

*... this approach was reflected in the statement of Lord Radcliffe in Smith v. East Elloe Rural District Council (1956) AC 736,769-770, where it was held:*

*"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity*

upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

...

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 the purported Gazette marked P3 does not become *ab initio void* automatically unless and until such Gazette is set aside by a competent court. Hence, the stance of the 1<sup>st</sup> and the 2B Respondents that the purported Gazette marked P3 is *ab initio void* is misconceived in law.

It is on the common ground that the Gazette marked P3 had not been set aside by a competent court of law. Hence, the validity of the above Gazette will stand, and the vesting of land in issue named Moragalla Estate with the 5<sup>th</sup> Respondent remains unchallenged. The said Gazette P3 specifies as follows.

ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාවේ අභිවෘද්ධිය සඳහා එසේ කිරීම අවශ්‍ය යයි සලකා බැලීමෙන් පසුව එම කොමිෂන් සභාව විසින් කරන ලද ඉල්ලීමක් අනුව 1975 අංක 39 දරණ පනතින්ද 1981 අංක 14 දරණ පනතින්ද, 1981 අංක 39 දරණ පනතින්ද, සංශෝධනය කරන ලද 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ නීතියේ 22 හා 23 වගන්තින් සමඟ කියැවෙන අංක 27 ඒ වගන්තිය යටතේ මෙහි පහත උප ලේඛනයේ සඳහන් කෘෂිකාර්මික ඉඩම්, 1958 අංක 4 දරණ ලංකා රාජ්‍ය වැවිලි සංස්ථා පනත යටතේ පිහිටුවා ඇති ශ්‍රී ලංකා රාජ්‍ය වැවිලි සංස්ථාවට මෙයින් පවරා දෙනු ලැබේ.

මෙකී ඉඩම් වෙනුවෙන් ගෙවිය යුතු මුදල පිලිබඳ කිසියම් පොරොන්දුවක් හෝ ගිවිසුමක් ඇතුළත් නොකෙරේ.

*උපලේඛනය*

<i>කෘෂිකාර්මික ඉඩමේ නම</i>	<i>පිහිටීම (පරිපාලන දිස්ත්‍රික්කය)</i>	<i>ප්‍රමාණය හෙක්ටයාර්</i>
<i>1. මොරගල්ල වත්ත</i>	<i>ගාල්ල</i>	<i>473.33</i>

Section 27A (2) of the Land Reform Law stipulates that:

*“An Order under subsection (1) shall have the effect of vesting in such State Corporation specified in the Order such right, 'title and interest to the agricultural land or estate land or portion thereof described in that Order, as was held by the Commission on the day immediately preceding the date on which the Order takes effect.”*

The only process that can permit the 1<sup>st</sup> Respondent to override a vesting order made under the above Section 27A (1) is outlined in Section 27A (4) of the Land Reform Law, that is through a subsequent Gazette Order, in the event of a breach of any term or condition related to the consideration of the vesting order made under Section 27A (1). Said 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.”*

The legal provision relating to aforesaid Section 27A(4) has been discussed 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**, where it was 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 the instant application, no materials have been before this Court to the effect that such an order had been made under Section 27A (4) to revoke the Order in issue. Further, 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 P3 by which the 1<sup>st</sup> Respondent had vested the land in issue, with the 5<sup>th</sup> Respondent. Said alienation had been effected free from any terms and conditions. In the absence of any such term or condition under the Order published in the said Gazette, there could not have been any breach of such term or condition.

Hence, with the publication of the Gazette P3, the right, title and interest to the land in issue shall be vested with the 5<sup>th</sup> Respondent as specified in Section 27A(2) of the Land Reforms Law. Consequently, the 1<sup>st</sup> Respondent ceases to have any right or interest in the land in subject and is *functus*. Accordingly, the 1<sup>st</sup> Respondent is not authorized to alienate or sell the land in issue, which is not vested with the 1<sup>st</sup> Respondent under Section 22(1) or Section 42H (1)b of the Land Reform Law. Consequently, the Deed of Transfer No. 11256 marked P6 issued pursuant to the decision P8 has no legal effect or validity. Therefore, it is my view that the 1<sup>st</sup> Respondent acted *ultra vires* and unlawfully when it decided to alienate the land in issue to the 6<sup>th</sup> Respondent as specified in the decision marked P8.

The Petitioner states that it had been duly appointed to carry out the duties of the 5<sup>th</sup> Respondent and to take necessary steps pertaining to litigation, among other things, by virtue of the Power of Attorney bearing No. 921 marked P2. The 1<sup>st</sup> and the 2<sup>nd</sup> B Respondents submit that the power conferred by the 5<sup>th</sup> Respondent to the Petitioner by P2 is contrary to Sections 5 and 6 of the Sri Lanka State Plantation Corporation Act. However, it appears that the P2 is a document which gives authority to Kelani Valley Plantations Limited, but not to the Petitioner. Hence, it is my view that the consideration of the legitimacy of the P2 to the extent of this application does not arise. However, the indenture of lease marked P1, from which the petitioner derived the rights, shows that the petitioner has sufficient interest in the matter.

Having considered the reasons given above, the Court is inclined to issue a Writ of Certiorari as prayed for in the prayer (b) of the amended Petition. I order no cost.

*Application is allowed.*

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal