

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of *Certiorari*, *Mandamus*
and Prohibition.

Galkadu Gedara Jayathilaka,
No. 10, Siri Dharmarathana, Mawatha,
Ampara.

PETITIONER

**Court of Appeal Case No:
CA/WRIT/240/2024**

Vs.

1. U.P.I. Anurudhda Piyadasa,
Divisional Secretary,
Divisional Secretariat,
Ampara.
2. Balapitiya Liynage Prasanna
Udayanga Silva,
Senior Superintendant of Surveys,
District Survey Office, Ampara.
3. A.L.I. Bhanu,
Land Commissioner
(Inter Provincial) Office,
Ampara.
4. S.A. Nishantha Priyadarshana,
The Registrar,
District/Magistrate Court,
Ampara.
5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Rushdhie Habeeb with Supun Dissanayake for the Petitioner.
Ranga Dayananda for the 2nd Respondent.
M. Amarasinghe SSC for the State.

Supported on: 03.07.2025

Decided on: 01.08.2025

Mayadunne Corea J

The Petitioner is seeking, *inter alia*, the following reliefs:

- “(d) *Grant and issue an order in the nature of a Writ of Mandamus directing the 1st, 2nd and/or any other Respondents to grant the long-term lease license and/or permit as stipulated in P10*
- (e) *Grant and issue an order in the nature of a Writ of Prohibition directing the 1st, 2nd and/or any other Respondents to preventing grant the land in question to 2nd Respondent and/or any other person*
- (f) *Grant and issue an order in the nature of a Writ of Certiorari quashing the decision of the Land Commissioner General as stipulated in his letter no. 4/10/63695 and dated 17.02.2022 which is hereto marked as P13”*

The facts of the case briefly are as follows. The Petitioner alleges that he is in possession of the land in question in the extent of 10.3 perches. The said land consists of three lots. There has been a dispute between the 2nd Respondent and the Petitioner who both claim part of the land. It is further alleged by the Petitioner that he nor the 2nd Respondent possesses any valid permit for the said land. It is also submitted that the 1st Respondent was going to give a lease to the extent of 7 perches to the Petitioner from the said land with the balance to the 2nd Respondent. The Petitioner claims the said decision to be *ultra vires*. He further submits that the 1st Respondent had filed a case against the Petitioner for ejection under State Lands (Recovery of Possession) Act. The Petitioner alleges that this action is in violation of the legitimate expectations of the Petitioner and hence, this Writ Application.

It is common ground that the three lots of land namely, lots 82, 83 and 84 morefully described later in this elsewhere are State land. It is also not disputed that the Petitioner is in unauthorized occupation of the land and an application under the State Lands (Recovery of Possession) Act had been filed against the Petitioner for the unauthorized occupation of lot 82 and the learned Magistrate had issued an Order of eviction against which the Petitioner had filed revision papers at the High Court but later had withdrawn.

The Petitioner's contention

The Petitioner contends that being in occupation from 1996 he applied to regularize his illegal occupation and the 1st, 3rd and 4th Respondents had been positive of the said application. Thus, creating a legitimate expectation in the Petitioner to obtain a permit.

Objections of the 1st, 3rd, 4th, and 5th Respondents

The Respondents raised several objections to this Application, among other objections stating,

- The Petitioner's representation itself does not validly create a legitimate expectation.
- The Petitioner is estopped from claiming all the lots of land he claims.
- Misrepresentation of facts.

Objections of the 2nd Respondent

- While associating with the learned Senior State Counsel's submission, the Counsel for the 2nd Respondent took objections on misrepresentation of facts.
- The disputed lot 82 had been originally given through a permit to the mother of the 2nd Respondent, hence, there cannot be a legitimate expectation for the said lot accrued to the Petitioner.

Analysis

The Petitioner contends that he is in occupation of lots 82, 83 and 84 in the cadastral map no. 280006 to the extent of approximately 10.3 perches. It is his contention that the said lots are together and constitutes one block of land. Further, it was contended that the Petitioner and the Petitioner's predecessor had been in possession of lot 82 together

with the two other lots. The predecessor in occupation of the land is the Petitioner's uncle one G.G. Podimahatthaya.

It was the Petitioner's contention that he had been to a land kachcheri in the years 2010 and 2015 to regularize his occupation. It is the contention of the Petitioner that the 2nd Respondent in 2022 had come to the Petitioner's above mentioned addressed and threatened to evict him.

Petitioner's claim to the land

The Petitioner submits that he and his predecessor had been in occupation of the disputed land which consists of lots nos. 82, 83 and 84 as depicted in P2. The cadastral map P2 bearing number 280006 had been done by one G.R.L. Perera, Government Surveyor and bears the date 25.02.2010. The said plan has been checked by one B.L.P.U. Silva who has placed his signature to the document P2. Interestingly the said B.L.P.U. Silva is the 2nd Respondent to this Application. The schedule of parcels attached to the cadastral map states that lot no. 82 is a bare land which consists of a garden and the owner is mentioned as State. The said schedule also states that there is no allottee found. Hence, it was contended by the Respondents that nobody had made a claim to the said land. However, lots 83 and 84 contain a building though it is owned by the State, there is an entry to state it is encroached by G. Podimahatthaya and contains an extent 0.0092 and 0.0078 hectares. These two documents establish that in 2010 the Petitioner's predecessor had encroached on to State land and constructed a house and was in occupation of lot 83 and lot 84. This also established that lot no. 82 had not been encroached and no allottee had been found. These documents submitted by the Petitioner contradicts his own contention that he and his predecessor had been in occupation of lots 82, 83 and 84. If the Petitioner was in occupation of said lot 82 he would have stated a claim to lot 82 in the same way that he have stated a claim to lots 83 and 84. Though the Petitioner submits that he had been in possession of the said lot since 1982, the Petitioner has failed to establish this claim through any independent material. The Petitioner has filed several electricity and water bills. However, the said bills contain assessment numbers and there is no material to demonstrate that the bills pertain to the lots the Petitioner claims.

Does the Petitioner have legitimate expectation to obtain a permit for lot 82?

The Petitioner contends that he has been in occupation of lots 82,83 and 84 by himself and through his predecessor for a long period of time. Further, he contends that by the

conduct of the Respondents, other than the 2nd Respondent, he was made aware that he could obtain a Permit for the said lots on the basis of long-term occupation.

The Petitioner's main argument is that he has a legitimate expectation of obtaining Permits for the occupation of the land he is allegedly possessing. It is his contention that the said land consists of lot 82, 83 and 84. Now I will consider the said argument.

In 2017, there had been a land kachcheri to which the Petitioner too had been invited (P7). Subsequently, on 27.07.2020, the Divisional Secretary had sent a letter to the Land Commissioner seeking his recommendations to regularize the land occupied by the Petitioner (P8). With the said letter, the Divisional Secretary has attached the application tendered by the Petitioner marked as P9. In the said application the Petitioner has not given the extent of land nor has he given any number or date of any previous permits issued to him. The document P9 is dated 22.10.2015. In the said application the Petitioner has made a request to regularize lot nos. 83 and 84 depicted in the cadastral plan no. 280006 and specifically stated the Petitioner had been in possession of the two lots since 1994. He further states that it consists of about 12 perches of land. It is also pertinent to note that the learned Counsel appearing for the Petitioner conceded that the said extent was stated without a surveyor surveying the said land but, on the Petitioner's rough understanding of the extent. The said letter P9 is signed by the Petitioner. By his application the Petitioner has made a written representation to State that he had been in possession of lots 83 and 84. It was also brought to my attention a letter written by the Petitioner to the Divisional Secretary, Ampara dated 06.05.2010 whereby he has represented that he is in possession of premises no. 10 which was originally possessed by the Petitioner's uncle and has sought for a long-term permit for the said land. The Petitioner has failed to explain whether the premises bearing no. 10, Siridarmarathna Mawatha in Ampara falls into any of the lots marked in P2. However, it is pertinent to note that the disputed lots are also bordering a Siridarmarathna Mawatha.

Thereafter, the Land Commissioner by his letter dated 30.07.2021 had informed the Divisional Secretary that the Hon. Minister had approved the grant of a long-term lease to the Petitioner (P10). This letter does not depict any extent or the purported lot numbers that are intended to be given to the Petitioner.

By the document marked as P9 through which the Petitioner applied to regularize his illegal encroachment of State land, it is clear that the Petitioner is seeking a permit to lot 83 and lot 84 on the basis of being in long term possession. It is not in dispute that the process of regularizing the unauthorized possession of the Petitioner was based on

the above-mentioned representation. This is more evident as the documents relied on by the Petitioner namely P2, P2a, P7, P8, P9 and P10 are based on the premise that that the Petitioner is in occupation of the lots 83 and 84. In the said letter the Petitioner made representations to affect that he had 12 perches of land. However, as per the submissions of the learned Counsel, it is evident that the said extent had been arrived at without a proper survey plan. It was not in dispute the said extent may not be accurate. At the support stage it was conceded by all parties that the extent of land that consists of lot 83 and 84 amounts only to 7 perches.

It is also pertinent to note that as per the document P36, there is an approval to grant a long-term lease to the Petitioner on the above stated representations. The said approval per se is not before Court. However, the document P36 states that the approval has been granted to an extent of 12 perches. It is further stated that these recommendations for approval have been based not on a survey plan but on a rough tracing drawn on the representations made by the Petitioner. It was further stated that a rough tracing does not reflect accurate information. Hence, it is stated that the actual physical extent of the land occupied by the Petitioner is not 12 perches but only 7 perches. The Petitioner himself in his Petition has pleaded contradictory extents of land that he is alleged to be possessing.

Though the Petitioner pleads that he possesses 12 perches as per the cadastral map no.280006, the amount the Petitioner possesses physically is reflected only as 0.0092 and 0.0078 hectares. In the submissions the learned Counsel conceded that it is about 7 perches. Hence, it was argued that the recommendation given to issue a permit and regularize the possession of the Petitioner is not for an extent of 12 perches as the said 12 perches has been arrived at without a proper survey and had been arrived on by the representation of the Petitioner. It was further submitted that in reality the Petitioner possesses only 7 perches and it was submitted that the State was in the process of granting him a permit for the said extent. Be that as it may, on consideration of all the documents and submissions this Court observes that the Petitioner has made representations to regularize his possession only pertaining to lots 83 and 84. In his representations, he has never made a submission pertaining to lot 82. Hence, even if this Court is to consider that the Petitioner pursuant to documents marked as P2, P2a, P7 to P11 has made a representation and by the conduct of the Respondents, the Respondents have created a legitimate expectation, it is only pertaining to lots 83 and 84. Accordingly, I am of the view that the Petitioner's contention that he has a legitimate expectation of regularizing his unauthorized possession of lots 82, 83 and 84 is not tenable. It is also pertinent to note that as per P11 and P36 when the Divisional Secretary of Ampara had ascertained the lots 83 and 84 do not contain an extent of 12 perches, they had taken steps to amend the said recommendation to read not as 12 perches but as 7 perches. In the submissions, the learned Counsel for the Petitioner submitted that

even at present if lots 82, 83 and 84 are taken as a whole plot of land, it would not exceed more than 10 perches.

The 2nd Respondent's claim

The 2nd Respondent claims that lot no. 82 in cadastral plan no. 280006 was originally given by a permit to his mother on an annual permit. However, it was submitted that the said plot of land had been originally possessed by one W.D. Chithrapali in whose favor an annual permit had been issued dated 18.05.1977. The said lot consists of .0090 hectares. It was further submitted that one B.L.P.U. Silva who is the son of the said permit holder had made a representation and the Land Commissioner General by his letter dated 17.02.2022 with reference no. 4/10/63695 had given approval to issue a long-term lease and the said process to issue a permit is now in progress (P28A). As per this letter it is also observed that the adjoining lot consisting of 7 perches is occupied by the Petitioner. The letter also states that though the Petitioner had claimed that he was occupying 12 perches, physically, he is occupying 7 perches of land, and therefore it has been suggested to issue the Petitioner a permit for the said 7 perches. It appears that thereafter there had been several complaints by the Petitioner contesting the land extent he is occupying and a dispute arose between the Petitioner and the 2nd Respondent pertaining to lot 82.

As per the submissions of the learned Counsel for the Petitioner and 1st Respondent the disputed lot depicted in P2 is lot 82. While the Petitioner claims that lot 82 was possessed by the Petitioner and the 2nd Respondent had in fact threatened him and attempted to obtain possession of the said lot. The 2nd Respondent contends that the said lot had been originally given by an annual permit to his mother and now approval has been given to give it on a long-term lease to the 2nd Respondent. It is his contention that the said lot 82 is encroached by the Petitioner. All parties agreed that the question before this Court only pertains to the disputed lot 82 depicted in P2.

It is also observed by this Court that in P37, the Divisional Secretary has filed an application to eject the Petitioner from part of lot 82 which he is in unauthorized possession. The said case had proceeded to inquiry and the learned Magistrate had issued an eviction Order P38. It was not in dispute that the Petitioner had filed a revision application against the said Order but had later withdrawn. Though the Petitioner submitted that his legal rights have been violated by acts or omissions of 1st and 2nd Respondents, the Petitioner has failed to demonstrate before this Court, what legal rights have been violated and how the said violations have occurred.

The Petitioner is seeking a Writ of Mandamus to compel the 1st and 2nd Respondents to grant a long-term lease or license as stipulated in P10. This Court observes P10 does not depict the lots to be allocated to the Petitioner nor does it give an extent of land to be allocated to the Petitioner. It is also pertinent to note that the learned Senior State Counsel submitted that the process has commenced to regularize the Petitioner's occupation for lots 83 and 84. Hence, this Court observes that there is no refusal by the Respondents to issue a permit and to regularize his unauthorized occupation for the lots of land he is now occupying as depicted in P2a and P9. It is trite law that in the absence of refusal, the Court will not issue a Writ of *Mandamus*.

It was held in *Rasammah & another v. A.P.B. Manmperi* 65 NLR 77 quoting S.A.de Smith

“The general rule is that the applicant before moving for the order, must have addressed a distinct and specific demand or request to the Respondent that he perform the duty imposed upon him, and the Respondent must have unequivocally manifested his refusal to comply.”

It is also observed that though the Petitioner is seeking a Writ of *Mandamus* he has failed to establish any legal right over lot 82 or any legal right that the Respondents other than the 2nd Respondent has denied him, enabling him to seek a Writ of *Mandamus*.

Can the Petitioner prohibit the alienation of lot 82?

It is also observed by this Court that though the Petitioner is seeking a Writ of Prohibition against the 1st and 3rd Respondents from granting the land (lot 82) to the 2nd Respondent, the said prayer does not explicitly set out the portion of land sought to be prohibited from being given to the 2nd Respondent. As enumerated above, the Court has observed that the 1st and 3rd Respondents have given approval to grant lot 82 to the 2nd Respondent. In P2, P2a and P9 the Petitioner has not stated a claim to the said lot. It is common ground that the said land belongs to the State and it is also not disputed that originally the said lot 82 had been given on a permit to the 2nd Respondent's mother. The Court observes that in seeking a Writ of Prohibition the Petitioner has to demonstrate that there is a *prima facie* case of the 1st and 3rd Respondents acting illegally and outside their powers in granting the said lot 82 to the 2nd Respondent. The Petitioner has failed to establish this. The Petitioner has also moved to quash the document marked as P13 by way of a Writ of *Certiorari*. However, the Petitioner failed to demonstrate by issuing P13, how the Additional Land Commissioner General has acted *ultra vires*.

Hence, has failed to demonstrate any material as to how the said Assistant Commissioner's act is bad in law.

Suppression and misrepresentation of facts

The Petitioner though stated that he was in occupation of lots 82, 83 and 84 has failed to give an explanation as to why he omitted lot 82 in his application to regularize his unauthorized possession in P9. He also failed to explain why he did not state a claim to lot 82 when the said tracing was made. In the absence of such explanation and in view of his representation to lots excluding lot 82 and confining only to lots 83 and 84, but subsequently claiming that he was also in possession of lot 82, in the view of this Court the Petitioner has misrepresented facts and thereby, failed to come to Court with clean hands.

Conclusion

In considering the submissions made by the learned Counsel for the Petitioner and the Respondents and giving careful consideration to the documents tendered to this Court, this Court is of the view that the Petitioner has failed to demonstrate a *prima facie* case for the issuance of formal notice on the Respondents. Accordingly, for the aforesaid reasons this Court is not inclined to issue formal notice and proceeds to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal