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, Prohibition and Mandamus.

Abeysuriya Pattabandige Kapila Nishantha Piyumal,
Nimal Priyantha Ranaviru Mawatha,
Hunnadeniya,
Kottagoda.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/151/2022

1. Land Reform Commission,
   P.O. Box 1526,
   Hector Kobbekaduwa Mawatha,
   Colombo 07.

2. Nilantha Wijesinghe,
   Chairman,
   Land Reform Commission,
   P.O. Box 1526,
   No. C 82, Hector Kobbekaduwa Mawatha,
   Colombo 07.

2A. Panduka Keerthinanda,
   Chairman,
   Land Reform Commission,
   P.O. Box 1526,
   Hector Kobbekaduwa Mawatha,
   Colombo 07.

2B. R.K. Nihal,
Chairman,
Land Reform Commission,
P.O. Box 1526,
Hector Kobbekaduwa Mawatha,
Colombo 07.

3. Liyanage Pathmasiri,
Director General,
Land Reform Commission,
P.O. Box 1526,
Hector Kobbekaduwa Mawatha,
Colombo 07.

4. N. Vimalraj,
Zonal Assistant Director – Batticaloa,
Batticaloa District Land Reform Authority,
Kachcheri Batticaloa.

5. K. Karunaharan,
District Secretary Batticaloa,
District Secretary Office,
Batticaloa.

5A. J.J. Muraleetharan,
District Secretary Batticaloa,
District Secretary Office,
Batticaloa.

6. Abeysuriya Pattabandige Keerthi Ananda,
Madumalka Kirimettimulla Therichavila,
Matara.

7. Abeysuriya Pattabandige Ranmale,
Godauda Kottegoda,
Matara.

8. Abeysuriya Pattabandige Sirinimala,
No. 7, Police Quarters,
Nagoda, Galle.

9. J.W. Hapuarachchi,
   P.O. Box No. 1526,
   Hector Kobbekaduwa Mawatha,
   Colombo 7.

10. Kumudhu Dharmapriya,
    P.O. Box No. 1526,
    Hector Kobbekaduwa Mawatha,
    Colombo 7.

11. Nelundhi Ratnayake,
    P.O. Box No. 1526,
    Hector Kobbekaduwa Mawatha,
    Colombo 7.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Dilrukshi Dias Wickramasinghe, P.C. with Dilumi De Alwis instructed by S. W. Amila Kumara for the Petitioner. Harishke Samaranayake instructed by Sakunthala Jayalath for the 1st to 4th and 9th to 11th Respondents. Pulina Jayasuriya, S.C. for the 5th Respondent.
Argued on:	26.05.2025 and 30.06.2025
Written Submissions:	For the Petitioner on 26.09.2025 For the 1st to 4th and 9th to 11th Respondents on 23.09.2025
Decided on:	19.12.2025

Mayadunne Corea J

The Petitioner in this Application sought, *inter alia,* the following reliefs:

> "*c) Call for and issue a mandate in the nature of a writ of Certiorari, quashing any order or decision of the 1st Respondent deeming that the corpus which was decreed to the Petitioner by settlement entered in the*

District Court of Batticaloa case No. 2601/ L, has vested in the 1st Respondent as part of the estate called and known as 'Punnaikudah thottam' estate.

d) *Call for and issue a mandate in the nature of a Writ of Certiorari, quashing the decision of the 1st Respondent, i.e. the Land Reform Commission, and/or any one or more of its officers, to approve and/or implement and/or enforce, the impugned decision to sell and/or lease the corpus under and in terms of Section 22(1)(d) of the Land Reform Law*

e) *Issue a mandate in the nature of a Writ of Certiorari, quashing the order dated 15.05.2018 (P11) made by the 2nd Respondent's predecessor in office directing that the corpus be leased/sold to the 6th to 8th Respondents and/or to any other third party on the premise the same is vested in the 1st Respondent*

f) *Issue a mandate in the nature of a Writ of Certiorari, quashing the decisions contained in the undated report (P28) made by the 9th to 11th Respondents*

g) *Issue a mandate in the nature of a writ of Certiorari, quashing the decision of the 1st Respondent as contained in the document dated 06.09.2023 (P29) that the Deed of Transfer bearing No. 2649 and dated 07.08.1972 made and attested by Kasinather Vaithilingam Margandan Subramaniam of Batticaloa is null and void*

h) *Issue a mandate in the nature of a Writ of Certiorari, quashing any consequential steps taken and/or any subsequent orders made pursuant to the order "P11" of the 1st Respondent and/or 2nd Respondent or his predecessor in office, including the corpus in the estate called and known as 'Punnaikudah thottam' estate, decreed to the Petitioner by settlement entered in the District Court of Batticaloa case No. 2601/ L and resurveyed in Plan No. 1861 dated 01.09.2018 as four lots deemed to be vested in the 1st Respondent*

i) *Call for and issue a mandate in the nature of a Writ of Certiorari, quashing all consequential decisions, steps or measures taken by the 1st and/or 2nd and/or 3rd and/or 4th Respondents and/or their servants and agents or successors in office, in respect of and in pursuance of the order including the corpus in the estate called and known as 'Punnaikudah thottam' estate, decreed to the Petitioner by settlement entered in the District Court of Batticaloa case No. 2601/ L and resurveyed in Plan No. 1861 dated 01.09.2018 as four lots deemed to be vested in the 1st Respondent*

j) *Issue a mandate in the nature of a Writ of Mandamus, compelling the 1st Respondent and/or 2nd and/or 3rd and/or 4th to exclude the corpus decreed*

to the Petitioner by settlement entered in the District Court of Batticaloa case No. 2601/L and resurveyed in Plan No 1861 dated 01.09.2018 as four lots deemed to be vested in the 1st Respondent, from the estate called and known as 'Punnaikudah thottam' estate, subject to such terms and conditions if any, as to Your Lordships' Court shall seem fit

k) Issue a mandate in the nature of a Writ of Prohibition, prohibiting the 1st and/or 2nd and/or 3rd and/or 4th Respondents and/or their servants and agents or successors in office from selling and/or leasing and/or alienating the corpus to the 6th, 7th and 8th Respondents and/or their servant agents or assign and/or to any other third party

l) Issue a mandate in the nature of a Writ of Prohibition, prohibiting the 1st and/or 2nd and/or 3rd and/or 4th Respondents and/or their servants and agents or successors in office from taking any steps pursuant to the impugned orders made on 15.05.2018 (P11) and/or the undated report (P28) and/or on 06.09.2023 (P29) and thereby including the corpus in the estate called and known as 'Punnaikudah thottam' estate, decreed to the Petitioner by settlement entered in the District Court of Batticaloa case No. 2601/ L and resurveyed in Plan No 1861 dated 01.09.2018 as four lots deemed to be vested in the 1st Respondent

m) Strictly without any form of prejudice whatsoever to the foregoing, issue a Writ of Prohibition, preventing 1st and/or 2nd and/or 3rd and/or 4th Respondents and/or their servants and agents or successors in office from restraining the Petitioner and/or his servants and agents from carrying out any activity on the corpus

n) Issue a mandate in the nature of a Writ of Prohibition, prohibiting the 1st and/or 2nd and/or 3rd and/or 4th Respondents and/or their servants and agents or successors in office from proceeding with any acts pursuant to the impugned order made on 15.05.2018 vide (P11) and/or the undated report (P28) and/or on 06.09.2023 (P29), including the corpus in the estate called and known as 'Punnaikudah thottam' estate, decreed to the Petitioner by settlement entered in the District Court of Batticaloa case No. 2601/ L and resurveyed in Plan No 1861 dated 01.09.2018 as four lots deemed to be vested in the 1st Respondent, subject to such terms and conditions if any, as to Your Lordships' Court shall seem fit

o) Without prejudice to the foregoing, issue a Writ of Prohibition, restraining the 1st and/or 2nd and/or 3rd and/or 4th Respondents and/or their servants and agents or successors in office from taking any steps and proceeding in any manner whatsoever, against the Petitioner in pursuance of impugned order made on 15.05.2018 (P11) and/or the undated report (P28) and/or on 06.09.2023 (P29) including the corpus in the estate called and known as 'Punnaikudah thottam' estate, decreed to

the Petitioner by settlement entered in the District Court of Batticaloa case No. 2601/ L and resurveyed in Plan No 1861 dated 01.09.2018 as four lots deemed to be vested in the 1st Respondent"

The facts of the case briefly are as follows. A land called 'Punnaikudah thottam' in Batticaloa was vested with the Land Reform Commission following the enactment of the Land Reform Law. It is alleged that, in 1972, upon a settlement arrived at in the District Court of Batticaloa in case bearing no. 2601/L, one Sarvanamuttu Kumaraswamy Thirumal executed a deed of transfer in favor of the Petitioner to transfer a portion of the Punnaikudah thottam land. In 1979, the District Court of Batticaloa, in the case bearing no. 3447/L, affirmed the title of the Petitioner as opposed to the defendants in the said District Court case.

Nevertheless, in or about 1985/1986, the Petitioner's family was forced to leave Batticaloa following the outbreak of an armed conflict. The Petitioner states that the 30-year armed conflict prevented him from possessing or accessing the land. The Petitioner, thereafter in 2014/2015 visited the land, and in 2020 the Petitioner took steps to reconstruct an 'ice wadiya' that is alleged to have previously existed on the land. Subsequently, the 6th Respondent had made a complaint to the police stating that the 6th, 7th and 8th Respondents are claiming the land on the basis of their father's rights. The 4th Respondent directed the parties to meet the 1st Respondent in order to resolve the dispute. However, the 1st Respondent too, claimed ownership of the land in terms of the Land Reform Law. Further, the 1st Respondent had informed the District Land Reform Authority of Batticaloa to lease or sell the portion of land on the basis that the land had been vested in the Authority, which was then sought to be given to the 6th, 7th and 8th Respondents (P11).

The inquiring committee, comprising of the 9th to 11th Respondents, conducted an inquiry with the presence of all parties to the dispute and came to the conclusion that the transfer of ownership made by the deed of transfer cannot be considered a valid transfer (P28). Subsequently, the 1st Respondent stated that the deed of transfer had been executed during a period prohibited by law and that the execution of the deed had not been reported to the Commission as required by section 13(1) of the Land Reform Law. Thus, the 1st Respondent decided that the deed of transfer was null and void. Hence, this Writ Application.

The Petitioner's contention

The Petitioner challenges the acts of the 1st Respondent on the following grounds:

- The deed of transfer was executed following a settlement arrived at in the District Court of Batticaloa and the title to the land was acquired by the Petitioner in accordance with that settlement.
- The Land Reform Law has no effect on the Petitioner as ownership of the land was acquired by a settlement in a District Court case.
- The District Court of Batticaloa affirmed the Petitioner's title as opposed to the other defendants through whom the 6th to 8th Respondents are claiming title to the land.
- The *corpus* was transferred to the Petitioner prior to the Land Reform Law being enacted.
- Therefore, acts of the 1st Respondent are illegal, arbitrary, capricious, disproportionate, unreasonable, unfair, contrary to the principles of natural justice and in violation of the legitimate expectations of the Petitioner.
- The acts of the 1st Respondent are contrary to the Land Reform Law.

The Respondents' contention

The Respondents raised the following objections:

- The deed of transfer falls within the prohibitive period referred to in section 13 of the Land Reform Law.
- The declarant who made the statutory declaration as the owner of the land had not disclosed any alienation that fell within the period stipulated under section 13(1) of the Land Reform Law.
- Accordingly, the land is vested with the 1st Respondent.

Analysis

I will consider the Petitioner's contention with the Respondents' objections. If I am to summarize the Petitioner's contention, the pivotal question to be answered is, has the *corpus* disputed been vested with the Land Reform Commission (herein after referred to as "LRC")? Secondly, does the Petitioner have title to the land?

If the LRC has title to the land, then the Petitioner's claim has to fail and *vice versa*. If the Petitioner indeed has the title to the *corpus* the acts of the LRC are *ultra vires* the

powers granted under the Land Reform Law No. 1 of 1972 (as amended) (herein referred to as "Law").

In the written submissions the Petitioner has abandoned the above grounds and has taken a position that the 1st Respondent had not made a declaration to state that the said deed marked as P2 is a nullity pursuant to section 13(2) of the Law and hence, the said deed is valid.

Has the *corpus* been vested with the LRC?

It is common ground that the original owner of the land had been Sarvanamuttu Kumaraswamy Thirumal. The extent of the land is 429 Acres 1 Rood and 12 Perches. While the said owner was in possession of the land, the Land Reform Law came into operation in 1972, whereby, the owners of agricultural land had to possess their lands within the prescribed ceiling. Accordingly, under section 3 of the said Law, a landowner who possessed paddy land exclusively was subject to a ceiling of 24 Acres and a land which was not exclusively of paddy land was subject to a ceiling of 50 Acres. In the instant case, the owner of the *corpus* is the owner of a land in excess of the ceiling. Accordingly, every landowner who possessed in excess of the ceiling pursuant to section 18 made a statutory declaration declaring the lands so held.

Accordingly, the owner of the *corpus* made a statutory declaration declaring the *corpus* under section 18 of the Law. The said declaration has been marked as 1R1. Perusing the said document, I find the owner has declared an extent of 429 Acres, 1 Rood and 12 Perches and the name of the land is given as 'Punnaikudah thottam'. The declarant has declared that out of the said land 1 Acre is occupied with the owner's residential house and another half an Acre comprises of labour lines. He has further declared that he had come to possess the land by virtue of deed no. 2733 on 21.09.1944. The said declaration is dated 09.11.1972. By operation of law, immediately after the declaration, the owner becomes a statutory lessee of the said land, subject to the statutory determination which specifies the portion or portions of the land that the declarant would be allowed to retain. The said statutory declaration is also published in the Government Gazette. Upon the statutory determination being published under section 20 of the Law, the owner would cease to have any right, title or interest in the agricultural land specified in the statutory determination, from the date of such publication. Accordingly, the statutory determination was published on 06.07.1979 under Extraordinary Gazette no. 43/20 whereby the declarant was allowed to retain 25 Acres 2 Roods as depicted in Lot 1 of plan no. mada 335. Section 18 and section 21 of the LRC Law states as follows:

"18.

(1) The Commission may, by Order published in the Gazette and in such other form as it may deem desirable to give publicity to such Order, direct that every person who becomes the statutory lessee of any agricultural land shall, within a month from the date of the publication of the Order, or of becoming a statutory lessee under this Law make a declaration, in this Law referred to as a "statutory declaration", in the prescribed form of the total extent of the agricultural land so held by him on such lease.

"*21.*

Every statutory determination published in the Gazette under section 19 shall inter alia:

(a) specify the extent of the agricultural land permitted by the Commission to be retained by the statutory lessee;

(b) make reference to a survey plan made-

(i) by the Surveyor-General or under his direction; or

(ii) by a surveyor licensed under the Surveyors Ordinance and approved by an officer in the Survey Department holding a post not below that of Superintendent of Surveys, of the agricultural land permitted to be retained by the lessees under paragraph (a); and

(c) *specify any servitude or encumbrance attaching to such agricultural land*."

Section 19 of the Law lays down the provisions applicable when the Commission receives a statutory declaration if made under section 18. Section 19 states as follows:

"19.

(1) The following provisions shall apply on the receipt by the Commission of a statutory declaration made under section 18:-

(a) The Commission shall, as soon as practicable, make a determination, in this Law referred to as a "statutory determination ", specifying the portion or portions of the agricultural land owned by the statutory lessee which he shall be allowed to retain. In making such determination the Commission shall take into consideration the preference or preferences, if any, expressed by such lessee in the declaration as to the portion or portions of such land that he may be allowed to retain.

(b) The Commission shall publish the statutory determination in the Gazette and shall also send a copy thereof to such lessee by registered letter through the post. Such determination shall be final and

conclusive, and shall not be called in question in any court, whether by way of writ or otherwise."

Thereafter, in 1974, the LRC had issued the certificate of accepting possession (1R3). Hence, from 1974 the statutory lease has come to an end and the possession of the land in extent of 404 Acres 1 Rood and 12 Perches has been vested with the LRC. It is pertinent to note that the declarant had declared the entire land, which he became the owner pursuant to deed no. 2733 in its entirety and the Court further notes that, with the declaration, the land in its entirety has been vested with the LRC from the year 1972, except for the land depicted in 1R2, which consists of the statutory determination in the extent of 25 Acres.

It is also pertinent to note that pursuant to section 13, if there has been any alienation of land by a person who owned agricultural land in excess of the ceiling should report the same to the LRC in the prescribed form within 3 months from the date of commencement of the Law.

It is clear that upon the receipt of the said notice by the declarant, if the LRC finds that the alienation of the agricultural land on or after 29.05.1971 has been done to defeat the purpose of the law, the Commission has been vested with the power to make an order declaring that such alienation is null and void. It is pertinent to note that for the LRC to come to such a conclusion, it is a prerequisite that the alienor or the declarant of the statutory declaration complies with section 13(1) and gives notice to the LRC of such alienation. It is clear upon reading the said Law that if the alienor or declarant does not comply with section 13(1), then section 13(2) would not come into effect. In the instant case before me, it is the contention of the 1st Respondent that the declarant has not reported of any alienation of the land declared.

Keeping it as it may, now I will consider the argument of the Petitioner.

Petitioner's claim to part of the *corpus*

It is the contention of the Petitioner that there had been Court proceedings in a land case bearing number 2601/L in the District Court of Batticaloa and the parties have entered into a settlement in the said case whereby upon a deposit of Rs. 2000 credited to the case, the said Thirumal was to transfer 1 Rood of the *corpus* to the Petitioner. It was the Petitioner's contention that the said money had been deposited and the said Thirumal had executed a deed of transfer bearing no. 2649 dated 07.08.1972 in favor of the

Petitioner. Accordingly, the Petitioner tendered the deed marked P2 and claimed title to 1 Rood from the land vested with the LRC. It is the contention of the Petitioner that the said deed had been executed before the Law came into operation. Hence, the said deed is valid and the land depicted in Schedule "B" of the said deed could not have vested with the LRC.

On a careful consideration of this argument, I observe the deed marked as P2 had been executed on 07.08.1972 by the parties signing the deed. Though the deed mentions the case number 2601/L in the District Court of Batticaloa, the Petitioner was unable to tender any material to substantiate the existence of the said case. In the absence of such this Court is not in a position to verify the parties to the said case nor the circumstances the Petitioner pleads the settlement was entered, and the execution of the said deed. It is also observed that in the attestation, the notary had stated that no consideration had passed between the parties in the notary's presence. I also observe that, though the Petitioner claims that he owns the portion depicted in Schedule "B" which says the said portion is divided, it is a larger portion of land consisting of 429 Acres 1 Rood and 12 Perches. However, there is no plan referred to in the Schedule to identify the exact portion depicted in the said Schedule "B". Hence, in the circumstances, it appears that though the said deed describes the said portion of the land as divided, it is not demarcated as the boundaries depicted in the Schedule are not depicted in a plan. The Petitioner failed to explain, in the absence of such, how exactly he can claim as the land depicted in the Schedule "B" from the larger land.

Further, this Court also observes that subsequently the Petitioner pleads that there had been another litigation between the Petitioner and his father's brother and sister, one Abeysuriya Pattabandige Mathius Silva and Abeysuriya Pattabandige Seminona. The said Abeysuriya Pattabandige Mathius Silva is the father of the 6th ,7th and 8th Respondents whereby the said father of the above-mentioned Respondents had claimed title, and, to resolve the dispute the Petitioner's mother on behalf of the Petitioner had instituted a District Court action as the Petitioner was a minor. In the said circumstances it appears when the deed P2 was executed the Petitioner had to be a minor as the said deed was executed prior to the District Court case bearing no 3447/L. However, the deed P2 does not bear the beneficiary as a minor.

It is also pertinent to note that the signatures had been placed on the deed on 07.08.1972. However, curiously, the date of attestation is 07.09.1972 which is after one month from the date parties have signed the deed. It is also pertinent to note that the Law came into operation on 26.08.1972.

The Petitioner addressing this issue in his written submission for the first time has taken a position that this was a mistake on the part of the notary. It is observed that this position was not tendered even at the argument stage. Further, the Petitioner pleads that the negligence of the notary should not affect the parties and that the deed satisfied section 2 of the Prevention of Frauds Ordinance. It is pertinent to note that if it was a mistake, the Petitioner has waited for more than fifty years from the execution of the deed to realize it as a mistake, as no rectification had taken place. Further, even at the argument stage, the Petitioner has failed to give this explanation which makes me come to the conclusion that this is an afterthought explanation. Though the Petitioner submits that the deed satisfies section 2 of the Prevention of Frauds Ordinance the issue would be the attestation is subsequent to the Law coming in to operation. Then if this Court is to assume that it was negligence or mistake of the notary pertaining to the date of attestation, still the Petitioner admits that the deed was executed the day it was signed. Still the deed was signed falls within the prohibitive period. Leaving it as it may, as per section 13 of the Law, a prohibitive period is created. It was argued by the Respondents that the period where deed P2 was executed directly falls within the said prohibitive period. Before I advert to the said contention, let me reproduce section 13(1) and (2) to get a better understanding of the said contention.

> *"Section 13*
>
> > *(1) Where on or after May 29, 1971, any person who owned agricultural land in excess of the ceiling has alienated any agricultural land to any other person, such alienor shall, within three months of the date of commencement of this Law, report such alienation to the Commission in the prescribed form.*
> >
> > *(2) Where the Commission finds that any alienation of agricultural land on or after May 29, 1971, has been calculated to defeat the purposes of this Law the Commission may by order made under its hand declare that such alienation is null and void. Every such order shall be sent by registered post to the alienor and alienee of the agricultural land to which that order relates".*

It is clear in the instant case the deed has been executed after 29.05.1971. Hence, it is within the prohibitive period. Accordingly, there should be compliance with section 13 of the Law. As stated above in this judgment, the declarant of the statutory declaration has not declared any alienation of the land declared in compliance with section 13(1). Instead, he has made the declaration 1R1 on 09.11.1972, whereby he has declared the entire land as land in excess. The declaration clearly states the extent as 429 Acres 1 Rood 12 Perches. Hence, if the declarant had executed the deed P2 under whatever the circumstances, he should have declared the said alienation pursuant to section 13, which has not happened. Further, if he has executed the deed in good faith other than to defeat the intention of the Law, then his declaration cannot have the extent of the land he

declared in virtue of deed no. 2733 dated 21.09.1944, whereby he obtained ownership for the same extent. Thus, by the said declaration and by operation of law, the land in its entirety becomes vested in the LRC, which includes the portion the Petitioner claims.

It is also pertinent to note that by virtue of section 6 of the Law, subsequent to the statutory declaration, the land becomes vested with the LRC without any encumbrances. Section 6 of the Law states as follows,

> *"Where any agricultural land is vested in the Commission under this Law, such vesting shall have the effect of giving the land in the Commission absolute title to such land as from the date of such vesting, and free from all encumbrances."*

Hence, in the absence of the Petitioner declaring any alienation under section 13, land that is declared is vested with no encumbrances. Thus, by operation of law, whatever the rights and titles the Petitioner claims to derive through the deed marked as P2 ceases to have any effect.

It is also observed that pursuant to the statutory declaration and the statutory determination, the notice under section 29 had been published in the Extraordinary Gazette no. 365/11 dated 04.09.1985 calling for claims for compensation. It appears that even at this stage, the Petitioner has failed to submit his claim, as submitted only the declarant of 1R1 had been paid the compensation for the land vested with the LRC.

The Petitioner in the written submissions contended that he would confine his argument to the non-compliance of section 13(2) by the 1st Respondent. However, this Court would like to reiterate that the alienor of the land, Thirumal, has not reported to the Commission that he had alienated a portion of land to the Petitioner. If an alienor reports to the LRC, the Commission is bound to afford a fair hearing to ascertain if the land has been alienated to defeat the purpose of the Law. The duty is on the alienor to report alienation of the land to the LRC.

In my view, if the declarant has not declared that he has alienated his land during the prohibitive period, the LRC cannot inquire into the matter, as they are unaware of any alienation. If I am to accept the argument of the Petitioner, the LRC would have to engage in a voyage of discovery to find persons who have purchased lands during the prohibitive period to ascertain whether they have purchased the land to defeat the purpose of the Law. The intention of the Legislature in imposing section 13(2) is to ascertain if the declarant of the land is defeating the purpose of the Law by alienating land within the prohibitive period.

This sentiment was expressed by His Lordship Justice Rajaratnam in the Supreme Court case of ***Amaradasa v. Land Reform Commission*** **(1977) 79(1) NLR 505**

> *"Section 13 (2) of the Land Reforms Law however does not empower the Commission to declare all alienations after May 29, 1971, as null and void. It contemplates only such alienations as are "calculated to defeat the purposes of the Law", so that I cannot agree with the proposition that in regard to this law the words "calculated to defeat" means likely or reasonably likely to defeat and not necessarily intended or designed to defeat the law."*

When the declarant had not reported to the Commission that there was an alienation on whatsoever grounds of the land pursuant to section 13(1) but made a declaration, without disclosing any alienation by operation of law the entirety of the declared land becomes vested in the LRC. Moreover, if the declarant had noticed the Commission, it would be the declarant or alienor who is afforded a right to be heard at the inquiry.

When considering the scheme of the Land Reform Law, especially section 13 (2) of the Law, as I have stated above, it is specifically to ascertain whether a declarant by alienating a part of the land had attempted to defeat the purpose of the law during a prohibitive period. Thus, once it is declared by the alienor that he has alienated the land, then under 13(2) there should be an inquiry to ascertain the intention of the alienation. Hence, the alienor has the right to be heard to justify his alienation. In this instance, I observe that the declarant has not declared any alienation. Hence, there is no necessity for 13(2) inquiries to commence. If I am to make an observation, once the alienor reports the alienation and an inquiry commences, then to ascertain the objective of the alienation, the Commission may hear the alienee, who may be the purchaser. However, that situation would not arise in the case before me as there was no reporting at all.

Therefore, the Petitioner's argument that he should have been afforded a hearing under section 13(2) cannot be maintained. It is also observed that even the Petitioner has failed to demonstrate that at least he had made a claim and invited the 1st Respondent to act pursuant to provisions under section 13(2), as no such material was tendered to Court with the Petition. In the absence of a notice under section 13(1), the 1st Respondent would be unaware of any alienation and hence the need to make a declaration that P2 is null and void in this instant case would not arise, as at the time of vesting, the existence of P2 could not have been within the knowledge of the 1st Respondent. For the reasons I have stated above, this argument has to fail.

As stated above in this judgment, it was also argued that the Petitioner had filed an action against the 6th - 8th Respondents, pertaining to the land depicted in P2 in the District Court of Batticaloa bearing case no. 3447L, and in the said action, the judgment had been in favor of the Petitioner. The said proceedings were marked P4(a). However, the Court finds that in the said proceedings, the LRC has not been made a party. Hence, the judgment binds only the parties to the case and not the LRC. Thus, in my view, the said judgment will not have an effect on the 1st Respondent pertaining to the title of the 1st Respondent and the Petitioner. It is also pertinent to note that as per the above reasoning, the Petitioner's argument that the land could not have been part and parcel of the land vested with the 1st Respondent pursuant to the declaration of Thirumal is not tenable, as the said Thirumal had himself declared the larger land that consists the lot the petitioner claims as a land in excess. In the circumstances, the Petitioner's claim to possessing the title independent of the 1st Respondent has to fail.

Further, as per paragraph 60 of the Petition, the Petitioner pleads that he himself has been an allottee of the land parcel marked as Lot 56 in the extent of 20 Perches by the 1st Respondent. This is pursuant to the 1st Respondent taking steps to distribute the land vested within it. As per the said paragraph 60, the Petitioner pleads as follows:

> *"(a) that after the war the 1st Respondent was distributing land that was vested with it from 'Punnaikudah thottam' estate, and has sought to survey the said estate;*
>
> *(b) the Petitioner too applied to obtain a parcel of land from the LRC and the LRC has agree to allocate a separate 20 purchase of land;*
>
> *(c) the 1st Respondent has sought to survey the said estate and the said estate was surveyed under survey plan bearing No. E/1369/2016 made by T. Elavarasu, licensed surveyor dated 10.10.2016.*
>
> *(d) the Petitioner states that as evident from the said survey plan and the attached tenement list, the said survey has been carried out to effect a sale of the said lands under section 22(1)(c) of the Land Reform Law;*
>
> *(e) the Petitioner has also been identified as an Allottee of the land parcel marked as Lot 56 in extent of 20 perches."*

By the said pleadings the Petitioner himself concedes that the land Punnaikudah thottam is vested with the 1st Respondent and the Petitioner has himself sought for a parcel of land to be obtained from the 1st Respondent from the said Punnaikudah thottam estate. It appears that while the Petitioner claims independent title for a portion of the said Punnaikudah thottam land and contends that the said portion of the land could not have been vested with the 1st Respondent. He himself has decided to apply and obtain a portion of the land from the 1st Respondent on the basis that it is vested with the 1st

Respondent. In my view, by this action the Petitioner is approbating and reprobating the rights of the first Respondent over the said land.

It is trite law that a party cannot approbate and reprobate for his gain. The Supreme Court in ***Ranasinghe v. Premadharma*** **[1985] 1 SLR 63 held**,

> *"The rationale of the above principle appears to be that a defendant cannot approbate and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides."*

Petitioner's representation to the 1st Respondent

The Petitioner submits that when he learned that the land called Punnaikudah thottam is going to be leased out to the 6th, 7th and 8th Respondents, in 2020 he had taken steps to complain to the 1st Respondent pertaining to his rights over the land. The 1st Respondent had replied to the Petitioner and sought him to send his grievance. Accordingly, a separate inquiry had commenced and the LRC had come to the conclusion which is marked as P29, whereby the LRC has concluded that the purported deed the Petitioner relies on to establish his title was executed within the prohibitive period and since the declarant of the statutory declaration had not declared the alienation under section 13 of the Law, the inquiring committee had come to the conclusion that the said deed possessed by the Petitioner is null and void by the operation of the Law.

Unreasonableness

Petitioner at the hearing submitted that P11 and P29 violate the principles of Wednesbury unreasonableness. In any event, when the alienor does not declare that he has alienated the land within the prohibitive period and as in this event when the alienee has not made an application stating that he obtained the title to the land within the prohibitive period, as I have explained, the 1st Respondent is unaware of any alienation of land and in the absence of the alienee making an application, the need to hold an inquiry under 13(2) cannot be envisaged. However, it is also pertinent to note that after nearly 5 decades of the deed P2 being executed, the 1st Respondent upon being informed of the execution of deed P2 by the alienee, still has given a hearing where parties have

made their representations and the conclusion of the inquiry arrived at the validity of P2. The conclusion the said committee had arrived at is reflected in P29. In the circumstances, though the Petitioner impugned P29 to be violative of the principles of reasonableness, the Petitioner has failed to demonstrate and explain the said allegation. The Petitioner has failed to demonstrate that with the evidence given that the inquiring committee's decision is unreasonable. In my view, with the material that has been marked as evidence in P29 and after considering the law pertaining to section 13, I cannot agree with the contention that the decision impugned in P29 violates the Wednesbury rules of unreasonableness.

Let me now consider the objections raised by the Respondents.

The Petitioner's claim to the land is in dispute

As stated above in this judgment the Petitioner claims that he owns the land by virtue of deed P2. However, as I have observed the lot the Petitioner alleges was transferred to him is depicted in Schedule B of the deed P2. Schedule B contains a small portion of a larger extent of land called Punnaikudah thottam comprising of 429 Acres 1 Rood and 25 Perches. Schedule B describing the boundaries of the Petitioner's land only describes it as "*bounded on the EAST by Punnaikudah Road and on the NORTH SOUTH and WEST by the remaining portion of the said Punnaikudah Estate*" and the extent is given as 1 Rood. The said Schedule does not refer to any plan. In the absence of such plan, identifying the exact portion the Petitioner claims from the larger land has to be done through evidence and valid survey plans. Especially, in view of the fact that the 1st Respondent claims that the land in its entirety has been vested with the 1st Respondent with the exclusion of the portion in the statutory determination. Even if I am to consider that the land the Petitioner is claiming through P2 is within the statutory determination, that has to be established by the Petitioner, as the burden of proof in a Writ application lies with the Petitioner.

In coming to the above conclusion, the Court has considered the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** **SC Appeal 10/2009 decided on 15.12.2014**, where it was held that, *"The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies".*

In this instance the Petitioner has failed to discharge this burden. Accordingly, the Petitioner's entire case is based on disputed facts which have to be established through

evidence. It is trite law that when the material facts are in dispute the Writ Court will be reluctant to exercise its discretionary jurisdiction. Hence, the objection on disputed facts has to succeed. This is also relevant as based on Gazette No. 365/11 dated 04.09.1985 the 1st Respondent had made a plan which is marked as 1R5 and 1R6, that depicts the land vested with the 1st Respondent. I observe that the Petitioner has not challenged the Gazette notification. In any event the said Gazette notification was published in 1985 and it is belated to challenge the said Gazette notification.

It is also further observed that by the Gazette marked as 1R2, the statutory determination published depicts the portion of land that the declarant Thirumal has been able to retain. Thus, by operation of law the rest of the land declared is vested with the 1st Respondent. This statutory declaration was published in 1979. The Petitioner has failed to challenge any of these documents.

In paragraph 24 of the Counter Affidavit the Petitioner submits that the documents marked as 1R1, 1R2, 1R3, 1R4, 1R5 and 1R6 have been issued subsequent to the deed marked as P2. This pleading should militate against the Petitioner's claim as if the Petitioner states that P2 being executed in 1972, the *corpus* described in Schedule B could not have been vested with the LRC. The declarant himself had declared the land in excess to include the extent the Petitioner claims through P2, by 1R1. This creates a serious doubt as to the genuineness of the Petitioner's deed especially in view of the absence of material to support, namely the case record which would demonstrate the circumstances P2 was executed. Further, the documents 1R2, 1R3 and 1R4 clearly creates a doubt on the genuineness of the Petitioner's so-called deed P2.

Necessary parties

The Petitioner's main contention is that he has derived title from the original owner who was the declarant pertaining to the land in dispute by the name of Sarvanamuttu Kumaraswamy Thirumal. It is the Petitioner's contention that he had obtained title from the said Thirumal by virtue of a settlement entered between him and the said Thirumal in a District Court action and pursuant to that said settlement, Thirumal transferring 1 Rood of the said land to the Petitioner. As observed by this Court, the case record of the said settlement is not tendered and the Court has no opportunity to peruse the said case record. What has been tendered is only a deed marked P2 which is executed by the said Thirumal. However, as I have observed above in this judgment, the said Thirumal in a statutory declaration made to the 1st Respondent has declared the land owned by him in its entirety, including the land that is supposed to have been allegedly alienated by P2. However, the Petitioner has not made the said Thirumal a party to this Application nor

has the Petitioner informed the Court as to why he has decided not to name the said Thirumal as a party to this case. In adjudicating the dispute, as correctly submitted by the Counsel for the Respondent, the presence of Thirumal is necessary. In the circumstances, I am inclined to agree that for the proper adjudication and for establishment of the Petitioner's case, the said Thirumal becomes a necessary party and the Petitioner has failed to bring in necessary parties.

Material facts are in dispute

As stated above, the Petitioner is claiming his title by virtue of the deed marked as P2. However, as I have observed elsewhere in the Schedule to P2, the boundaries for North, South and West for the land claimed by the Petitioner are not demarcated other than to state that it is the remaining portion of the larger land. Hence, the boundaries for the so-called land are in dispute.

In the absence of proper demarcation, the Petitioner would first have to establish the correct boundary of his land out of the larger land to stake any claim. Hence, the portion the Petitioner owns becomes a disputed fact.

It is also observed, that while the Petitioner claims that 1 Rood of the larger land that was declared to the 1st Respondent by the above stated Thirumal belongs to him by virtue of P2, the fact remains that the said Thirumal in his statutory declaration of 1R1 has declared the land in its entirety to the 1st Respondent and has further not notified the 1st Respondent about the alienation of any part of the land. Hence, in view of the conflicting situation taken by the said Thirumal the declarant of 1R1 and the alleged vendor of P2, the execution and whether any title was intended to be given to the Petitioner becomes a disputed fact.

It is also observed that, in view of the date of execution of the deed and the date of attestation which is subsequent to one month and especially in view of the document marked as P2 not bearing a legible land registry seal to demonstrate when it was registered creates a doubt as to the date of the execution of the deed. In the submissions, the Counsel for the Respondents made a comment on the date of signing of the deed and the date of attestation as the date of signing falls within the prohibitive period and the date of executing is subsequent to the Law coming into operation. The Petitioner has failed to attach an affidavit by the attesting notary explaining this discrepancy nor has informed this Court of the reason for his inability to tender such an affidavit. Hence, it was the submission of the Respondent's Counsel that the date the deed was signed

and the date it was executed is a disputed fact. Further, by taking a new position in the written submissions after the conclusion of the arguments and without any supportive averments in the pleadings pertaining to the date namely that it was the negligence of the notary too militates against the Petitioner.

Though not pleaded, the Petitioner was heard to argue that section 13 of the Law should not apply to this case. It is pertinent to note that even if I am to agree that the Petitioner has derived title from the declarant Thirumal, still the Petitioner can derive only the title that was with Thirumal. Further, the said declarant, Thirumal, had not challenged the vesting of the land under the Law by the Respondent. In fact, he has declared the entire land as land in excess and also obtained compensation from the 1st Respondent subsequent to the land being vested with the 1st Respondent and subsequent to the statutory determination. Hence, it is not open to the Petitioner now to contest the vesting of the land when the original declarant did not contest the vesting of the said land. However, this position would not arise in any event when the deed P2 is written within the prohibitive period pursuant to the Law.

It is also pertinent to note that even if we are to consider the Petitioner's argument that if the Petitioner had obtained title by the deed marked as P2 and therefore, the said land should not have been vested with the 1st Respondent, The Petitioner should then have challenged the vesting in the year 1985 and state his claim when the Gazette marked 1R5 was published, which he has failed to do. The Petitioner has failed to explain why he has not complied with the requirements of the said Gazette. Hence, in my view the Petitioner after sleeping over his rights since 1985 now cannot stake a claim to a land so vested which is nearly after more than few decades of the publication of 1R5. Especially, the Petitioner should have staked a claim to the 1st Respondent whose head office is situated in Colombo. Hence, even if we are to consider that the land could have been in an area where there was an armed conflict in the year 1985, it does not deter the Petitioner from acting pursuant to section 13 and 1R5 and making his claim to the 1st Respondent, whose head office is situated in Colombo.

Let me now consider the Petitioner's prayers.

The prayers

The Petitioner in prayer (c) is seeking for a Writ of Certiorari to quash any order or decision of the 1st Respondent deeming that that the *corpus* which was decreed to the Petitioner by the Batticaloa District Court case vested with the 1st Respondent has to

fail for the above stated reasons. Also, I observe that the Petitioner for whatever the reason has failed to tender the decree which he relies on to substantiate his prayer.

By prayer (d) the Petitioner is seeking a Writ of Certiorari to quash the decision of the 1st Respondent to approve to sell and/or lease the *corpus* under and in terms of section 21(d). This prayer has to fail as a land that is vested with the LRC can be disposed under the said Law and in this instance the Petitioner has failed to impugn the vesting of the land as bad in law. Further, the Petitioner himself has made an application to obtain an allotment of the said land under the section. Hence, the Petitioner cannot blow hot and cold. Further, the said decision to sell has not been tendered to this Court.

Prayer (e) has to fail as the Petitioner has failed to establish that the land stated in the said document has not vested with the 1st Respondent according to the law. The Petitioner has failed to establish any illegality or *ultra vires* of powers to quash the document marked P28 as the said Committee was formed on the appeal of the Petitioner himself and the Petitioner has submitted himself to the said committee of inquiry. Further, the Petitioner has failed to establish any illegality contained in the document marked as P28.

In view of my findings on the deed P2 and the circumstances of its execution and especially in view of the fact that the said deed has been executed during the prohibitive period and in the absence of the notice of the execution of the deed by the declarant, the Petitioner's contention of illegality contained in the decision marked P19 has to fail.

The Petitioner's prayers (h) and (i) have to fail as they are vague and further, the Petitioner has failed to establish any illegality pertaining to the P11 and for the above stated reasons the Petitioners prayers (j), (k), (i), (m) and (n) have to fail.

It is pertinent to note that to seek a Writ of prohibition it is imperative that the Petitioner establishes illegality of the acts contemplated in the said prayers which the Petitioner in the instant case has failed to establish.

Conclusion

Accordingly for the above stated reasons in my view, the Petitioner has failed to establish any grounds to obtain the reliefs prayed for. Hence, I refuse to grant the reliefs prayed for and proceed to dismiss this Application. Parties to bear their own costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal