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 of the Republic of Sri Lanka for an Orders in the nature of *Writs of Certiorari and Prohibition.*

1. Gamage Don Kamala Melo,
   No: 14, St. Martin Road, Munnakkaraya,
   Negombo.

2. Burgerge Christopher Canisius Peiris,
   No: 175/4, St. Nicholas Mawatha,
   Munnakkaraya, Negombo.

CA Writ Application No: 101/2022 — Petitioners

Vs.

1. Divisional Secretary
   Divisional Secretaries Office,
   Negombo.

2. Hon. Attorney General
   Attorney General Department,
   Colombo 12.

Respondents

Before : Sobhitha Rajakaruna, J.

Dhammika Ganepola, J.

Counsel	:	Dr. Sunil Coorey with Sudharshani Coorey for the Petitioners. Medhaka Fernando SC for the Respondents.
Argued On	:	11.03.2024
Written Submission tendered On	:	Petitioners : 04.04.2024 Respondents : 18.04.2024
Decided On	:	2024.05.31

Dhammika Ganepola J,

The Petitioners in the instance application seek a quashing order to quash the quit notices issued by the 1st Respondent on the Petitioners under Section 3 of the State Land (Recovery of Possession) Act No.07 of 1979 marked X-1a, X-1b, and X-1c. The said quit notice X-1a refers to Lot 1 in Plan No. ගම්/මිග/00/188 while said X-1b refers to Lots 2,3,5 and 6 of the said Plan, and X-1c refers to Lots 4, 8 and 9 of the said Plan. The 1st Petitioner has been served with the above three quit notices whereas the quit notice X-1c has been jointly issued on both 1st and 2nd Petitioners.

The Position of the Petitioners

The Petitioners claim that pursuant to the judgement and interlocutory decree issued in the partition action bearing No. 1870/P instituted in the District Court of Negombo to Partition the land called Kongahawattha alias Kongahawaththa and Ambagahawaththa situated at Munnakkarai within the limits of the Municipal Council of the Negombo. The 10th and the 11th Defendants of the said action were vested with the rights over Lot 9 of the Preliminary Plan No.1271 made by Licensed

Surveyor R.I. Fernando and another undivided 38 perches while the 8th Defendant of said partition case was held entitled to 34 Perches. The balance of the subject matter was left unallotted. Neither the State nor the Attorney General had been a party to said partition action. At a later stage of the said partition case 1st Petitioner was substituted in the place of her parents who were the 10th and 11th Defendants of the said partition case and also subsequently substituted as the Plaintiff. The 2nd Petitioner claims to be the purchaser of the interests from 4 persons who had been decided as co-owners of the above disputed land.

During the pendency of the said partition case No.1870/P, there had been another land action bearing Case No.5291/L before the District Court Negombo in which the Divisional Secretary and the Attorney General were parties to such action. The said case had been instituted by the 1st Petitioner along with her siblings. The Divisional Secretary and the Attorney General In the said case have taken the stand that the land in question is State land and it does not belong to the Plaintiffs of the said action. However, the Petitioners state that the said land case No.5291/L had been withdrawn on legal advice as the above-mentioned partition case was concluded giving rights over the subject land to the 1st Petitioner. As the matters remained such, the Petitioners claim that they have been served the impugned quit notices by the Divisional Secretory without granting any hearing to the Parties. The Petitioners claim that in view of the above conduct of the Divisional Secretary, the Rules of Natural Justice have been violated.

The Position of the Respondents

The Respondents submit that the quit notices subjected to this Application relate to several potions of State land identified as Lots 01,02,03,04,05,06,08,09 and 10 of the Advanced Tracing Plan No. ගම්/මීග /00/188 (X2) which forms a part of the reclaimed portion of the Negombo Lagoon. As per the reference made in the said Plan X2, the Negombo Town Survey No.71, Sheet 59 prepared by the Survey Department of Ceylon(1R1), Plan ගම්/විවිධ/84/44 prepared by the Survey Department of Sri Lanka (1R2), and Plan ගම්/මීග/94/350 prepared by the Survey Department of Sri Lanka (1R3) also conclusively show that the above Lots of the Plan X2 are parts of a reclaimed portion of the Negombo Lagoon. Thus, based on the provisions of Sections

70 and 76 of the State Lands Ordinance, the 1st Respondent has concluded that the above-mentioned Lots are State Lands.

The 1st Respondent also asserts that the said Lots form a part of the reclaimed portion of the Negombo Lagoon on the same basis that in the above-mentioned land action No.5291/L before the District Court Negombo. Although the 1st Respondent was not a party to the above-mentioned partition action bearing No.1870/P, the tenement list of Preliminary Plan 1271 provides that Lot 9 of the corpus forms a part of the Negombo Lagoon. Accordingly, the 1st Respondent claims that he has acted reasonably and rationally in arriving at a conclusion that the subject matter of the instant Application is a portion of State land and the impugned quit notices were issued on such grounds.

Submissions

The Petitioners submit that the land in issue was a part of the corpus of the partition action bearing No.1870/P and allotted to the predecessors of the Petitioners by virtue of the final decree issued in said action. Hence, it was submitted that the District Court has decided that the land in issue belongs to private parties and not to the State. It is important to note that the State was not a party to above mentioned partition action. The decree in a partition action is considered as a decree in rem and accordingly, the 1st Respondent is also bound by the decree in the above partition decree even though the State was not a party to such partition action. However, neither such interlocutory decree nor the final decree has been set aside or interfered with, by way of an appeal or revision. Hence, it is contended that the 1st Respondent has no power or authority to make a finding contrary to that of the said partition decree in issuing the relevant quit notices under the State Land (Recovery of Possession) Act. The Petitioners further submit that, in any event, a fair hearing should be given to all relevant parties in order to decide whether the land in issue is State land or not for the purpose of issuance of a quit notice, however, the 1st Respondent has failed to do so. Accordingly, the Petitioners' argument is twofold.

Effectiveness of a partition decree against State lands

Section 48 of the Partition Law No.21 of 1977 speaks about the finality of the interlocutory and final decree of partition action against all persons whomsoever, whatever right, title, or interest they have, or claim to have, to or in the land to which such decree relates. The Petitioners argue that when a land has been declared to be privately owned property, by virtue of a decree in a partition action, and thus, the 1st Respondent has no legal power or authority to come to a contrary finding.

Although the writ jurisdiction of this Court does not extend to vindicate the parties' title relating to the disputed land, as of the circumstances, this Court has to consider the effect of the partition decree in respect of the State lands. It is well-settled law that the State which is not a party to the Partition action is not bound by a final decree entered in a Partition decree. Section 3 of the Interpretation No.21 of 1901 provided that the Crown is not bound by any statute where it is not mentioned. Section 3 of the Interpretation Ordinance is reproduced as follows,

> *"No enactment shall in any manner affect the right of the State unless it is therein expressly stated, or unless it appears by necessary implication that the State is bound thereby."*

The Partition Law No. 21 of 1977 came into effect in 1977 after the Interpretation Ordinance came into operation in 1901. Accordingly, the State is not bound by a decree issued under Partition Law. This position has been considered and adopted by our courts for a long period of time in a series of determinations.

In ***Hamid at al v. Special Officer 21 NLR 353,*** *it was held, that "A decree in a partition case to which the Crown is not a party does not bind the Crown."* In the appeal filed against said decision, the Privy Council *(****Hamid at al vs Special Officer 23 NLR 150)*** dismissed the appeal, observing, that,

> *"Against all persons whomsoever. It is unnecessary to consider whether this section establishes title to the land as against strangers, or only title to the shares as against interested parties; it is sufficient to say there is nothing in the Ordinance to bind the Crown, and it would, indeed, be a remarkable thing if a partition decree effected between two or three parties, it might be by arrangement among themselves, should have the effect of depriving the*

Crown of the important rights conferred under the Ordinance (Waste Land Ordinance Section 24) in question."

In ***Fernando v. Senerat 33 NLR 346***, holding that a path used from time immemorial by the public is a public road, the Court held as follows:

"Section 9 of the Partition Ordinance makes the final decree entered in a proceeding under the Partition Ordinance "good and conclusive against all persons whomsoever whatever right or title they have or claim to have in the said property". These words appear to me to contemplate the rights of persons and not such rights as those of the public in a highway which are not the subject of individual personal ownership. (Section 9 of the Partition Ordinance had the same effect as Section 48 of Partition Law in respect of the finality of a partition decree).

It is well-settled law that the Crown is not bound by a final decree entered in a proceeding under the Partition Ordinance, and it was conceded that, if a highway lay over land which belonged to the Crown, it would remain unaffected by such a decree. It is not possible to say in this case to whom the land belonged when this path came into existence.

It is sufficient to say that the State has rights of ownership in public roads and such rights are not affected by a decree for partition to which the Crown is not a party."

It is noteworthy that the land in question which is referred to in the impugned quit notices is a reclaimed portion of the Negombo Lagoon.

In ***Ibrahim v. Kaluappu, 1917 4 CWR 181 De Sampayo J. held as follows:***

"There is no doubt, as contended on his behalf, that the crown was not bound by the partition decree, and consequently, if the crown had good title at the time of the sale to the defendant, the Plaintiff's title, founded upon the partition decree, must yield to the crown title acquired by the defendant."

In the circumstances, this Court is of the view that the respective decrees of Partition which the Petitioners claim title do not have the effect of final and conclusive against the State. Accordingly, I am of the view that the Petitioners' first argument fails.

In the above context, this Court needs to consider the Petitioners' second argument, whether a fair hearing has been given to the Petitioners before the issuance of the impugned quit notices by the 1st Respondent.

The necessity of granting a hearing by the competent authority prior to forming his opinion under Section 3 of the State Lands (Recovery of Possession) Act

It is claimed that the impugned quit notices were issued under Section 3 of the above Act. The said Section reads as follows.

"3(1) Where a competent authority is of the opinion

(a) that any land is State land; and

(b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his Dependents, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.

(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1)."

Section 3(1A) specifically provides that individuals are not entitled for any hearing or for any opportunity to make any representations before the competent authority prior to such competent authority issuing any quit notice. Accordingly, as per the above Section 3 (1A), no legal requirement has been imposed upon the competent authority to conduct an inquiry regarding the title of the person who is in possession of the land in issue prior to forming his opinion.

This position has been constantly supported in several decisions by this Court. In *Mohammed Mohideen Mohamed Rizvi v. Land Commissioner and Others, CA/WRIT/ Application No. 61/2017, decided on 19910.201,* it was held that the Competent Authority is not required in terms of the Act to carry out an inquiry on the title, as long as he has cogent material to form an opinion under Subsection (1).

In Farook v. Gunawardena, Government Agent, Ampara [1980] 2 SLR 243, it was held that;

> "*When the Legislature has made an express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process described in the Act itself, it is not for this Court to grant relief on the ground that the petitioner has not been heard. Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land."*

Although the legal position is that the individuals are not entitled to a hearing or the opportunity to make any representation concerning a notice issued under subsection 3 outlined in Section 3(1A) is further supported by Section 12 of the Act, which offers a mechanism for individuals who have been served with a quit notice to assert their title in a District Court Action. Accordingly, I take the view that the Petitioners' second argument is also not tenable.

Further, I also take the view that in the event where the law specifically provides that the Petitioners are not entitled for a hearing prior to the issuance of a quit notice, any claim by the Petitioners that the competent authority has acted in violation of the principles of natural justice by failing to grant such hearing, does not constitute a ground for judicial review.

Opinion of the Competent Authority

However, it's significant to note that Sections 3(1A) and Section 12 do not exempt the competent authority from their obligation to act reasonably and within the four corners of the law when forming an opinion under Section 3 of the act. The Competent Authority's opinion must be formed on a rational basis depending on the facts and circumstances of each case. In the case of ***Weeresinghe v. Ceylon Petroleum Corporation (writ) no. 298/2018***, decided on 30.06.2020, his Lordship Justice Obeyesekere has observed that the legislature could not have intended for the Competent Authority's opinion to be baseless.

> *"it is the view of this court that the legislature could not have intended for the competent authority's opinion, which can have far-reaching consequences on one's proprietary rights, to be baseless. The Competent Authority's opinion must therefore be formed on a rational basis. What constitutes a rational basis would depend on the facts and circumstances of each case"*
>
> *Therefore, when considering the legality and /or the reasonableness of the opinion of the Competent Authority in the course of an application filed under Article 140 of the Constitution, this Court will require the Competent Authority to present the material on which he formed the opinion that the State is lawfully entitled to the said land so that this Court can consider whether the Competent Authority has acted legally and/or reasonably. This Court must state that in doing so, it is not the function of this Court to consider the title of the State, or for that matter, the title of the person sought to be ejected, to the said land. That is the function of the District Court under Section 12 of the Act or in an Actio Res Vindicatio. This Court wishes to state however that merely because a person who is to be ejected or against whom an order for ejectment has been made, has a remedy by way of Section 12, does not absolve the Competent Authority from his obligation to act reasonably and legally when forming the all important opinion in terms of Section 3.*
>
> *The principle then is that while no investigation or inquiry is needed to form the opinion that the State is lawfully entitled to the land, such opinion must satisfy the Wednesbury test of reasonableness. What then is the 'reasonable basis' on which the 2nd Respondent formed the opinion that the 1st Respondent is lawfully entitled to the land referred to in the notice marked 'P8'? "*

In the instance Application, the 1st Respondent has formed his opinion that the impugned plots of land were State land mainly based on the Advance Tracing Plan No. ගම්/මීගඟ/00/188 (X2) and the Negombo Town Survey No.71, Sheet 59 prepared by the Survey Department of Ceylon(1R1), Plan ගම්/විවිධ/84/44 prepared by the Survey Department of Sri Lanka (1R2), and Plan ගම්/මීගඟ/94/350 prepared by the Survey Department of Sri Lanka (1R3). As the Respondents submit, a note which appears in the Advance Tracing Plan X2 specifies that the land depicted in the X2 is part of the reclaimed Negombo Lagoon as depicted in the aforesaid Plans R1, R2 and R3. Accordingly, the documents prepared by the Superintendent of Surveyor (Gampaha) identify the impugned lots referred to in the quit notices marked X-1a, X-1b, and X-1c as part of a reclaimed portion of the Negombo Lagoon. As per Section 21 of the Survey Act No.17 of 2002, a cadastral map or plan prepared by the Surveyor General shall be taken to be prima facia evidence. The said Section 21 reads;

> *21. Any cadastral map, plan or any other plan or map prepared in accordance with the provisions of this act or any written law purported to be signed by the surveyor general or officer acting on his behalf and offered in evidence in any suit shall be received in evidence and shall be taken to be prima facie proof of the facts stated therein and shall not be necessary to prove that it was in fact signed by the surveyor General or an officer acting on his behalf, nor that it was made by his authority, nor that the same is accurate until the evidence to the contrary shall have first been given.*

The Advance Tracing Plan X2, Plan 1R2 and Plan 1R3 which have been prepared by the Surveyor General. The above documents establish that the lands depicted in the quit notices are part of the reclaimed Negombo Lagoon. The 1st Respondent submitted that he has arrived at a conclusion that the impugned plots of lands were State lands based on the above circumstances and the definition of a '*lake*', '*public lake'*, and '*private lake*' given in Section 70 and the provisions in Section 76 of the State Lands Ordinance. I have no reason to reject the said contention of the 1st Respondent who has adequately identified that the lands depicted in the quit notices as State lands.

In the given circumstances, this court is of the view that the opinion formed by the Competent Authority, 1st Respondent that the lands subjected to these quit notices belonged to the State and such decisions have been made on a rational basis.

Accordingly, the Competent Authority appears to have acted reasonably and lawfully upon the materials made available to him.

conclusion

For the reasons stated above, I am of the view that the Petitioners are not entitled to any relief as prayed for in the prayer of the Petition. Application is dismissed without cost.

Application is dismissed.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal