

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

In the matter of an application for
mandates in the nature of writs of
Certiorari and Prohibition under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

Case No: CA (Writ)/124/2018

1. Maturata Plantations Limited,
No. 19,
Dudley Senanayake Mawatha,
Colombo 08.
2. Kamal Punchihewa
Group Chief Executive Officer,
Maturata Plantations Limited,
No. 19,
Dudley Senanayake Mawatha,
Colombo 08.
3. Tharanga De Silva
Superintendent,
Hayes Estate,
Ullinduwawa.

PETITIONERS

-Vs-

1. Land Reform Commission
No. 475,
Kaduwela Road,

Battaramulla.

2. Sampath Subasinghe Arachchi
Chairman,
Land Reform Commission,
No. 475,
Kaduwela Road,
Battaramulla.
- 2A. Sirimewan Dias
Chairman,
Land Reform Commission,
No. 475,
Kaduwela Road,
Battaramulla.
- 2B. Nilantha Wijesinghe
Chairman,
Land Reform Commission,
No. 475,
Kaduwela Road,
Battaramulla.
- 2C. R.K. Nihal
Chairman,
Land Reform Commission,
No. 475,
Kaduwela Road,
Battaramulla.
3. Sri Lanka State Plantations Corporation
No. 11,
Duke Street,
Colombo 01.

4. A. Wijerathne
Divisional Secretary,
Kolonna Pradeshiya Sabha,
Kolonna.

- 4A. S. T. Priyanka Weerasingha
Divisional Secretary,
Kolonna Divisional Secretariat,
Kolonna.

5. Hon. Gayantha Karunathilaka
Minister of Lands,
Ministry of Lands,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

- 5A. Hon. S.M. Chandrasena
Minister of Lands,
Ministry of Lands,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

- 5B. Hon. Harin Fernando
Minister of Lands,
Ministry of Lands,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

- 5C. Hon. K. D. Lal Kantha

Minister of Agriculture, Livestock, Lands
and Irrigation,
Ministry of Agriculture, Livestock, Lands
and Irrigation,
Mihikatha Madura,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

RESPONDENTS

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

Counsel : Saliya Peiris, PC with Pasindu Silva and
Andrea for the Petitioner.
Thisath Wijegunawardane, PC with Gihan
Liyanage for the 1st & 2nd Respondents.
Ganga Wakishtaarachchi, DSG for the
State.

Argued on : 04.03.2026

Written Submissions : Petitioners : 31.03.2026
tendered on 1st and 2C Respondents : 02.04.2026

Decided on : 06.05.2026

Dhammika Ganepola, J.

In the present application, the Petitioners, inter alia, impugn the quit Notices marked P8(a), (b) and (c), issued by the 2nd Respondent to evict the 1st Petitioner and to recover possession of the land in dispute. The Hayes Estate, the land in dispute, was originally vested in the 1st Respondent, Land Reform Commission (hereinafter sometimes referred to as "LRC"), and was transferred to the 3rd Respondent, Sri Lanka State Plantations Corporation (hereinafter sometimes referred to as "SPC"), by an Order of the Minister published in the Government Gazette bearing No. 815/10 dated 21.04.1994, marked P2. Thereafter, the Hayes Estate had been leased out, and possession had been handed over to the 1st Petitioner, Maturata Plantation Limited (hereinafter sometimes referred to as Petitioner Company), by an Indenture of Lease No. 169 dated 27.11.1995, marked P3(a). The lease had been subsequently amended by Amendment of Lease No. 1564 dated 11.12.1995, marked P3(b). The Petitioner Company states that it was empowered by the Power of Attorney bearing No. 170 dated 27.11.1995, marked P4, to manage and operate the business of the Estate on behalf of the SPC.

The Petitioners state that the LRC, by its letter dated 21.05.2010 marked P5, has informed the SPC with a copy to the 1st Petitioner, that:

- a. The said land had been irregularly vested with the 3rd Respondent by the Extraordinary Gazette No.181/12 dated 27.02.1982 and No. 815/10 dated 21.04.1994;
- b. The said lands are still barren lands, and SPC had violated the objectives of vesting the said lands to SPC;
- c. Hence, action will be taken in terms of section 27(a)(4) of the Land Reform Law in the future;
- d. Further, in terms of Section 44 of the said Law, the LRC will take steps as the absolute owner of the respective lands.

However, thereafter, the Minister of Lands, by the Extraordinary Gazette No.1695/16 dated 01.03.2011, had amended the said Order P2 issued in terms of Section 27A of the Land Reform Law, revoking the original vesting of certain portions of land. The Petitioners state that the aforesaid vesting has no force or avail in law. Further, the said vesting is being

challenged before this Court in a separate application bearing No.CA Writ/125/2018.

Nevertheless, three Quit Notices, marked P8(a), (b), and (c), have been sent by the 2nd Respondent to the Petitioners' Company under the State Land (Recovery of Possession) Act No. 7 of 1979. The Quit Notices cover different portions of the lands comprising a total of 363 Acres, 3 Roods, and 13 Perches of the Hayes Estate. The Petitioners contend that the lands referred to in the impugned Quit Notices have never been surveyed and properly identified, and therefore, it is not practical to comply with the impugned Quit Notices in relation to the said lands. The Petitioners further contend that the move to acquire or take possession of the lands referred to in the said Quit Notices is arbitrary, unlawful, unfair, irrational, unreasonable, and *ultra vires*. Accordingly, the Petitioners, *inter alia*, seek, in the nature of the Writs of Certiorari, to quash the impugned Quit Notices P8(a), (b), and (c), and a Writ of Prohibition restraining the Respondents from issuing permits, executing any Deeds, or taking any action under the State Land (Recovery of Possession) Act relating to the lands described in the impugned Quit Notices.

Although the 1st and 2nd Respondents filed their Statements of Objections, it is observed that the averments contained therein do not correspond to the Petition in this application. However, the Respondents allege that the Petitioners have suppressed the facts that the absolute ownership of the subject lands is vested with the 1st Respondent Commission and the legal effect of Section 27A (1) and 27(4). Further, the Respondents claim that the subject lands were not utilized productively as per the directions given in order to attain the objectives of the Land Reform Law. It is further claimed that the Gazette Notification P2 is subject to Sections 22, 23, and 42H of the Land Reform Law and could be revoked on the grounds of violating statutory terms other than consideration. Additionally, it was revealed that the Gazette Notification P2 has been revoked by Gazette Notification No.1695/16 dated 01.03.2011 issued by the Minister acting in terms of Section 27A (4) of the Land Reform Law. The said Gazette Notification is the subject matter

of the application bearing No.CA Writ/125/2018 and is challenged thereby.

The 3rd Respondent states that the lands in issue were originally vested with the LRC and subsequently were vested with the SPC by virtue of Gazette Notification P2 and categorically denies that the 1st Respondent LRC has any title to the lands in issue. The management of the lands, which were vested with the SPC by Gazette P2, including the lands in issue, was handed over to the Petitioner Company upon the Indenture of Lease P3(a) and P3(b) entered into between the Petitioner and the 3rd Respondent. The 3rd Respondent further states that the said lease agreement is still valid in law.

When this matter was taken up for argument, the parties agreed and sought permission of the Court to dispose of the application by way of written submission. Upon such, parties filed written submissions.

It is on common ground that the Hayes Estate was vested with the 3rd Respondent by Gazette Notification P2. However, the 1st and 2nd Respondents claim that the said Gazette Notification P2 has been revoked by the Gazette Notification No. 1695/16 dated 01.03.2011(which has been marked as P8 in the CA/Writ/125/2018) on the grounds of non-compliance with terms and conditions relating to provision of consideration for vesting such portion of land of the said Vesting Order P2 and the Hayes Estate was re-vested with the 1st Respondent.

Nevertheless, the Petitioners argue that the said Revesting Order reflected in Gazette Notification No. 1695/16 dated 01.03.2011 is *void ab initio*, including subsequent transactions thereto, i.e. Quit Notices P3(a),(b), and (c). The Petitioners submit that no hearing was given prior to the gazetting of the above-mentioned Revesting Order. It should be noted that the Petitioners have neither sought any relief challenging the said Revesting Order under the instant application, nor have they collaterally challenge the same therein. Moreover, the Petitioners in their written submissions state that when the purported Revesting Order by Gazette Notification No. 1695/16 dated 01.03.2011 was issued, the

Petitioner Company received legal advice not to challenge it due to the prevailing political situation of the country at the time.

Accordingly, the inference this Court could arrive at is that, the Petitioners have not taken any steps to get the above-mentioned Revesting Order cancelled. As per the Gazette Notification No.1695/16 dated 01.03.2011, said Revesting Order has been issued under Section 27A(4) of the Land Reform Law, amending the previous Orders made under Section 27A(2) of the Land Reform Law. The 1st and 2nd Respondents contend that the Gazette Notification No.1695/16 was lawfully made. Said Revesting Order specifies that,

“ BY VIRTUE of the powers vested in me by Sub-section 4 of section 27A of the Land Reform Law No. 1 of 1972, as amended by the Land Reform (Special Positions) Act No.39 of 1981, read with paragraph (2) of Article 44 of the Constitution of the Democratic Socialist Republic of Sri Lanka, I, Mahindra Rajapaksa, President, do hereby -

(a)amend the Orders made under subsection 2 of section 27A of the aforesaid Act, and published in Gazette Extraordinary No.181/12 of February 27, 1982 and No. 815/10 of April 21, 1994 relating to the lands called and known as Ensal Watta, Hanford Watta, Haize Watta and Panikanda Watta morefully described in the 1st Schedule to this Order and which had vested in the Sri Lanka State Plantation Corporation, established by the Sri Lanka State Plantation Corporation Act No.4 of 1958 by revoking on grounds of non-compliance with such terms or conditions relating to consideration for the vesting in such Corporation, such portion of the said Orders as relates to the extent of land specified in the Second Schedule here to which are part of the lands called and known as Ensal Watta, Hanford Watta, Hanford Watta, Haize Watta and Panilkanda Watta;

(b)State that upon revocation, such extents of lands shall re-vest in the Land Reform Commission.”

Section 27A(4) of the Land Reform Law referred to in the above Gazette Notification is 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 Petitioner states that the LRC was not the absolute owner of the land and the ownership has been transferred to the SPC by an Order of the Minister published in the Gazette Notification P2. Therefore, the Minister of Land is estopped from making such an Order divesting a portion of the Hayes Estate. However, the authority given to the Minister under Section 27A(4) of the Act to reverse land vested cannot be challenged. Section 27(4) of the Land Reform Law clearly grants the Minister the powers to divest the land 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*. Consequently, as long as such terms and conditions are not complied with, no absolute right in relation to the land shall transfer to the SPC. Hence, this Court is not inclined to accept the position of the Petitioner that the LRC was not the absolute owner of the land and the ownership has been transferred to the SPC by an Order of the Minister published in the Gazette Notification P2.

Then the question arises as to whether the Divesting Order under Gazette Notification No. 1695/16 dated 01.03.2011 is *void ab initio* or as to where there arises a need for the Court to issue an Order nullifying such Order. The Petitioners argue that the purported divesting is *ab initio* void, and consequently, subsequent transactions made by the LRC based on the aforesaid divesting are void *ab initio*. The Petitioners rely on the statement made by Lord Denning in **Mac Foy v. United Africa Company (1961) 3All ER 1169** at p.1172, which is as follows:

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

Nevertheless, it is important to consider the judgement in **Kelani Valley Plantations PLC (formerly Kelani Valley Plantations Limited) v. Chairman of the National Housing Development Authority and Others S.C. Appeal No. 70/2015, decided on 03.04.2024**, where the Court of Appeal considered the effect of the above statement made by Lord Denning in the Sri Lankan context. His Lordship Justice Janak De Silva (concurring with their Lordships Justice Vijith K. Malalgoda, P.C. and Justice Arjuna Obeyesekere) in the said case has referred to the cases of Rajakulendran v. Wijesundera (1 Srisantha's Law Reports 164 at 168) and Bandahamy v. Senanayake (62 NLR 313) in which cases, the statement referred above made by Lord Denning in *Macfoy v. United Africa Company Limited* [(1961) 3 All E.R. 1169 at 1172], had been adopted. Accordingly, his Lordship Justice Janak De Silva has observed that:

"Nevertheless, the position in English law is different. This was examined by a divisional bench of 5 judges in the Colombo Port City Economic Commission Bill Special Determination [Decisions of the Supreme Court on Parliamentary Bills, 2021, Vol. XVI, page 23 at 33] where it was held:

*"However, the Court observes that Clive Lewis, *Judicial Remedies in Public Law, 5th ed., South Asian Edition (2017)*, in discussing the meaning of null and void in *Administrative Law* states (page 185):*

"The primary concern here is the meaning of nullity or voidness solely in the context of the remedies granted by courts. The concept of nullity has been used to solve other problems arising in administrative law. For remedial purposes, the orthodox view is that an ultra vires act is regarded as void and a nullity. An act by a public authority which lacks legal authority is regarded as incapable of

producing legal effects. Once its illegality is established, and if the courts are prepared to grant a remedy, the act will be regarded as void from its inception and retrospectively nullified in the sense that it will be regarded as incapable of ever having produced legal effects." (emphasis added)

.....In fact, Wade and Forsyth (supra, page 305) state that the statement of Lord Denning in MacFoy v. United Africa Co. Ltd.(supra) is not the correct position of the law. Wade and Forsyth, Administrative Law, (supra, page 304), after restating the above statement of Lord Radcliffe, state as follows:

"This must be equally true even where the brand of invalidity is plainly visible, for there also the order can effectively be resisted in law only by obtaining the decision of the court. The necessity of recourse to the court has been pointed out repeatedly in the House of Lords and Privy Council, without distinction between patent and latent defects. Lord Diplock spoke still more clearly [F Hoffmann-La Roche & Co. v. Secretary of State for Trade and Industry (1975) AC 295 at 366], saying that;

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

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

In view of the rationale upheld in the above case, I opine that the purported divesting does not become *ab initio* void automatically. Hence,

I am not inclined to accept the stance of the Petitioner that the purported divesting Order published in the Gazette Notification No. 1695/16 dated 01.03.2011, is *ab initio* void. The validity of such Divesting Order will stand until set aside by a competent court.

This Court is not inclined to accept any of the grounds upon which the Petitioner challenges the impugned Divesting Order. Thus, the said Divesting Order shall stand valid before law. Consequently, the Hayse Estate, as detailed in the said Divesting Order, including the lands identified in Quit Notices P8(a), (b), and (c), which are part of the said Hayse Estate, has also unequivocally reverted to the 1st Respondent Commission. Impugned Quit Notices P8(a), (b) and (c) are dated 20.07.2017 had been issued pursuant to the publication of the above Divesting Order. Once the impugned land is vested with the 1st Respondent, it is entitled to take the necessary steps under the State Land (Recovery of Possession) Act No. 7 of 1979 to recover possession of the impugned land.

In the circumstances and the reasons given above, I am of the view that the Petitioners have failed to satisfy any legal ground to exercise the writ jurisdiction of this Court in respect of the impugned Quit Notices P8(a), (b), and (c). Accordingly, the application of the Petitioners is dismissed without cost.

Application dismissed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal