

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

Jayawardhana Rathnayake Arachige
Gamini Darmashri,

“Rukshana Hotel and Bakers”,

Petrol Shed Junction,

Pasikuda Road, Valachchenai.

CA (Writ) App. No. 741/2023

PETITIONER

Vs.

1. Divisional Secretary,
Divisional Secretariat, Koralei Pattu,
Valachchenai.
2. Additional Divisional Secretary,
Divisional Secretariat, Koralei Pattu,
Valachchenai.
3. District Secretary,
District Secretariat,
Batticaloa.

4. The General Manager of Railways,
Sri Lanka Railways,
Colombo 10.
5. The Secretary,
Ministry of Transport and Highways,
7th Floor, Sethsiripaya, Stage II,
Battaramulla.
6. Commissioner General of Lands,
VWX8+VPM,
Sri Jayawardenepura Kotte.
7. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Thilini Vidanagamage instructed by Chamali Ranatunga for the Petitioner.

Pulina Jayasuriya, S.C. for the Respondents.

Argument on: 04.03.2026

Delivered on: 03.06.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner asserts that he is carrying on a business of a boutique and a cafe in the land in suit (hereinafter referred to as the “premises”), which is the premises identified as Lot No. 1 of the plan prepared by the Survey General Plan bearing No. © @/ 2/23 dated 24.05.2025, which is marked as **P1** annexed to the Petition and also part of the Magistrate record of Valachchenai bearing case No. 40543/ MISC/22 instituted against the Petitioner by the 2nd Respondent under the State Lands (Recovery of Possession) Act, No. 7 of 1979 (as amended) (hereinafter referred to as “the Act”). The said Magistrate’s Court case has been instituted by the 2nd Respondent in terms of the Act, seeking the ejectment of the Petitioner; the 2nd Respondent has instituted the said proceedings upon issuing notice, by the document marked as **P4** annexed to the Petition, which the Petitioner challenges in this Application. In addition to that, the Petitioner further challenges the entirety of the Magistrate’s Court proceedings initiated on the application made by the 2nd Respondent marked as **P17(b)**.

The 1st Respondent is the Divisional Secretary of Valachchenai, while the 2nd Respondent is the Additional Divisional Secretary of the same Division. The 3rd Respondent is the District Secretary, under whose supervision the 1st and 2nd Respondents serves.

The 5th Respondent is the Secretary to the line ministry of the Railway Department, and the 6th Respondent is the Commissioner General of Lands, while the 7th Respondent is the Honourable Attorney General.

After supporting this Application, notice has been issued on the Respondents; though they were all represented by the Honourable Attorney General, and several dates had been obtained according to the records amounting to ten, they have not filed any Objections. Therefore, the matter was fixed for Arguments without any objections.

However, at the hearing following arguments were advanced by the Counsel on either side; hence, this judgement.

Arguments

Ms. Vidanagamage argues that the land belongs to the Railway as per the documents marked as **P23** and **P23(b)**. In addition to that, even the documents marked **P2** and **P22** confirm the same.

Therefore, Ms. Vidanagamage argued that if the land belongs to the Railway authorities, the person who can issue the quit notice is the General Manager of Railways according to the Recoveries of State Lands Possession Act, and not the Divisional Secretary. Accordingly, the 1st Respondent or the 2nd Respondent cannot issue such notice. Therefore, the quit notice marked as **P4** is bad in law.

However, on the other hand, Mr. Jayasuriya argues that the Petitioner is guilty of laches, as the writ notice had been given in 2022 and, without challenging it, they waited until the Magistrate's Court proceedings were filed after the relevant period contained in **P4**. In addition to that he argued

that the Petitioner has acquiesced by appearing before the Court and moving for time to file his objections.

Further, he argued that there is uncertainty in the Petitioner's case in the way it has been formulated. However, he concedes that Lot No. 22 of **P22** is the same lot as identified as Lot No. 1 of **P23** and **P23(b)**, and that the same lot is depicted as Lot No. 1 in **P2(a)** and also as Lot No. 22 of **P27(a)**.

The Petitioner's position

The land in suit had already been identified as Lot No. 1 of the plan bearing No. A996 marked as **P2**, dated as far back as 21/02/1953. The Petitioner asserts that the same parcels of land is depicted as Lot No. 1 in **P1** and Lot No. 1 of **P2** overlaps. The Petitioner further asserts that the Petitioner had taken the said land on lease from the Railway Department, whose competent authority is the 4th Respondent.

The Petitioner marked the document issued by the Railway Department as **P3(a)** to elucidate that the land belongs to the Railway Department, which is the letter dated 29.02.1972. Subsequent to receiving **P4** and **P5**, he has made an application under the Right to Information Act to obtain further confirmation that the land belongs to the Railway Department, which is marked as **P3(b)**.

The Petitioner asserts that the Petitioner received a document dated 18.03.2022, which is in Tamil; since he was not conversant in Tamil language, he did not respond to the said letter (**P4**). The Petitioner further asserts that, later, in May 2022, he received another document from the Magistrate's Court of Valachchenai, which was also completely in Tamil, which is marked as **P5**.

However, since it says that it is from the Court, out of respect to the courts, he has consulted an Attorney-at-Law to ascertain exactly what it was.

He asserted that to his surprise, he came to know from the said Attorney-at-Law, that proceedings have been instituted against him under ‘the Act’ by the 1st Respondent to evict him from the premises under the 4th Respondent, where he now carries on the said business of his livelihood; therefore, it is the Petitioner’s position that the 1st and 2nd Respondents cannot institute proceedings against the Petitioner in the Magistrate’s Court of Valachchenai, to evict him.

After the Petitioner came to know, by **P5**, that action had been instituted by the 2nd Respondent to evict the Petitioner from the premises, he made an application to obtain a formal lease form from the 4th Respondent, which is marked as **P6**.

Accordingly, the 4th Respondent’s office informed the Petitioner, by the document dated 19.02.2022, that after exactly ascertaining the position, the 4th Respondent would inform the Petitioner about the true position of the land. The said letter is marked as **P7**.

Thereafter, the 6th Respondent, by letter dated 03.10.2022, directed the 1st Respondent to send a detailed report regarding the land in order to exactly ascertain whether it is State land or not. The said letter is marked as **P9** and a similar letter is marked as **P11**, and the copies thereof had also been sent to the Petitioner.

Subsequently, there had been inter-departmental correspondence between the officials of the Railway Department and the Land Commissioner’s Department; hence, some of the said correspondence are marked as **P10**, **P11**, **P12**, and **P13**.

Thereafter, the Petitioner made an application to the Magistrate's Court for a translation of the entire case record, and the said application is marked as **P14**. After receiving the translation, the Petitioner filed a Statement of Objections along with the relevant documents, and the said statement is marked as **P15**. Thereafter, the Petitioner made certain applications under the Right to Information Act to the 4th Respondent. The said application is marked as **P16**, and the replies thereto are marked as **P16(a)** and **P16(b)**.

Further, the translation of the case record of the case bearing case No. 40543/ MISC/22 Magistrate record of Valachchenai is annexed to the Petition marked as **P17(a)** to **P17(d)**. The Petitioner is challenging, by this application, the documents marked as **P17(d)**, which form part of the record marked as **X**. Since the document **P17(d)** is the formal application made to the Magistrate's Court in terms of the Recovery of Possession Act, No. 7 of 1979.

Moreover, the Petitioner is also challenging the quit notice marked as **P4**. The Petitioner had further marked, together with a separate affidavit, an additional set of documents marked as **P23** to **P28**, without any objection being raised by the Respondents. I will refer to them when necessary in the course of this judgement.

In view of those submissions and matters complained of and asserted by the Petitioner, though there is no dispute, certain matters have arisen for the consideration of this Court. I will summarize them as follows:

Firstly, whether the land belongs in fact to the Railway Department as asserted by the Petitioner. Secondly, if the answer is in the affirmative to the first question, whether the 1st and 2nd Respondents are empowered to take action under the State Lands (Recovery of Possession) Act. Thirdly, if the answer is in the negative, whether the proceedings under the State Lands (Recovery of Possession) Act initiated and instituted by the 1st and 2nd Respondents are *ultra vires*. Fourthly, in those circumstances, whether the Petitioner is entitled to obtain the writs as prayed for.

Whether the land belongs to the Railway Department or to the State

It is quite clear that the land in suit (premises) had been identified on several plans. The very first plan is **P23**, which was prepared in 1922; thereafter, **P22** was prepared in 1938; thereafter, the plan prepared in 1952 marked as **P2(a)**; and finally, the same land is depicted as Lot No. 1 in the latest plan is marked as **P1**, which was prepared in 2023. For more than a century, the same land has been identified as land belonging to the Railway Department, as depicted in the said plans as well. Hence, it is common ground. Further, Mr. Jayasuriya also conceded that fact.

However, the 1st and 2nd Respondents have assumed that the land belongs to the State and not to the Railway Department, and on that assumption they have acted wrongfully. In fact, there are reports to the effect that the land belongs to the Railway Department, particularly those issued by the Land Commissioner's Department. In fact, the same land had been acquired for the Railway Department as far back as 1922, as reflected in the document marked **P31**.

Therefore, there is no question that the said land had been identified and depicted as land belonging to the Railway Department for more than a century; therefore, it remains not as State land but as land of the Railway Department, which the Petitioner had taken on an informal lease a few years ago.

However, the issue arose after he received **P4** and **P5**. Only thereafter did the Petitioner also activate and make attempts to obtain a formal lease, which the Railway Department, having ascertained from the Land Commissioners Department, had decided that the land belongs to the Railway Department after several reports, and decided to lease out to the Petitioner as reflected in documents attached along with further affidavits as **P29** and **P30**.

Therefore, it is very clear that the land belongs to the Railway Department, and the 4th Respondent, as the competent authority, after appointing a committee and complying with the said recommendations thereof, has decided to enter into a formal lease in respect of the premises in favour of the Petitioner. Therefore, I hold that the land belongs to the Railway Department and not to the State.

1st and 2nd Respondents are not the competent authorities

Now, the second matter that has arisen for my consideration is whether the 1st and 2nd Respondents are competent authorities to issue the notice marked as **P4**, followed by the institution of proceedings marked as **P17(b)** in the Magistrate's Court.

It is my view that since the land belongs to the Railway Department, the competent authority cannot be the 1st and 2nd Respondents, who can be competent authorities only in respect of lands

belonging to the State as State land. Nevertheless, if it is Railway land, the competent authority has to be the General Manager of Railways, as the State Lands (Recovery of Possession) Act clearly indicates; therefore, it is the 4th Respondent who is the competent authority, as stipulated in Section 18(d) of the State Lands (Recovery of Possession) Act. For further clarity, Section 18(d) is reproduced below;

“18. In this Act, unless “competent authority” used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes ...

(d) the General Manager of Railways; where such land is under the control of the Railway Department.”

Further, as stipulated in Sections 3(1)(a) and (b) of the State Lands (Recovery of Possession) Act, a quit notice is required to be served by a “competent authority”. However, the 1st and 2nd Respondents do not constitute a “competent authority” for the purpose of issuing a quit notice. For further clarity, I reproduce Sections 3(1)(a) and (b) of the State Lands (Recovery of Possession) Act below;

“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 dependants, 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.”

Accordingly, the Petitioner is not in any unauthorized possession, thus, he is authorized by the competent authority who is the 4th Respondent.

Therefore, the documents marked as **P4** is issued and based on that **P17(b)** was filed in Magistrate’s Court of Valachchenai; and therefore, both are ultra vires, and even the institution of action based on the powers under the State Lands (Recovery of Possession) Act is also *ultra vires*, as the 1st and the 2nd Respondents have acted outside the law.

However, the 4th Respondent, after ascertaining from the Land Commissioners Department whether the land belongs to the Railway Department or the State, formally informed the Petitioner that the land belongs to the Railway Department and that the Railway Department can formally lease it out to the Petitioner, thereby the Railway Department decided to lease out to the Petitioner.

Writ lies

The last question that arises for my consideration is whether the Petitioner is entitled to writs.

As mentioned above, since the land belongs to the Railway Department and the Railway Department had decided to lease out the land to the Petitioner, and in fact the Petitioner has been

carrying on business in the premises having generated several employment opportunities for people who work under him and also creating certain value-added services which in turn contribute to the economy, the Petitioner is entitled to carry on his business as a citizen in this country. Therefore, he is entitled to obtain relief from the Railway Department, and since the Railway Department had decided to give the land to the Petitioner to carry on his business, the 1st and 2nd Respondents are not empowered or entitled to do any *ultra vires* act, as the law does not empower them to eject the Petitioner from the land in question.

The Petitioner has paid the due rental in millions as borne out by the document marked from **P32(a)** to **P32(o)**; therefore, the Petitioner is entitled to remain in the premises, which falls within the purview of the 4th Respondent.

Conclusion

For the reasons adumbrated above, it is my view that the writs the Petitioner seeks lie in his favour because even after the issuance of **P9** addressed to the 1st Respondent, the 1st Respondent has still failed to withdraw **P4** and **P17(b)**. Therefore, an order to quash should be granted, particularly in view of the fact that no objection has been filed by the Respondents; only flimsy arguments were advanced in that behalf such as delay, laches, and acquiescence. Therefore, heavy costs must be ordered.

Accordingly, I grant the writs as prayed for in prayers (b) and (c) of the Petition, and I also further direct the 1st and the 2nd Respondents to pay costs of litigation, which I estimate at Rs. 52,500/- (Fifty-Two Thousand Five Hundred Rupees), since, being responsible officers, without

ascertaining the exact facts, they decided to take the Petitioner unnecessarily to Court based on the issued *ultra vires* documents which are marked as **P4** and **P17(b)**. The Petitioner is entitled to recover the said costs jointly and severally from the 1st and 2nd Respondents, who were instrumental in issuing **P4** and **P17(b)**.

JUDGE OF THE COURT OF APPEAL