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 Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 45/2016

Ven Rajawela Nandarathana Thero,
Padmawathi Pirivena Rajamaha Viharaya,
Keragala, Henegama.

PETITIONER

Vs.

1. Land Reform Commission.

2. T. A. Sumanathissa Thaambugala,
   Chairman, Land Reform Commission.

2A. Mr. Sirimewan Dias,
   Chairman, Land Reform Commission.

3. Mrs. W.H.M. Kusum Herath,
   Director-Land Ceiling,

   1st – 3rd Respondents at
   Land Reform Commission,
   C 82, Gregory's Road, Colombo 7.

4. Upali Marasinghe,
   Secretary, Ministry of Plantation Industries,

4A. J.A. Ranjith,
   Secretary, Ministry of Plantation Industries,
   Sethsiripaya 2nd Stage, Battaramulla.

5. Janatha Estates Development Board.

6. K.D. Gunarathna,
Chairman,
Janatha Estates Development Board.

6A. M.R.M. Abdeen,
Chairman,
Janatha Estates Development Board

5th, 6th and 6A Respondents at
Janatha Estates Development Board,
55/75, Vauxhall Lane, Colombo 2.

7. Kurunegala Plantation Co. Ltd.

8. A.M. Upali Piyasoma,
Chairman,
Kurunegala Plantation Co. Ltd.,
80, Dambulla Road, Kurunegala.

RESPONDENTS

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Manohara De Silva, P.C., with Hirosh Munasinghe for the Petitioner

Dr. Sunil Cooray with Nilanga Perera for the 1st – 3rd Respondents

Manohara Jayasinghe, Senior State Counsel for the 4th – 8th Respondents

Argued on: 23rd June 2020

Decided on: 31st July 2020

Arjuna Obeyesekere, J

The Petitioner is the Chief Incumbent of the '*Pathmawathi Pirivena Viharaya*' (the Viharaya) situated in Keragala. The Petitioner states that the said *Viharaya* which was earlier known as the '*Keragala Tampita Viharaya*' has a long history, with an archaeological heritage. The Petitioner states further that the *Viharaya* has been in existence even before the Dambadeniya period, and that it was established as a Buddhist educational institution during the Kotte period.

The Petitioner states that the land adjacent to the North-West and North of the *Viharaya* is known as '*Danawkanda Watta*' and had been part of the *Viharaya* property, and had been used for the activities of the *Viharaya*. The Petitioner states further that during the Colonial period, private parties had acquired lands belonging to the *Viharaya* including '*Danawkanda Watta*' and that the said land became the property of private individuals.

The Petitioner admits that with the introduction of the Land Reform Commission Law No. 1 of 1972, as amended (the LRC Law), the said '*Danawkanda Watta*' had been vested in the Land Reform Commission and had been taken over by the Land Reform Commission. The said land had subsequently been vested with the 5th Respondent, the Janatha Estates Development Board in terms of Section 27A(1) of the LRC Law, and has been leased to the 7th Respondent, Kurunegala Plantation Company Limited for a period of 53 years, in November 1995.

The Petitioner states that he became aware that the Land Reform Commission is seeking to alienate 69 acres of '*Danawkanda Watta*' to the petitioners in CA (Writ) Application No. 1072/2009, and that he intervened in the said application to prevent the alienation of the said land to a private party, and to

protect the said land as an archaeological heritage site. Pursuant to the said intervention, the Department of Archaeology had undertaken an assessment of the archaeological monuments that exist on '*Danawkanda Watta*'. Its report, annexed to the petition marked '**P1**' sets out that 17 archaeological monuments have been identified on the said land. The said report goes into state as follows:

> "කැරගල පද්මාවති පිරිවෙන් භූමියේ පිහිටුවා ඇති දඹදෙණි යුගයේ හා කෝට්ටේ යුගයේ දී ලියැවුණු ශිලා ලේඛන දෙකෙහි තොරතුරුවලට අනුව කැරගල ප්‍රදේශය රාජ්‍ය තාන්ත්‍රික සම්බන්ධතා තිබුණු ප්‍රදේශයක් බවත් කැරගල පද්මාවති පිරිවෙණට ලැබුණු නින්දගමක් වශයෙනුත් වැඩි වටිනාකමක් ගනී (ඇමුණුම 1)."

Pursuant to the submission of the report '**P1**', the Department of Archaeology had informed the Hon. Attorney General, *inter alia* that:

> "02. එහි සඳහන් වන පරිදි මෙම දෙපාර්තමේන්තුව මගින් සිදුකරන ලද පුරාවිද්‍යා හානි ඇගයුමෙන් අනතුරුව හඳුනාගත් පැරණි ස්මාරක 17ක් ඇතුළත් වන ආකාරයට එම ස්මාරක සහිත භූමි භාගය මෙම දෙපාර්තමේන්තුව වෙත පවරාගත යුතුව ඇත.
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> 05. එහෙත් ඉහත ඉතිරි ඉඩම් තදාශ්‍රිත භූමි වපසරිය පෞරාණික වටිනාකමක් සහිත පැරණි නින්දගම් ලෙස සැලකිය හැකි සාක්ෂිද පවතින බැවින් එම භූමිය යාබද කැරගල පද්මාවති පිරිවෙන් විහාරස්ථානය වෙත ලබාදීමට පියවර ගැනීම වඩාත්ම සුදුසු ක්‍රියාමාර්ගය බවට යෝජනා කර සිටිමි."[1]

Thus, even as at 2009, the Petitioner had no claim to the said land known as '*Danawkanda Watta*', except the interest on the part of the Petitioner to preserve the said land for its archaeological heritage and importance.

In 2013, the Director General of Archaeology has recommended by his letter marked '**P5**' that the land surrounding the temple be handed over to the temple as there is evidence that the said land forms part of an old *nindagam*

[1] Vide letter dated 24th August 2009, marked 'P4'.

land. The Commissioner General of Buddhist Affairs had thereafter sent the letter marked '**P6**' to the Land Reform Commission informing that the land area around the temple be handed over to the temple as the said land had vested in the Land Reform Commission by an oversight. The Director General of Archaeology had also informed the Land Reform Commission by letter marked '**P7**' as follows:

> "02. ඓතිහාසික කැරගල රාජමහා විහාරය, දඹදෙනිය යුගයේ ටැංපිට විහාරයක්ව ආරම්භව කෝට්ටේ යුගයේ පද්මාවති පිටිවෙන පිහිටියා වූ වනවාසි නිකායේ සංඝරාජයාණන් වූ කැරගල වනරතන මාහිමි වැඩ සිට ඓතිහාසික වුත් පූජනිය වුත් සිද්ධස්ථානයකි. එකල රජවරු මෙම ස්ථානයේ පැවැත්මත් ආරක්ෂාවත් සලකා සෙල්ලිපි දෙකකින් හා සන්නසකින් ඉඩම් පූජා කළ වග රජය විසින් පිළිගෙන 1964 අගෝස්තු 14 වන දින 14-142 දරණ ලංකා ආණ්ඩු ගැසට් පත්‍රයෙහි ප්‍රකාශයට පත්කර ඇත.[2]
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> 03. දනවිකන්ද ඉඩම, කැරගල රාජමහා විහාරස්ථානය සතු නින්දගම් ඉඩමක් මෙන්ම සංඝික දේපලක් සේ සලකා 2014 ඔක්තෝබර් 10 වෙනි දින අතිගරු ජනාධිපතිතුමා විසින් විහාරස්ථානයට නිදහස් කළ වග දන්වා එවා ඇත."

The Land Reform Commission had thereafter taken a decision that *Danawkanda Estate* must be handed over to the Petitioner and requested the Petitioner to pay a sum of Rs. 306,410/- being the equivalent of the compensation that the Land Reform Commission had paid the statutory declarant in 1982. I must note at this point that the fact that the Petitioner was asked to pay the said sum of money establishes the fact that the decision of the Land Reform Commission to hand over the said land to the Petitioner was not taken on the basis that the land had been vested in it by mistake, but as admitted by the Petitioner in his counter affidavit, on the basis that the said land is suitable to be handed over to the Petitioner, in view of the archaeological significance referred to earlier.

[2] A copy of the said Gazette has not been produced to this Court.

Thereafter, the Land Reform Commission had directed the 7th Respondent, by letter dated 30th March 2015, marked '**P12**' to handover the said land to the Petitioner, which the 7th Respondent had not complied with. It is only thereafter that the Petitioner invoked the jurisdiction of this Court, seeking *inter alia* the following relief:

(a) A Writ of Mandamus directing the Land Reform Commission to act in accordance with the letter marked '**P12**';

(b) A Writ of Mandamus directing *inter alia* the Janatha Estates Development Board, and the 7th Respondent to act in accordance with the said letter marked '**P12**'.

The conditions that must be satisfied for a Writ of Mandamus to issue have been clearly set out over the years in several judgments. The Supreme Court in **Ratnayake and Others vs C.D.Perera and others**[3] has held that:

> "*The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties."*

The above position has been reiterated in **Jayawardena vs. People's Bank**[4] where it was held as follows:

[3] [1982] 2 Sri LR 451.

"*Courts will always be ready and willing to apply the constitutional remedy of mandamus in the appropriate case. The appropriate case must necessarily be a situation where there is a public duty. In the absence of a public duty an intrusion by this Court by way of mandamus into an area where remedial measures are available in private law would be to redefine the availability of a prerogative writ*."

In **Credit Information Bureau of Sri Lanka v. Messrs Jafferjee & Jafferjee (Pvt) Ltd**[5] J.A.N. De Silva J. (as he was then) held as follows:

"*There is rich and profuse case law on mandamus on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be*:

(a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought (R. v Barnstaple Justices. The foundation of mandamus is the existence of a legal right (Napier Ex parte).

(b) The right to be enforced must be a "Public Right" and the duty sought to be enforced must be of a public nature.

(c) The legal right to compel must reside in the Applicant himself (R. v Lewisham Union)

(d) The application must be made in good faith and not for an indirect purpose.

[4] [2002] 3 Sri LR 17.
[5] [2005] 1 Sri. L.R. 89 at 93.

(e) The application must be preceded by a distinct demand for the performance of the duty.

(f) The person or body to whom the writ is directed must be subject to the jurisdiction of the Court issuing the writ.

(g) The Court will as a general rule and in the exercise of its discretion refuse writ of Mandamus when there is another special remedy available which is not less convenient, beneficial and effective.

(h) The conduct of the Applicant may disentitle him to the remedy.

(i) It would not be issued if the writ would be futile in its result.

(j) Writ will not be issued where the Respondent has no power to perform the act sought to be mandated."

In **Rajeswari Nadaraja v. M. Najeeb Abdul Majeed, Minister of Industries and Commerce and Others**[6] Aluwihare, J has held that, "*In an application for a writ of mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists*."

The issue that this Court must determine in this application is therefore twofold. The first is, *as a question of fact*, whether *Danawkanda Estate* is Temple land and therefore excluded from the definition of 'Agricultural Land'. The second is, *as a question of law*, whether the Land Reform Commission can

[6] SC Appeal No. 177/15; SC Minutes of 31st August 2018.

exercise any authority over lands which were vested in it, once an Order has been made under Section 27A(1) and while such Order subsists, or in other words, whether it has the power in terms of the law to direct the 7th Respondent to hand over the said land to the Petitioner.

Prior to considering the above two issues, it would be useful to lay down the provisions of the LRC Law that are relevant to this application. The LRC Law is the first law enacted under the First Republican Constitution of 1972 by the National State Assembly, and came into operation on 26th August 1972. In its long title, the said Law was stated to be a "*Law to establish a Land Reform Commission, to fix a ceiling on the extent of agricultural land that may be owned by persons, to provide for the vesting of lands owned in excess of such ceiling in the Land Reform Commission, and for such land to be held by the former owners on a statutory lease from the Commission, to prescribe the purposes and the manner of disposition by the Commission of agricultural lands vested in the Commission so as to increase productivity and employment, to provide for the payment of compensation to persons deprived of their lands under this Law and for matters connected therewith or incidental thereto*."

With the introduction of the LRC Law, agricultural lands owned by any person in excess of the ceiling stipulated in the LRC Law vested with the Land Reform Commission, by operation of law.[7] However, in view of the definition of 'Agricultural land' in Section 66, lands belonging to Viharas and Devalas (together referred to as Temples) were excluded from the provisions of the LRC Law.

At the time the LRC Law was introduced, in addition to private individuals who owned land, there were several companies, commonly known as 'Sterling

[7] Vide Section 3(2) of the LRC Law.

companies' and 'Rupee Companies' that owned large extents of agricultural land on which predominantly tea and rubber had been cultivated. The principal enactment did not apply to such lands and the reason for such exclusion has been set out in the speech delivered in Parliament on 10th October 1975 by Hon. Hector Kobbekaduwa, the then Minister of Agriculture and Lands, when he presented the amendment to the LRC Law to include lands owned by such companies.[8] Part IIIA to the LRC Law titled 'Special Provisions relating to estate lands owned by public companies' was introduced by the Land Reform (Amendment) Law No. 39 of 1975, to address the nationalisation of such lands.[9]

In terms of Section 42A (1) of the LRC Law, "*Every estate land*[10] *owned or possessed by a public company shall, with effect from the coming into operation of Part IIIA,*[11] *(a) be deemed to vest in and be possessed by the Commission ; and (b) be deemed to be managed under a statutory trust for and on behalf of the Commission by the agency house or organization which was responsible for, and in charge of, the management of such estate land on the date of such vesting…*"

Similar provision with regard to agricultural lands is found in Section 3(2), with the former owner being referred to as the 'Statutory lessee'.

[8] Hansard of 10th October 1975 (Columns 1448 – 1459): "On that occasion (*i.e. when the LRC Bill was presented in 1972*) the House will remember that we excluded from the operation of this Law, lands belonging to public companies, both foreign and local lands belonging to religious and charitable trusts. We had very good reasons for excluding those lands, particularly lands belonging to public companies, because of precarious foreign exchange at that time."

[9] Part IIIA consists of Sections 42A – 42M.

[10] Estate land has been defined in Section 42M to mean, "any land of which an extent exceeding fifty acres, is under cultivation in tea, rubber, coconut or any other agricultural crop, or is used for any purpose of husbandry, and includes unsold produce of that land and all buildings, fixtures, machinery, implements, vehicles and things, movable and immovable, and all other assets belonging to the owner of such land and used for the purposes of such land."

[11] The date is 17th October 1975.

The effect of such vesting of agricultural land has been set out in Section 6 of the LRC Law, which reads as follows:

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

Similar provision in respect of estate lands is found in Section 42A(2) of the LRC Law. Thus, whether it be agricultural land or estate land, once vested, it conferred on the Land Reform Commission, absolute title in such land.

It is noted that in terms of Sections 15 and 42B of the LRC Law, while the land remains vested with the Land Reform Commission, the statutory lessee or the statutory trustee, as the case may be, is responsible for the management of the agricultural or estate land,[12] and the statutory lease or trust shall continue for one year from the date of vesting. If the Land Reform Commission so decides, the period can be continued for a further period of one year. No statutory lease or trust may be continued for any further period by the Land Reform Commission, except with the express approval of the Minister.

Thus, in terms of the LRC Law, agricultural lands owned by any person in excess of the ceiling, and estate lands owned or possessed by a public company were deemed to be vested with the Land Reform Commission. Until such time a suitable entity was identified to manage the said lands, the management was to remain with the individual or company that owned such land on the basis of a Statutory Lease or Trust, subject to the said period being limited to two

[12] Section 42B(1) reads as follows: "Where any estate land is vested in the Commission under section 42A, the statutory trustee of such estate land, shall, during the continuance of such statutory trust, be responsible for the good and proper management of such estate land, subject to such general or special directions as may from time to time be issued by the Commission."

years. Thus, the role of the Land Reform Commission was as a repository of lands that vested with the State in terms of the LRC Law, and as a custodian of such lands until *inter alia* suitable persons were identified to manage the said lands or the lands were alienated in accordance with the LRC Law.

Sections 22(1) and 42H(1) have specified the purposes for which the agricultural and estate lands so vested with the Land Reform Commission may be used. This includes the alienation of the said lands to the Sri Lanka State Plantations Corporation established under the Sri Lanka State Plantations Corporation Act No. 4 of 1958 or to any corporation established or to be established under the State Agricultural Corporations Act No. 11 of 1972.[13] The Janatha Estates Development Board is the public corporation that was established for the said purpose, in terms of an Order made under Section 2(1) of the State Agricultural Corporations Act No. 11 of 1972.[14] In terms of the said Order, the Janatha Estates Development Board has been entrusted with the power, *inter alia,* to *manage agricultural and estate lands.* It is not in dispute that in keeping with the nationalisation policy of the then Government, management of the said estate lands as well as certain agricultural lands had been handed over to the Janatha Estates Development Board, and the Sri Lanka State Plantations Corporation.[15]

The next important amendment to the LRC Law was effected by the Land Reform (Amendment) Act No. 39 of 1981, by the introduction *inter alia* of Section 27A consisting of four sub-sections.

[13] Vide Sections 22(1)(g) and 42H(1)(c).
[14] The said Order has been published in the Gazette of 6th February 1976.
[15] In 1975, the Rupee and Sterling companies were nationalized, with Agency Houses continuing as trustees. Thereafter in 1976, these were turned over to the two largest State-owned plantation agencies, namely, the Janatha Estates Development Board (JEDB) and State Plantations Corporation (SPC); https://www.historyofceylontea.com/ceylon-publications/ceylon-tea-articles/the-evolution-of-sri-lankas-plantation-sector.html.

Section 27A(1) reads as follows:

> "*At the request of the Commission, the Minister may, where he considers it necessary in the interest of the Commission to do so, subject to sections 22, 23 and 42H, by Order published in the Gazette,* ***vest, in any State Corporation specified in the Order****, with effect from a date specified in that Order, any agricultural land or estate land or any portion of the land vested in the Commission under this Law, and described in the order, subject to such terms and conditions relating to consideration for the vesting of that land in such Corporation as may be agreed upon between the Commission and such Corporation.*"

Acting in terms of Section 27A(1) of the LRC Law, the Minister of Agriculture Development and Research has made an Order in terms of Section 27A of the LRC Law, read together with Section 42H thereof. The said Order has been published in Extraordinary Gazette No. 230/12 dated 2nd February 1983, marked '**R2**'. Thus, in terms of Section 27A(1) of the LRC Law, the agricultural and estate lands referred to in the Schedule to '**R2**' including *Danawkanda Estate* in extent of 262.8H vested with the Janatha Estates Development Board.

The consequences of an Order made under Section 27A(1) has been set out in Section 27A(2), which reads as follows:

> "*An Order under subsection (1) shall have the effect of vesting in such State Corporation specified in the Order* ***such right, title and interest*** *to the agricultural land or estate land or portion thereof described in that Order,* ***as was held by the Commission*** *on the day immediately preceding the date on which the Order takes effect."*

The provisions of Section 27A(3) leaves no room for any ambiguity when it states as follows:

> "*Where any agricultural land or estate land or any portion thereof is vested in a State Corporation by an Order made under subsection (1),* ***all the rights and liabilities of the Commission*** *under any contract or agreement, express or implied,* ***which relate to such*** *agricultural land or* ***estate land*** *or portion thereof, and which subsist on the day immediately prior to the date of such vesting,* ***shall become the rights and liabilities of such State Corporation***."

The above provisions reflect the intention of the legislature that the rights and liabilities of the Land Reform Commission in respect of any agricultural or estate land, together with the absolute title that the Land Reform Commission had to such lands shall pass to the Janatha Estates Development Board, with the making of an Order under Section 27A(1).

With the publication of the said Order '**R2**', the Land Reform Commission ceased to be the owner of all the agricultural and estate lands referred to therein, and in terms of Section 27A(1) of the LRC Law, the said lands referred to in the Schedule to '**R2**' vested with the Janatha Estates Development Board, and the title to the said lands stood transferred to the Janatha Estates Development Board effective from the date of such Order.

It is not in dispute that even though the objectives sought to be achieved by the LRC Law was laudable,[16] its implementation vis-a-vis the management of the lands did not achieve the desired results. The enormous losses that were

[16] Speech by Hon. Hector Kobbekaduwa in presenting the Land Reform (Amendment) Bill on 10th October 1975 – "We tried to embody in cold print, by placing a ceiling on the ownership of land, our will and determination to redistribute the vast acres of land that were concentrated in the hands of a few people in this country. "

incurred by the Janatha Estates Development Board and the Sri Lanka State Plantations Corporations in managing the lands resulted in the decision in 1992 to privatise the estate sector.[17] This process was effected by incorporating plantation companies in terms of an Order made under Section 2(2) of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987, as amended (the Conversion Act), and handing over the management, movable property, contracts, agreements, employees, liabilities, current assets etc of the estates specified in such Order to the relevant company. The Order relating to the 7th Respondent, marked '**R3**' enabled the 7th Respondent to take over the functions and business specified in Part I in respect of the estates referred to in Part II of the Schedule to '**R3**', including *Danawkanda Watte* which formed part of Attanagalle Estate. The Janatha Estates Development Board had thereafter executed the lease agreement marked '**R4a**' in favour of the 7th Respondent in respect of the Attanagalle Estate that had been vested in the Janatha Estates Development Board by virtue of the Order marked '**R2**'.

The issue that has given rise to this application has arisen in view of the definition of 'Agricultural Land' in Section 66 of the LRC Law. The relevant portions of the said definition are re-produced below:

> " '*agricultural land' means land used or capable of being used for agriculture within the meaning given in this Law and shall include private lands, lands alienated under the Land Development Ordinance or the State Lands Ordinance or any other enactment ...* ***but shall exclude***-

[17] Vide report of the Asian Development Bank on the Plantation Reform Project, December 2004.

*(b) any such land which was viharagam or devalagam land on **May 29, 1971**, so long and so long only as such land continues to be so owned or possessed;*

(e) any such land held in trust on May 29, 1971, under the Buddhist Temporalities Ordinance so long and so long only as such land is held in trust under that Ordinance."

Thus, it is clear that lands belonging to Viharas, Devalas and Temples (together referred to as Temples) which was *viharagam or devalagam land on **May 29, 1971*** have been excluded from the applicability and scope of the LRC Law and that such lands could not have (a) vested in the Land Reform Commission, or (b) come under the control of the Land Reform Commission.

An issue however arose with regard to temple lands which had been leased by such temples (a) to private individuals who in turn had declared the said lands in their statutory declarations, or (b) to a public company. Whether lands owned by Temples but possessed by public companies vested in the Land Reform Commission in terms of Section 42A was considered by this Court in **Land Reform Commission vs. Ganegama Sangarakhitha Thero**.[18] The facts of that case briefly are as follows. The plaintiff as Trustee of *Budulena Raja Maha Vihara*, Pelmadulla, filed action against the Land Reform Commission, seeking a declaration of title to the land called Lellopitiya Estate, in extent of 213A 1R 21P, which the Budulena Temple had leased out to a Public Company, namely L.L.P. Estates Company Limited for a period of fifty years from 1st January 1934. The plaintiff, while alleging that the Land Reform Commission took possession of this land on 1st November 1975 illegally and unlawfully, also prayed for damages and ejectment of the Land Reform Commission. The Land Reform

[18] [1987] 2 Sri LR 411.

Commission admitted that it took over possession of the land in dispute, but resisted the action on the basis that in terms of the Land Reform (Amendment) Law No. 39 of 1975, the land in dispute which formed a part of a larger estate of 1882A, 1R and 29P, possessed partly as owner and partly as a lessee by L.L.P. Estates Co. Ltd., vested with the Land Reform Commission. The learned District Judge gave judgment in favour of the plaintiff. On an appeal by the Land Reform Commission, the question that arose for the consideration of this Court was whether the land in dispute, **admittedly owned by the Budulena Raja Maha Vihara**, of which the plaintiff was the trustee, and possessed by L.L.P. Estates Company Limited, a public company as a lessee from the temple, vested with the Land Reform Commission by operation of the Land Reform (Amendment) Law No. 39 of 1975.

This Court, having considered in detail the provisions of the LRC Law, held that:

(a) The word ‘possessed’ in the term 'owned or possessed’ in section 42A carries the same meaning attached to it in Section 66 and refers to the possession of a deemed owner;

(b) ‘Viharagam' or ‘devalagam’ land owned or possessed by a religious institution and land held in trust under the Buddhist Temporalities Ordinance for so long as such land is held in trust under that Ordinance - **all as at 29th May 1971** - are excluded from the definition of agricultural land in Section 66;

(c) The disputed land is part of the temporalities of the *Budulena Raja Maha Vihara* and is excluded from the operation of the Land Reform Law by virtue of the exclusions contained in clauses (b) to (e) in Section 66.

In the light of the above legal and factual background, I shall now consider whether *Danawkanda Estate* is Temple land and if so, in view of the definition of 'Agricultural Land' in Section 66 of the LRC Law, whether *Danawkanda Estate* could not have vested in the Land Reform Commission, and therefore should be handed over to the Petitioner.

In paragraph 5 of the petition, the Petitioner has stated that, *"the adjacent land to the North West and North of the said Temple, known as 'Danawkanda Watte' alias 'Danawkanda' was* ***earlier*** *part of the temple property with great archaeological values and had been used for the purpose of activities of Pathmawathie Pirivena during pre-colonial period.*"

The Petitioner goes onto state in paragraph 6 of the petition that, *"this Pirivena had been subjected to attack and destruction by the Portuguese and British during the Colonial period and* ***subsequently acquired by private parties*** *as a result of which greater parts of the land belong(ing) to the said Pathmawathie Pirivena including the said* ***Danawkanda Watta land became a property of private individuals****."*[19] Thus, even if it is accepted that the said land formed part of a *nindagam* given to the said *Viharaya,* on the Petitioner's own admission, the said land has been acquired by private parties during the Colonial period, and was not part of the *Viharaya* on the all important date of 29th May 1971.

I shall now consider the manner in which *Danawkanda Watte* came to be vested with the Land Reform Commission. In its Statement of Objections, the Land Reform Commission has stated that in a statutory declaration made in terms of Section 18 of the LRC Law marked '**1R1**', Mrs. E.L.I. Ranamuni had declared *Danawkanda Estate* as being an agricultural land belonging to her in

[19] This position has been reiterated in paragraph 2(iii) of the Counter Affidavit.

excess of the ceiling stipulated by the LRC Law. The Land Reform Commission has stated further that the physical possession of the said land was taken over by it, a fact which has been admitted by the Petitioner.

By a notice published in terms of Section 29 of the LRC Law in Extraordinary Gazette No. 321/2 dated 12th June 1978, marked '**1R2**', the Land Reform Commission had called for claims for compensation in respect of the land declared by Mrs. Ranamuni. According to the Land Reform Commission, neither the Petitioner nor his predecessors had any objection on behalf of the *Viharaya* at the time the said land was taken over by the Land Reform Commission on 27th June 1974, nor did the Petitioner or his predecessor respond to '**1R2**'. Compensation had accordingly been paid to Mrs. Ranamuni, as there were no other claims.

The Land Reform Commission states that while an extent of 50A 2R 20P was set apart from *Danawkande Estate* for Mrs. Ranamuni, the balance extent of 67A 3R 21P was taken over by the Land Reform Commission and subsequently vested with the Janatha Estates Development Board, vide '**R2**'. Even though the said extent out of *Danawkande Estate* had been vested with the Janatha Estates Development Board, Land Reform Commission had taken steps to exchange the said land with the declarant of Rathgammana Estate as part of a settlement in CA (Writ) Application No. 1072/2009, at which point the Petitioner intervened against the handing over of the said land on the basis that the said land contained several monuments of archeological value.

Even though the Department of Archaeology and the Commissioner General of Buddhist Affairs have stated that the said land is temple land, and the Petitioner too has stated so in his counter affidavit, the 7th Respondent has categorically denied that the said land was ever a part of the property of the *Viharaya*. The learned Senior State Counsel has drawn the attention of this

Court to the report of the Presidential Commission on Buddhist Temporalities, marked '**R1**' which considered the issue of Temple land being vested by mistake in the Land Reform Commission, and to the fact that *Danawkande Watte* is not one of the lands referred to, therein. Nor is there any specific reference to *Danawkande Watte* in the documents filed by the Petitioner with his affidavit of 21st September 2016. While this Court cannot determine any questions relating to title, if the Petitioner is of the view that title to *Danawkanda Watte* is with the *Viharaya*, the proper course of action would be for the Petitioner to pursue its title in a Court of competent jurisdiction.

Taking into consideration the totality of the material presented to this Court, the aforementioned averments in the petition, together with the statutory declaration filed by Mrs. Ranamuni it is clear that the *Viharaya* was not the owner of the said land on the relevant date – i.e. 29th May 1971, nor was the said land in the possession of the *Viharaya* on that date.

In the above circumstances, I am of the view that:

(a) *Danawkanda Watte* was not a *viharagam or devalagam* land on **May 29, 1971;**

(b) Therefore, the said land comes within the definition of 'Agricultural Land' and has vested with the Land Reform Commission in terms of the LRC Law;

(c) Absolute title in the said land has been vested in the Janatha Estates Development Board, in terms of '**R2**';

(d) As the Land Reform Commission does not have absolute title to the said land consequent to the publication of '**R2**', the Land Reform Commission is *functus* and cannot exercise any control in respect of the said land, nor

can it direct the Janatha Estates Development Board or the 7th Respondent to hand over the said property to the Petitioner;

(e) Any interference by the Land Reform Commission with the rights of the Janatha Estates Development Board and the 7th Respondent over such land is illegal and *ultra vires* the powers of the Land Reform Commission.

Applying the proposition laid down by the Supreme Court in **Rajeswari Nadaraja v. M. Najeeb Abdul Majeed, Minister of Industry and Commerce and Others**[20] to the facts of this application, I am of the view that the Petitioner has not satisfied either the question of law or the question of fact that must be satisfied in order to succeed in this application. In the above circumstances, I see no legal basis to grant the relief prayed for. The application of the Petitioner is accordingly dismissed, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal

[20] Supra.