

**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.*

1. Weligama Thuppahige Udara
Priyantha,
Elk Plain Farm,
Ruwan Eliya,
Nuwara Eliya.
2. W T U. Agri (Private) Limited,
(PV 00318050)
Elk Plain Farm,
Ruwan Eliya,
Nuwara Eliya.

CA (Writ) App. No. 121/2025

PETITIONER

Vs.

1. Minister of Land,
Ministry of Land,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6,
Rajamalwatta Road,

Battaramulla.

2. Commissioner of Lands,
Commissioner General's Department of
Lands,
VMX8+ VPM
Sri Jayawardana Kotte,
10120.
3. District Secretary *Cum*,
The Secretary,
District Coordinating Committee,
District Secretariat,
Administrative Building,
Nuwara Eliya.
4. Divisional Secretary,
Divisional Secretariat,
Old Uva Pussellawa Road,
Nuwara Eliya.
5. The Chairman,
District Coordinating Committee,
Nuwara Eliya,
Administrative Building,
Nuwara Eliya.
6. Honorable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

7. Forest Glen Hotel and Spa (Pvt) Ltd,
Elk Plain, Blackpool,
Nuwara Eliya.
8. Elk Plain Farm (Pvt) Ltd,
Blackpool,
Nuwara Eliya.

ADDED RESPONDENTS

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

Counsel:

Uchitha S. Bandara instructed by Abrahams & De Alwis for the Petitioner.

Pulina Jayasuriya, S.C. for the 2nd and 6th Respondents.

Samhan Munzir instructed by Ms. U.N. Karunasinghe for the 7th and 8th Respondents.

Supported on: 03.12.2025

Order delivered on: 16.12.2025

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

Order

Introduction

The 1st Petitioner is an individual who is a shareholder and a director of the 2nd Petitioner. The 2nd Petitioner is a company capable of suing and being sued in its corporate name. The 1st Petitioner was carrying on a business of seed potato cultivation in the Nuwara Eliya area, within the boundaries of the land described in Schedule 2, which forms part of the 1st Schedule.

The 1st Petitioner, having entered into a Memorandum of Understanding (MOU) with one Thariq Kuraishy, who is a director of Elkplane Hotel, entered into possession of the said land and started carrying on business for several years. However, he claims that he carries on the said business and is in possession of the said land as a licensee of the said Thariq Kuraishy. The Forest Glen Hotel and Spa (Pvt) Ltd and Elkplane Farms (Pvt) Ltd (hereinafter referred to as “Elkplane Hotel”) had been given a long-term lease by the Government to put up a hotel and carry on the business of the said hotel on the land described in the 1st Schedule, and Schedule 2 forms part of the 1st Schedule.

However, while in possession, the said Thariq Kuraishy, being a foreign national, had a visa issue, as his visa was not being extended. In the meantime, the Petitioner was served with a quit notice under Section 3 of the State Land Recovery of Possession Act, No. 7 of 1979 (as amended) by the 4th Respondent, and thereafter an eviction order was secured from the Magistrate’s Court. However, the same was revised, and subsequently another quit notice was served on the Petitioner, which was also followed by an eviction order issued by the Magistrate’s Court of Nuwara Eliya. Therefore, the Petitioners seek to obtain *inter alia* the following reliefs:

"(c) grant an order in nature of Writ of Prohibition forbidding the Respondents from evicting the petitioners or their agents, servants or licensees from the said land until the determination of the instant action.

(d) grant an order in nature of Writ of Prohibition forbidding the Respondents from taking any steps to evict the petitioners or their agents, servants or licensees from and out of the said land more fully described in the schedule below.

(e) grant an order in nature of Writ of Certiorari to quash the decision of the Respondents to evict the 1st Petitioner from and out of the said land more fully described in the schedule to this petition. "

This Application was supported on 03.12.2025, and was vehemently opposed by Mr. Pulina Jayasooriya, S.C., Counsel for the 1st to 3rd Respondents. The following arguments were made by the Counsel; hence, this Order.

Arguments

The first contention of Mr. Bandara is that his client, who is the licensee of the lessee, had been carrying on a potato seed farm on the premises where he used to produce potato seeds and provide it to the local farmers, rendering an enormous service which the Government should have done. Being the licensee of the 7th and 10th Respondents, he happened to be carrying out the potato farm for quite some time; therefore, on his representation, the Media Advisor to the President has recommended by **P25** to the Land Commissioner to take action to give the lease directly to the Petitioner.

In addition to that, on this Appeal made by **P26**, the Land Commissioner who is the Competent Authority under the State Lands (Recovery of Possession) Act, No. 7 of 1979 (hereinafter referred

to as “the Act”), by **P27**, has directed the 4th Respondent, who is the Divisional Secretary, to take steps to issue him with a license to continue to carry out his potato seed farm since he renders an enormous service to the farms of Nuwara Eliya.

Despite all this, the 4th Respondent himself has taken initiative to send the Petitioner a quit notice; Magistrate’s Court proceedings had been instituted against him, and secured an eviction order which has now been executed as the Petitioner has now been evicted from the said land which is more fully described in the Schedule to the Petition. However, Mr. Bandara further argued that in terms of Appendix to the Ninth Schedule, the land’s subject is vested with the President; therefore, as Presidential Advisor, one of the officers to the Presidential Secretary on behalf of the President has written **P25**. Thus, in terms of Article 33, the President is empowered to reside over the land subject, and the Divisional Secretary should not have taken steps to eject the Petitioner in view of those documents.

On the other hand, Mr. Jayasuriya, State Counsel, contended that if this Writ Application is allowed, it would amount to the circumvention of the proceedings and the execution of the quit notice issued by the Magistrate’s Court of Nuwara Eliya, ejecting the Petitioner, which was once challenged in this Court unsuccessfully. Therefore, such circumvention cannot be done in this Court.

In addition to that, though the Petitioner argues that **P27** is written by someone who can be treated as the Competent Authority under Section 14 of the State Lands (Recovery of Possession) Act, the 4th Respondent should not have taken steps to eject the Petitioner in the light of the said document.

Mr. Jayasuriya contends that neither **P27** nor any other document, creates or gives any right to the Petitioner (statutory or otherwise) to obtain a *Writ of Mandamus*, compelling the relevant authorities to restore the Petitioner in possession of the said land.

Factual matrix

The 1st Petitioner is a shareholder and a director of the 2nd Petitioner, which is a company incorporated. The 1st Petitioner, a citizen of Sri Lanka and carrying on a business of potato seed cultivation, had entered into a Memorandum of Understanding (MOU) with a person called Thariq Kuraishy, who is a director and shareholder of a company that runs the Elkplane Hotel of Nuwara Eliya. On behalf of the Government of Sri Lanka, the Head of the State had given the said company a long term lease of land described in the First Schedule to construct a hotel and run the business of the said tourist hotel or guest house in the area of Nuwara Eliya.

Since there is a certain area of arable land within the boundaries of the said leased land, the said Hotel has subleased a certain area described in the Second Schedule to the 1st Petitioner to establish his potato seed cultivation which he has run for several years. For that purpose, the 1st Petitioner was required to pay at the rate of Rs. 150,000/- (One Hundred and Fifty Thousand Rupees) per month on a quarterly basis, which amounts to Rs. 450,000/- (Four Hundred and Fifty Thousand Rupees) per three months. The payments made by the Petitioner are established by the documents marked and annexed to the Petition as **P2(a)** to **P2(i)**.

While the Petitioner was carrying on his business in the said land, he was disturbed by several outsiders who had made attempts to enter into the land by force; there are several police inquiries on the complaints made by the 1st Petitioner. However, no action had been taken by the police on the basis that it is only a civil dispute.

However, in the meantime, the 1st Petitioner has taken steps to write to various authorities including the 1st to 5th Respondents and also the Head of the State, to obtain a long term lease for him to carry on his business of the seed potato cultivation in the said subleased land since it is an essential business in the area that he has been providing to the cultivators in the area.

The Petitioner has established that he has entered into an agreement with the Department of Agriculture of Nuwara Eliya to provide seed potatoes; the said agreements **P8(a)** and **P8(b)** are annexed to the Petition. In addition to that, several correspondences exchanged between the Petitioner and the authorities marked **P3** to **P29**. Some of which I will enumerate as follows:

1. The document marked as **P3** is a letter addressed to the 2nd Respondent pleading to regularize and legalize his position in the land in suit.
2. The letter **P4** is the reply to the said letter **P3** written by the 2nd Respondent addressed to the 1st Respondent.
3. **P5** is another document written by Director Agriculture of Nuwara Eliya to the 2nd Respondent regarding the plight of the Petitioner.
4. **P6** is the letter by the Deputy Director of Agriculture of Nuwara Eliya recommending the service of the Petitioner.
5. The document marked as **P7** is written by the Seed Potatoes Farmers Association addressed to the Land Commissioner requesting to redress the Petitioner's plight.
6. **P8(a)** and **P8(b)** are two documents entered between Petitioner and the Agricultural authorities for the Petitioner to supply seed potatoes.
7. **P9** is to establish that the Petitioner is engaged in the said business.
8. **P10(a)** is a document sent by the Director (Public Relations) to the 2nd Respondent to redress the Petitioner.

9. The 2nd Respondent has written to the 4th Respondent by the document marked as **P10(b)**.
10. **P16**, **P17**, **P18**, **P19** and **P20** are letters the Petitioner has written to the Head of State on his plight.
11. The document marked as **P24** is a letter addressed to the 2nd Respondent by the 4th Respondent advising the cancelation of the lease granted to Elkplane (Pvt) Ltd and informing that the Petitioner does not have any legal right to the land.

The relevant authorities have had relevant correspondence with the 1st Petitioner, and to establish that fact, he has annexed several correspondences to the Petition. On one such correspondence, the Land Commissioner (2nd Respondent) has given directions to the 4th Respondent to take steps to lease out or permit the 1st Petitioner to the said subleased land.

In the meantime, the said Elkplane Hotel, to whom the original long term lease was issued to, was to wind up its business and the director who had entered into an MOU (**P2**) with the 1st Petitioner was denied the extension of his visa since there had been some problems.

Eviction Orders

Responding to the directions given, the 4th Respondent has reported to the 2nd Respondent by **P24** that the Petitioner is in unlawful occupation having obtained a sublease from a lessee. Therefore, the long-term lease given to Elkplane Farm (Pvt) Ltd should be terminated.

The 1st Petitioner asserts that during that time, the 4th Respondent has taken steps to serve a quit notice, being an unlawful occupier of the leased Government land in question. This was followed by an institution of proceedings in the Magistrate's Court of Nuwara Eliya bearing No. B 5931/23 to evict the 1st Petitioner from the said land, on the basis that he is in unlawful possession; there

was an Eviction Order that resulted in the Revision Application bearing No. HC/NE/44/23 before the Provincial High Court of Nuwara Eliya.

In the meantime, the 4th Respondent has served another quit notice on the Petitioner and secured another eviction order obtained from the Magistrate's Court of Nuwara Eliya in the case bearing No. 12507/24. Thereafter, the Petitioner has taken steps to revise the said order in case bearing No. HC/NE/Revision 01/2025; nevertheless, unsuccessful.

No right accrued to the Petitioner

In those circumstances, the Petitioner has taken steps to quash the eviction order obtained by the 4th Respondent from the Magistrate's Court. However, it was conceded in the submissions of the Counsel for and on behalf of the Petitioner, that the Petitioner has been evicted from the land and is carrying on his business elsewhere with difficulty. It must be borne in mind that the Petitioner has not been given any lease or permit by the Government, who is admittedly the owner of the land in suit, to occupy and carry on a business of the said potato seed cultivation. Therefore, it is my view that the Petitioner does not have any right to stay in the land in question.

The other matter that should be noted is that the Petitioner had entered into the land under **P2** with the said Thariq Kuraishy, who is a non-Sri Lankan national and a director of the said company, who permitted the Petitioner to carry on the said business in the land and premises leased out by the Government to the said company on a long term lease. Therefore, the Petitioner on his own showing, is only a licensee, and is in occupation of the land in suit without the permission of the owner (the Government). The Petitioner's possession has not been regularized or legalized by any of the authorities, though the Petitioner had made several attempts by making several appeals to almost all the Respondents in addition to the Head of the State.

Therefore, it is my view that it is unfortunate that the situation of a young entrepreneur like the 1st Petitioner, who has been deprived of his livelihood without considering his contribution towards the development of the country, not only in commerce but also in the agricultural sector. The 4th Respondent has taken steps to evict him mainly on a very technical issue (on the basis that he is only the licensee under the permit). The Counsel for the Petitioner heavily relied on **P27** to say that the Competent Authority, the Land Commissioner, has written to the 2nd Respondent to take steps to redress the Petitioner and to allow him to proceed with his cultivation without any disturbance. However, the 4th Respondent has not complied with that request. If at all, the 2nd Respondent should have taken those matters into consideration and taken steps to issue at least a permit to the Petitioner; that has also not been done. Nevertheless, it is my view that the Petitioner does not have any legal footing to pursue this Application, since he has no legal right. In the same breath, I have to say that **P27** does not have any binding effect on the 1st Respondent, since no order or any basis for such an order or any direction is given by the said document.

If the Petitioner has any right, he can only establish that in the relevant court and not through a writ application since an Eviction Order has already been issued and on the Petitioner's own showing that he does not have any permit or license to occupy or be in possession of the premises in suit belonging to the Government.

Accordingly, with reluctance I am compelled to refuse notice and consequently, dismiss this Application *in limine*.

JUDGE OF THE COURT OF APPEAL

