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

Pakiyanathan Nishanthan,
No. 2, Nanmpankulam,
Omanthai,
Vavuniya.

PETITIONER

C.A. Case No. WRT/0543/25

Vs.

1. Hon. K.D. Lal Kantha,
   Minister of Agriculture, Livestock, Land and Irrigation,
   Ministry of Agriculture, Livestock, Land and Irrigation,
   Land Secretariat,
   No. 1200/6, Rajamalwatta Road,
   Battaramulla.

2. Chandana Saman Ranaweera Arachchi,
   Commissioner General of Lands,
   Land Commissioner General's Department,
   "Mihikatha Medura", No. 1200/6,
   Rajamalwatta Road, Battaramulla.

3. A. Sothinathan,
   Provincial Land Commissioner of Northern Province,
   Provincial Land Commissioner's Department,
   Jaffna.

4. I. Prathapan,
   Divisional Secretary,
   Divisional Secretariat,
   Vavuniya.

5. U.B. Rohana Rajapaksha,
   Commissioner General of Agrarian Development,
   No. 42, Sir Marcus Fernando Mawatha,
   P.O. Box 537, Colombo 07.

6. K. Wimalaruban,
   Deputy Commissioner of Agrarian Development,
   Department of Agrarian Development,
   Vavuniya.

7. K. Kirushanthan,
   Agrarian Development Officer,
   Agrarian Services Centre,
   Omanthai.

8. Vickramasingham Sellamma,
   Nanmpankulam,
   Omanthai.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Gamini Hettiarachchi for the Petitioner.
Dr. Peshan Gunaratne, S.C for the 2nd Respondent.

SUPPORTED ON : 13.06.2025

DECIDED ON : 25.06.2025

ORDER

K.M.G.H. KULATUNGA, J

1. The petitioner claims to have been in possession and cultivating the lands depicted as Lots 1609 and 1610, in plan No. TOPO74 prepared by the Surveyor General. The petitioner's claim to these two lots is based on a permit held by N. Nagalingam, that is stated in the tenement list of Plan P-1, according to which, Lots 1609 and 1610 are said to have been cultivated by virtue of a permit issued under the Land Development Ordinance (hereinafter referred to as "LDO"). The said endorsement states that N. Nagalingam was cultivating Lot 1609 on a permit bearing No.5130, and Lot 1610 is described as being excess cultivation by N. Nagalingam, the allottee of the adjoining Lot 1609. The petitioner admits that he is not a direct recipient of any permit. He claims that his wife's father was Nagalingam.

2. In support of this application, the learned Counsel for the petitioner submitted that letters P-8, P-9, and P-10 constitute and amount to an Eviction Order under Section 27 of the Agrarian Development Act. The learned State Counsel, in objecting to issuing of notice, submitted that the said letters do not constitute or amount to a decision under Section 27 of the Agrarian Development Act, and cannot be considered as being an Eviction Order under Section 27. According to the learned State Counsel, P-7 is nothing more than an intimation made to a Police Officer, and P-8 is no more than mere correspondence between the Agrarian Services Centre and the Divisional Secretary. Similarly, P-10 is also not an Order to evict under Section 27. In these circumstances, a preliminary objection was made that this application is premature and be rejected on that basis.

3. To consider granting notices in the first instance, the petitioner should satisfy this Court as to the existence or the making of a decision under Section 27 of the Agrarian Development Act. Section 27 reads as follows:

> *27. Cultivation of land subject to a dispute*
>
> *(1) Where the Commissioner-General is satisfied that any agricultural land is not being cultivated due to the existence of a dispute relating to that land, the Commissioner-General may, after affording an opportunity to. the owner or occupier of such agricultural land to make representations to the Commissioner-General or his authorised representative, issue an order requiring the person on whom the order is served to vacate the land within the period specified in that order and deliver possession of such land to the Commissioner-General or his authorised representative.*
>
> *(2) Every order shall be sent by registered post to the person so whom it relates.*
>
> *(3) Where a person on whom an order under subsection (1) is served fails to vacate the land within the period specified in such order the Commissioner-General shall evict such person in accordance with the provisions of Section 8*
>
> *(4) Until the dispute relating to that land is settled or a decision is made in respect of that dispute such agricultural land may be delivered to the Land Bank for the purpose of cultivation of such agricultural land, and the income derived therefrom shall be disposed of in the manner directed by the Commissioner-General.*

4. That being so, P-7 is a letter addressed to the Officer-in-Charge of the Omanthai Police Station requesting him to instruct the petitioner that

he is developing the land beyond his limits. This letter is no more than a mere request for the communication of a fact through a third party to the petitioner. It certainly is not an Order made under Section 27.

5. Then we have document P-8. This is a letter written by the Divisional Secretary to Mrs. Sellamma, Nagarathnam and Nishanthan, the petitioner. This letter does refer to an inquiry or hearing by the Land Commissioner and informs of a decision to transfer the land in question to the Agricultural Service Centre.

6. Then we have P-9. This is a communication to the Assistant Commissioner of the Department of Rural Development, whereby the Divisional Secretary has requested the Assistant Commissioner to take charge of Lots No. 1609 and 1610 as it has been decided to allocate 01 acre to Sellamma, and ¾ acres adjoining 1609 to Nagalingam. Finally, by P-10, the Agrarian Service Centre of Omanthai, has communicated to the petitioner that they have received instructions from the Divisional Secretary to acquire the land in dispute between the petitioner and Sellamma. Then, it is also notified that the said land will be taken over by the Omanthai Agrarian Services Centre, through the Grama Niladhari, under the Agrarian Development Act. The petitioner is also informed that he should immediately suspend further cultivation.

7. P-10 clearly states that the land is being taken over by the Omanthai Agrarian Services Centre through the Grama Niladhari under Section 27 of the Agrarian Development Act on the instructions of the Divisional Secretary and the Deputy Commissioner. Therefore it is apparent that the intimation of the decision conveyed by P-8, P-9 and P-10 is a decision to act under Section 27 of the Agrarian Development Act. On the face of it, Section 27 comes into play only if the pre-condition specified in Subsection (1) namely upon the satisfaction of the Commissioner General that *any agricultural land is not being cultivated* due to the existence of a dispute relating to the land. There appears to

have been some dispute between the petitioner and the 8th respondent, Sellamma. However, it appears that the petitioner had been cultivating the said land in dispute which is also confirmed by paragraphs 5 and 6 of P-10 where it is stated that, "the petitioner is cultivating and that he should immediately suspend further cultivation operations carried out on the said land." *Prima facie*, it appears that notwithstanding a dispute, if the land is cultivated, then the provisions of Section 27 may have no application.

8. In these circumstances, there appears to be a matter to be looked into, and accordingly, notice is issued as prayed for by prayer *(a)*. The petitioner also moved for interim relief prayed for by prayer *(e)*, which is granted. However, the said interim relief is granted only until the next date and the extension thereof will be upon hearing all the respondents. Interim relief is granted subject to the said limitation.

9. Issue notice on all the respondents upon tendering. Notice returnable on 25.07.2025.

JUDGE OF THE COURT OF APPEAL