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

In the matter of an Application for writs in the nature of Writs of *Certiorari* and *Mandamus* under Article 140 of the Constitution of the Republic of Sri Lanka.

CA (Writ) application No: 942/2025

Dulip Lal Kumanayake
No.S.P.52/B, Tissapura,
Ampara.

PETITIONER

-Vs-

1. Thilina Wickremaratne,
   Divisional Secretary,
   Divisional Secretariat,
   Ampara.

2. G.D. Keerthi Gamage,
   Commissioner General of Lands,
   Land Commissioner General's Department,
   "Mihikatha Medura",
   Land Secretariat,
   No.1200/6,
   Rajamalwatta Road,
   Battaramulla.

3. Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

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

Counsel: W. Dayaratne, P.C. with Ranjika Jayawardene for the Petitioner.

Asela Wijesinghe, SC for the Respondents.

Supported on: 02.10.2025

Order delivered on: 10.10.2025

S. U. B. Karalliyadde, J.

This Order pertains to the issuance of formal notices of this Writ Application on the Respondents. The facts of the case in a nutshell are as follows. The Petitioner is a businessman carrying out textile and vegetable business in a State land in D. S. Senanayake Street, Ampara, in the extent of 8 Perches. The Petitioner states that the subject land was allotted to the Petitioner's uncle, one M. G. Herman, by a letter written by the Land Commissioner General (the 2nd Respondent) to the Government Agent, who is the predecessor in office of the Divisional Secretary, the 1st Respondent, dated 08.03.1974 marked as P1. The Petitioner states that he has been carrying out his business since 1994, and in the year 2011, in the extent of 2 Perches of the subject land were allotted to the Regional Development Bank, which is operating the Banking business in the adjoining land of the land possessed by the Petitioner. In the year 2013, the Ampara Urban Council issued a development permit valid for one year to the Petitioner to construct a building. The Petitioner states that he has constructed a

building according to the permit P2 on the land he possesses in a manner that includes a portion of land reserved for the Regional Development Bank. Both the Petitioner and the Regional Development Bank have made claims for the same portion, that is Lot E in the extent of 0.0152 Hectares, as evident from the letter marked as P4. The Petitioner and 4 others have requested the 1st Respondent to issue a long-term lease for the said Lot E (P7). The Commissioner General of Lands, the 2nd Respondent, by letter dated 13.03.2024 marked as P8, informed the 1st Respondent to call tenders for the purpose of disposing of Lot E, as five persons had submitted claims in respect of the said lot. However, a Quit Notice dated 16.06.2025 marked as P10 in terms of the State Lands (Recovery of Possession) Act, No. 07 of 1979 (as amended) (the Act), has been issued to the Petitioner to vacate the subject land. Thereafter, the 1st Respondent has instituted proceedings against the Petitioner in the Magistrate's Court of Ampara to evict the Petitioner from the said land (P12). The Petitioner's contention is that the decision of the 1st Respondent to issue a Quit Notice without calling for tenders is arbitrary, excess of the powers of the 1st Respondent and violates his legitimate expectation.

Being aggrieved by the Quit Notice marked as P10 and the proceedings before the Magistrate's Court of Ampara, the Petitioner has come before this Court seeking substantive reliefs, *inter alia*, seeking for a Writ of Certiorari to quash the Quit Notice marked as P10, a Writ of Mandamus directing the 1st Respondent to expedite the tender procedure and not to evict the Petitioner and an interim order staying the proceedings before the Magistrate's Court Ampara until the final determination of this Application.

The contention of the Petitioner is that the Quit Notice marked as P10 is arbitrary and excess of the powers of the 1st Respondent. In terms of Section 3(1) of the Act, if a competent authority is of the opinion that any person is in unauthorised possession or occupation of any State land, the competent authority may serve a Quit Notice on such person in possession or occupation. In *Don Sarath Rajapaksha v Susantha Aththanayake, Divisional Secretary and Another,*[1] the Petitioner has sought similar reliefs as in this Application. The Petitioner in that application has argued that he has prescriptive title to the land as he was in occupation of the Land for a long time and that the Divisional Secretary is duty-bound to establish the fact that the Land belongs to the State. Sobhitha Rajakaruna J. emphasising that in terms of Section 3 of the Act, a competent authority must first form an opinion that a particular land is State land and that a person is in unauthorised possession or occupation thereof before serving a Quit Notice, held that the land in question is a State land. His Lordship therefore held that the Petitioner in that application has failed to submit a *prima facie* case or an arguable question of law upon which this Court could issue formal notice on the Respondents.

In coming to the above conclusion, Sobhitha Rajakaruna J., having considered several cases, has cited the case of *Udagedara Waththe Anusha Kumari Nikaathagoda v. Jayasinghe Mudiyanselage Chamila Indika Jayasinghe, Divisional Secretary and others*,[2] where Arjuna Obesekara J had held that,

[1] CA/WRIT/374/2022, CA Minutes of 29.11.2022
[2] CA/Writ/293/2017 CA Minutes of 18.11.2019

"The strict regime for the expeditious recovery of State land stipulated in the Act only provides a person served with a quit notice, the limited remedies under Section 9, and a person against whom an Order of ejectment has been issued, an opportunity to vindicate her title under Section 12 of the Act. It is the view of this Court that the legislature could not have intended for the Competent Authority's opinion, which can have far reaching consequences on one's proprietary rights, to be baseless. The Competent Authority's opinion must thus be formed on a rational basis. What constitutes a rational basis must be ascertained case by case. In the present application, this Court is of the view that a Surveyor General's Plan confirming that the land acquisition process had been completed, would amply satisfy the test for rationality

This Court wishes to emphasise, for the avoidance of any doubt that the Competent Authority is not required in terms of the Act to carry out an inquiry of the title of the person who is in unauthorized possession of such land.

The principle then is that while no inquiry is needed to form an opinion, there should be a rational basis to form the opinion that the State is lawfully entitled to the land. The rational basis should satisfy the Wednesbury test of reasonableness. Thus, a Competent Authority would be acting reasonably if he were acting on the basis of a Surveyor General's plan, even if the occupant is claiming prescription. The Competent Authority is not expected to, and indeed is precluded from, carrying out an inquiry"

What differs from this instant Application and the case of *Don Sarath Rajapaksha v Susantha Aththanayake, Divisional Secretary and Another* (supra) is that the Petitioner in the instant Application does not dispute that the subject matter of this Application is a State land. In fact, the Petitioner himself has admitted that it is a state land. Now the question before this Court is whether the Petitioner is in unauthorised possession or occupation of the land. Unauthorised possession or occupation has been defined under Section 18 of the Act as,

> "*except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon state land*."

The Petitioner, by producing the letter marked as P1, issued by the Surveyor General and addressed to the Government Agent, seeks to establish that his uncle was granted a land in the extent of 8 perches. However, the said letter marked as P1 does not disclose or confirm that any right over the said land had been conferred upon the Petitioner's uncle. Nowhere in the Petition has the Petitioner established that he himself has been granted any legal right or title to the land that he is in possession of. The Petitioner has merely established that he has been conducting a business on the said land. It is also evident from the documents produced by the Petitioner that both he and several others are attempting to obtain legal rights over the land presently occupied by the Petitioner (P4). Although a development permit was issued to the Petitioner in 2013 (P2), the said

permit was valid only for one year, and the Urban Council does not possess the authority to confer proprietary rights in respect of State land.

Moreover, it is apparent from the letter dated 15.02.2021 marked as P5 that the 1st Respondent had recommended to the 2nd Respondent that the said land be granted to the Petitioner on a long-term lease, as the Regional Development Bank had not yet utilised the said land. However, since several individuals had made requests to obtain the said land on a long-term lease, the 2nd Respondent has decided to call for tenders for that purpose (P8). The Petitioner in the averment 18(f) of the Petition has stated that, as evident from the letter marked P11, he obtained an order from the High Court of Ampara in the year 2007 against the Urban Council to evict him, and the Urban Council decided not to evict him. However, in the letter P11, it only indicates that the Petitioner has instituted an action in the High Court against removing the building constructed on the said land, and the Petitioner has withdrawn the said application due to the decision of the Urban Council not to remove the said construction. Therefore, considering the above facts, this Court is of the view that the Petitioner has failed to satisfy this Court that he is possessing the land under a valid permit or any other authority granted by the State, nor has he established that his uncle, in fact, has any right or title to that land by way of a permit or any other authority granted by the State. Therefore, this Court is of the view that the Petitioner has failed to satisfy any ground that warrants the issuance of a Writ of Certiorari to quash P10.

Furthermore, the Petitioner argues that he has a legitimate expectation that he will get the rights to the land. In the case of *Vasana v. Incorporated Council of Legal Education and Others,*[3] it was held that in order to succeed in an application made on the grounds of legitimate expectation, the expectation must be legitimate.

In *Ariyarathne and others v Inspector General of Police and others*,[4] it was stated that

> "*The doctrine of legitimate expectation envisages that a Court may, in appropriate circumstances and where the public interest does not require otherwise, enforce a "legitimate expectation" (as distinct from a personal or proprietary right) of a person that a public authority will act as it has promised or held out. The doctrine of legitimate expectation operates where an aggrieved person does not have a proprietary or personal right stricto sensu which gives him the locus standi to challenge a decision of a public authority under the other grounds recognised by administrative law*."

In *Ariyarathne and others v Inspector General of Police and others* (supra), it was further held that,

> "*A mere wish, a desire or a hope cannot found a legitimate expectation which will be protected by the Court. The petitioners had at best a wish, a desire or a hope ... That does not help the petitioners to establish the substantive legitimate expectation they claim in this case*."

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[3] (2004) 1 SLR 159

[4] (2019) 1 SLR 100

The Petitioner argues that he has attempted to acquire legal rights over the land from the authorities concerned for a long period of time, and therefore, he has a legitimate expectation over the land, and issuing the Quit Notice marked P10 violates his legitimate expectation. Firstly, as stated above, the Petitioner has not established that either he or his uncle has any right to the land. It is the view of this Court that the Petitioner does not have a legitimate expectation merely for the fact that he is in possession of a State land for a long continuous period of time without having any legal right to possession. Even though one can assume that the Petitioner may have a legitimate expectation as per the letter marked P5, where the 1st Respondent had recommended to the 2nd Respondent to issue a long-term lease for the land in the name of the Petitioner, this Court is of the view that P5 is a mere recommendation given by the 1st Respondent. The 2nd Respondent, without acting on it, has recommended calling for tenders, considering the number of claims made to the same land requesting a long-term lease be issued on them (P8). Therefore, it is clear that no promise has been given to the Petitioner that he will be given the land on a long-term lease. Considering the above facts, this Court is of the view that the Petitioner has failed to satisfy this Court that his expectation is legitimate and not a mere wish, desire or hope.

The Petitioner, without appearing before the Magistrate's Court of Ampara to show cause as to why he should not be evicted in terms of Section 6 of the Act, now has come before this Court to quash the Quit Notice marked as P10 by way of a writ of Certiorari. It is the view of this Court that the Petitioner has an equally convenient alternative

remedy to go before the learned Magistrate of Ampara without invoking the writ jurisdiction of this Court. It is trite law that when there is an alternative remedy available, this Court is reluctant to exercise its writ jurisdiction. In *Linus Silva v. The University Council of the Vidyodaya University*,[5] it was held that,

> "*the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy*"

Considering all the above-stated facts and circumstances, it is the view of this Court that this is not a fit case to issue formal notices on the Respondents. Application dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL

[5] 64 NLR 104