

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

Peter Joseph Polraj,  
Dunsinane Co – operative Society  
Building,  
Dunsinane Estate,  
Pundalu Oya.

**Petitioner – Appellant**

CA (PHC) Case No. 70/2005      Vs.

01. Rohan Edward,  
Superintendent,  
Dunsinane Estate,  
Pundalu Oya.

02. E.C.K. De Alwis,  
Consultant of the Plantation Reform  
Project,  
Plantation Management Monitoring,  
Division of Ministry of Plantation  
Industries,  
2<sup>nd</sup> Floor, Unity Plaza,  
No. 02, Galle Road,  
Colombo 04.

**Respondent – Respondents**

**Before      : W.M.M.Malinie Gunarathne, J**  
**: P.R.Walgama, J**

**Counsel : Daya Guruge for the Appellant.**  
**: Samantha Vithana with Ananda Abeywardane for**  
**1<sup>st</sup> Respondent – Respondent.**

**Argued on : 23.07.2015**

**Decided on: 07.12.2015**

**CASE NO- CA (PHC) -70-2005- JUDGMENT-07.12.2015**

**P.R.Walgama, J**

The instant appeal lies against the order of the Learned High Court judge dated 01.04.2015, by which order the application of the Petitioner was dismissed.

The Petitioner by his application to the High Court Holden at Kandy made an application for a mandate in the nature of a writ of Certiorari to quash the notice to quit marked as P32, and for a writ of Prohibition restraining the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents, from taking any step to eject the Petitioner from the subject land.

The facts germane to the instant application are as follows;

The Petitioner was employed by the Co operative Society of the Dunsinane Estate of Pundaluoya and he had purchased shares of the said estate. In the year 1981 the above Co operative Society was dissolved and the Petitioner was allowed to maintain a canteen for the purpose of selling tea.

The Petitioner was in the said business from 1983 to 1991 and living in the above premises with his family, while working as a watcher.

The 1<sup>st</sup> and the 2<sup>nd</sup> Respondents had sent two letters in terms of Government Quarters Recovery of Possession Act No. 06 of 1969, and pursuant to the afore said letters the Respondents had sent a quit notice marked as P32, in terms of State Land Recovery of Possession Act.

It is to be noted that the 2<sup>nd</sup> Respondents originally issued a quit notice dated 30.01.2003, to the Petitioner under Government Quarters (Recovery of Possession) Act NO. 7 OF 1969. but subsequently a quit notice was issued under Section 3 of State Lands (Recovery of Possession ) Act No. 7 of 1969.

The ground norm of the argument of the Petitioner was that the subject land does not belong to the State, but owned by the Elpitiya Plantation ltd., and therefore it is alleged by the Petitioner that the notice to quit marked as P32 sent by the Respondents is not valid, as the Respondents did not have the authority to send the same. But it is to be noted, that the said Plantation Company was formed under the provisions of Public Corporations and Government Owned Business Undertakings in to Public Companies Act No. 23 of 1987, continues to be a State Land.

It is contended by the Respondents that the disputed land belongs to the State and according to the Thirteenth ~~Amendment~~ ~~Amended~~ to the Constitution, Article 154(p)(4)(b) although the High Court is empowered to issue Writs it could

do so only regarding the subjects which are devolved in the Province and more fully stated in the Provincial Council List.

In considering the facts stated above the Learned High Court Judge was of the view that the High Court of Provinces are barred from issuing Prerogative Writs, in respect of any matter which is not within the Province.

It is apparent from the Article 154(p) (4) (b) that

Any statutes made by Provincial Council established for that province,

In respect of any matter set out in the Provincial Council List.

According to the Ninth Schedule List I (Provincial Council List), Article 18 deals with the issue of lands, and states thus;

‘Land, that is to say , rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix II.’

The above Appendix II specifically deals with the Land and Land settlement.

‘ State Land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written Law governing the matter.’

In the above setting the Learned High Court Judge was of the view that the High Court is barred in issuing a Prerogative Writ in respect of Lands as the said subject is vested with the Centre and not with the Province.

Therefore the Learned High Court Judge was of the view that the Petitioner is not entitled to challenge the validity of the said quit notice marked as P32 which was issued in terms of Section 18 of State Land Recovery of Possession Act No. 07 of 1979.

In the said back drop it was held by the Learned High Court Judge that he is not empowered to issue a Writ of Certiorari as sought by the Petitioner, and as such has dismissed the Petitioner's application accordingly.

Being aggrieved by the said order the Petitioner has appealed to this Court to have the said order set aside or vacate.

The Petitioner in the instant appeal by assailing the above order of the Learned High Court Judge has asserted the above mentioned details and reiterate the following;

That the Petitioner- Appellant (in short the Appellant) has renovated the disputed premises and was living with his family. The Respondents had attempted to eject him but the Ceylon Tamil Congress has intervened and as a result, the Appellant was able to be in possession of the subject premises.

Pursuant to the aforesaid the Respondents had sent the quit notice marked as P32, which notice has been challenged by the Appellant, by way of a writ of Certiorari, in order to quash the said notice.

The core issue in the instant matter to be resolved is whether the premises in suit is a State Land or a land now vested in a private company, to wit: the Elpitiya Plantation Ltd.

The counsel for the Petitioner has adverted this Court to the fact that the Dunsinane Estate is managed by the Elpitiya Plantation Company and all the immovable property has been vested in the said Company, and it is being managed by Aitken Spence Plantation Management (pvt) Ltd.,

✓ The 1<sup>ST</sup> Respondent~~s~~ holding the contrary view has submitted thus;

That the High Court of Province has no jurisdiction to entertain an application for writ of Certiorari to quash the notice to quit, marked P32, issued under State Land (Recovery of Possession) Act No. 7 of 1979, to eject the Petitioner from the State Land.

The said proposition was enshrined in the recent judgment of SOLAIMUTTU RASU .VS. THE SUPRINTENDENT STAFFORD ESTATE- SC Appeal No. 21/2013.

✓ It is the categorical position of the 1<sup>ST</sup> Respondent~~s~~ that a Land leased out by Janatha Estates Development Board (JEDB) to a private Company, formed under the Provisions of Conversion of Public Corporations and Government Owned Business Undertakings in to Public Companies Act No. 23 of 1987, continues to be a State Land. It was so held in the case of CHANDRABOSE .VS. CONSULTANT PLANTATION AND INDUSTRIES AND OTHERS, (CA Writ 920/2000 C.M.A. 12.05.2003).

It is also contended by the Respondents, that the Appellant was running a tea shop maintained by the Co operative Society and even after the dissolution of the said Co operative the Appellant had continued to run the business without the permission of the

Respondents. The Respondents allege that the said Co operative Society has informed the Appellant to hand over the disputed premises to the Dunsinane Estate by letters marked as P8 and P10.

It is salient to note that under the State Land (Recovery of Possession) Act, the burden is on the occupier to establish that he possess the land with a valid permit or any other written authority.

In the above setting it is crystal clear that the Appellant's application is untenable, and devoid of merits and should stand dismissed.

Accordingly we dismissed the appeal without costs'

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**