

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

In the matter of an appeal made
under the Constitution of Democratic
Socialist Republic of Sri Lanka against
the Judgement dated 28.09.2020 of the
Court of Appeal.

SC/APP/112/2021

SC.SPL.LA.No.260/2020

CA Writ Application No.85/2018

01. 88th Developers(Pvt)Ltd.
No.15/5, Circular Road
Sapumal Place,
Rajagiriya

02. M.S.C. Perera,
Director
88th Developers(Pvt)Ltd
No.15/5, Circular Road
Sapumal Place,
Rajagiriya.

PETITIONERS

Vs.

01. Urban Development
Authority of Sri Lanka,

6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

02. Dr. Jagath Munasinghe,
Chairman,
Urban Development
Authority of Sri Lanka,
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

03. Eng. S.S.P.Ratnayake,
Director General,
Urban Development
Authority of Sri Lanka,
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

RESPONDENTS

AND NOW BETWEEN

01. Urban Development
Authority of Sri Lanka
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

02. L.P.Harshan de Silva,
Chairman,
Urban Development
Authority of Sri Lanka
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

03. N.P.K. Ranaweera,
Director General ,
Urban Development
Authority of Sri Lanka
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

RESPONDENTS-PETITIONERS-
APPELLANTS

Vs.

01. 88th Developers(Pvt)Ltd.
No.15/5, Circular Road
Sapumal Place,
Rajagiriya

02. M.S.C. Perera,
Director
88th Developers(Pvt)Ltd

No.15/5, Circular Road
Sapumal Place,
Rajagiriya.

PETITIONERS-RESPONDENTS
RESPONDENTS

Before : Hon. Jayantha Jayasuriya, PC, CJ
Hon. Murdu N.B. Fernando, PC, J
Hon. S.Thurairaja,PC, J

Counsel : Milinda Gunetilleke, PC, ASG with S.Wimalasena, DSG
for the Appellants.

Faisz Musthapha, PC with Faiza Marker and Bishran
Iqbal instructed by Tharmaraja Tharmaja for the
Petitioner-Respondent.

Written submissions : Petitioner-Respondent on 24.01.2022, 11.03.2024 and
18.09.2024
1st 2nd and 3rd Respondents-Petitioners-Appellants on
28.01.2022 and 05.03.2024

Argued on : 04.07.2023, 13.09.2023, 01.12.2023 and 08.08.2024

Decided on : 12.11.2024

Javantha Jayasuriya, PC, CJ.

Three Respondents-Appellants (hereinafter referred to as the Appellants) invoked the appellate jurisdiction of this Court under Article 128(2) of the Constitution. The first of them is the Urban Development Authority (UDA). The second and third are the Chairman and Director General of the 1st Appellant, respectively. The Appellants impugn the Judgment of the Court of Appeal dated 28th September 2020. Two Petitioners-Respondents (hereinafter referred to as the Respondents) sought a writ of certiorari to quash a Quit Notice issued by the UDA under State Land (Recovery of Possession) Act No 7 of 1979 as amended. The Learned Justices of the Court of Appeal by the impugned Judgment, granted the relief prayed by the Respondents and quashed the aforesaid Quit Notice. The first Petitioner-Respondent is a private limited liability Company (the company) and the second is the Director of the said 1st Petitioner-Respondent company.

The impugned Quit Notice dated 28th December 2017, has been issued on the basis that the company is in unlawful possession of the land described in the schedule. The company was asked to hand over possession on 29th January 2018. The land in question as described in the schedule of the impugned Quit Notice comprises of Lot 1 and Lot 14 depicted in the Preliminary Plan No. 5534 dated 07th January 1981 (PP.Co.5534), prepared by the Surveyor General. The extent of the relevant land is 0.4435 Hectares.

The Respondents challenged the Quit Notice issued by the Appellant on several grounds, in the Court of Appeal. They contended that there is no material to establish that the said Land in issue is State land, and hence it was claimed that the Appellants could not have formed the opinion that the company is in unlawful possession of a State land. It was further contended that the Respondents and their predecessors in title have been in long, peaceful and uninterrupted possession of the said land for their private use and enjoyment for over 25 years. They further submitted that the UDA is not the competent authority for the purpose of the said Quit Notice and that the Notice is totally without jurisdiction, unsupported by evidence and *ultra vires* the powers of the UDA. It was their contention

that the said Quit Notice has been issued for a collateral purpose. They further claimed that their legitimate expectation that they would be able to carry out their commercial activities without any hindrance upon obtaining all approvals was denied.

The Respondents, as the Petitioners in the Court of Appeal, further claimed that the District Court by its Judgment in Case No.32/09/DLA dated 07th February 2018 decided that the predecessors in title of the Respondents were entitled to receive compensation from the Road Development Authority for the acquisition of the land in question in the said proceedings for road development as opposed to the claim for compensation by the Appellants. The Appellant's claim for compensation in relation to the said acquisition was rejected by the Court. Respondents contended that the land in question in the aforesaid District Court matter forms a part of the corpus relating to which the impugned Quit Notice is issued and therefore the aforesaid decision of the District Court stands proof of the fact that the UDA has no legal right to issue the impugned Quit Notice.

When granting relief in favour of the Respondents, the Learned Judges of the Court of Appeal held that *".....the 2nd Respondent, the Director General of the UDA, abused the provisions of the State Lands (Recovery of Possession) Act in order to eject the 1st Petitioner from the land in suit summarily. He cannot do so. The very fact that the Quit Notice was issued after the inquiry but before the delivery of the Judgment of the District Court amply demonstrates mala fides on the part of the UDA. The summary procedure of ejection laid down in the Act cannot be allowed to be abused to achieve ulterior motives. That is not the intention of the legislature..."*.

The Appellants impugn the aforesaid Judgment of the Court of Appeal on many grounds. They contend that the Court of Appeal erred in fact and law, erred in failing to consider the effect of the Grant issued by the President in terms of Section 6(1) of the Crown Lands Ordinance, erred in failing to consider that the purported predecessors in title of the Respondents were unauthorized occupants at the time of vesting the land in question to the

UDA, erred in failing to consider that the purported predecessors in title of the Respondents had attempted to regularize their unauthorized occupation by executing a declaration deed in the year 1991(which is six years after the land was granted to the UDA), erred in failing to consider that the Learned District Judge in his Judgment in Case No. 32/DLA /09 has refused the claim of UDA for the Lot No.89 of Preliminary Plan No 8703 (PP.Co.8703) on the ground that the UDA has failed to prove that the said Lot No.89 in PP.Co. 8703 is a part of Lot 1 of PP.Co. 5534, erred in law by failing to appreciate that the Learned District Judge in Case No. 32/DLA/09 did not decide the issue whether the UDA does or does not have the title for Lot 1 of PP.Co. 5534 for which the quit notice is issued, erred in deciding the effect of Grant issued by the President, erred by failing to appreciate that the material available to the Director General of the UDA was sufficient for him to form the opinion that the company was in unauthorized occupation of the State land, erred by failing to evaluate the material placed before the Court of Appeal and erred in failing to consider that the material facts are in dispute and hence no writ could be granted.

This Court on 13th December 2021 granted leave to appeal on the following questions of law:

1. Did the Court of Appeal err in quashing the Quit Notice marked P1?
2. Did the Court of Appeal err in failing to consider the effect of the Grant issued by His Excellency the President in terms of Section 6(1) of the Crown Lands Ordinance?
3. Did the Court of Appeal err in law by failing to appreciate that, in District Court Case No.32/DLA/09, the Learned District Judge has not decided the issue of whether the UDA has title for Lot 1 of PP.5534, for which the Quit Notice in issue was issued?
4. Did the Court of Appeal err in law by misconstruing the Judgement of the District Court Case No.32/DLA/09 in deciding the effect of a Grant issued by His Excellency the President?

5. Was there any material before the 2nd Respondent (2nd Respondent in the writ application before the Court of Appeal) to form the opinion that the land in question was state land?
6. In the circumstances of this case, was the 2nd Respondent justified and / or have jurisdiction to resort to the provisions of State Land Recovery of Possession Act?
7. (a) Was there a bona fide dispute in regard to title and / or identity of the land?
(b) In such an event, was the 2nd Respondent competent to recourse to the provisions of State Land Recovery of Possession Act?
8. Are the questions of law raised by the learned President's Counsel inconsistent with the scheme of the State Land Recovery of Possession Act No 7 of 1979, in particular Section 9 of the said Act?

Questions 5, 6 and 7 were raised by the learned President's Counsel for the Respondents.

The Respondents before this Court , reiterated the positions they averred in the Court of Appeal and resisted this appeal. They contended that there is no material to establish that the land in question is a State land and that the Appellants could not have formed the opinion that the Respondents are in possession of State Land. They contend that the Judgment in the District Court Case No. 32/DLA/09 has proved the rights of their predecessors in title to the land in question and that the UDA has no rights over the same. The Respondents submitted that the appeal has no merit and moved this Court that the appeal be dismissed and the Judgment of the Court of Appeal be affirmed.

First, I will examine the two of the aforementioned questions (questions 3 and 4) revolving around the District Court proceedings in Case No. 32/DLA/09. According to the material available, proceedings had been initiated by the Director (land) who is the land acquisition officer of the Colombo District Road Development Authority on the basis that a dispute arose between several claimants for compensation in relation to the acquisition of the corpus described in the plaint. He named the UDA and three others as four Defendants.

These four Defendants did submit competing claims to receive compensation for the land acquired for the road widening project. The UDA claimed that the land in question, the subject matter in the District Court, which was acquired for a road widening project, is a portion of a larger land where a grant was issued in favour of the UDA by the President. The other three Defendants disputed this position and claimed rights over the said land.

The corpus relevant to the dispute before the District Court is described as Lot No. 89 (Hectares 0.0018 – 0.71 perches) of the Surveyor General's plan PP. 8703 situated at Welikada, Nugegoda Division, Colombo District, Western Province. This land is identified as Assessment No. 1177, Cotta Road.

The first Defendant in the District Court (the UDA) by their answer claimed that the aforesaid land is a portion of the land depicted as Lot 1 in PP.Co.5534 dated 01 July 1981. It was claimed that the aforesaid Lot 1 of PP.Co.5534 has been awarded to the UDA by the President on the grant 4/2/9006 dated 11th October 1985 under Section 6(1) of the State Lands Ordinance.

The 2nd Defendant in the District Court claimed that the land in question (Lot No. 89 of PP.Co. 8073) is clearly depicted as Lot No. 1 of plan No. 1914 dated 31st July 1986 prepared by Licensed Surveyor M.W.D.P.Wijesinghe and he obtained the title of the said land by deed No. 59 dated 28th October 2004, attested by W.M.H.S.Wijesinghe, Notary Public.

The 3rd and 4th Defendants in the District Court claimed that the land described in the Plaint – Lot 89 of PP.Co. 8703 in extent 0.71 perches – is a portion of a larger land. They claimed that it is a portion of the land depicted as Lot 1 in Plan No. 3 prepared by Licensed Surveyor R.H.Dharmawardane, which is in extent one Rood and twenty one Perches. They further claimed that buildings bearing assessment Nos. 1177, 1177/1, 525/2 and 525/9 are situated in the said Lot 1 in plan No. 3. They further claimed that the 3rd and 4th Defendants

gained title to the said land through the following deeds: deed No. 220 dated 1st March 1991 attested by R.W.Wijewardane NP, deed No. 483 dated 02nd December 1993 attested by L.Hiriumuthugoda, NP, deed No. 3242 dated 12th April 2005 attested by H.R.K.Caldera NP and prescriptive title gained by the two Defendants and their predecessors in title through long and uninterrupted possession.

The Learned District Judge did not accept the claims of the UDA and the 2nd Defendant but decided in favour of the 3rd and 4th Defendants, who submitted a joint claim. In reaching this decision the Learned District Judge observed that the aforementioned three competing claims are based on three different plans and it had not been possible to obtain a superimposition of the said plans on Lot 89 of PP.Co.8703. Furthermore, the Learned Trial Judge has observed that premises No. 1177 is not referred to in the Grant issued to the UDA by the President. The Learned Trial Judge has held that the 3rd and 4th Defendants and their father had been in possession of premises 1177 over a period of time and that they were residing in the said premises at the time of acquisition.

The learned President's Counsel for the Respondents contended that the aforesaid Judgment of the District Court establishes that the UDA has no rights over the land in question. Therefore, the UDA has acted *ultra vires* in issuing the Quit Notice. Furthermore, the learned President's Counsel for the Respondents submitted that the District Court has held that the predecessors of the Respondents have been in possession of the said land, bearing assessment No. 1177 and forming part of Lot 1 of PPCo 5534.

The Learned Additional Solicitor General having drawn the attention of this Court to the aforementioned Judgment of the District Court in Case No. 32/DLA/09 submitted that there is no finding by the Learned District Judge on the status of the land in question relating to the impugned Quit Notice, namely Lots No. 1 and 14 in PP.Co. 5534. It is on this basis the Learned Additional Solicitor General submitted that the Court of Appeal erred when the

Court quashed the Quit Notice on the premise that the proceedings in the District Court relates to a portion of land on which the Quit Notice was issued.

In my view, there is merit in the above contention of the Learned Additional Solicitor General. Learned Justices of the Court of Appeal, whilst making reference to the objections filed by the UDA in the writ application observed that “..when the UDA filed this statement of objections, it knew or ought to have known that the District Court, which the UDA says is the competent court to decide the title of the land, **held against the UDA and in favour of the predecessors in title of the 1st Petitioner**”. (emphasis added). This observation clearly demonstrates that the Learned Justices of the Court of Appeal had acted on the assumption that the lands in question in the Quit Notice and the land relating to which the inquiry for compensation are the same and/or the latter is a part of the former. As enumerated hereinbefore, the Learned District Judge clearly held that the land in question at the compensation inquiry is not covered by the Grant issued by the President. Furthermore, the Learned District Judge specifically mentioned the inability to conduct a superimposition of the three plans on which the Defendants described lands they claimed, including the plan referred to in the Quit Notice. The decision of the Learned District Judge is in relation to the entitlement of compensation in relation to the acquisition of the land depicted as Lot 89 in PP.Co. 8703 and nothing else. As set out hereinbefore, Lot 89 in plan 8703 is identified as Assessment No. 1177, Cotta Road. Furthermore, the schedule of the plaint filed in the District Court reflects that the Lot 14 of PP.Co. 5534 (a part of the land relating to the impugned Quit Notice) is bordering Lot 89 in PP.Co. 8703 (the land in relation to the compensation inquiry proceeded) in its Eastern, Southern and Western boundaries. Lot 1 of PP.Co. 5534 (the other part of the land relating to the Quit Notice is bordering the Northern boundary of Lot 14). Therefore, the decision of the District Court at the compensation inquiry cannot by any means be interpreted as a judicial determination on the rights of the UDA in relation to the land depicted as Lots 1 and 14 in PP.Co. 5534 which is the subject matter of the impugned Quit Notice. It is also pertinent to note that the observation of the Learned Justices of the Court of Appeal – “...*The very fact that the Quit*

Notice was issued after the inquiry but before the delivery of the Judgment of the District Court amply demonstrate mala fides on the part of the UDA. The summary procedure of ejection laid down in the Act cannot be allowed to be abused to achieve ulterior motives. That is not the intention of the legislature...”, also demonstrates that they acted on the same premise, and on the assumption that the two lands are interconnected. It is the sole basis on which the Writ had been issued to quash the Quit Notice.

In this regard it is also pertinent to note that the UDA’s attempt to evict unauthorized occupants from Lots 1 and 14 of PP.Co. 5534 dates back to year 1981. Attempts of the UDA to prepare a plan to demonstrate the unauthorized occupation in lot Nos. 1 and 14 of the abovementioned PP.Co. 5534 through the Surveyor General, in the year 2014, have been foiled due to the obstructions and objections of the unauthorized occupants of the said portions of the land. In the year 1994, the Minister of Housing Construction and Urban Development by virtue of powers vested on him under section 14(2) B of the State Lands (Recovery of Possession) Act had granted approval to the UDA to initiate proceedings to eject eight unauthorized occupants in Lot 14 of PP.Co. 5534 and one unauthorized occupant from Lot 1 of PP.Co. 5534. Two years thereafter, in the year 1996 also, the Minister had granted approval to the UDA to initiate a process to eject unauthorized occupants in several UDA lands. This includes the ejection of three persons from Lots 1 and 14 in PP.Co. 5534. However, according to the UDA, for reasons unknown, this process had not completed successfully. The Learned Justices of the Court of Appeal have failed to appreciate this item of evidence when they held that the issuance of the impugned Quit Notice dated 28th December 2017, prior to the delivery of the Judgment in the District Court, demonstrates *mala fides* on the part of the UDA. Furthermore, in my view when all material as enumerated hereinbefore is considered they do not show that the impugned Quit Notice has been issued “*to achieve ulterior motives*” and the Court of Appeal erred when it concluded that the UDA has no right to issue the Quit Notice in relation to the land more fully described in the schedule of the Quit Notice, on the same basis.

Based on the findings I have enumerated hereinbefore I answer both questions namely, “did the Court of Appeal err in law by failing to appreciate that, in District Court Case No.32/DLA /09, the Learned District Judge has not decided the issue of whether the UDA has title for Lot 1 of PP.5534, for which the Quit Notice in issue was issued?” and “did the Court of Appeal err in law by misconstruing the Judgment of the District Court Case No.32/DLA/09 in deciding the effect of a Grant issued by His Excellency the President?”, in the affirmative.

It is also a matter of great importance to note that the 2nd Petitioner-Respondent – the Director of the company - in his capacity as the 2nd Petitioner in the Court of Appeal, by his affidavit dated 15th February 2018, one of the grounds on which he sought a writ to quash the Quit Notice is:

*“the land which is the subject matter of this application and the land referred to in the schedule of the Quit Notice are **two distinct and different lands** for the reason that the boundaries contained in the schedule in the said plan No 7570 dated 28.08.2016 made by P.A,K,J,Perera Licensed Surveyor and the schedule of the Quit Notice do not tally”* (emphasis added – paragraph 28 (c) of the affidavit). The learned President’s Counsel also reiterated this position in the submissions before this Court and pleaded as one of the grounds on which the appeal should be dismissed.

It is incomprehensible, as to how an Order to quash the Quit Notice could be issued in such a situation when the party who is seeking the Writ himself is admitting that the corpus relating to which the Quit Notice is issued is different to the land for which he is claiming title. The effect of the impugned Quit Notice is to vacate and hand over the possession of the land specified in the Quit Notice to the UDA. It is irreconcilable how the Petitioner seeks an order to quash a Quit Notice which requires him to vacate a land for which he does not claim title.

In this regard it is also pertinent to note that on behalf of the appellants, it was submitted that the Learned Justices of the Court of Appeal erred by failing to consider that the main facts are disputed by the parties before Court. One of the main facts in dispute is the identity of the corpus. The special grant issued to the UDA by the President under Section 6(1) of the State Lands Ordinance on 11th October 1985 describes the relevant land as Lots 1,6,11,12,13,14,16,17,19,23 and 24 depicted in PPCo. 5534 including Assessment nos. 1179, 1181,1183 and 1185 of Cotta Road. The impugned Quit Notice relates to aforesaid Lots 1 and 14. To the contrary, the predecessors in title of the land relating to which the District Court held the inquiry for compensation is identified as Lot 89 in PP.Co. 8703 and also described as Assessment No.1177, Cotta Road. The Learned District Judge rejected the claim of the UDA to the last-mentioned land on the basis that they failed to demonstrate by a plan, that the land in relation to the inquiry was held is a part of the land for which the grant was issued. Furthermore, the Learned District Judge observed that the land for which the grant was issued does not include Assessment number of Lot 89 of PP.Co. 8703 namely Assessment No. 1177, Cotta Road. In fact, the Deed of Declaration made in the year 1991 by the predecessor in title of the Respondents – Deed No. 220 dated 01st March 1991 - describes the property as premises bearing Assessment Nos. 1177, 1177/1. This deed of declaration which is made six years after the grant was issued in favour of the UDA neither makes any reference to PP.Co. 5534 nor any of the Assessment nos. i.e: 1179,1181,1183 and 1185 of Cotta Road – referred to in the said grant. The two deeds on which the Respondents gained title – deed 451 dated 3rd August 2016 and deed No. 453 dated 03rd August 2016 also makes no reference to any of the assessment numbers referred to in the grant or PP.Co.5534. Therefore, it is not possible to reconcile or to establish any interrelationship between the identity of the land to which the Respondents are claiming title to and the identity of the land in relation to which the Quit Notice is issued, other than the mere assertion of the Respondents through pleadings that the land to which they claim title is a part of the land in relation to which the Quit Notice is issued. Therefore, in the absence of clear evidence to establish Respondent's title or any interests over the land relating to which the grant is made and the Quit Notice is issued, no writ could have been

issued to quash the Quit Notice. Therefore, the Court of Appeal has erred in failing to consider the existence of such dispute over the facts, when granting the relief pleaded by the Respondents and quashed the Quit Notice.

In view of my findings enumerated hereinbefore and the findings on two questions that I have already answered in the affirmative, I answer question No. 1 namely “did the Court of Appeal err in quashing the Quit Notice marked P1?” also in the affirmative. In view of my answers to questions 1, 3 and 4, any further examination of the rest of the questions is only an academic exercise. Hence, I do not wish to consider questions 2,5,6,7 and 8. Accordingly, I allow the appeal and set aside the judgment of the Court of Appeal dated 28.09.2020.

Chief Justice

Murdu N.B. Fernando , PC.
I agree

Judge of the Supreme Court

S.Thurairaja, PC.
I agree

Judge of the Supreme Court