

**GOONATHILAKA AND ANOTHER**  
**v**  
**THOLLAPPAN**

SUPREME COURT.

SARATH N. SILVA, C.J.

FERNANDO, J.

AMARATUNGA, J.

S.C. APPEAL NO. 19/2005, S.C. (SPL.) LA NO. 211/2004

C.A. NO. 211/2004

AUGUST 25, 2006

*State Land (Recovery of Possession) Act No. 7 of 1979 as amended by Act No. 58 of 1981, Section 18, – What is State land in terms of Section 18? – Land is taken to include buildings? – Evidence Ordinance – Section 114. – Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987.*

Bagawantalawa Plantations Ltd., was an estate vested in the Land Reform Commission and later in the Sri Lanka State Plantations Corporation (SLPC). The respondent was an employee of the SLPC and was permitted to occupy the land in question on the payment of a sum of Rs. 50/- per month as rent. Subsequently the estates vested in the SLPC was leased out to companies established in terms of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act. Bogawantalawa Plantations Ltd. was incorporated in terms of the said Act, the estate within which the land occupied by the respondent is situated was leased by SLPC to Bogawantalawa Plantations Ltd.

The Court of Appeal issued a *writ of certiorari* on the basis that the respondent had been given on rent a building and that the land is mere appurtenant to the building. The notice to quit was issued by the original respondent-appellant as the Competent Authority for the purpose of the State Land (Recovery of Possession) Act on the basis that the respondent (V.N. Thollappan) is in unauthorized occupation of state land. The land described in the schedule to the notice to quit is a portion of field 4 of the Bogawantalawa Estate.

**Held:**

The purpose of the State Lands (Recovery of Possession) Act as amended is to recover possession of the state lands from persons in unauthorized possession or occupation of such land. Section 18 makes it abundantly clear that land is taken to include buildings standing thereon. The specific reference in the definition that land includes any building standing thereon has been ignored in the judgment of the Court of Appeal. The fact that there is a building on the land and that a person is in occupation of that building cannot remove such land from the operation of the Act.

In terms of section 114 of the Evidence Ordinance a Court may presume *inter alia* "that judicial and official acts have been regularly performed". In this case the respondent has produced the letter by which he is appointed as the Competent Authority in respect of the Sri Lanka State Plantations Corporation. As the petitioner has not disputed that averment, no further proof is required in regard to the authority of the appellant to perform his official functions under the Act.

**APPEAL** from the Judgment of the Court of Appeal.

*Gomin Dayasiri with Manoli Jinadasa* for petitioner.

*S. Mandaleswaran with S. Shanthisan and Tharanga Aluthge* for the respondent.

*Cur.adv.vult.*

August 25, 2006

**SARATH N. SILVA, C.J.**

This is an appeal from the Judgment of the Court of Appeal dated 6.7.2004. By that Judgment the Court of Appeal issued a *writ of certiorari* to quash the quit notice produced marked X13. The Notice was issued by the original respondent-appellant as the Competent Authority for the purpose of the State Land (Recovery of Possession) Act, stating that the petitioner-respondent (V.V. Thollappan) is in unauthorized occupation of state land described in the schedule to the Notice and requiring him to vacate the land together with dependents, if any, on or before 31.12.2001. The land described in the schedule to the Notice is a portion of field No. 4 of the Bogawantalawa estate of which the boundaries are given containing an extent of 57ft x 65 ft.

It is not disputed in this case that Bogawantalawa Plantations Ltd., was an estate vested in the Land Reform Commission and later in the Sri Lanka State Plantations Corporation (SLPC). According to the documents the respondent was an employee of the SLPC and was permitted to occupy the land in question on the payment of a sum of Rs. 50/- per month as rent. Subsequently the estates vested in the SLPC were leased to Companies established in terms of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987.

Bogawantalawa Plantations Ltd., was thus incorporated by an order dated 22.6.1992 made in terms of the said Act. The Bogawantalawa estate within which the land occupied by the petitioner is admittedly situated was leased by the SLPC to Bogawantalawa Plantations Ltd., by Lease bearing No. 83 dated 18.1.1994 attested by J. Kottage, Notary Public.

The lease is for a period of 99 years and contains a provision for prior termination. Therefore the land remains vested in the Sri Lanka State Plantations Corporation.

In terms of section 18 of the State Lands (Recovery of Possession) Act, as amended by Act No. 58 of 1981, "State land includes .... any land vested in or owned by or under the control of ..... the Sri Lanka State Plantations Corporation". Thus the provisions of the Act, as amended would apply in respect of the land and premises in question.

Although the Court of Appeal also arrived at the conclusion stated above as to the application of the Act in respect of the Bogawantalawa Estate, the Court of Appeal issued the *writ of certiorari* on the basis that the petitioner had been given on rent a building and that the land is mere appurtenant to the building. On that reasoning it was held that the provisions of the Act cannot be invoked to evict a person from a building. On that reasoning it was held that the provisions of the Act cannot be invoked to evict a person from a building under the guise of an eviction from land. It is specifically stated in the judgment that the impugned notice to quit is an abuse of the process of

the special law meant to evict those who are in unauthorized and unlawful occupation of the State land.

It was further held that the respondent has not adduced any proof of his authority to issue the impugned notice to quit as a Competent Authority in terms of the said Act.

Counsel for the appellant contended that the Court of Appeal has misdirected itself as to the meaning to be attached to the phrase "State Land" and has failed to take into account its definition as given in section 18 of the Act. The operative portion of the definition of the phrase "State Land" in the Act, as amended by Act No. 58 of 1981 reads as follows:

*"State land means land to which the State is lawfully entitled or which may be disposed of by the State together with any building standing thereon and with all rights, interests and privileges attached or appertaining thereto...."*

The latter part of this definition referred to above extends it to the SLPC.

According to the long title of the main Act, it is intended to make provision for the "Recovery of possession of State land from persons in unauthorized or unlawful occupation thereof."

The purpose of the Act is therefore to recover possession of the state land from persons in unauthorized possession of such land. The definition in Section 18 makes it abundantly clear that land is taken to include buildings standing thereon. The Court of Appeal has failed to give effect to the manifest purpose of the Act, which is the recovery of possession of land from persons in unauthorized or unlawful occupation. The fact that there is a building on the land and that a person is in occupation of such building cannot remove such land from the operation of the Act.

The interpretation given by the Court of Appeal imposes into the Act a restriction which is not warranted by its provisions. The interpretation would result in a curtailment of its provisions, wherever there is a building on such land. The specific reference in the definition that land includes any building

standing thereon has been ignored in the judgment of the Court of Appeal. Furthermore in reference to the particular facts of this case it is revealed from the documents produced by the respondent himself that he was permitted to occupy an extent of 15 perches situated in the Bogawantalawa estate. Letter dated 9.4.1986 (X2) states as follows:

*"This is to certify that Mr. V.N. Thollappan, an employee of the Sri Lanka State Plantations Corporation Board I, is resident on Bogawantalawa State Plantations. He is living in a temporary shed of wattle and daub which is not inventorized in the plantation. This temporary shed is close to the cemetery and has about 15 perches of vegetable garden attached to it."*

The extent described in the notice to quit is approximately 15 perches and significantly one boundary is the cemetery referred to in document X2. If the Court of Appeal had given sufficient heed to document X2, the conclusion would not have been drawn that the petitioner was in occupation of a building with some appurtenant land. The contrary appears to be the correct position where the respondent was permitted to occupy an extent of about 15 perches of land with a temporary shed that was standing thereon.

For the reasons stated above I am of the view that the land as described in the notice to quit comes within the definition of state land in section 18 of the State Lands (Recovery of Possession) Act, as amended by Act No. 58 of 1981.

The next matter to be considered is in respect of the authority of the respondent to function as the Competent Authority in terms of the Act. The definition of phrase "Competent Authority" as contained in the Act as amended No. 58 of 1981 includes

*"(h) an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of such corporate body".*

The respondent produced in evidence document "R1" dated 25.8.1999 issued by the Ministry of Plantation Industries, which

specifically states that the respondent is appointed as Competent Authority for the Sri Lanka State Plantations Corporation in respect of the State Land (Recovery of Possession) Act No. 7 of 1979. The petitioner has not denied this averment in the respondent's affidavit filed in the Court of Appeal. Therefore the Court of Appeal is clearly in error when it held that the respondent did not adduce any proof of his appointment as "Competent Authority."

In terms of section 114 of the Evidence Ordinance a Court may presume *inter alia* "that judicial and official acts have been regularly performed". In this case the respondent has produced the letter by which he is appointed as the Competent Authority in respect of the Sri Lanka State Plantations Corporation. The petitioner has not disputed that averment. Therefore no further proof is required in regard to the authority of the appellant to perform his official functions under the Act.

For the reasons stated above the appeal is allowed and the judgment of the Court of Appeal dated 6.7.2004 is set aside. No costs.

**FERNANDO, J.** - I agree.

**AMARATUNGA, J.** - I agree.

*Appeal allowed.*