

**EDWIN**  
**v.**  
**TILLAKARATNE**

COURT OF APPEAL  
GUNAWARDENA, J.  
C.A. 145/99  
AUGUST 03<sup>RD</sup>, 2000

*Land Acquisition Act - 9 of 1950 S7, S. 42 person interested - Acquisition of land - State Lands (Recovery of Possession) Act No. 7 of 1979, S.5 quit Notice - Validity of same - due process of law.*

**Held :**

- (i) When the statutory scheme embodied in the Land Acquisition Act itself provides a procedure for ejection or remedy it must in the generality of cases, be taken to exclude any other procedure or remedy.
- (ii) Application that had been made to the Magistrates Court in pursuance of S.5 of the State Lands Recovery of Possession Act cannot be proceeded with.

**APPLICATION** for a Writ of Certiorari.

**Cases referred to :**

*Senanayake v. Damunupola - 1982 2 SLR 621*

*S. T. Gunawardena* for Petitioner.

*Viran Corea S. C.*, for 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

*Cur. adv. vult.*

May 02, 2001.

**U. DE Z. GUNAWARDENA, J.**

The petitioner has made this application seeking an order of certiorari to quash the quit notice (E) dated 04. 07. 1997 issued on him by the 1<sup>st</sup> respondent who is the Divisional Secretary (Dehiwala - Mt. Lavinia), under section 3 of the State Lands (Recovery of Possession) Act no. 7 of 1979 (the object of

the said Act being to make provision for recovery of possession of state lands from persons in unauthorized possession or occupation thereof) requiring the petitioner to vacate the allotment of land, the four boundaries of which land are mentioned in the schedule to the said quit notice, but not the name. However, from the schedule in the quit notice it is clear that the name of the relevant allotment is Korapuwa Henawatta and is depicted as lot no. 2 in plan no. 1999 (2R1) the extent of which lot is 35.4 perches. It is virtually an admitted fact that the petitioner has a building and other improvements on the said the lot, which lot or premises now bears asst. no. 132 and that the petitioner is carrying on a hotel in that building, on more than a modest scale. It is also an admitted fact that this land had been acquired by the state, somewhere in the year 1972, under the provisions of the Land Acquisition Act no. 9 of 1950 (as amended) the broad object of the said Act. according to its long title, being "to make provision for the acquisition of lands and servitudes for public purpose and to provide for matters connected with or incidental to such provision".

To determine the question as to whether the 1<sup>st</sup> respondent could have validly issued a quit notice on the petitioner in terms of the State Lands (Recovery of Possession) Act, or rather to consider the same, it is necessary to state the relevant background facts. The fact that the petitioner had been in occupation of the lot in question even prior to the acquisition of the land by the State - the portion occupied by the petitioner being only a part of the whole land - has not been disputed. The entire land that was so acquired by the state is depicted as lots 1 and 2 in plan (2R1) - the portion presently occupied by the petitioner being depicted therein, as stated above, as lot 2. It is also common - ground that despite the acquisition by the state the petitioner continued to occupy the portion shown as lot 2 in the plan marked 2R1. The petitioner had also averred in his petition that the officials of the National Water Supply and Drainage Board (2<sup>nd</sup> respondent) itself barbwired lot 1 in the said plan excluding lot 2 - the two lots being contiguous, so that the petitioner had been in exclusive and uninterrupted

possession of lot 2 notwithstanding the fact that the entire land (depicted as lots 1 and 2 in plan 2R1) was formally acquired in the year 1972. The petitioner had also produced statements of water consumption (water bills) issued by the 2<sup>nd</sup> respondent - board itself in respect of this premises (occupied by the petitioner) bearing assessment no. 132, Allen Avenue, Dehiwala. These water bills issued by the 2<sup>nd</sup> respondent is, perhaps, relevant to show that the 2<sup>nd</sup> respondent had acquiesced in the petitioner continuing to possess the relevant lot notwithstanding its acquisition by the state. It is worth pointing out that the authorities are now seeking, to evict the petitioner from the aforesaid lot 2 in plan 2 R1 (on the basis that the state had acquired the same) for the purposes of the 2<sup>nd</sup> respondent. In fact the 1<sup>st</sup> respondent in his affidavit had averred that the acquisition of the land was made in the year 1972, for the express purpose of enlarging the water tank belonging to the 2<sup>nd</sup> respondent and also for the purpose of constructing a housing complex for the officers engaged in the service of the 2<sup>nd</sup> respondent.

It is manifest that the procedure adopted by the 1<sup>st</sup> respondent in seeking to evict the petitioner in pursuance of the provisions of the State Lands (Recovery of Possession) Act, no. 7 of 1979 is misconceived. I think section 42(1) of the Land Acquisition Act no. 9 of 1950 (as amended) caters to a situation such as this we have met with in this case. The petitioner is clearly a "person interested" within the meaning of section 7 of the Land Acquisition Act. A "person interested" may fall into any one of the categories of persons who have an "interest" in the land as owner, co-owner, mortgagee and includes also a lessee. The fact that the petitioner was a lessee or a tenant under Abdul Raheem was not in controversy at the hearing before me, and was, in fact, borne out and by several rent receipts issued by Abdul Raheem from whom the land had been acquired by the state. The submission of the learned Counsel for the petitioner is, in substance, this : that is, that the petitioner ought to have been evicted, if at all, under section 42 of the Land Acquisition Act which sets out the procedure to be employed

or followed in evicting a person in occupation of a building standing on a land acquired by the state, and that submission has much to commend it. In fact, the submission of the learned Counsel for the petitioner seems to suggest that the fact that the petitioner (who was a lessee or a tenant under the person from whom the land was acquired in 1972 under the Land Acquisition Act) is still in occupation serves to show that proceedings in respect of the relevant land, initiated under the Land Acquisition Act, had not yet been completed or brought to a close of finality in pursuance of the provisions of the said Act.

The report appended to plan (2R2) marked by the 2<sup>nd</sup> respondent - board itself shows that there were permanent buildings on lot 2 (which is the lot relevant to this application) even at the date of acquisition by the state, which was more than 28 years ago. It is not denied by the 1<sup>st</sup> and 2<sup>nd</sup> respondent that even as at that date, that is, when the land was acquired in the year 1972, the petitioner was in occupation of the lot in question, so that under the Land Acquisition Act no. 9 of 1950 (as amended) the petitioner was clearly a "person interested", within the meaning of section 7 of the said Act, who could not, in any event, be evicted without being compensated in respect of his improvements (if, in fact, he is the owner of such improvements) which, in this instance, are fairly substantial. The fact that the petitioner had continued in occupation, perhaps, inferentially proves that he had not been compensated in respect of his improvements. It is, somewhat improbable that the state compensated the petitioner and also allowed him to continue in occupation. There is nothing to indicate that the petitioner was, at least notified in terms of section 7 of the Land Acquisition Act, as he should have been. There is not even a bare averment to that effect. If the petitioner is permitted to be ejected by invoking the State Lands (Recovery of Possession) Act - he would be deprived of or denied the compensation to which he is entitled as matter of law or of right - since there is no sanction or provision for the payment of compensation (in case he is found to be entitled to such compensation after inquiry) under the Act in terms of which the quit notice, sought to be quashed on this application, had been issued by the 1<sup>st</sup>

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respondent. The long and short of it is this: in the circumstances or state of facts (outlined above) in this case, which facts are not really in controversy, the steps, if any, have to be taken or the process initiated in the year 1972 under the Land Acquisition Act, has to be carried on or completed - if that is, in fact, possible after the effluxion, of such a considerable length of time, approximating to nearly three decades - under the same Act.

I think it would be appropriate to refer to the case of *Senanayaka v. Damunupola*<sup>(1)</sup> where it was held by a bench of three judges of the Supreme Court that "the State Lands (Recovery of Possession) Act no. 7 of 1979 was not meant to obtain possession of land which the state had lost possession of, by encroachment or ouster for a considerable period of time by ejecting a person in such possession". Of course, in that case the title of the state was also called in question.

The inapplicability of State Lands (Recovery of possession) Act to the situation we are faced with in this case is best explained by an illustration. Suppose, the authorities sought to eject the petitioner immediately after the land was acquired under the Land Acquisition Act, nearly thirty years ago. Then, ejectment would have been necessarily sought to be effected under the Land Acquisition Act employing the machinery provided by the said Act itself under which the acquisition was made. What I am seeking to explain is this: acquisition cannot be made under one Act, and ejectment cannot be sought under another (Act). The effluxion of nearly 30 years after the acquisition cannot alter the legal position that ejectment also ought to be effected under the same Act as that under which the acquisition was made - more so, as that Act itself provides for a remedy or procedure to be followed for the ejectment of persons in occupation of the land acquired. The state Lands (Recovery of possession) Act would have applied to the petitioner had the petitioner wrongfully regained possession after he had been evicted (at the time that the land was acquired) in pursuance of the provisions of the Land Acquisition Act. There

is room for thinking or rather conjecturing that the petitioner is not entitled to compensation under the Land Acquisition Act, since compensation would have been paid to Abul Raheem (owner) from whom the state had acquired the land.

But, when the statutory scheme embodied in the relevant Act (Land Acquisition Act) itself provides a procedure for ejection or remedy, it must, in the generality of cases, be taken to exclude any other procedure or remedy. One has to follow the procedure given in the Land Acquisition Act itself to remove the petitioner, more so as the petitioner is not a person who was in unauthorised occupation but, as explained above, clearly "a person interested" within the meaning of section 7 of the said Act. This is a case where the right to eject the petitioner existed solely by virtue of the Land Acquisition Act and where the state acquired ownership also by virtue of that Act. And as such, rights as had vested in the state by virtue of the acquisition under the relevant statute can be enforced only in the way contemplated and authorised by the same statute. The right (of ownership) and remedy (procedure in ejection) - after the state had acquired the land - are both given by the same Act, so to speak, uno flatu (in one breath), and one cannot be dissociated or disentangled from the other.

One recalls those historic words which the courts adopt as a general rule of conduct: "That no man of what estate or condition that he be, shall be put out of land or tenement ..... without being brought in answer by due process of law".

It means much the same as Madison meant when he proposed an amendment to the constitution of the United States which was accepted in 1791 in the fifth amendment : "no person ..... shall be deprived of life, liberty, or property without due process of law". By "due process of law" meant the measures or steps sanctioned by the law "so as to keep the streams of justice pure: to see that trials and inquiries are fairly conducted according to law".

There is no denying that it is violative of "due process of law" - a phrase or concept invented or re-discovered, I think, by Lord Denning, to seek to eject the petitioner under State Lands (Recovery of Possession) Act when, in fact, he ought to be ejected, if at all, as explained above, under the Land Acquisition Act for the petitioner had been in physical possession of the relevant lot as at the date of acquisition by the state, be it noted, under the Land Acquisition Act, and even before that, and continuously thereafter.

For the aforesaid reasons I do hereby make order granting an order of certiorari quashing the aforesaid quit notice marked E. In consequence, the application that had been made to the magistrate's court in pursuance of section 5 of the State Lands (Recovery of Possession) Act cannot be proceeded with. Each of the two respondents is hereby ordered to pay Rs. 2100/= as costs to the petitioner.

*Application allowed.*