

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

In the matter of an application for Leave to Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka under Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 5(c) of the High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006, against the judgment delivered in Civil Appellate High Court of the Central Province holden in Kandy Case NO. CALA 63/2013, and dated 23rd September 2016.

SC/Appeal/227/16

SC/HCCA/LA/520/2016

HC CIVIL Kandy: CALA 63/2013

DC Nawalapitiya: 387/2013

Santak Power (Pvt) Ltd,
No. 132, Old Kottawa Road,
Nawinna, Maharagama.

Plaintiff.

Vs.

1. Janatha Estate Development Board,
No. 55/75, Vauxhall Lane,
Colombo 02.
2. Ramya Nirmali Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.

3. Ajith Bathiya Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.
4. Ophelia Iyelin Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.
5. Ceylon Electricity Board,
Sri Chittampalam A Gardiner Mawatha,
Colombo 02.

Defendants.

And between

Ramya Nirmali Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.

2nd Defendant – Appellant.

Vs.

1. Santak Power (Pvt) Ltd,
No. 132, Old Kottawa Road,
Nawinna, Maharagama.

Plaintiff – Respondent.

2. Ajith Bathiya Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.

Presently of
5511 Katey Inn,
Arlington,
Texas - 76017

3. Janatha Estate Development Board,
No. 55/75, Vauxhall Lane,
Colombo 02.
4. Ceylon Electricity Board,
Sri Chittampalam A Gardiner Mawatha,

Colombo 02.

Defendant – Respondents.

And Now between

Santak Power (Pvt) Ltd,
No. 132, Old Kottawa Road,
Nawinna, Maharagama.

**Plaintiff – Respondent –
Petitioner.**

Vs.

1. Janatha Estate Development Board,
No. 55/75, Vauxhall Lane,
Colombo 02.

**1st Defendant – Respondent –
Respondent.**

2. Ramya Nirmali Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.

**2nd Defendant – Appellant –
Respondent.**

3. Ajith Bathiya Illeperuma,
No.141, Ketawelamulla Road,
Colombo 09.

Presently of
5511 Katey Inn,
Arlington,
Texas - 76017

**3rd Defendant – Respondent –
Respondent.**

5. Ceylon Electricity Board,
Sri Chittampalam A Gardiner Mawatha,
Colombo 02.

**5th Defendant – Respondent –
Respondent.**

6. Sri Lanka Sustainable Energy Authority,
Block 5, 1st floor,
BMICH,
Colombo 07.

Added Respondent.

Before: Sisira J de Abrew J
Murdu N.B. Fernando J
E. A. G. R. Amarasekara J

Counsel: Kalinga Indatissa PC with Mahesh Senaratne, Rashmini Indatissa and
Dhanushka Sigera for the Plaintiff – Respondent – Petitioner –
Appellant.

R.C. Gooneratne for the 2nd Defendant – Appellant – Respondent and
the 3rd Defendant – Respondent – Respondent.

Sumathi Dharmawardena, DSG, PC with Sureka Ahmed SC for the 1st
Defendant – Respondent – Respondent and Added Respondent
(Sustainable Energy Authority Sri Lanka).

Argued on: 10.10.2019

Decided on: 20.05.2021

E.A.G.R. Amarasekara J

2nd Defendant – Appellant – Respondent of this application(hereinafter
sometimes referred to as the 2nd Defendant or 2nd Defendant Respondent) and 3rd

Defendant – Respondent – Respondent of this application (hereinafter sometimes referred to as the 3rd Defendant or 3rd Defendant Respondent) had instituted an action bearing no. 21371/L as plaintiffs in the District Court of Colombo against the 1st Defendant – Respondent – Respondent of this application who was also the 1st Defendant in the said action (hereinafter sometimes referred to as the 1st Defendant or 1st Defendant Respondent), without making the Plaintiff – Respondent – Petitioner of this application (hereinafter sometimes referred to as the Plaintiff or Plaintiff – Petitioner or Petitioner) a party to the said action, inter alia praying for a declaration of title in respect of the lands described in the schedule to the plaint in the said action and praying for an order ejecting the 1st Defendant Respondent of this application from the said lands. The lands in the schedule of the said plaint were parts of Bowhill Estate described as lot 1 and 2 of plan no. 1379 and lot 1 of plan no. 1378, both made by S.H.P. Tennekoon, Licensed Surveyor. Subsequently, the 1st Defendant Respondent had filed its answer in the said action and after the trial, judgment was delivered granting all reliefs as prayed for by the 2nd and 3rd Defendant Respondents of this application who were the plaintiffs in that action, by the Learned District Court Judge of Colombo.

The District Court of Colombo in the said action had served the Plaintiff Petitioner of this application who was not a party to the said action, a court order dated 17th May 2013 which ordered the 5th Defendant – Respondent – Respondent of this application (hereinafter sometimes referred to as the 5th Defendant or 5th Defendant Respondent) to disconnect the supply of electricity to the Plaintiff Petitioner of this application. In the said action, the Plaintiff Petitioner of this application had later on filed an application under section 839 of the Civil Procedure Code. However, the said application had been refused- vide paragraph 39 of the Petition.

Thereafter, the Plaintiff Petitioner instituted an action in the District Court of Nawalapitiya by the plaint dated 27th May 2013, bearing No. DC Nawalapitiya Case No 387/2013 and pleaded inter alia that;

- The land described in the schedule to the plaint, which is a part of Bowhill Estate, is situated within the jurisdiction of the said court, and is depicted as Lots 1-6 in Plan No. 3120 dated 2003.01.15 prepared by

A. A. Padmadasa, Licensed Surveyor as a land in extent of 17 Acres and 27 perches.

- The said land was vested in the 1st Defendant, Janatha Estate Development Board (JEDB) by an order made by the then Minister of Agricultural Development and Research under section 22 and 23 read with section 27A of the Land Reform Law.
- Thereby, the 1st Defendant became the owner of the land with the right and authority to lease out the property.
- Thereafter, 1st Defendant by Deed of Lease No. 394 dated 2004.02.13 attested by Sudhath Perera, Notary Public had leased out the premises to the Plaintiff for 50 years. Thereby, the Plaintiff has become the lessee of the 1st Defendant.
- Having acted accordingly, on 2004.12.24, the Plaintiff commenced the “Korawak Oya Hydropower Project” on the said land.
- Plaintiff invested around Rs.147 million and had been in possession from 13.02.2004 and has employed 16 people and was supplying the electricity generated from the project to the 5th Defendant.
- When the circumstances were as such, on or around 2005.05.20, the Plaintiff was served with an order issued by the District Court of Colombo in the Case No. 21371/L directing the 5th Defendant to disconnect the electricity supply given to the Plaintiff. Accordingly, the Plaintiff came to know that the 2nd Defendant and the 3rd Defendant have instituted an action against the 1st Defendant without making the Plaintiff a party to the said action.
- Since the Plaintiff was not made a party to the said DC action No. 21371/L, any order made in the said case has no applicability to the Plaintiff.
- Judgment of the District Court Case No. 21371/L was given granting all the reliefs prayed by the 2nd and the 3rd defendants.
- The 2nd and 3rd Defendants had acted in collusion in the Colombo District Court case to evict the Plaintiff from the land depicted in the schedule to the Plaint.

Accordingly, the Plaintiff inter alia prayed in the Nawalapitiya District Court case;

- a) A judgment and a decree to the effect that under and by virtue of the Deed of Lease No. 394 dated 13.02.2004, the Plaintiff has the lawful right to possess the land described in the schedule.
- b) A judgment and a decree to the effect that the Deed of Lease No. 394 is a valid deed and that it is still in effect.
- c) To demarcate the boundaries of the land described in the schedule of the said Deed of Lease.
- d) To issue an enjoining order restraining the 1st to 4th defendants and their agents from evicting the plaintiff and its agents from the land described in the schedule unless any condition in the said Deed of Lease is breached.
- e) To issue an interim injunction restraining the 1st to 4th defendants and their agents from evicting the plaintiff and its agents from the land described in the schedule to the plaint unless any condition in the said Deed of Lease is breached.
- f) To issue a permanent injunction restraining the 1st to 4th defendants and their agents from evicting the plaintiff and its agents from the land described in the schedule to the plaint unless any condition in the said Deed of Lease is breached.
- g) To issue an enjoining order restraining the 1st to 4th Defendants and their agents from obstructing the plaintiff and its agents from enjoying its rights with regard to the land possessed by it under and by virtue of the said Deed of Lease.
- h) To issue an interim injunction restraining the 1st to 4th Defendants and their agents from obstructing the plaintiff and its agents from enjoying its rights with regard to the land possessed by it under and by virtue of the Deed of Lease.
- i) To issue permanent injunction restraining the 1st to 4th Defendants and their agents from obstructing the plaintiff and its agents from enjoying its rights with regard to the land possessed by it under and by virtue of the Deed of Lease.
- j) To issue an enjoining order restraining the 5th defendant and their agents from disconnecting the power supply to the Plaintiff.

k) To issue an interim injunction restraining the 5th defendant and their agents from disconnecting the power supply to the Plaintiff.

l) To issue permanent injunction restraining the 5th defendant and their agents from disconnecting the power supply to the Plaintiff

The matter was supported on 28.05.2013 and the learned District Judge by its order granted the enjoining orders as prayed in d), g) and j) mentioned above.

Thereafter, 2nd and 3rd defendants filed their objections and stated inter alia that;

- The land in the plaint depicted in the plan no.3120 made by A. Padmadasa, Licensed surveyor is part of the land in plan no. 3179 made by S.P.M. Tennekoon, Licensed Surveyor. (It appears, here the position was that it is part of the land in the aforesaid Colombo District Court action).
- Said land originally belonged to the father of the 2nd and 3rd Defendants and later was vested with the 1st Defendant, as per the sections 27A, 22 and 23 and 39 as amended of the Land reform Law.
- Land Reform Commission had given the said land to the 1st Defendant only to possess the same. In the judgment of the case No.21371/L, it is stated that the 1st Defendant admitted the same and the 1st Defendant recorded an admission to that effect in the aforesaid Colombo District Court case. Therefore, 1st Defendant, has no right to lease out the land in issue.
- Thereby, the Deed of Lease No. 394 is null and void and the Plaintiff did not become the lawful lessee of the 1st Defendant.
- The Plaintiff had no legal right to become a party to the Colombo District Court case No.21371/L and the Plaintiff was a person who was under the 1st Defendant, and in cases other than partition cases, even if a person was not made a party to an action, said judgment do not become null and void and since the Plaintiff entered into the subject matter under the rights of the 1st Defendant, the judgment in the Case No.21371/L is applicable to the plaintiff.
- As per the Gazette No. 1457/22 dated 2006.08.11, a part of Bowhill Estate was given back to the 2nd and 3rd Defendants. (In fact, this court

observes that the said Gazette revoked the order which vested the Bowhill Estate in the 1st Defendant to the extent as described in the schedule in the Gazette.)

- Thereafter, the lands described in the plaint were transferred to the 2nd and 3rd Defendants by the Land Reform Commission by Deed No. 392 dated 2006.12.14 attested by N.H.S. Herath, Notary Public. (This Court observes that as per the deed the lands conveyed to the Defendants are depicted in the Plans No.1378 and 1379 dated 25.05.2006 made by S P H Tennekoon, Licensed Surveyor and lands mentioned in the schedule to the plaint in the case at hand referred to a different plan).
- The Chairman of the Land Reform Commission by letter dated 2006.11.03 had requested the Chairman of the 1st Defendant to handover the possession of the land described in the schedule to the Plaint to the 2nd and 3rd Defendants.
- When the Registrar of the District Court Colombo went to the land in issue to handover the possession to the 2nd and 3rd Defendants it was obstructed and it has been reported to the District Court of Colombo.
- If the Plaintiff has an independent right, it can claim it before the fiscal and legally object to it and without exercising that right it does not have any right to file this action.

Accordingly, the 2nd and 3rd Defendants prayed for a dismissal of the action filed by the Plaintiff, to vacate the enjoining orders issued and to reject the request made for the interim injunctions.

Thereafter on 10.12.2013 the learned District Court judge delivered its order granting the interim injunctions as prayed in prayers (e), (h) and (k) and held *inter alia* that;

- Although an objection has been filed by the 2nd Defendant and the 2nd Defendant acting as the power of attorney holder for the 3rd Defendant, the said objection could be considered as an objection filed by the 2nd Defendant only, since the said power of attorney is invalid due to the defects morefully described in the order itself.

- Thus, only the 2nd Defendant has filed objections and the 1st,3rd,4th and 5th Defendants have not filed their objections.
- To obtain an interim injunction a prima facie case must be established. Further that if there is an irremediable loss or damage, an injunction will be granted and the applicant must come to courts with clean hands and maintain *uberima fide*.
- The deed of lease no.394 was not subject to the scrutiny of the Colombo District Court. Hence, there is no hindrance to file and maintain an action on a cause of action based on that lease and to see whether the said lease is valid and, whether the Plaintiff is entitled to the possession on that deed.
- As per the order published in the Gazette to vest the property in the 1st Defendant, there was no condition imposed that it cannot be given on lease.
- The 1st Defendant has given it on a lease to the Plaintiff for 50 years, in a manner binding its successors for the obligation created by the lease agreement.
- As per the circumstances of the case at hand, 2nd and 3rd Defendants can be interpreted as the successors of the 1st Defendant.
- Hence, there is a strong prima facie case for the Plaintiff.
- Still the 2nd and 3rd Defendants are awaiting to take the possession, and if the interim injunction is not given the huge money invested by the Plaintiff to the Hydropower project is at a loss and even the supply of electricity to the national grid and the function of the project itself are also at a risk. Interim injunction will not harm the 5th Defendant which gain electricity from the Project. The harm caused to the 1st, 2nd and 3rd Defendants by issuing an interim injunction would be comparatively less than the harm to the plaintiff if it is not issued. Thus, the balance of convenience was in favour of the Plaintiff.
- The Plaintiff is not guilty of not disclosing material facts or for misrepresentation and also not in breach of *Uberima Fide*. Thus, equitable considerations favour the Plaintiff.

Being aggrieved by the said order of the District Court grating the interim injunctions as prayed by the Plaintiff, the 2nd Defendant filed a leave to appeal

application in the Civil Appellate High Court Kandy, bearing No. CALA 63/2013 against the said order.

Order on the leave to appeal application was delivered on 23.09.2016 by the learned High Court Judges allowing the appeal made by the 2nd Defendant and vacating the order issuing interim injunctions, dated 10.12.2013, made by the Learned District Judge of Nawalapitiya.

The learned High Court judges among other things based their decision on the following grounds;

- Since an attempt has been made to oust the 2nd and 3rd Defendants from the land in dispute, a problematic situation has arisen – vide page 6 of the High Court Judgment.
- The cause of action arisen due to the occupation of the 2nd, 3rd and 4th Defendant in the land given to the Plaintiff by the 1st Defendant has been continuously supported through various arguments, since it appears that the actions of the 2nd and 3rd Defendants caused a situation of persisting hindrance to the continuation of the hydropower project – vide page 6 and 7 of the High Court Judgment.
- Even though, the Land Reform Commission has given permission for the Defendants to occupy at the beginning, it has been cancelled by the letter dated 26.11.2006 but it is not within the task of the high court to decide the legality of that cancellation – vide page 7 of the said Judgment.
- As per the submissions made by the 2nd Defendant, it can be decided that due to the interim injunction issued by the District court, the 1st, 2nd, 3rd and 5th Defendants lost their possession in the land in dispute – vide page 7 of the said judgment.
- The Plaintiff Company has got the final reliefs through the interim injunction which is contrary to law. - vide page 8 of the said judgment.
- The Plaintiff company has asked for an interim injunction to remove the 2nd Defendant from the possession of the land and learned District Judge has not given due consideration to that fact. – vide page 8 of the Judgment.

- The damage that may be caused to the plaintiff if the interim injunction is not issued has not been assessed and submitted to court and since the defendants lose the possession of the land by issuing the interim injunction, the damage that may cause to the defendants cannot be considered as one that can be assessed monetarily – vide page 9 of the said judgment.
- Although a loss may cause to the plaintiff the same can be compensated at the end of the case. Thus, it is not reasonable to grant an interim injunction at the beginning of the case.

Thus, the Learned High Court Judges allowed the appeal and vacated the order made by the learned District Judge.

Being aggrieved by the said order made by the Civil Appellate High Court of Kandy, the Plaintiff preferred a leave to appeal application. Upon supporting the leave to appeal application this Court was inclined to grant leave on the following questions of law - vide journal entry dated 18.11.2016.

“(b) Have the Learned High Court judges of HC Civil Appellate Kandy erred in law in understanding the nature of the possession and occupation of the petitioner to this application?

(c) Have the Learned High Court judges of HC Civil Appellate Kandy erred in law in understanding the nature of the interim injunctions issued in DC Nawalapitiya Case No. 387/2013 on 10th December 2013?

(d) Did the Learned High Court judges of HC Civil Appellate Kandy err in law and in fact in determining that the 2nd Defendant – Appellant – Respondent and the 3rd Defendant – Respondent – Respondent were in possession of the land in question which formed the subject matter of DC Nawalapitiya Case No. 387/2013?

(h) Did the Learned High Court judges of HC Civil Appellate Kandy err in law in understanding the basic grounds/tests to be satisfied in the issue of an interim injunction?

(i) Did the Learned High Court judges of HC Civil Appellate Kandy err in law in determining that the Learned District Judge of Nawalapitiya had failed to consider the grounds for the issue of injunctive relief?

(j) Did the Learned High Court judges err in law and in fact in applying the prima facie test and the balance of convenience test regarding the interim injunction issued in the DC Nawalapitiya Case No. 387/2013?

(n) Is the determination by the learned judges of the Civil Appellate High Court of Kandy in the said judgment marked 'X35' on the question that the effect of the injunction issued in DC Nawalapitiya Case No. 387/2013 was to dispossess the 2nd Defendant – Appellant – Respondent and the 3rd Defendant – Respondent – Respondent contrary to the evidence adduced before the said High Court? “

Moreover, the learned counsel for the 2nd and 3rd defendants also raised consequential issues at this stage which are as follows;

(X1) In terms of the settlement entered into between the parties dated 27.10.2014 before the High Court of Civil Appeal Kandy, did the plaintiff agree to handover possession with any portion of the land described in the lease Bond falls within the said land that described in the schedule to the plaint in D.C.Colombo Case No. 21371/L?

(X2) Is the Petitioner in unlawful occupation of the land of the 1st and 2nd defendants and therefore is the petitioner entitled to an injunctive relief?

When one looks at the reasons given by learned High Court Judges in their judgment, it is apparent that they have misapprehended the factual background of the case at hand since the defendants were not in the possession or occupation of the land and, the cause of action was not based on an attempt to oust them from the land. Thus, the finding of the learned High Court judges that the Defendants may lose their possession due to the interim injunction is wrong and, in that context, comparing that aspect with the possible harm caused to the plaintiff by not issuing the interim injunction to decide the balance of convenience is not tenable. Further, the finding of the High Court that the damage caused by such dispossession cannot be assessed monetarily is also not tenable, since such dispossession could not have taken place with the issuance of the interim injunction. It is also clear that the finding that the interim injunction was prayed to remove the 2nd Defendant from the possession of the land is also wrong. Nowhere in the pleadings the Plaintiff or 2nd and 3rd defendants have averred that the Defendants were in possession of the land in dispute. It is an undisputed fact that the DC Colombo Case No. 21371/L was filed by the 2nd and

3rd Defendants to obtain the possession of the lands released to them by the Land Reform Commission which lands appear to fall within Bowhill Estate once vested with the 1st Defendant, part of which may have been occupied by the Plaintiff – Petitioner in the case at hand. The cause of action in the Nawalapitiya District Court case is based on the imminent threat of eviction and disconnection of electricity supply of the Plaintiff owing to a court order in the said Colombo District Court case where the Plaintiff was not a party. It is true that the Plaintiff could have legally objected to the execution of decree or may tender a written statement of claim during the execution process or can make an application after the dispossession -vide section 325 and 328 of the Civil Procedure Code. Even when such a claim fails, the Plaintiff Petitioner has the right to file an action to establish his right or title to the property – vide section 329 of the said code. However, there is no prohibition that, when a party has a cause of action due to imminent threat of eviction or disturbance to his possession (like disconnecting of electricity) he cannot straightly institute an action. It is difficult to understand how an order to disconnect electricity supply to the Plaintiff which affects his rights went out from the Colombo District Court when there was no prayer to that effect and when the Plaintiff was not a party to that case. However, these circumstances were not contemplated by the learned High Court Judges in allowing the appeal and vacating the interim injunctions. The learned High Court judges have come to a conclusion that the Land Reform Commission has given permission for the Defendants to occupy at the beginning, and it has been cancelled by the letter dated 26.11.2006. This also indicate that the High Court did not comprehend the facts and cause of action. As per the undisputed facts, through a Gazette notification dated 31.05.1982 the land, Bowhill estate was vested with the 1st Defendant and it was revoked with regard to the extent of lands described in the Extraordinary Gazette no.1457/22 dated 11.08.2006. After that a letter dated 29.11.2006 had been issued by the Land Reform Commission to the Superintendent of the Bowhill Estate of the 1st Defendant to hand over the said lands referred to in the latter Gazette. Further, the learned High Court Judges have expressed the view that the interim injunctions prayed by the Plaintiff, if granted, give the final reliefs prayed by the Plaintiff. However, the prayer in the plaint separately contained the declaratory reliefs and permanent injunctions which are of a final and permanent nature but the interim injunctions were prayed to maintain the status quo till the final decision of the case. Since, the

Judgment of the learned High Court judges is full of misapprehensions, conclusions reached by the learned High Court judges cannot be considered as valid conclusions.

However, before confirming the decision to issue injunctions by the learned District Judge it is necessary to see whether his conclusions were correct.

As per the sequence of events, it is clear that once the Bowhill Estate belonged to the 2nd and 3rd Defendant's father and later on, as per the land reform laws, it was vested in the Land Reform Commission. Thereafter, as per the order made by the Minister of Agricultural Research and Development in terms of sections 27A, 22 and 23 of the Land Reform Law, published in the Gazette dated 31.05.1982, marked as X3, that estate was vested with the 1st Defendant, Janatha Estate Development Board. It must be noted that there are no conditions or prohibitions laid down in that order with regard to the title, possession or with regard to giving it on lease. The 1st Defendant thereafter, leased out lots 1-6 of the plan no. 3120 made by A. A. Padmadasa, Licensed surveyor by deed of lease no.394 dated 13.02.2004, marked X5, to the Plaintiff Company for the purpose of putting up a Mini Hydropower Project. The extent so leased out was 17 Acres and 27 perches. Meanwhile, it appears, by an order published in the Extra Ordinary Gazette No.1457/22 dated 11.08.2006, the Minister revoked the vesting order that gave the Bowhill Estate to the 1st Defendant with regard to the lots and extents described in the schedule to the said gazette, which described the areas as lot 1 and 2 of plan no.1379 dated 29.05.2006 and lot 1 of plan no.1378 dated 29.05.2006 made by licensed surveyor S P H Thennekoon. Total Extent of the said lots were 100 Acres. Thereafter, the Land Reform Commission has transferred the said land to the 2nd and 3rd defendants by deed no.392. It appears that on the strength of the said documents and circumstances the 2nd and 3rd Defendants instituted the Colombo District Court case against the 1st Defendant to get a declaration of title and recover the possession of said 100 Acres. It must be noted that even though the 1st Defendant had given a part of the Bowhill Estate to the Plaintiff on lease, neither that fact has been revealed nor it was prayed to add the Plaintiff as a party to that case by any of the parties to that action. It is also pertinent to note that even though, the portion given to the Plaintiff by the said lease and the portion released to the 2nd and 3rd defendants are parts of Bowhill Estate, there was no finding in that case that the parts of Bowhill Estate given to

the Plaintiff by the 1st Defendant falls within the Parts of Bowhill estate released to the 2nd and 3rd defendant. In the aforesaid backdrop, it is questionable how the District Court issued an order in the said action affecting the rights of the Plaintiff who was not a party to the said action. This Court observes that there had been an admission made in the Colombo District Court case that the 1st Defendant was given only the right to possess by the Land Reform Commission. However, the Plaintiff was not a party to that admission and he is not bound by that admission. The Plaintiff's rights have to be decided as per the law and as said before, there was no condition or limitation or prohibition on the 1st Defendant when the Bowhill Estate was given to it by the aforesaid order published in the Gazette. As per Section 27A (2) of the land reform Law, once the vesting order is made, the relevant State Corporation gets the right, title and interest as was held by the Land reform Commission on the day immediately preceding the date on which the vesting order takes effect. As such the Plaintiff in the Nawalapitiya District Court Case had a *Prima facie* case to establish that its deed of lease is valid as it was given by one of the predecessors of title to the 2nd and 3rd Defendants even if the land contemplated in the deed of lease falls within the land given to the 2nd and 3rd Defendants. On the other hand, if the lots given to the Plaintiff fall outside the lots given to the 2nd and 3rd Defendants, the decision in the Colombo District Court has no relevance to the case filed in the District Court of Nawalapitiya, and still the Plaintiff has a prima facie case against the Defendants as there appears to be an imminent threat to its rights by using the Colombo District Court case decision against him. As per the objections filed by the 2nd and 3rd Defendants in the Nawalapitiya District Court case, they have taken up the position that the 1st Defendant had no right to enter into lease agreements and also that the Plaintiff need not have been made a party in the Colombo District Court case since he was a lessee of the 1st Defendant and came to the land in that case under him. As indicated above the Plaintiff could have presented a *prima facie* case that the lease is valid as he is not bound by the admissions made in the Colombo District Court. On the other hand, there was no finding in the Colombo District Court case that lots in the Plaintiff's lease fall within the lots in the schedule to the Plaintiff in the Colombo District Court case. Even for the sake of argument one accepts that the lease is not valid, there appears to be ample material that the Plaintiff is a bona fide possessor and he has invested and made improvements. Without making the Plaintiff a party to Colombo case and deciding its rights, the

Defendants cannot evict the Plaintiff or disturb its possession using the Colombo District Court case since in such a situation, it has the right to remain in possession till the compensation is paid. Thus, this court is not inclined to accept the argument that the Plaintiff need not have been made party to the Colombo District Court case and therefore there was no Prima facie case for it in the Nawalapitiya case. Contrary to the said position the 2nd and 3rd Defendants in their written submission attempt to argue that the Plaintiff has encroached the 2nd and 3rd Defendants' land when it belonged to the 1st Defendant. If it is an encroachment of a different part of the Bowhill Estate that did not fall within the land given on lease, it is a different cause of action for a case that has to be filed against the Plaintiff. In such situation, the 2nd and 3rd Defendants cannot rely on the judgment given against the 1st Defendant as such encroachment is not an act of the 1st Defendant but an independent act of the Plaintiff.

The counsel for the 2nd and 3rd Defendants in his written submission refers to a settlement that took place in the High Court but it appears that the said settlement was not properly carried out as per the submission the survey had to be done by two surveyors named by both the parties. Nothing is there to say that parties settled the matters relating to the issuance of Interim injunction as agreed. Even the learned High Court judge has not mentioned that as there is a valid settlement, it is not necessary to make an order on the appeal made.

As per the reasons given above, this Court is of the view that there was a strong *prima facie* case¹ for the Plaintiff in the Nawalapitiya District Court action where there were serious² questions to be tried with regard to the Plaintiff's rights, with a reasonable prospect of success³. If the interim injunctions were not issued it was not only the investment made by the Plaintiff that can be assessed monetarily was to be affected but its future profits, obligation towards its employees and other parties such as 5th Defendant where it might have entered into contracts, progress of the hydropower project and its goodwill also were at risk. Such harm may be irremediable. Learned District Judge has observed some of these and decided that there was a prima facie case for the Plaintiff and the

¹ Felix Dias Bandaranayake V The State Film Corporation (1981) 2 Sri L R 287

² Felix Dias Bandaranayake V The State Film Corporation (1981) 2 Sri L R 287, Gulamhusein V Cohen (1995) 2 S L R 365,

³ Ibid, and also see Amarasekere V Misui & Company Ltd. (1993) 1 Sri L R 22, Ratnayake Vs Wijesinghe (1989) 1 Sri L R 406

balance of convenience favours the Plaintiff. Hence, the learned District Judge's decision to issue interim injunctions was correct. As observed by the learned District Judge, there is nothing to say that equitable considerations stand against the granting of reliefs to the Plaintiff.

Thus, the questions of law (b) (c) (d) (h) (i) (j) and (n) mentioned above has to be answered in the affirmative and, the questions of law X1 and X2 are answered as follows.

X1 – There is no proof that the matter was concluded as per the settlement reached and a survey was done as agreed.

X2 - The Plaintiff Petitioner has placed materials to show that it has prima facie a lawful right to occupy the land. Thus, it is entitled to injunctive reliefs.

Hence, this court decides to allow the appeal and vacate the judgment dated 23.09.2016 of the Civil Appellate High Court of Kandy and to affirm the order dated 10.12.2013 made by the Learned District Court Judge of Nawalapitiya and to reinforce the Interim Injunctions issued by the said Order. The Plaintiff is entitled to the costs of this Court and lower Courts in relation to the applications for interim injunctions.

Judge of the Supreme Court.

Sisira J De Abrew, J.

I agree.

Judge of the Supreme Court.

Murdu N. B. Fernando, PC J.

I agree.

Judge of the Supreme Court.