

**In the Court of Appeal of the Democratic  
Socialist Republic of Sri Lanka**

**In the matter of an application  
for revision from the judgment of  
the High Court of Colombo**

**CA (PHC) APN 158/2006  
HC Colombo 512/04  
MC Fort 58439**

**Morgan Engineering  
(Private) Ltd,  
No 31 A, Morgan Rd,  
Colombo 2  
Respondent- Petitioner  
Petitioner**

**VS**

**L H M B B Herath,  
Chief Manager,  
Welfare and Industrial  
Relations,  
Sri Lanka Ports Authority,  
Colombo 1  
Complainant-Respondent-  
Respondent**

**Before: W L R Silva J & A W A Salam, J  
Counsel: Geoffrey Alagaratnam PC with Johana Corea for the  
respondent-petitioner-petitioners and Sanjeewa Jayawardena with M/S  
Sandamalee Chandrasekara for the complainant-respondent-respondent.  
Arguments concluded on: 22 February 2011  
Written submissions tendered on: 01.04.2011 and 06.04.2011.  
Decided on: 10.01.2012.**

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A W Abdus Salam, J

On behalf of Sri Lanka Ports Authority, ["Ports Authority"] proceedings were initiated in the Magistrate's Court against "Morgan Engineering Pvt Ltd", [Morgan] for the recovery of possession of a State land.

In terms of the Provisions of the State Lands [Recovery of Possession] Act ["Act"], the burden was on "Morgan" to prove that its possession of the subject matter is associated with a valid permit or other valid authority which has not been revoked. The position taken up by Morgan was that by letter marked XI, it was permitted to be in possession of the land in question which remains unrevoked and continues to be in force and that it had paid rentals to the Ports Authority for its occupation of the land as supported inter alia by documents marked as X2-X8 [d].

The finding of the learned Magistrate was that "Morgan" did not possess a valid permit or valid authority to explain its possession of the State land. Accordingly, allowed the application of the Ports Authority to execute writ for the recovery of possession of the subject land. The said order of the learned Magistrate was challenged by way of revision in the High Court of Colombo in proceedings No 512/2004. The learned High Court judge by judgment dated 26.9.2006 dismissed the application of the petitioner. Aggrieved by the said judgment, Morgan has filed the present application to have the judgment of the High Court revised *inter alia* on the following grounds, namely that the learned High Court judge...

[a] Failed to appreciate that the permit referred to in the "Act" covers even a letter authorizing and/ or allowing and/or permitting possession.

- (b) Placed an unduly narrow interpretation/definition of the concept of a permit in the context of the State Lands (Recovery of Possession) Act, against the background of established judicial authorities.
- (c) Failed to consider the lawful possession of Morgan on a document which was in force or not lapsed.
- (d) Erred that whilst accepting X1 which is a written authorization, licence or permit issued by the Sri Lanka Ports Authority with no restrictions as to duration or time.
- (e) Failed to consider the totality of the documents produced by Morgan in that despite the quit notices R1 to R4, Morgan had documented that the petitioner lawfully occupied the subject premises beyond the periods contemplated by such purported quit notices.
- (f) Erred in failing to consider that the wrongful denial of the licence or permit in X1 which is confirmed and shown documents to be valid beyond the periods contemplated by the Ports Authority's documents R1 to R4 amounts to serious and grave questions of law and constitute exceptional circumstances which compelled the petitioner to invoke the jurisdiction of the High Court.

There is no gainsaying that the land in question is a State Land. . Therefore the question for determination in the Magistrate's Court was basically the existence of a valid permit or other written authority of the State granted in accordance with any written law in favour of the petitioner and whether such permit or authority is in force and not revoked or otherwise rendered invalid.

The controversy therefore revolved around the documents marked as X1 and X2. The Magistrate in his order stated *inter alia* that Morgan had been in possession of the land described in the schedule to the application from Ol. 09. 1989 upon the basis of a tenancy but when the notice to quit was issued in the year 2003 Morgan had failed to produce any documents to establish that it had a right to be in possession of the subject of the application. The learned Magistrate further determined that even though it is established that by virtue of a contract, rents had been paid and receipts issued, prior to the filing of the application under section 5, there is no proof of a valid contract of tenancy subsisted between the parties. Relying on the authority in Walker Sons and Company vs Sri Lanka Ports Authority CA 350/1990, the learned Magistrate rejected the defence and issued the writ of execution.

The learned High Court judge who affirmed the order of the learned Magistrate was of the view that the petitioner has been handed over possession of the premises in question upon X1 on Ol. 08. 1989 by an employee of the Ports Authority on the promise that Morgan would enter into a lawful agreement as soon as possible. As Morgan had breached the promise and neglected the payment of the rentals due, the High Court judge was of the view that the learned Magistrate was correct in his finding that Morgan had no tenancy agreement, licence or lawful permission to be in possession of the subject matter.

Thus, it would be seen initially, the document marked as X 2 read with X 1 had played an important role towards the resolution of the dispute that arose

initially in the Magistrate's Court. The main and only defence taken up in the Magistrate's Court in opposition to the application was that Morgan had a written authority to be in possession and the same had not been revoked or cancelled or rendered ineffective. In an application of this nature such a defence is permissible under section 9 of the Act which enacts *inter alia* that no person is entitled to contest any of the matters stated in an application under section 5, except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.

The position of Morgan was that it was granted possession of the subject premises by the Sri Lanka's Ports Authority. X2 states *inter alia* that it has been decided to hand over possession of the premises to Morgan on a lease or rent and that the petitioner should meet the officer referred to in paragraph 3 of the said letter and takeover possession of the same. The documents marked as X3 to X8 (d) are demonstrative of the fact that Morgan had paid the cost of valuation of the subject premises and lease rentals due. There was no evidence whatsoever to show that at the time of the institution of proceedings in the Magistrate's Court the authority given to Morgan by XI had been revoked or terminated.

Quite strikingly the learned Magistrate having ignored the implications arising from the documents marked as XI and X2 looked for a more formal document or lease at the date of issuing the notice to quit under the Act when there was no evidence to demonstrate that XI and X2 had been

terminated or cancelled. The undated quit notice issued in terms of the Act required Morgan to hand over the premises on or before 9 April 2003 to the Competent Authority. Although the revision application filed in the High Court was to test the legality of the order of the learned Magistrate, based on the material available at that time, the Ports Authority filed several new documents before the learned High Court judge. One such document was R9 dated 27 March 1997 which had been issued much later than the notice to quit. By R9 the Managing Director of the Ports Authority informed Morgan that after considering the appeal made by the latter, it had been decided to grant an extension of the lease of the subject premises subject to the condition that action should be taken to terminate the lease if and when the premises are required for the port development work. R 9 was in fact not available to the learned Magistrate. Yet the document has been tendered in the High Court and relied upon by Ports Authority itself. This shows the gravity of the suppression made by The Ports Authority in seeking the recovery of possession of the subject matter, in proceedings of draconian nature.

The learned counsel for the Ports Authority has in his submissions conceded that it may be inferred that there had been an informal monthly lease between the parties at common law, as demonstrated by the documents X4, X5, X6 and X 7 which indicate that rents had been paid to the Ports Authority by Morgan up to 1990. It has been further submitted by the Ports Authority that Morgan has failed to annex any receipts in proof of any rent from the year 1990 to 2003 and the receipts X8a to X8d, X21, X30 and X31

relate to payment of rent well after the ejection proceedings were underway.

As has been correctly submitted by the learned counsel for the Ports Authority, this being an application made in revision, in order to decide the legality of the impugned judgment, all what is required to be considered is case that was presented to Magistrate at the inquiry under Section 9 of the Act. Accordingly, the documents that were before the Magistrate at such inquiry were X1 to X8d. In other words the legality of the impugned order of the learned Magistrate should be examined only in the light of the said documents X1 to X8d the summary of which are given below..

X2 - letter dated 17.07.1989 written on behalf of the Ports Authority addressed to Morgan expressing the willingness to handover the subject premises to Morgan on a monthly rental subject to the parties entering into a formal agreement. (The formal agreement of the monthly tenancy is not specified whether it has to be in writing)

X1 - letter dated 01.08.1989 signed by both parties upon handing over of the subject premises to Morgan in terms of document X2.

X3 - letter dated 17.11.1989 requesting Morgan to deposit a sum of Rs 4320/- being the valuation charges.

X4 - receipt dated 17.11.1989 whereby Morgan has paid a sum of Rs 4320/- being the valuation charges.

X 5 - Letter of Ports Authority addressed to Morgan on 01.02.1990 indicating that the chief valuer has assessed the subject premises at Rs

9000/- as being the monthly rental and requesting Morgan to deposit the sum of Rs 51,000/-being the balance of six month's rent due from Morgan.

X6 – proof of payment of Proof Rs 51,000/-by cheque dated 21 March 1990 made to Ports Authority by Morgan.

X7 - proof of payment of Rs 72,000/- by cheque dated 21.7.1990 to Ports Authority by Morgan of payment of rent.

X8(a) - covering letter dated 30.9.2003 from Morgan in proof of payment of Rs 28,000/-by way of rent.

X8(b) Receipt DATED 5.6.2003 Issued any acknowledgement of the payment of rent for that year 2003 by Ports Authority.

X8(c) Covering letter enclosing a cheque for Rs 10,209.37 by way of rent.

X8(d) covering letter dated 26.08.2003 with an annexure in proof of payment of rent.

According to document X [a certified copy of the proceedings in case No 58439] Ports Authority has initiated proceedings against Morgan under the Act, on 19 May 2003. Accordingly, the documents marked X1 to X7 have been in existence prior to the institution of proceedings in the Magistrate's court and they are in fact relevant to determine the maintainability of the defence raised by Morgan to justify its possession of the subject premises.

On behalf of the Ports Authority, it was emphasized that the legal phraseology "in accordance with any written law" used in section 9 of the Act provides interalia that it is for the occupier of the State land to establish that the possession or occupation of the land was pursuant to a valid permit



or other written authority of the State granted in accordance with any written law. Consequently, the argument advanced on behalf of the Ports Authority is that the lands belonging to the Ports Authority being State lands under the Act can be disposed of or otherwise alienated according to written law only under Article 33 (d) of the Constitution of the Republic of Sri Lanka or by permits and grants issued under the Land Development Ordinance or of special grants and leases issued under and in terms of section 2 of the Prevention of Frauds Ordinance.

As far as X2 is concerned Ports Authority has handed over the subject premises to Morgan on condition that the parties enter into a monthly tenancy. It is not specific as to whether the contract of tenancy referred to in X2 should be verbal or reduced to the form of writing. In terms of section 8 of the Sri Lanka Ports Authority Act No 51 of 1979 (as amended) (1) Subject to this Act, the Ports Authority may exercise its powers to give on lease any of its immovable properties.

It is settled law that a person who is in possession of an immovable property even without a formal instrument of lease for more than one month, is to be regarded as a monthly tenant and not as a tenant-at-will or tenant on sufferance or trespasser. Such a person can be considered to be in possession without a valid permit or authority according to written law, only if he continues to occupy the premises, ignoring the notice to terminate such tenancy.

Having placed Morgan into possession of the State land, Port Authority has clearly accepted by way of monthly rentals prior to initiating proceedings in the Magistrate's Court. By having acknowledged the receipt of monthly rentals, Port authority has in no uncertain terms issued written authority according to law to Morgan to be in possession of the subject matter as a tenant at common law until it is terminated according to law. The learned counsel for the Ports Authority has submitted that a monthly tenancy or

lease in terms of the common law is not accepted under section 9 and it is the availability of such defences that prompted the Legislature to bring in such a specific and clearly defined phrase in section 9, in order to exclude such defences.

I am not attracted by the above submissions as being the correct proposition of law, for the reason that the payment of rents evident by the written receipts read together with X2 and X1 had in effect created a monthly tenancy by itself and constitute a written authority given to Morgan until such time the said authority is legally revoked. (Emphasis added)

In this respect it is appropriate at this stage to refer to the gist of the decision in M W M Farook vs Urban Appellant Authority CA 357/89. In that case, the person who was sought to be ejected under section 5 of the Act took up the defence that he had been in occupation of the state land for over 20 years paying a monthly rental of Rs 200/-and that in that year 1987 the rental was suddenly increased to Rs 3500/- and therefore the tenant fell into arrears. Admittedly the person in occupation of the state land had been given temporarily written authority to occupy the premises subject to the conditions that till the development activities were commenced and also on the payment of rent as determined by the local authority. Prior to the institution of proceedings under the Act, the person in occupation was put on notice that should he failed to comply with the demand to pay the arrears of rent amounting to Rs 18,500/-legal action would be taken against him both to have him ejected from the said premises and also to recover the arrears of rent due to the authority. it was held that the mere threat of legal action as referred to in the letter does not revoke the authority granted to the person whose ejection was sought in those proceedings in the permit remained valid since it was not revoked or cancelled.

Now it is pertinent to examine the extent to which the decision in Walker Sons Ltd vs Sri Lanka Ports Authority and another CA 305/1990 (MC Colombo Port 58/H) decided on 15 June 1995 is applicable to the facts of the case before hand. In that case Sri Lanka Ports Authority initiated proceedings