

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALSIT.  
REPUBLIC OF SRI LANKA

Priyankara Vithanalage Dayananda  
Kolabagama,  
Divisional Secretary ,  
Kahawatta

Complainant

Vs.

C.A.(PHC) Appeal No. 52/2010  
P.H.C. Ratnapura H.C.R./R.A. No. 03/2008  
M.C. Palmadulla No. 29825

Sunethra Nallaperuma  
Dissanayake,  
Household No. 81,  
Main Stree,  
Kahawatta.

Respondent

AND

Sunethra Nallaperuma  
Dissanayake,  
Household No. 81,  
Main Stree,  
Kahawatta.

Respondent-Petitioner

Vs.

Priyankara Vithanalage Dayananda  
Kolabagama,  
Divisional Secretary ,  
Kahawatta

Complainant-Respondent

AND NOW BETWEEN

Sunethra Nallaperuma  
Dissanayake,  
Household No. 81,  
Main Stree,  
Kahawatta.

Respondent-Petitioner-Appellant

Vs.

Priyankara Vithanalage Dayananda  
Kolabagama,  
Divisional Secretary ,  
Kahawatta

Complainant-Respondent-  
Respondent

Before : **SISIRA DE ABREW, J. and  
D.S.C. LECAMWASAM, J.**

Counsel : Dr. Jayatissa de Costa PC with Lahiri  
silva for the Respondent- petitioner-  
Appellant

Sumathi Dharmawardena S.S.C. for the  
Applicant-Respondent-Respondent.

Argued &  
Decided on : 27.09.2011.

**Sisira de Abrew, J.**

Heard both counsel in support of their respective cases.

The respondent in this case issued a quit notice on the appellant directing her to hand over the vacant possession of the State Land which is the subject matter of this case. As the appellant did not comply with the quit notice, the respondent filed an application in the Magistrate's Court under relevant provisions of the State lands (Recovery of Possession ) Act.

The learned Magistrate issued the evicting order. Being aggrieved by the said order of the learned Magistrate, the appellant filed a Revision Application in the High Court. The learned High Court Judge, by his order dated 25<sup>th</sup> of February 2010, dismissed the Revision Application. Being aggrieved by the said order of the learned High Court Judge, the appellant has appealed to this court.

The main point urged by the leaned President's Counsel is that the respondent has failed to produce a plan demarcating the boundaries of the subject matter of the State Land. The learned President's Counsel drawing our attention to the quit notice issued by the respondent submitted that the extent of the land has not been specified as it states about 30 perches. But we note that the respondent has referred to the lots Nos. W3A and A4 of a final village plan. When we examined the document marked

X1, it appears that the appellant was in possession of a portion of a State Land. We therefore hold the view that it was not necessary for the respondent to draw up a plan demarcating the boundaries of the State Land which is the subject matter of this case. We therefore reject the contention urged by the learned President's Counsel.

The learned President's Counsel next contended that there is no proper application before the learned Magistrate. Drawing our attention to the letter issued by the Post Master General he contended that the Divisional Secretary could not have proceeded under the State Lands (Recovery Possession) Act, since the letter issued by the Post Master General referred to government quarters. In our view, the Divisional Secretary was at liberty to file this case under the State Lands (Recovery Possession) Act when the other party is in unlawful occupation of the State Land. Even though the State Land is occupied by a different department of the government, it is open to the Divisional Secretary to take steps under the State lands (Recovery of Possession) Act. For these reasons, the contention urged by the learned President's Counsel is rejected.

The most important question that must be decided in this case is whether the appellant has a permit or written authority issued by the government to occupy the State Land.

The learned President's Counsel drawing our attention to an inventory at page E 30 contended that the said inventory should be considered as a permit or written authority issued by the government. It appears from the said inventory that this is an inventory prepared when the government quarters were handed over to the appellant in this case. This inventory has been signed on 12<sup>th</sup> of May 1994. The quit notice has been issued by the respondent on 12<sup>th</sup> of September 2007. The said inventory does not indicate that the appellant has been authorized to stay in the State Land until the year of 2007. In our view the said inventory cannot be considered as a permit or written authority issued by the government to occupy the State Land. The appellant has failed to produce any written authority or a permit issued by the government to occupy the State Land.

**In Mohandiram Vs. Charman Janatha Estate Development Board 1992 1 SLR Page 110** His Lordship Justice Grero held thus

*“ In an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the State granted according to any written law. If this burden is not discharged, the only option open to the Magistrate is to order ejectment.’*

**In Nirmal Paper Convertes (Pvt) Limited Vs. Sri Lanka Ports Authority 1993 1 SLR page 219 at page 223** His Lordship Justice Wijeyaratne held thus

*“ The only ground on which the petitioner is entitled to remain on this land is upon a valid permit or other written authority of the State as laid down in section 9 (1) of the State Lands (Recovery of Possession ) Act. He cannot contest any of the other matters. ”*

Applying the principle laid down in above judicial authorities, we hold that in an inquiry under section 9 of the State Lands (Recovery of Possession) Act, the only ground on which the appellant could stay in the State Land is upon a valid permit or written authority issued by the government. As we pointed out

earlier, the appellant has not produced any written authority or a permit issued by the government to occupy the State Land.

For these reasons, we hold that there is no merit in this appeal and dismiss the appeal.

*Appeal dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**D.S. C. Lecamwasam, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**

/mds