

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

CA (PHC) 139/2006
PHC -A'pura25/03

Deepthi Kumara Uyanwatta, Deepthi
Motors, Anuradhapura.

Respondent-Petitioner-Appellant.

Vs.

Ashoka Alawattte, Divisional Secretary,
Divisional Secretary's Office, Pandulgama,
Anuradhapura.

Plaintiff-Respondent-Respondent.

Before : A.W.A. Salam, J &
Sunil Rajapakshe, J.

Counsel : Dr. Sunil Coory for the appellant ad Suranga Wimalasena
SSC for the respondent.

Argued : 30.07.2013

Decided on: 07.08.2013

A.W.A.Salam,J

The plaintiff-respondent-respondent (hereinafter referred to as the "respondent") initiated proceedings in the Magistrate's Court against the respondent-petitioner-appellant (appellant) in terms of the State Lands (Recovery of Possession) Act No 7 of 1979, to recover the possession of the allotment of land admittedly in the possession of the appellant. The learned Magistrate by order dated 23rd June 2003 directed the ejectment of the appellant from the land of which he is in possession. Dissatisfied with the order of the learned Magistrate the appellant in invoked the revisionary jurisdiction of the High Court of the Province and the learned High Court Judge by Judgment dated 26 April 2006 refused to exercise the revisionary powers of the High Court resulting in the order of the learned Magistrate remaining unaltered. The present appeal has been preferred by the appellant to have the judgment of the learned High Court Judge and that of the order of the learned Magistrate set aside and substituted with an order dismissing the application filed by the respondent in the Magistrate's Court.

At the argument the learned Counsel for the appellant placed reliance heavily on two grounds in support of his appeal, to have the order of the Magistrate and the judgment of the learned High Court Judge set aside.

They are as follows....

1. That the land being previously alienated under the Land Development Ordinance, to one Amaraseeli, no proceedings could have legitimately filed under the State Lands (Recovery of Possession) Act to eject the appellant, save and except as provided under Section 168 of the Land Development Ordinance.
2. In any event, no order for the ejectment of the appellant should be made, since the officer who identified himself as the Competent Authority within the meaning of the State Lands (Recovery of Possession) Act, in fact is not the Competent Authority entitled to file action in the Magistrate's Court.

I will deal with the first ground urged by the appellant at the outset. The learned counsel repeatedly cited Section 168 A of the Land Devopment Ordinance, as the Provision of the law the respondent should have resorted to in this case. Section 168 A deals with the encroachment of State land alienated under the Land Development Ordinance. Under this Section, If any person encroaches upon a land alienated under the Ordinance on a permit, he shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to

a certain punishment. Sub Section 2 sets out the territorial jurisdiction of the court and by whom proceedings can be initiated. Sub Section 3 deals with the consequences of a conviction under Sub Section 1. In other words when a person is convicted under 168A (1) of the Land Development Ordinance, he is liable to be ejected from the land under Section 127 of the Ordinance.

The learned counsel for the appellant contended that the land in question had been previously alienated under the Land Development Ordinance to one Amaraseeli. It is with the permission of Amaraseeli, the appellant has entered the land in question and constructed a house valued at Rs.20 million. The learned counsel contended that in the circumstances the respondent is debarred from initiating proceedings under the State Lands (Recovery of Possession) Act.

To buttress his argument he emphasized that the Land Development Ordinance must be considered as a Special Legislation that prevails over the State Lands (Recovery of Possession) Act as the latter Act deals with all types of lands belonging to the State while the former deals with a particular type of land, namely the lands alienated under the Land Development Ordinance. He urged that the maxim *generalialia specilibus non derogant* must be applied to the present case to rule out the permissibility of the State to maintain proceedings

under the State Lands (Recovery of Possession) Act, in respect of lands that are alienated under the Land Development Ordinance.

The learned counsel for the appellant cited certain decisions of the Apex Court as being binding on this court in deciding the appeal preferred by the appellant. The ratio of the judgments cited by him is that when a Statute provides a machinery to achieve a particular object, a party has no right to step outside that mechanism and look for relief. Admittedly, the appellant has filed an unsuccessful application for writ of *mandamus* on the Divisional Secretary to compel him to issue a permit in respect of the land in question.

On a reading of section 168 A of the State Land (Recovery of Possession) Act, it is quite clear that under Sub Section 2 the Government Agent of a particular administrative district in which the land that is encroached upon is situated, is given a wide discretion whether to institute proceedings against a trespasser under that Section or not. The operative words used in Sub Section 2 are "Proceedings under Sub Section (1) may be instituted by the Government Agent....."

In the circumstances, it would be seen that the argument placed on behalf of the appellant to the effect that the Government Agent has no alternative but to file proceedings under the Land Development Ordinance, if the land has been

once alienated is untenable and in my opinion it is open to the Government to choose between the Land Development Ordinance and State Lands (Recovery of Possession) Act. Hence, the first argument of the learned counsel fails.

The second and final argument advanced on behalf of the appellant was that the officer who had signed the documents as the Competent Authority, namely the respondent to this appeal is not legally empowered to initiate proceedings against the appellant as the Competent Authority. He maintained the position that the Competent Authority in this case should be an officer from the Irrigation Department as the land in question is said to belong to that Department.

Therefore, it is quite clear that the Government Agent or the Divisional Secretary as he is now known has the discretion either to proceed under the land development Ordinance or the state land (recovery) act to regain possession of a state land from a trespasser or encroacher. As such, the argument advanced by the learned counsel that the proceedings under the state land (recovery) act cannot be maintained against the appellant does not appear to be quite sound.

The next argument of the learned counsel for the appellant was that the officer who had signed as the Competent Authority in this case is in fact not the Competent Authority who is empowered to sign the relevant documents or to initiate

proceedings against the appellant. According to the appellant the Competent Authority who is empowered to initiate proceedings against the appellant, if at all, should be an officer from the Irrigation Department. This position of *the* appellant is quite contradictory to the stance he maintained in the writ application for *mandamus*. Quite surprisingly, in the writ application the appellant took up the position that the officer who has legal authority over the land in question is the respondent who is the Divisional Secretary.

In the light of the position taken up by the appellant previously, I do not think it is open for him to now take a different stand as to the officer who is entitled to represent that State. Hence, I find no merits in both grounds urged by the appellant. This appeal therefore is dismissed.

Judge of the Court of Appeal

Sunil Rajapakha, J

I agree

Judge of the Court of Appeal

NR/-