

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

CA(PHC)APN/RV/17/07

H.C.R.A. No. 658/04

MC Mt. Lavinia No.648/5/02

J.M.L. Jayasekara, Director General,
Urban Development Authority,
27, D.R. Wijewardena Mawatha,
Colombo 10.
Complainant.

Vs.

Abdul Majeed Mohideen Meerasa, 50/1,
Mayura Place, Wellawatte, Colombo 06.
Respondent.

And Then Between

Abdul Majeed Mohideen Meerasa, 50/1,
Mayura Place, Wellawatte, Colombo 06.
Respondent-Petitioner.

Vs.

J.M.L. Jayasekara, Director General,
Urban Development Authority,
27, D.R. Wijewardena Mawatha,
Colombo 10.
Complainant-Respondent.

And Now Between

Abdul Majeed Mohideen Meerasa, 50/1,
Mayura Place, Wellawatte, Colombo 06.

Respondent-Petitioner-Petitioner.

Vs.

J.M.L. Jayasekara, Director General,

Urban Development Authority,

27, D.R. Wijewardena Mawatha,

Colombo 10.

Complainant-Respondent-Respondent.

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

Sunil Rajapakshe, J.

Counsel : D.H. Siriwardane for Respondent-Petitioner-
Petitioner.

Neil Unamboowe DSG for Complainant-Respondent-Respondent.

Argued on : 12.07.2013 & 31.08.2013

Decided on : 09.09.2013

A.W.A. Salam, J.

This is an application to have the order of the learned and High Court judge dated 7 February 2006 and the learned Magistrate dated 1 October 2002 revised and set aside. The impugned order of the learned Magistrate has been made under the Provisions of the State

Lands (Recovery of Possession) Act No 7 of 1979, allowing the complainant-respondent-respondent (respondent) to obtain vacant and peaceful possession of the State land and premises that were the subject matter of the application before the learned Magistrate. The impugned judgment of the learned High Court judge has been entered consequent upon the respondent-petitioner-petitioner (petitioner) invoking the revisionary jurisdiction of the Provincial High Court to challenge the order of the learned Magistrate.

The order of the learned and Magistrate was challenged in the High Court *inter alia* on the following grounds.

1. That the application of the complaint-respondent-respondent, (respondent) namely the competent authority is contrary to law.
2. The respondent had no *locus standi* to file the said application in the Magistrate's Court.
3. The respondent had not invoked the jurisdiction of the Magistrate's Court, under and in terms of the procedure established by law.
4. The learned and Magistrate had no jurisdiction to entertain the said application and/or inquire into the same and/or to make any order thereafter.

As stated above, quite remarkably the order of the learned and High Court judge dismissing the revision application has been made as far back as in February 2006. However, the revision application in question has been made on 9 February 2007 nearly one year after the impugned

order of the High Court judge had been entered. Besides, the petitioner has not supported the application for notices on the revision application before this court for nearly 6 years. The unexplained lethargic attitude of the petitioner by itself is a ground which disqualifies him from seeking the prerogative remedy to invoke the revisionary jurisdiction of this court.

In the revision application the petitioner states that he is diagnosed to be a patient with hypertension and paralysis for nearly 3 ½ years and right now under medication. He states that he cannot do his work on his own and most of the time he is confined to bed. He further states that owing to his acute illness and partial paralysis his livelihood as a small-time businessman has been affected which in turn rendered him helpless and destitute and that he is unable to generate any income. The petitioner further states that his wife who is a teacher by profession had undergone by-pass surgery and she too is ill and under medication. Whatever may be the unfortunate medical condition of the petitioner and his wife it may be, the particular Legislation under which the eviction of the petitioner is sought being a draconian law which requires strict compliance of the Provisions of law to continue in possession of the land in question, the petitioner is under a legal obligation to establish that he is in possession or occupation of the land in question 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 document produced by the petitioner to justify his occupation is marked X3 dated 29 December 1979. The caption to the document reads "EXPRESSION OF CONSENT FOR BILATERAL DEVELOPMENT OF THE NEW DEVELOPMENT SCHEME UNDER THE HOUSING AND URBAN DEVELOPMENT MINISTRY".

The said document produced by the petitioner does not constitute a valid permit or other written authority of the State granted in accordance with any written law as contemplated by the Provisions of State Lands (Recovery of Possession) Act.

In the circumstances, I have no alternative but to refuse entertained the revision application filed by the petitioner and accordingly I refuse notice to be issued on the respondents.

There shall be no costs.

Judge of the Court of Appeal

Sunil Rajapakha, J

I agree

Judge of the Court of Appeal

NR/-