

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

Lanka Jathika Estate Workers Union  
60, Bandaranayakepura  
Sri Jayawardenapura Mawatha  
Weikada, Rajagiriya

Petitioner-Appellant

No.C.A (PHC) 147/2002

Vs

PHC Kandy No. 136/98

Pradeshiya Lekam, Walapane

M.C.Walapane No.M/7948/97

Plaintiff-Respondent-Respondent

2. Thailan Pushparaj

Lanka Jathika Estate Workers Union

Bus Stand. Walapone

1<sup>st</sup> Respondent-Respondent-

Respondent

BEFORE

A. W. A. Salam J.,

Sunil Rajapakse J.,

COUNSEL

Sunil Abeyratne for the Appellant

Anusha Samaranayake, S.S.C for the Respondent

ARGUED ON:

11<sup>th</sup> July 2013

DECIDED ON:

13<sup>th</sup> September 2013

Rajapakse, J.,

This is an application for Revision filed by the Petitioner Appellant against the Judgment of the learned High Court Judge of Central Province, Kandy and the learned Magistrate of Walepana.

Being aggrieved by the said Judgments, th4e Petitioner Appellant filed this Revision Application to set aside the above judgments.

The Complainant Plaintiff Respondent made an application under the provisions of State Lands (Recover of Possession) Act to the Magistrates Court of Walapane against the 2<sup>nd</sup> Respondent. After issuing summons on the 2<sup>nd</sup> Respondent, the Respondent appeared before the Magistrates Court of Walapane and moved to show cause against the Order for ejectment. At the At the inquiry, th4e 2<sup>nd</sup> Respondent was led on behalf of the Respondent. After the inquiry learned Magistrate of Walpane delivered his Order ejecting the 2<sup>nd</sup> Respondent from the disputed premises on the basis that the Applicant had been unable to establish to court that he is in possession of the disputed land on a valid permit, in terms of Section 9 of the State Lands (Recovery of Possession) Act.

Being aggrieved by the said Order of the learned Magistrate of Walapane, the Petitioner Appellant had filed a Revision Application in the High Court of Kandy. By Judgment dated 2002.6.20 the learned High Court Judge dismissed the application for Revision.

Being aggrieved by the learned High Court Judge's judgment, the Petitioner Appellant has filed this appeal to the Court of Appeal.

When the matter came up for argument before this Court the learned Counsel for the Petitioner Appellant submitted to Court that the 2<sup>nd</sup> Respondent's possession/occupation was merely as an employee and dependant of the Petitioner.-Appellant. Further he contended that the Petitioner Appellant's Trade Union was in the actual possession of the said premises. In the Magistrates Court the 2<sup>nd</sup> Respondent's main contention was that his possession/occupation was merely as an employee and dependant of the Lanka National Estate Workers' Union (Petitioner Appellant). But the 2<sup>nd</sup> Respondent's evidence in the Magistrates Court revealed that he was in actual physical possession/occupation of the said disputed premises. Learned Magistrate of Walapane had rejected the 2<sup>nd</sup> Respondent's defence on the basis that the provisions of the State Lands

(Recovery of Possession) Act applied to the 2<sup>nd</sup> Respondent who was in possession of the premises in question.

Section 9 of the State Lands (Recovery of Possession) Act read as follows :

*"Section 9(1)*

*"At such inquiry the person on whom summons under Section 6 has been served shall not be entitled to contest any of the matters stated in the 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:*

*(a) It shall not be competent to the Magistrate court to call for evidence from the competent authority in support of the application under Section 5."*

According to the State Land Recovery Act the Respondent or any other person are not entitled to contest any of the matters set out in the application unless the Respondent had established that he was in occupation of the land on a valid permit or other written authority of the State, he cannot occupy the said premises.

The learned Counsel for the Plaintiff Respondent contended that the other two defences raised by the petitioner Appellant in this case did not come within the scope of inquiry permitted under Section 9.

The Petitioner Appellant has raised two other objections in this case. Those objections are as follows :

- i) Rent and ejection case was pending in respect of the premises in question; and
- ii) That a previous application filed under Act against the 2<sup>nd</sup> Respondent had been rejected for failure to name the correct person

After analyzing the submissions made by both parties this Court agree with the Plaintiff Respondent under Section 9 of the State Lands (Recovery of Possession) Act, that the Petitioner Appellant or 2<sup>nd</sup> Respondent can raise objections only on the basis of a valid Permit or written authority. If the Magistrate is not satisfied with the objections raised by the Respondent he has the authority to make order directing the ejection forthwith. I hold that the 2<sup>nd</sup>

Respondent has not proved the requirement of Section 9 of the said Act.

In this regard Court cite the following case.

In the case of Muhandiram vs Chairman No.1 Janatha Estate Development Board (1992) 1 SLR page 110. It was held :

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 is possessed or occupied upon a valid permit or other written authority of the State granted according to any written law. It is this burden that is not discharged, the only option opened to the Magistrate is to order ejectment.

In the Magistrates Court inquiry, the Petitioner Appellant was not summoned to show cause. Hence, the Petitioner Appellant is not entitled to raise any of the above objections in this Revision Application.

The burden on a Respondent in an inquiry under Section 9 was considered by Justice Grero in the case of Muhandiram vs Chairman,

7

JEDB. It was held *"In this case that the burden is on the person noticed to establish that he is in possession on a valid permit and/or other written authority of the State granted according to any written law. If the party noticed fails to discharge this burden that the court could make its order of ejectment"*.

In this matter that the Respondent has failed to prove his objections in the Magistrates Court proceedings. The Petitioner Appellant Union was not a party to the Magistrates Court inquiry provisions of State Lands Act applies only to the person who is in actual and physical possession/occupation of the premises in question. Therefore, there is no alternative for the learned Magistrate other than to allow the application of the Plaintiff Respondent (Competent Authority).

If the Appellant Petitioner is aggrieved by the Magistrate's Order and he has been wrongfully ejected from the disputed land, he has alternative remedy under Section 13 of the State Lands (Recovery of Possession) Act. Under Section 13 of the Act any person aggrieved by the Magistrates Order is entitled to recover reasonable compensation from the Competent Authority.

I am of the view, Order of the learned High Court Judge of Kandy is a well considered order as the learned High Court Judge has taken to consideration both relevant facts and law when arriving at the decision on 20<sup>th</sup> June 2002.

It is only the aggrieved party can show exceptional circumstances for seeking relief by way of Revision. The petitioner has failed to establish exceptional circumstances in this application. In Hotel Galaxy (Pvt) Ltd., vs Mercantile Hotels Ltd., 1987 (1) SLR 5 "*It is settled law that the exercise of revisionary powers of the Appellant confined to cases in which exceptional circumstances exists warranting its intervention*".

Applying the principles laid down in the above judicial decisions, the Court holds that the 2<sup>nd</sup> Respondent is not entitled to raise the question whether the Respondent was a dependant of the Petitioner Appellant in the Magistrates Court proceedings. Further I hold that the Magistrate court proceedings reveal that the 2<sup>nd</sup> Respondent was in actual physical possession of the dispute premises. Therefore I am of the view that there is no reason to disturb the findings of the learned Magistrate and the learned



High Court Judge. The learned High Court Judge has correctly affirmed the Order of the learned Magistrate and rejected the Revision Application.

For the aforesaid reasons the Revision Application of the Petitioner Appellant is dismissed.

Application is dismissed. .

Judge of the Court of Appeal.

Salam J.,

I agree.

Judge of the Court of Appeal.