

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

CA PHC 240/2003

Page | 1

PHC Colombo 101/2001

Kahandawala Arachchige
Naleena Prabashini,
33/1, Pansalhena Rd,
Meetotamulla,
Wellampitiya.
Accused-Appellant

Vs

1. W A Siriwardena,
The Director General,
Urban Development
Authority,
Colombo 10
Complainant-Respondent-
Respondent
2. Honourable The Attorney
General
Colombo , 12
Respondent-Respondent

Before: A.W.A.Salam, J (P/CA) & Sunil Rajapaksha, J

Counsel : L D M Abeysekera for the accused-appellant and
Nayomi Kahawita SC for the Complainant-Respondent.

Argued : 22.1.2014

Decided : 16.7.2014

A W A Salam, J (P/C A)

This is an appeal preferred against the judgment of the learned
High Court Judge of Colombo dated 17 September 2003. By
the said judgment the learned High Court Judge dismissed the

revision application filed by the accused-appellant (hereinafter referred to as the "appellant"). The description given in the caption as the accused-appellant is misleading and should be corrected as respondent-appellant.

Page | 2

The background to the appeal is as follows; The complainant-respondent (hereinafter referred to as the "complainant") filed an application in the relevant Magistrate's Court seeking the ejectment of the appellant from the land and premises identified by him as a land belonging to the State. The application has been made in terms of the State Land (Recovery of Possession) Act. The appellant was issued with notice to appear in the Magistrate's Court on a particular day and show cause as to why an order of ejectment should not be made as prayed for in the application of the complainant.

On the day fixed for the appearance of the complainant she was not present in court and according to the order of the learned Magistrate her father had appeared but shown no cause against a possible order being made for the ejectment of the appellant. The proceedings in the Magistrate's Court do not indicate that a postponement was sought on that day on behalf of the appellant. The learned Magistrate, thereupon entered an order of ejectment, on the footing that no cause had been shown as required by the State Land (Recovery of Possession) Act.

Against the said order of the learned Magistrate the appellant filed a revision application that too was dismissed on the basis that she had failed to make out a case for revision. This appeal has been preferred against the said judgment.

The learned counsel for the appellant contended that the procedure adopted by the learned Magistrate before he issued the order of ejectment is fatally irregular and that he has failed to charge the appellant under Section 183 (2) (b) of the Code of Criminal Procedure. Page | 3

Section 183 (1) of the Code of Criminal Procedure deals with an admission of offence by the accused. On the other hand Subsection 2 (b) provides a situation where the accused does not make a statement or makes a statement which does not amount to an unqualified admission of guilt. In such a circumstance the Magistrate is obliged to ask the accused if he is ready for trial and if he replies that he is not ready for trial by reason of the absence of witnesses or otherwise the Magistrate shall, subject to the provisions of subsection (3) of section 263, either postpone the trial to a day to be then fixed or proceed forthwith to try the case in manner hereinafter provided.

The grievance of the appellant seems to be that she was not asked whether she is guilty of the offence and had she stated that she was not guilty the learned Magistrate would have had to postpone the trial. The learned counsel for the appellant appears to have misconstrued that Section 183 of the Code of Criminal Procedure is applicable to proceedings initiated under the State Lands (Recovery of Possession) Act as well.

According to the records maintained by the learned Magistrate no application has been made for a postponement on the day the appellant was required to appear in the Magistrate's Court. Had an application been made for a postponement to show cause the learned Magistrate may have accommodated the

appellant. As no such application had been made the learned Magistrate had proceeded on the basis that the appellant is unable to produce a permit or written authority entitling her to remain on the land.

Page | 4

As a matter of law, if the appellant was absent on the day fixed for her to show cause against an order of ejectment being made, she should have purged the default in the original court. As she has failed to do that it is not open to the appellant to take up the question of nonappearance due to whatever reasons that may be, in the High Court or before this court.

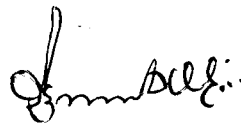
In the circumstances, the Magistrate was correct in taking up the matter and disposing of the application whatever may be the unfortunate condition that would have prevented appellant from attending Court. In this type of applications it is necessary to be borne in mind that the particular Legislation under which the eviction of the appellant 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 appellant was under a legal obligation to establish that she was 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 position of the appellant as regards her right to occupy the premises in question is quite unusual. She takes up the position that had she been granted a postponement, she would have produced the letter dated 8 August 2000 signed by Navalage Benette Cooray, Member of Parliament Colombo.

District and Deputy Minister for Transport and Highways, which document spells out that the appellant was entitled to a portion of the said land in question. She further states that the said letter spells out the positive legitimate expectation of her to be in possession and occupation of the land in question and the learned Magistrate failed to give her an opportunity to produce this letter. Page | 5

It is my considered view that even if this letter was produced yet she would not have been able to discharge the burden of establishing that she had 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.

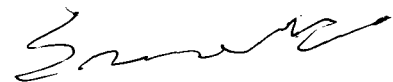
In the circumstances, I am not inclined to grant relief to the appellant on the petition of appeal. Appeal dismissed without costs.



President, Court of Appeal

Sunil Rajapaksha, J

I agree



Judge of the Court of Appeal