

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

C.A (PHC) No. 176/08

P.H.C.Colombo No.114/08

M.C. Nugegoda No.9838

W. Saman Danarathna
No: 301/2,
Parakum Mawatha,
Dehiwala Road,
Maharagama.

Respondent- Petitioner

Vs.

Secretary
Provincial Secretary office,
Maharagama.

Complainant-respondent

C.A.(PHC)No.176/08

Rev. Appl. H.C.Colombo No.114/08

M.C. Nugegoda No.9838

Before : K.T. CHITRASIRI, J. &
W.M.M.MALINIE GUNARATNE, J.

Counsel Appellant is absent and unrepresented.
Suranga Wimalasena SSC for the Applicant-Respondent.

Argued and

Decided on : 22.07.2014

K.T.CHITRASIRI,J.

Notice sent to the Respondent-Petitioner-Appellant by the Registrar of this Court, directing him to appear in this Court, had been returned with the endorsement that no house is found at the address given in the said notice and that the house that was there had been demolished. It is the address given in the petition of appeal as the address of the appellant. Hence, this Court has no option than to take up this appeal in his absence. Accordingly, this appeal is taken up for consideration in the absence of the appellant.

This appeal had been preferred seeking to set aside the orders dated 03/02/2010 and 11/07/2008 made respectively by the learned High Court Judge and the learned Magistrate. Learned High Court Judge has affirmed the order of the learned Magistrate dated 11/07/2008 by which an application by

the respondent to have the appellant evicted from the premises in dispute had been allowed. The said application by the respondent which is dated 27/02/2008 to the Magistrate had been made in terms of the provisions contained in the State Land Recovery of Possession Act No.17 of 1979 as amended, in order to have the appellant evicted from the land referred to in the schedule to the application filed in the Magistrate's Court. Learned Magistrate having considered the circumstances of the case has decided that the appellant has failed to produce a valid permit or written authority issued by the Government to possess or occupy the premises in suit since it is a land belonging to the State.

The law in this connection had been clearly stated in many ~~a~~ decisions including that of the following. In the case of **Aravindakumar v. Alwis and others, [2007] 1 S.L.R. 317**, it was held thus:

"Any person served with a quit notice under Section 3 can continue to be in possession/occupation of the land only upon a valid permit or other written authority of the State described in Section 9."

In the case of **Muhandiram v. Chairman, No.111, Janatha Estate Development Board [1992] 1 S.L.R. 110** it was held thus:

"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 to the Magistrate is to order ejectment.”

In view of the authorities referred to above, a person can only be allowed to possess or occupy a State land, only if he/she possesses a valid permit or written authority issued by the Government to remain so. In this instance, the appellant has failed to produce such a permit or any written authority to be in possession/occupation of the land referred to in the schedule to the application made to the Magistrate's Court in this case which bears the No.9838.

Accordingly, we do not see any reason to interfere with the decision of the learned Magistrate and of the learned high Court Judge.

For the aforesaid reasons this appeal is dismissed.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.MALINIE GUNARATNE,J.

I agree.

JUDGE OF THE COURT OF APPEAL

WC/-