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

In the matter of an application for Revision

J.M.C. Priyadharshani,
Authorised Officer / Competent Authority,
Ministry of Plantation Industries,
55/75, Vauxhall Lane, Colombo 02.

APPLICANT

Vs.

Thuraisamy Krishasamy.
Abbotsleigh Division
Abbotsleigh Estate, Hatton.

RESPONDENT

CA (PHC) APN 102/2013
HC (NUWARA ELIYA) 39/11 REV
MC (HATTON) 51785

AND THEN BETWEEN

Thuraisamy Krishnasamy
Abbotsleigh Division,
Abbotsleigh Estate, Hatton.

RESPONDENT – PETITIONER

Vs.

J.M.C. Priyadharshani, Authorised
Offficer/ Competent Authority,
Ministry of Plantation Industries,
55/75, Vauxhall Lane, Colombo 02.

APPLICANT - RESPONDENT

AND NOW BETWEEN

Thuraisamy Krishnasamy, Abbotsleigh
Division, Abbotsleigh Estate, Hatton

RESPONDENT – PETITIONER – PETITIONER

Vs,

J.M.C. Priyadharshani, Authorised
Officer / Competent Authority, Ministry
of Plantation Industries, 55/75, Vauxhall
Lane, Colombo 02.

APPLICANT – RESPONDENT- RESPONDENT

BEFORE: **K.T. CHITRASIRI, J.**

MALINIE GUNARATNE, J

COUNSEL: **Kamran Aziz for the Respondent – Petitioner - Petitioner**

Manoli Jinadasa, Sulakshana Senanayake with

A.C.S. Dewapura, for the Applicant – Respondent – Respondent.

Argued on 18TH July 2014

Decided on 24th September 2014.

Malinie Gunaratne, J

The Petitioner to this application has instituted the present revision application to challenge the propriety of the order made by the learned Magistrate of Hatton, dated 17th December 2011 and to set aside the Judgment of the learned High Court Judge Nuwara Eliya, dated 17th May 2013.

When this matter was taken up for hearing on 18/07/2014, the learned Counsel for the Applicant – Respondent raised the following preliminary objections which have been set out in the Statement of Objections dated 22nd January 2014.

a) The Respondent states that the purported cause of action set out in the Petition by the Respondent – Petitioner – Petitioner (hereinafter referred to as **"the Petitioner"**) does not entitle the Petitioner to invoke the Revisionary Jurisdiction of Your Lordship's Court especially as the Petitioner had an alternative remedy, namely a Right of Appeal available to him, which he failed and / or neglected to exercise.

b) The Respondent states that this Court has no Jurisdiction to hear and determining this Application, as the Petitioner has failed to plead exceptional grounds necessary for the invocation of the Revisionary Jurisdiction of Your Lordship's Court, which is a discretionary remedy;

c) There is delay and/or laches on the part of the Petitioner in that the order of the Order sought to be challenged by these proceedings is dated 17.05.2013 and this Application has been filed on or about 29.08.2013 over three months later.

d) The Petitioner has failed to name the Janatha Estate Development Board (JEDB) who is the owner of the estate and as such a necessary party, as a party to this case, especially as the rights of the owner is challenged by this Petition.

e) The Petitioner has failed to make Watawala Plantations PLC who is the Lessee of the estate and who was directly affected by the Petitioner's unauthorized possession of the land which is the subject matter of this Petition and as such a necessary party, a party to this case, especially as the land is currently in the possession of the Lessee.

f) The Petitioner has suppressed and/or misrepresented facts.

At the hearing, the learned Counsel for both parties made submissions and subsequently they have tendered written submissions too.

The Respondent instituted proceedings against the Petitioner in the Magistrate's Court of Hatton under and in terms of Section 5 of the State Lands (Recovery of Possession) Act No.7 of 1979 (as amended), by filing the application dated 6th May 2011, seeking for an order from the Magistrate's Court ejecting the Petitioner from the premises morefully described in the schedule to the said Application.

The learned Magistrate pronounced the Order, dated 13th December 2011, granting the relief sought by the Respondent and made order ejecting the Petitioner from the land. Being aggrieved by the Order of the learned Magistrate, the Petitioner preferred an Application to the High Court of Nuwara Eliya, seeking that the Order of the learned Magistrate be revised.

The learned High Court Judge, pronounced the judgment dated 17th May 2013, by affirming the Order of the learned Magistrate, and dismissed the Petitioner's application. The Petitioner has now filed this revision application to revise the said order of the High Court Judge.

I will now consider the preliminary objections raised by the Respondent. As set out before, the first preliminary objection raised by the Respondent is that the Petitioner is not entitled to invoke the revisionary jurisdiction of this Court, specially as the Petitioner had an alternative remedy, namely the right of appeal which he has failed to exercise.

In the submissions of the learned Counsel for the Respondent also, she has stressed the above fact. It is a matter that is to be taken as a serious issue when an Order is being sought in a revision application filed to canvass such a decision.

On examining the Petition filed by the Petitioner it is important to note that no reasons whatsoever had been given in the Petition to support his failure to exercise the right of appeal available to him by law.

I will now turn to consider the authorities in this regard.

The Court refused to exercise their discretion and entertain a revision application where an appeal was available to the aggrieved party who has filed a revision application in Ameen vs. Rasheed (1936) 6 NCLW.

In that decision Abraham C.J. stated "..... in the petition no reason is given why this method of rectification has been sought rather than the ordinary method of appeal".

In the case of Letchumi vs. Perera and another (2000) 3 SLR 151, the Court dismissed an application for revision on the basis that there was an alternative remedy specified by statute.

In Perera vs. Silva (1908) 4 ACR 79, the applicant had another remedy and the Court specifically refused to grant the remedies available in a revision application.

In the case of Halwan and others vs. Kaleelua Rahuman (2000) 3 SLR 50 S.N. Silva J. (as he then was) has observed :

"A party dissatisfied with a judgment or order, where a right of appeal is given either directly or with leave obtained has to invoke and pursue the appellant jurisdiction. When such a party seeks judicial review by way of an application for a writ, he has to establish an excuse for his failure to invoke and pursue the appellant jurisdiction. Such excuse should be pleaded in the Petition seeking judicial review and be supported by affidavits and necessary documents. The same principle is applicable to instances where the law provides for a right of appeal from a decision or order of an institution or an officer, to a statutory tribunal. The reason is that such appellant procedure as established by law being the ordinary procedure

should be availed of before recourse is had to the extra ordinary jurisdiction by way of judicial review as provided in Article 140 of the Constitution."

In Carolis vs. Dharmaratne Thero and others (2006) 2 SLR 321 and in Kumarasiri and Another vs. Rajapakse (2007) 1 SLR 359, similar opinion had been expressed.

Replying to the submissions made by the Respondent, the Counsel for the Petitioner submitted that although a right of appeal was available, he is entitled to file a revision application when exceptional circumstances are present. Hence it is the position of the Petitioner that the existence of an appeal would not be an impediment in the filing of a revision application, provided there are exceptional circumstances. I also agree with the said contention of the learned Counsel for the Petitioner. It is settled law that even if the decision is appealable, the Court has a discretion to entertain a revision application and to make order when exceptional circumstances are pleaded.

However, I do not agree that the matters referred to therein amount to exceptional circumstances as required by law. If there are no exceptional circumstances, this Court will not exercise its revisionary powers specially when the right of appeal is available.

I will now consider the next objection namely, failure to show exceptional circumstances when filing this revision application. The Counsel

for the Petitioner has submitted, in paragraph 11 of the Petition, that the Petitioner has pleaded exceptional grounds, reasons and circumstances. I have examined the contents in Paragraph 11 of the Petition filed in this Court where he alleges that the Petitioner has exceptional circumstances to file this application.

In Athukorale vs. Saminathan 41 NLR 165 Soertsz J. stated that the right of the Court to revise any order made by an original court will be exercised only in exceptional circumstances. In Caderamanpulle vs. Ceylon Paper Sacks (2001) 3 SLR 172, the Court has held the existence of exceptional circumstances is a precondition for the exercise of the powers of revision and the absence of such circumstances in any given situation results in refusal of granting remedies. In Ameen vs. Rasid (Supra) Abraham C.J. has explained the rationale for insisting on the existence of exceptional circumstances for the exercise of revisionary jurisdiction. According to Abraham C.J., revision of an appealable order is an exceptional procedure and a person seeking this method of rectification must show why this extraordinary method is sought rather than the ordinary method of appeal.

Thus, the existence of exceptional circumstances is a process by which the method of rectification should be adopted. In Perera vs. Silva (Supra) Hutchinson C.J. has stated that if such selection process is not available, then revisionary jurisdiction of the Court will become a gateway for every litigant to make a second appeal in the garb of a revision

application to make an appeal in situations where the legislature has not given the right of appeal.

Furthermore, in Dharmaratne and Another vs. Palm Paradise Cabanas Ltd. (2003) 3 SLR 24 Gamini Amaratunga J. stated that the practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed.

Revisionary powers will only be exercised when it appears that there will be injustice caused to the Petitioner unless the revisionary power is exercised by Court. I do not agree that the matters referred to in the Petition amount to exceptional circumstances, as required by law. Having referred to the authorities above and to the facts and circumstances of this case it is my view that the Petitioner has failed to disclose exceptional circumstances in order to invoke the revisionary jurisdiction of this Court. Therefore I am of the opinion that the Petitioner has failed to establish exceptional circumstances to have and maintain this application.

I will now consider the next objection raised by the Counsel for the Respondent, namely, undue delay in filing this application. By looking at the circumstances in this case, it is revealed that the Petitioner was evicted from the premises in question even before filing the revision application in the High Court. The Counsel for the Petitioner submitted that these proceedings have been filed after three months from the date of the

impugned order and therefore he has contended that such a period will not amount to delay.

In the case of Attorney General vs. Kunchihambu 46 NLR 401, the delay of three months was held to disentitle the Petitioner for relief. Where there has been a delay in discretionary relief, it is essential that reasons for the delay should be set out in the petition. (Dassanayake vs Fernando 71 NLR 356). The Petitioner has not set out any reasons for the delay in his petition. The Court has a discretion to refuse the application on the ground of undue delay in bringing the proceedings. Therefore, I am of the view as disclosed by the Respondent, that there is a delay in filing this revisionary application.

In any event, for this Court to exercise revisionary jurisdiction, the order which is being challenged must have led to occasion a failure of justice and it should have become manifestly erroneous which go beyond an error or defect or irregularity than an order which an ordinary person who instantly react to. In other words the order complained of, is of such a nature which should have shocked the conscience of Court.

At the hearing of this application Counsel for the Petitioner contended, that the order sought to be set aside are contrary to law and / or are per incuriam and / or are of grave mistakes of fact and / or law. He further contended that the Respondent cannot in law resort to the provisions of the State Lands (Recovery of Possession) Act No. 07 of 1979 as the land had vested in Watawala Plantations Ltd.

The main thrust of the application is on the ground that the respondent has no authority to invoke the provisions of the State Land (Recovery Possession) Act, as the land in suit is part of the land in the control of Watawala Plantations Limited, by which the State land had been obtained on a lease.

In the submissions of the learned Counsel for the Petitioner, he has drawn the attention of Court, in two decided cases in support of his submission. Adakan Periayah Muthiah vs. S.C.K. de Alwis CA Appeal 1560/2000 dated 30.05.2002 and Suni Chandrakumar vs. K.S. Velu CA PHC No. 176/1997 decided on 05.04.2007.

He further submitted, that the High Court Judge and the learned Magistrate erred in law, by failing to appreciate and / or determine and / or apply the aforementioned authorities in the correct perspective.

Counsel for the respondent contended that the cases cited by the Petitioner are cases filed under the Government Quarters (Recovery of Possession) Act and has no bearing whatsoever to the present application.

She further contended, that the Competent Authority has the power to evict persons in unlawful occupation of land belonging to the State, but leased to the Plantation Companies.

The Counsel relied on the following decided cases to support her submission.

a) Abeynanda Dias V. V N Thollappan V. S C Appeal No: 19/2005 decided on 25.08.2006.

b) Mannikkam Muthuvelu V. Abeynanda Dias C A Appl No: 573/2002 decided on 31.05.2004 together with the Supreme Court judgment in S C 171/2004 decided on 24.11.2004 affirming the above Court of Appeal Judgment .

c) Kitman Shanmugam V. Abeynanda Dias and Others C A Appl No: 1791/2002 decided on 12.07.2004.

d) N. Chandrabose V. S C K de Alwis and Others – C A Writ Application No:920/2000 decided on 12.05.2003.

e) Aravinda Kumar V. Alwis and Others (2007) 1 SLLR 316.

f) Abdul Majeed V. H Malin Goonatilleke S C Appl. No.155/2004 decided on 17.05.2005.

On perusal of these judgments, it is clear that the Appellate Courts have specifically laid down the law in respect of the procedure in recovering possession of State lands leased to the plantation companies, which are occupied by unauthorized persons.

Accordingly, the position taken by the petitioner i.e., that the Competent Authority had no right to evict the Petitioner and therefore the Orders of the learned Magistrate and High Court Judge are bad in law has no merit.

For the foregoing reasons, I uphold the preliminary objection taken on behalf of the Respondent and dismiss the application without cost.

This Revision application is dismissed.

JUDGE OF THE COURT OF APPEAL

W.M. Malini Gunaratne, J.

K.T. Chitrasiri, J.

I agree

JUDGE OF THE COURT OF APPEAL