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

In the matter of an Appeal under and in terms of Article 154P(6) read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.S.B.D.G.Jayawardene
Chairman,
Tea Research Institute,
Talawakele.

Court of Appeal
Case No; CA(PHC) 149/2014
HC Nuwara Eliya Case No.HC/NE/29/13
M.C.N'Eliya Case No.32649

APPLICANT

Vs.

K.N.Deen
Chairman,
Texland Fashions Lanka
(Private) Limited
No.11/1B, Schofield Place,
Colombo 03.

RESPONDENT

AND THEN

S.S.B.D.G. Jayawardene
Chairman,
Tea Research Institute,
Talawakele.

APPLICANT – PETITIONER

Vs.

K.N.Deen
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No.11/1B, Schofield Place,
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RESPONDENT – RESPONDENT

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S.S.B.D.G. Jayawardene
Chairman,
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APPLICANT-PETITIONER-APPELLANT

Vs.

K.N.Deen
Chairman,
Texland Fashions Lanka
(Private) Limited
No.11/1B, Schofield Place,
Colombo 03.

Before : **W.M.M.Malanie Gunarathne, J**

: **P.R.Walgama, J**

Counsel : **Ms. Farzana Jameel, D.S.G. with Suren Gnanaraj S.C. for the Appellant.**

Mr.Rohan Sahabandu P.C. with Harith Amerasinghe for the Respondent.

Argued on : 29.04.2015

Decided on : 17.06.2015

P.R.Walgama, J

The Claimant- Petitioner by his affidavit dated 23.11.2012 along with the application for ejectment, under and by virtue of Section 5 of the Act No. 07 of 1979(State Land Recovery of possession Act.) moved inter alia for the ejectment of the Respondent from the land described in the schedule to the said notice. In the said application it is stated that the Respondent is in unlawful possession of the said land and had failed and neglected to hand over peaceful possession of the said land in terms of Section 4 of the said Act.

The Respondent by his statement of objections has stated thus;

That the Respondent is in occupation of the said disputed property by holding a valid permit.(by deed of lease)

It is categorically stated that the said Lease Agreement is valid and still in force. The above Agreement is marked as V1 and is duly registered at the Nuwara eliya Land Registry. The Respondent has also tendered certain receipts in proof of the payment of monthly rental paid to the Claimant from 2003-2012.

The Respondent is carrying on a business in the said land and entered in to the afore said Agreement on a lease for 50 years.

Therefore it is the position of the Respondent that the Claimant has no right to send him a notice of eviction in terms of the above Act.

In the above elucidation of the facts herein before mentioned the Learned Magistrate has in the said impugned order dealt with the same at a greater length. In that the Learned Magistrate has expressed that the Claimant acting under Section 3(1) (b) had failed to give notice of 30 days and there by had acted in contrary to the afore said Section.

In dealing with the above Section the Learned Magistrate has also dealt with the case of KANDIAH .VS. ABEYKOON (Srikantha Law Reports Volume iv page 96) wherein Their Lordship expressed thus;

"I am of the view that upon a true construction of the statute as a whole, the form of notice, application and affidavit had to be in strict compliance with those which the legislature has thought important enough to set out in the schedule before the jurisdiction of the Magistrate to eject a person in possession or occupation could be exercised." (emphasis added)

There fore it is abundantly clear that the strict compliance of the conditions contained in the above act should be followed in this process.

The Learned Magistrate had also dealt with the position taken up by the Claimant regarding the payment made by the Respondent after the termination of the said Agreement.
In the above setting the Learned Magistrate was of the view that the said Lease Agreement marked as V1 is in force and the same has not been terminated by the Claimant in conformity with the said provisions of the State Land Recovery Possession Act No. 07 of 1979.

Accordingly the Learned Magistrate dismissed the Claimant's application on the basis that the Respondent is in possession of the disputed land on a valid permit which is in accordance with the provision 9(1) of the State Land Recovery of possession Act.

Hence in the said back drop the Learned Magistrate dismissed the Application made by the claimant for the ejectment of the Respondent from the land in issue.

Being aggrieved by the said impugned order the Claimant-Petitioner preferred an application by way of Revision to the Provincial High Court of Nuwara eliya, to have the said order set aside or be vacated.

It is the contention of the Petitioner that the Respondent is in unlawful possession of the land in dispute. It is common ground that the Petitioner and Respondent entered in to the

said Agreement as V1 or X2. As the Respondent has failed and neglected to pay the rental the Petitioner has ter minated the said Agreement and demanded the arrears due to the Petitioner . Besides the Petitioner has tendered a statement of accounts which indicates the mode of payments made by the Respondent as per Agreement stated above.

The Petitioner also asserted the fact that they had given due notice in terms of Section 9(1) of the State Land Recovery of Possession Act, and the Learned Magistrate has misconstrued the said process.

The Learned High Court Judge after a careful analyze of the facts and the law emerged from the documents filed there in had arrived at the conclusion as stated in the impugned order dated 10.11.2014.

It is apparent from the said impugned order of the Learned High Court Judge that he has arrived at the said decision on the basis that the subject matter is not a devolved subject in terms of the 13th Amendment to the Constitution and as such a High Court in a Province cannot go in to such matters relating to state lands.

The Learned High Court Judge has adverted to the decision of the Supreme Court which interpreted the 13th Amendment to the Constitution in the case of SOLIMUTTU RASU .VS.

SUPRINTENDANT OF STAFFERED ESTATE- (SC App 21/13 (SC Special LA 203/12) wherein the decision in the case of WERAGAMA VS. EKSATH LANKA WATHU KAMKARU SAMITHIYA(1994) 4 Sri LR 293 was taken in to consideration.

His Lordship Mark Fernando J. has observed the intention of the Legislature in adopting the 13th Amendment. in the case of WERAGAMA VS. EKSATH LANKA WATHU KAMKARU SAMITHIYA, thus. "The Court cannot attribute the intention except that which appears from the words used by the parliament and that all the subjects and functions not specified in list I or II were reserved thereby contradicting such general intention to do otherwise."

In the case of WALALAWITA KAMKANAMLAGE MAHINDA .VS. DIVISIONAL SECRETARY MEEGAHAKIULA- SC special leave to appeal, decided on 20th January 2014 has also subscribed to the same view.

Being aggrieved by the said order of the Learned High Court Judge the Claimant-Petitioner- Appellant has lodged the instant Appeal to have the said order set aside or be vacated.

It is contended by the Appellant that the Respondent has failed to pay the rental regularly and as such the Appellant has terminated the Agreement and issued a quit notice on or about 26th May 2010 on the Respondent, demanding the

Respondent to hand over vacant possession of the disputed land on or before 26th of June 2010, which is marked as X7. In the light of the above it is abundantly clear that the Appellant has given notice of 30 days for the Respondents to vacate the said premises. It is viewed from the paragraph 10 of the Petition that the Appellant has accepted certain amounts as lease rental arrears which has accrued prior to the termination of the Lease Agreement. Further more it is stated a sum of Rs. 487,500/ paid by the Respondent was held over by the Appellant as against the losses incurred by the Appellant due to the delay in paying the rental as per Agreement stated above. . Therefore it is alleged by the Appellant that the learned Magistrate has dismissed their application for ejection of the Respondent under the State Land Recovery of Possession Act was on a wrong premis. Besides it is noted that the Respondent has not paid the monthly rental as agreed upon by the above Agreement, and there by has violated Agreement.

The identical issue was resolved in the case of IHALAPATHIRANA .VS. BULANKULAME, DIRECTOR GENERAL UDA {1988} 1 SLR 416, and had observed thus;

"the rights and liabilities under the agreement could be the subject matter of a civil action instituted by either the UDA or the Petitioner. The mere fact that such a civil action is possible does not have the effect of placing the land

described in the notice marked P3, outside the purview of the State Lands (Recovery of Possession) Act. Indeed, in all instances where a person is in unauthorized occupation or possession of State Land such person could be ejected from the land in an appropriate civil action. The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action."

Hence in light of the above it is crystal clear that the above mechanism has been introduced by the said Act in respect of the State Lands with the specific purpose as stated above.

Although the Respondent took up the position that he has paid the rental up to the due date, it is apparent that the Respondent has failed to make the payment on a regular basis. In the case M.R.M. RAMZEEN, COMPITANT AUTHORITY .VS. MORGAN EBGINEERING (PVT) LTD S.C. APPEAL- DECIDED ON 27.06.2013, it was held that a subsequent payments made by the occupant to the owner does not cure the deficiency of not having a written permit or authority granted by the State according to law to remain on the impugned land.

It also has been brought to the notice of Court initially a quit notice was sent to the Respondent in the year 2010, complying with the requirement in terms of Section 3(1) of the State land(Recovery of Possession) Act. Subsequently on 22 of

October 2012 notice to quit was issued to hand over vacant possession on the 23 of November 2012. Therefore in the said back drop it is apparent that the Learned Magistrate has arrived at the above determination on a wrong premis.

In interpreting the above said judgment of SOLAIMUTTU RASU .VS. THE SUPRINTENDENT, STAFFORD ESTATE has stated that in the said case it has only decided that the Provincial High Court had no jurisdiction to issue writs under Article 154 P(4) in relation to matter concerning State Land.

In the said judgment the issue stemmed there in was whether the Provincial High Court could exercise its original writ jurisdiction under Article 154 P (4) of the Constitution to quash a quit notice issued under the State Lands (Recovery of Possession) Act.

It was the finding of Their Lordships in the above case that the Provincial High Court to exercise the writ jurisdiction the issue should be one that falls within the ambit of the Provincial Council List. It was the interpretation of their Lord Ships that the subject of the State Land does not fall within the said list. Therefore it was observed by Their Lordships that the Provincial High Court could not issue writs under Article 154 P(4) of the Constitution in respect of matters connected with the State Land.

It was further held in the said judgment that the act of the competent authority in issuing a quit notice for ejectment does not fall within the extent of matters specified in the Provincial Council List and therefore Provincial High Court would have no jurisdiction to exercise writ jurisdiction in respect of quit notice issued under State Lands (Recovery of Possession) Act as amended".

In the above setting it is asserted by the Petitioner that he has invoked the revisionary jurisdiction of the High Court under Article 154 P(3) (b) to have the impugned order of the Learned Magistrate set aside.

Therefore it appears from the above setting this Court has only two issues to be resolved.

Firstly whether the Appellant has given 30 days notice to the Respondent to vacate the disputed premises in terms of Section 3(1)(b) of the State Land Recovery of Possession Act No. 7 of 1979.

AND

Whether the Provincial High Court is vested with the jurisdiction to entertain any application in respect of State Lands.

In resolving the issue No1 the Appellant has adverted this Court to exhibit marked X7, which is a proof of the fact that

the Appellant has given 30 days notice to vacate the disputed premises in terms of Section 3 of the State Land Recovery of Possession No. 7 of 1979. There fore it is abundantly clear that the Learned Magistrate has dismissed the Application of the Claimant – Appellant, for the ejectment of the Respondent, was erroneous and on a wrong premis.

Hence I am of the view that the Learned Magistrate's order is devoid of merits and cannot hold water, and as such I set aside the said impugned order accordingly.

In dealing with the issue No. 2, viz the order of the Learned High Court Judge, dated 10.11.2014, is crystallized in the following manner.

Further he had also embarked on a question, whether the High Court is empowered to deal with any matters pertaining to the state Land arising within the Province.

At this juncture it is intensely relevant to consider the applicable provisions of the 13th Amendment to the Constitution.

Article 154p (3) deals with the powers of the Provincial High Courts.
Every such High Court shall,

a. Exercise according to law , the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the province.
b. Notwithstanding anything in the Article 138 and subject to any law, exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate Courts and Primary Courts within the Province;
c. Exercise such other jurisdiction and powers, as Parliament may, by law, provide.

Therefore it is crystal clear the matter before this Court is to decide whether the High Court Judge has decided the issue that was before him in the correct perspective. The Claimant-Petitioner- Appellant, tendered an application by way of Revision against the Order of the Learned Magistrate as stated above , invoking the Revisionary jurisdiction in terms of Article 154p(3) (b). which has not excluded the power to exercise the Appellate or revisionary jurisdiction regarding the State Lands.

Therefore in encapsulating the above Article 154 p(3)(b) of the 13th Amendment to the Constitution, I'm of the view that the impugned order of the Learned High Court Judge is palpably wrong , and should be set aside forth with.

Nevertheless our Superior Courts had interpreted Article 154p(4)(b) to give effect to the prerogative writs and was of

the view the High Court of the Province can issue a writ in the nature of CERTIORARAI, PROHIBITION, PROCEDENDO, MANDAMUS,QUO WARRENTO, against any person, exercising, within the province any power under

1. Any law
2. Any statutes made by the Provincial Council established for that province,

In respect of any matter set out in the Provincial Council list.

In the above setting it is abundantly clear that the said Article of the 13th Amendment to the Constitution has no relevance to the case in hand.

As stated above the Learned High Court Judge has fortified his reasons to refuse the Revision application of the Petitioner on the strength of the case of SOLIAMUTTU RASU.Vs. THE SUPRINTENDT , STAFFORD ESTATE AND OTHERS S.C. Appeal 21/13 decided 26th September 2013.

But it is intensely relevant to note that the above mentioned case has no relevance to the case in hand. The Appellants invoke the revisionary jurisdiction of the High Court to set aside the order of the Learned Magistrate as stated above, in terms of Article 154 P(3)(b) and not under Article 154(p)(4) of the Constitution. Therefore it is abundantly clear that the Learned High Court Judge has misconstrued the said Article of

the Constitution and hence the said impugned order should be vacated.

The Respondents in the instant application has taken up the objection that the Appellant had delayed in making this application to the High Court. The Appellant made the revision application to the High Court Seven months after the impugned order was made by the Learned Magistrate. It is said that the said delay was due to the process of obtaining the certified copies of the relevant documents pertaining to the matter in issue.

The Appellant had adverted this Court to the fact that, although the Learned High Court Judge dismissed the Petitioner- Appellant's revision application in limine on the basis that the Provincial High Court does not have jurisdiction to act under Article 154P (3)(b) of the Constitution, on matters relating to the State Land (Recovery of Possession) Act. The said application was dismissed in limine, in pursuant to the submissions made by both parties on merits. Further more this Court too heard both counsel on the law and facts in order to arrive at a decision in terms of Article 139(1) of the Constitution.

In the above exposition of the law and facts, this Court is compel to arrive at the irresistible conclusion that the impugned orders of the Learned High Court Judge and Learned

Magistrate, are palpably wrong and should be set aside. Hence said orders are vacated, and I allow the appeal accordingly.

Appeal is allowed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malanie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL