

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

In the matter of an application to  
revise the Order of HCRA 138/2001  
under Section 154 of the Provincial  
High Court Act of the Democratic  
Socialist Republic of Sri Lanka.

Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

**Plaintiff**

**VS.**

**CA (PHC) 13/2013  
M.C. Case No. 41901/11  
H.C. Case No 138/11**

Satharasinghe Kamkanamage Nelson  
Sathyapala,  
No. 02 B,  
C.E.B. Quarters,  
National Housing Scheme,  
Aruppala, Mahanuwara.

**Defendant**

**AND BETWEEN**

Satharasinghe Kamkanamage Nelson  
Sathyapala,  
No. 02 B,  
C.E.B. Quarters,  
National Housing Scheme,  
Aruppala, Mahanuwara.

**Defendant-Petitioner**

**VS.**

Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

**Plaintiff-Respondent**

Satharasinghe Kamkanamage Nelson  
Sathyapala,  
No. 02 B,  
C.E.B. Quarters,  
National Housing Scheme,  
Aruppala,  
Mahanuwara.

**Defendant-Petitioner-Appellant**

**VS.**

Ceylon Electricity Board  
No.50, Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

**Plaintiff-Respondent-Respondent**

**BEFORE** : **W.M.M. Malinie Gunaratne, J. and  
P.R. Walgama J.**

**COUNSEL** : C.E. de Silva with Sarath Walgamage  
for the Appellant.  
S.T.M.H. Gunasinghe  
for the Respondent.

Argued on : 11.06.2015  
Written submissions  
filed on : 21.07.2015 and 28.07.2015  
Decided on : 29.01.2016

**Malinie Gunaratne, J.**

The Plaintiff-Respondent-Respondent acting under Section 6 of the Government Quarters (Recovery of Possession) Act No.7 of 1969 (Amended by Government Quarters Recovery of Possession Amendment Act No.8 of 1981 and Act No.45 of 1985), instituted proceedings in the Magistrate's Court of Kandy under M.C. Case No. 41901/11, on 24.08.2011 praying for the recovery of possession of Government Quarters situated at No. 2 B, Aruppala National Housing Scheme, Kandy and for the ejectment of the Defendant – Petitioner – Appellant (hereinafter referred to as the Appellant) and his dependants from the said quarters.

The Respondent, Competent Authority for the purposes of the Government Quarters (Recovery of Possession) Act, No. 7 of 1979 as amended served a notice on the Appellant requiring him to vacate the premises occupied by him and to deliver vacant possession to them. Section 3 of the Act empowers the Competent Authority to serve a notice to quit on the occupier of the Government Quarters.

After he was served with summons the Appellant appeared before the Magistrate's Court on 02.12.2011. The learned Magistrate upon being satisfied with the documents filed by the Respondent before Court and acting in compliance with Section 7 of the said Act made Order dated 2<sup>nd</sup> December 2011 ejecting the Appellant from the subject quarters.

Being aggrieved by the said Order, the Appellant had preferred a Revision Application to the High Court of Kandy. The learned High Court Judge of Kandy, after having heard and considered the submissions of Counsel for the respective parties, dismissed the Revision Application.

The Appellant has filed this case before this Court seeking the intervention of this Court to set aside the Order of the learned High Court Judge and the Order of the learned Magistrate, stating that the Order of both Courts are against the law and justice.

In the course of the hearing of this case, the main point that was argued by the learned Counsel for the Appellant was, that the Respondent cannot be identified as a “Competent Authority” for the purpose of the Government Quarters (Recovery of Possession) Act. However it is relevant to note that this fact has not been raised in the High Court. The Petition of Appeal also do not contain any material to substantiate it.

In the written submissions filed by the Counsel for the Appellant, it was contended that in the Affidavit filed by the Respondent, the Chairman Professor Wimaladarma Abeywickrama, has introduced himself as the person stating facts in the said affidavit. The said Chairman states that this action had been instituted by the Plaintiff against the Defendant. Further he contended, therefore that this action had been instituted by the “Ceylon Electricity Board” who had no jurisdiction to institute this action. The learned Counsel’s contention is, therefore, the learned Magistrate has no jurisdiction to entertain the said application.

I hold that there is no merit whatsoever in the submissions made by the learned Counsel. His argument is untenable in view of the definition given to the words “Competent Authority” by the Government Quarters (Recovery of Possession) Act. One Wimaladarma Abeywickrema as the Chairman of the Ceylon Electricity Board has initiated the proceedings in the Magistrate’s Court. The words “Competent Authority” has been

defined in the Government Quarters (Recovery of Possession) Act. In addition Section 9:1 of the Chapter XIX of the Establishment Code also has defined the words "Competent Authority". In view of the provisions of the Government Quarters Act and the Establishment Code the Respondent of this case can be identified as a "Competent Authority" for the purposes of the Government Quarters (Recovery of Possession) Act.

The second ground on which the Appellant relied on was (according to the written submissions filed in this Court), as there was no valid affidavit before the learned Magistrate, the learned Magistrate could not have proceeded to make the said order dated 02.12.2011, on the basis of a valid application for ejection. It is the stance of the learned Counsel for the Appellant, that the said Affidavit is filed by a Buddhist and the jurat does not state that the said author of the Affidavit has affirmed before signing. In supporting the contention the learned Counsel has cited several authorities.

However, it is the contention of the learned Counsel for the Respondent, that the mere technicalities of an affidavit do not amount to a total dismissal of the action, if there is no substantial prejudice to maintain this action. The learned Counsel in support of the above submissions has referred to a recent judgment by Lordship Justice Aluvihare 14.09.2015, in Case No. SC/FCCA/LA/02/14. Apart from that the learned Counsel has cited a number of cases to strengthen his submission.

The learned Counsel has relied strongly on the judgment of His Lordship Aluvihare. It was held in that case, the infirmities and irregularities in an Affidavit are technical in nature that can be cured by

application of Section 9 and therefore do not impact on the validity of the Affidavit.

When I consider the long line of cases cited by the Counsel for the Respondent, the only conclusion that could be arrived at is that the infirmities and irregularities in an Affidavit are technical and can be cured. As such, I am of the view that there is no merit in the submission made by the learned Counsel, although he has sought to impress upon Court that the Respondent had not filed a valid Affidavit along with the application. I hold that the irregularity is not sufficiently grave to have an effect on the validity of the impugned affidavit. Hence I am of the view that the application filed in the Magistrate's Court of Kandy, by the Respondent is in conformity with the provisions of the Government Quarters (Recovery of Possession) Act.

I will now proceed to deal with the next issue raised by the learned Counsel for the Appellant. He has contended that in the application to the Magistrate's Court, as the Respondent has given a caption to the application, it is a procedural error according to the schedule of the Government Quarters (Recovery of Possession) Act.

The stance of the learned Counsel for the Respondent is, merely because of giving the caption, the substance of the nature of the main case does not change. I have no difficulty in upholding the contention of the Counsel for the Respondent and I am of the view, that there is no merit whatsoever in the submissions made by the learned Counsel for the Appellant since it has not caused any substantial prejudice to maintain the action.

The next ground that arises for consideration in this Appeal is whether the Appellant was not given an opportunity to show cause and as such, was he denied a fair hearing. However, the learned Counsel for the Appellant has not placed any material before this Court regarding this aspect.

However, it is relevant to note, in view of the provisions of the Government Quarters (Recovery of Possession) Act, that every application for ejectment should be conclusive evidence of the facts as set out therein. In the case of RE. Vs. D.S.E.P.R. Senanayake 75 N.L.R. 215, it was held that the Government Quarters (Recovery of Possession) Act makes provision for the issue of Writ upon an *ex parte* Application and in the first instance upon an application the Magistrate has no option but to make an order for the issue of the Writ.

It was held in RE Senanayake, when an application for ejectment in respect of any Government Quarters is made *ex parte* in regular and proper form under the Government Quarters (Recovery of Possession) Act, the Magistrate has, in the first instance, no option but to issue Writ of possession forthwith in terms of Section 7 of the Act.

Hence, I am of the view that the Government Quarters (Recovery of Possession) Act does not provide any mechanism to grant an opportunity to show cause before the Magistrate after filing an application under Section 6 of the Government Quarters (Recovery of Possession) Act.

For the reasons aforesaid, the view of the Court is, reasons set out by the Appellant do not find any matters which are legally relevant to the question of ejectment.

For the reasons set out above I hold that the learned Magistrate's Order for ejecting the Appellant is correct and as such there is no reason to set aside the said Order. I hold the view that the learned Magistrate had correctly made the Order for ejectment. Therefore, it is not necessary to interfere with the judgment of the learned High Court Judge who affirmed the Order of the learned Magistrate. Accordingly, no ground exists which justifies the intervention of this Court to set aside the Order of the learned High Court Judge dated 22.01.2013 and the Order of the learned Magistrate dated 02.12.2011.

For the above reasons I hold that there is no merit in this Appeal and dismiss it.

**JUDGE OF THE COURT OF APPEAL**

P.R. Walgama, J.

I agree

**JUDGE OF THE COURT OF APPEAL**

Appeal is dismissed.