

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

Don Premasiri Hettiarachchi,
Commissioner for Local Government,
Department of Local Government for
Western Province,
Independence Square,
Colombo 7.

Petitioner

**C.A. (PHC) 169/2006
H.C. (Revision) 34/2002
M.C. (Mount Lavinia) 44256**

VS.

H.D. Jayatissa,
H.D. Tomas Appuhamy and Sons,
No.42, Galle Road,

Respondent

AND

Don Premasiri Hettiarachchi,
Commissioner for Local Government,
Department of Local Government for
Western Province,
Independence Square,
Colombo 7.

Petitioner-Petitioner

VS.

H.D. Jayatissa,
H.D. Tomas Appuhamy and Sons,
No. 42, Galle Road,

Respondent-Respondent

AND NOW

H.D. Jayatissa,
H.D. Tomas Appuhamy and Sons,
No. 42, Galle Road,

**Respondent-Respondent-
Appellant**

VS.

Don Premasiri Hettiarachchi,
Commissioner for Local Government,
Department of Local Government
Western Province,
Independence Square,
Colombo 7.

**Petitioner-Petitioner-
Respondent**

**BEFORE: : W.M.M. Malinie Gunaratne, J. and
L.T.B. Dehideniya, J**

**COUNSEL : Kapila Liyanagamage
for the Appellant**

**Wickum de Abrew D.S. G
for the Respondent.**

Argued on : 17.12.2015

Written submissions
filed by the Respondent
on. : 23 03.2016

Written submissions
filed by the Appellant on: 24.03.2016

Decided on : 06.06.2016

Malinie Gunaratne, J.

The Petitioner - Petitioner – Respondent (hereinafter referred to as the Respondent) instituted proceedings under the Case No. 44256, against the Respondent-Respondent-Appellant (hereinafter referred to as the Appellant) in the Magistrate’s Court of Mount Lavinia under the Provisions of State Land (Recovery of Possession) Act No.7 of 1979. It was filed on 27.08.1999, seeking for an order from the Magistrate’s Court to eject the Appellant from the premises morefully described in the schedule to the Application.

The Appellant appeared before the Magistrate’s Court and filed objections to the application. In his statement of objections he stated that he is a lawful tenant of Dehiwala – Mount Lavinia Municipal Council and without terminating the said tenancy the Respondent has no power / right to institute this action.

The matter was fixed for inquiry and on 26.03.2001, when it was taken up for inquiry the Counsel for the Appellant raised a preliminary objection with regard to the maintainability of the action that had not arisen at the time of filing the objections. It was the contention of the Appellant that, as the Respondent is not the Competent Authority, he has no locus standi to institute the action.

Having considered the submissions made by parties, the learned Magistrate upheld the preliminary objection and dismissed the Respondent's application.

Being aggrieved by the said order of the learned Magistrate, the Respondent filed a Revision Application dated 20.02.2002, that bears No. 34/2002, in the High Court of the Western Province holden in Colombo seeking to revise the Order of the learned Magistrate. Having considered the submissions made by parties, the learned High Court Judge set aside the learned Magistrate's Order directing the learned Magistrate to hold an inquiry and make an order according to law.

This appeal has been preferred against the aforesaid Order of the learned High Court Judge.

The main ground urged by the Counsel for the Appellant in this Appeal is, that in the impugned judgment the learned High Court Judge has erred in law holding that the Respondent is the Commissioner of Local Government (Competent Authority) as defined in Section 18 of the State Land (Recovery of Possession) Act, No. 07 of 1979. As such, the main question to be determined is, whether the Respondent is the Competent Authority as defined in Section 18 of the said Act.

When this Appeal was taken up for argument the learned Deputy Solicitor General for the Respondent adverted to the Section 9 of the State Land (Recovery of Possession) Act. It is the stance of the learned Deputy Solicitor General that the Sections 9(1) and 9(2) of the Act takes away from the Magistrate the power to inquire into matters stated in the application, under Section 5, except to inquire into the evidence of a valid permit.

The learned Deputy Solicitor General relied on the following decided cases to support his case more.

- (i) Farook vs. Gunawardana, Government Agent Ampara (1980) 2 SLR 243;
- (ii) Muhandiram vs. Chairman, Janatha Estate Development Board (1992) 1 SLR 110;
- (iii) Nimal Paper Converters (Pvt) Ltd; vs Sri Lanka Ports Authority and Another;
- (iv) Keenigama vs Dixon CA No. 116/95; CA Mts. 22/02/2002.

Section 9 of the Act reads as follows:

9 (1) At such inquiry the person on whom summons under Section 6 has been served shall not be entitled to contest any of the matters stated in the application under Section 5 except that such person may establish that he is in possession or occupation of the land upon valid permit or other written authority of the State granted in accordance with any other written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.

(2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under Section 5.

A simple reading of the Section shows, that the validity of the matters stated in the application cannot be questioned, challenged or contested except the matters mentioned in Section 9 (1).

In the premises aforesaid I have no difficulty in upholding the contention of the learned Deputy Solicitor General.

However, without prejudice to the above view, the next matter to be considered is whether the Respondent could be identified as a "Competent Authority" for the purpose of the State Land (Recovery of Possession) Act No. 7 of 1979.

It is the stance of the learned Counsel for the Appellant that, the Commissioner of Local Government referred to in Section 18 of the State Land (Recovery of Possession) Act. No. 07 of 1979, is the Commissioner of Local Government of the Central Government.

In the written submission filed in this Court by the learned Counsel for the Appellant, it was contended that a Commissioner of Local Government of a Province does not fall within the meaning of "Competent Authority" as defined in Section 18 of the said Act. It was further contended that, as the proceedings have not been instituted by the Commissioner of Local Government of the Central Government, the Respondent did not have the *locus standi* to institute the said action in the Magistrate's Court under the Provisions of the State Land (Recovery of Possession) Act.

Section 18 of the Act defines the “Competent Authority” as follows:

(18) “Competent Authority” used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes;

(i) the Commissioner of Local Government, where such land is under the control of a local authority;

The “local authority” is defined in the same section. It reads as follows:

“local authority” means any Municipal Council, Urban Council, Town Council or Village Council and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council”.

Simple reading of the Section 18 and the aforesaid definition clearly shows, that the Respondent has the power to take steps as the Competent Authority in terms of State Lands (Recovery of Possession) Act.

Hence, I hold that there is no merit whatsoever in the submissions made by the learned Counsel for the Appellant. His argument is untenable in view of the definition given to the words “Competent Authority” by the State Land (Recovery of Possession) Act.

On perusal of the Judgment it is apparent, that the learned High Court Judge has taken into consideration the submissions filed by the parties and

has come to a conclusion. As such, I do not see any wrong in the manner in which the learned High Court Judge has considered the facts and the way in which he has applied the law in this instance.

For the above reasons, I see no basis to interfere in the Judgment of the learned High Court Judge. Accordingly I affirm the Judgment dated 03.08.2006 and dismiss the Appeal with costs.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed with costs.