

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

In the matter of an appeal under
Article 154P of the Constitution of
the Democratic Socialist Republic
of Sri Lanka.

The Chairman,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

**C A (PHC) 188/2006
Kalutara High Court Revision
Application No.Rev/13/2005
Matugama MC No.78441**

**Petitioner-Respondent -
Respondent**

VS.

M Chulawathi
Kiranthidiya
Nawuththuduwa.

Respondent

AND

M. Chulawathi
Kiranthidiya,
Nawuththuduwa.

Respondent –Petitioner

VS.

1. Hon. Attorney General,
Attorney General's Department,
Colombo 7.
2. The Chairman
Land Reform Commission
C 82, Gregory's Road,
Colombo 7.

Respondents

AND BETWEEN

M. Chulawathi,
Kiranthidiya,
Nawuththuduwa.

**Respondent-Petitioner-
Appellant**

VS.

1. The Hon. Attorney General,
Attorney General's Department
Colombo 7
2. The Chairman,
Land Reform Commission,
C 82, Gregory's Road,
Colombo 7.

Respondents.

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

COUNSEL : Sanjeewa Ranaweera
for the Appellant

Euresha Fernando S.S.C
for 1st Respondent

D H Siriwardena
for the 2nd Respondent.

Argued on : 10.07.2015

Both parties filed
Written submissions
on : 26.04.2016

Decided on : 07.06.2016

Malinie Gunaratne, J.

The Petitioner-Respondent-Respondent (hereinafter referred to as the Respondent) instituted proceedings under the Case No. 78441, against the Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant), in the Magistrate's Court of Matugama under the Provisions of State Land (Recovery of Possession) Act No. 7 of 1979 (hereinafter referred to as the said Act). It was filed on 25.10.2004 seeking for an Order from the Magistrate's Court to eject the Appellant from the land morefully described in the schedule to the application.

After serving summons the Appellant appeared before the Magistrate's Court and the learned Magistrate has given the opportunity to show cause why Writ of Eviction should not be issued against her.

The Appellant filed her objections and having considered the submissions made by both parties the learned Magistrate delivered her Order on 17.03.2005, ejecting the Appellant from the subject land.

Being aggrieved by the said Order, the Appellant sought to move in revision against the said Order by the Revision Application No. 13/05 filed before the High Court of Kalutara.

The learned High Court Judge of Kalutara, delivering his Judgment on 27.07.2006, affirmed the Order of the learned Magistrate and dismissed the Revision application filed by the Appellant.

The Appellant has preferred this Appeal against the said decision of the learned High Court Judge, praying for annulling of the said Judgment and the Order made by the learned Magistrate.

The main ground urged by the Council for the Appellant in this Appeal is that the findings of the learned High Court Judge with regard to the defective affidavits, violation of Rule 3(1)(a) of the Court of Appeal Rules 1990 and the failure to file a proxy is *ex facie* misconceived and therefore, liable to be set aside.

However, it is to be noted, that, the learned High Court Judge has taken into consideration the main issue of this case too, that is whether the Order made by the learned Magistrate is correct or not, under the said Act.

The main issue of the case was of the inquiry held in the Magistrate's Court, under Section 9 of the said Act, whether the Appellant had failed to produce any valid permit or written authority of the State to support the occupation / possession of a State Land, as the learned Magistrate had

decided that the Appellant had failed to do so. The learned High Court Judge deciding that the Order made by the learned Magistrate is correct, dismissed the Revision Application filed by the Appellant.

It is significant to note that the learned Counsel for the Appellant has not addressed to effect of that issue, in the written submissions filed by him in this Court or when he made oral submissions at the time when this case was taken up for argument. I am of the view, the reason is that the Appellant had admitted in her objections (Paragraph 5 of the Affidavit) filed in the Magistrate's Court, that she has no valid permit or deed issued by the Land Reform Commission.

Paragraph (5) reads as follows:-

“එහෙත් මෙම ඉඩම සඳහා මා වෙත කිසිම බලපත්‍රයක් හෝ ඔප්පුවක් ඉඩම් ප්‍රතිසංස්කරණ කොමිෂන් සභාව විසින් ලබා දී නොතිබුණු අතර, මා මෙම ඉඩම භුක්ති විඳීම පිළිබඳව කිසිම විරෝධතාවයක් තිබුණේ නැත”

It is to be noted, as the Appellant had not established that she is in possession or occupation the land upon a valid permit or other written authority of the State, the learned Magistrate had correctly made the Order to eject the Appellant from the land.

Section 9 of the said 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).

It is relevant to note that, the Sections 9 (1) and 9 (2) of the said Act takes away from the Magistrate, the power to inquire into the matter stated in the application under Section 5, except to inquire into the evidence of a valid permit.

In the context of the case in hand, it is important to consider the following decided cases, related to the question that arises for determination in this case.

- (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 C A No. 116/95; CA Mts. 22.02.2002.
- (v) Herath Vs. Morgan Engineering Co. S.C. Appeal 214/12, 26.07.2013;

(vi) Ihalapathirana vs. Bulankulama, Director General U.D.A.
(1988) 1 S.L.R. 416.

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. 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 Magistrate dated 17.03.2005 and the Judgment of the learned High Court Judge dated 27.07.2006.

For the above reasons, I hold that there is no merit in this Appeal.

Accordingly, Appeal is dismissed.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed.