

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

In the matter of an application for revision
under Article 138 of The Constitution of the
Democratic Socialist Republic of Sri Lanka.

Mahahennadige Jayasena,
Channel 3, Siyambalagaswita,
Ruhunu Ridiyagama, Ambalanthoata.

Aggrieved Party Petitioner Appellant

**Court of Appeal case no.
CA/PHC/103/2011**

Vs.

**H.C.Hambanthota case
no. 22/2009**

1. Resident Project Manager,
Mahaweli Authority of Sri Lanka,
Walawa Special Area, Ambilipitiya.

Applicant 1st Respondent Respondent.

2. Liyana Arachchige Ariyasena,
Mahaara, galwewa, Beragama,
Ambalanthota.

Respondent Respondent.

Before : H.C.J.Madawala J.
: L.T.B. Dehideniya J.

Counsel : Nayomi Kahawita for the Applicant 1st Respondent
Respondent.
: The aggrieved Party Petitioner Appellant is absent and
unrepresented.

Argued on : 30.06.2016

Decided on : 30.11.2016

L.T.B. Dehideniya J.

This is an appeal from High Court of Hambanthota.

The Applicant 1st Respondent Respondent the Resident Project Manager of Sri Lanka Mahaweli Authority Walawa special area (hereinafter called and referred as to the 1st Respondent) instituted an action under provisions of the State Land (Recovery of Possession) Act seeking an eviction order against the 2nd Respondent Respondent Liyana Arachchige Ariyasena (hereinafter called and referred as to the 2nd Respondent). After considering the objections tendered by the 2nd Respondent, the learned Magistrate issued the order of eviction.

The Aggrieved Party Petitioner Appellant Mahahennadige Jayasena (hereinafter called and referred as to the Appellant) not being a party to the application made to the Magistrate Court by the 1st Respondent, filed a revision application in the High Court of Hambanthota as an aggrieved party to revise the order of the learned Magistrate. The learned High Court Judge after inquiry dismissed the application. This appeal is from the said order.

A party aggrieved by a decision of the Court can make an application to Court to revise the impugned order if he can establish the requirements that are necessary to invoke the revisionary jurisdiction of the Court. The power of revision is an extraordinary jurisdiction of the Court exercise on the discretion of the Court. it was held in the case of Sunil Chandra Kumara v. Veloo [2001] 3 Sri L R 91 that;

"Revision is a discretionary remedy, it is not available as of right. This power that flows from Art. 138 is exercised by the Court of Appeal, on application made by a party aggrieved or ex mero motu, this power is available even where there is no right of appeal.

The original application was filed under State Land (Recovery of Possession) Act. The scope of the inquiry in an application for ejectment under section 5 is defined in the section 9 of the Act. The inquiry is limited to establish that the possessor or the occupier is in possession or occupation on the authority of a valid permit or a written authority issued under any law.

In the present case the Appellant submits that he is in possession of the land in dispute. He admits that this is a State land because he says that he has been selected to issue a permit to a state land and further he says that the 1st Respondent taking steps to give this land to a their person with ulterior motives. That means that the Appellant indirectly admits that this is a State land. His version is that he possessed this land for a long time. But he does not submit that he has a permit to this land in dispute. If he does not have a permit, he cannot establish any right to possess this State land. The appellant cannot be categorized as a person aggrieved because he has not established any right to possess the land in dispute. The discretion of Court does not favour the Appellant.

The Appellant raised an argument that the 1st Respondent is not a competent authority under the State land (Recovery of Possession) Act. The section 23 of the Mahaweli Authority of Sri Lanka Act No. 23 of 1979 amended by Act No. 59 of 1993 endorses that the State Land (Recovery of Possession) Act applies to special areas and employee of the Authority as is authorized in that behalf by the Authority can exercise the powers under the Act. The subsection (1) and (3) of section 23 reads thus;

22.(1) The written laws for the time being specified in Schedule B hereto shall have effect in every Special Area subject to the modification that it shall be lawful for the Authority to exercise and discharge in such area any of the powers or functions vested

by any such written law in any authority, officer or person in like manner as though the reference in any such written law to the authority, officer or person empowered to exercise or discharge such powers or functions included a reference to the Authority.

(2)

(3) Any power or function which the Authority is authorized by subsection (1) to exercise or discharge, may be exercised or discharged on behalf of the Authority by any director of the Authority or by any employee of the Authority as is authorized in that behalf by the Authority.

The schedule 'B' includes the State Land (Recovery of Possession) Act. The 1st Respondent states that he has been authorized to act under the said Act. (Paragraph 10 (b) of the objection of the 1st Respondent dated 12.01.2010.) In his application for ejection he states that he is the competent authority. Under these circumstances, the argument that the 1st Respondent is not the competent authority, fails.

I see no reasons to interfere with the findings of the learned High Court Judge.

The appeal is dismissed.

Judge of the Court of Appeal

H.C.J.Madawala. J.

I agree.

Judge of the Court of Appeal