

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

*In the matter of an application for
a Revision in terms of Article 138
of the Constitution of the
Democratic Socialist Republic of
Sri Lanka.*

Jeyaweera Mudiyanalage
Chandrika Priyadharshani,
Competent Authority,
Plantation Monitoring Division,
Ministry of Plantation Industries,
No: 55/75, Vauxhal Lane,
Colombo-12.

Magistrate Court – Hatton

Case No: 58990/2012

Court of Appeal

Revision Application

No: 07/2012

APPLICANT

Vs.

M. Kandasamy
No: 86/B, JEDB, Official
Quarters,
Dumburugiriya Road,
Hatton.

RESPONDENT

NOW BETWEEN

M. Kandasamy
No: 86/B, JEDB, Official
Quarters,
Dumburugiriya Road,
Hatton.

RESPONDENT - PETITIONER

1. Jeyaweera Mudiyanalage
Chandrika Priyadharshani,
Competent Authority,
Plantation Monitoring
Division,
Ministry of Plantation
Industries,
No: 55/75, Vauxhal Lane,
Colombo-12.

APPLICANT - 1ST RESPONDENT

2. The Attorney General,
Attorney General's
Department,
Colombo-12.

2ND RESPONDENT

Before : P.R. Walgama, J

Council : S. Kumarasingham for the Petitioner.

**: K.V.S. Ganesharajan with S. Geerge for the 1st
Applicant – Respondent.**

Argued on : 14.01.2016

Decided on : 07.12.2016

CASE-NO- CA/MC/ 07 /2012- JUDGMENT- 07.12.2016

P.R. Walgama, J

The instant Revision application lies sequel to the order made by the Learned Magistrate, in respect of an application tendered by the Complainant- Respondent in terms of Section 3 of the State Land (Recovery of Possession) Act No. 7 of 1979 as Amended by Act No. 58 of 1081, , Act No. 29 of 1983 , Act No. 45 of 1992, Act No. 29. Of 1997.

As the Respondent- Petitioner, did not vacate the subject premises, the Learned Magistrate did allow the notice to be served by way of substituted service. But it was later revealed that at the time summons were served by substituted service the Respondent- Petitioner was abroad.

As per journal entry dated 28.09.2012, reveals that the Respondent made his appearance in Court , nevertheless the Learned Magistrate has issued the order of ejection.

It is apparent that the Learned Magistrate has considered the fact that the Respondent- Petitioner did not possess a valid permit or a written document to possess the land in issue.

Hence in the above context the Learned Magistrate has issued the order for ejectment in terms Section 11(b) and 13 of the said Act.

Being dissatisfied with the said order the Respondent - Petitioner lodged the instant application in this Court to have the above impugned order set aside or vacate.

The facts stemmed from the said petition are as follows;

That the Petitioner and his family has been living in the said premises as an employee of JEDB (Janatha Estate Development Board) since 1986.

That after the JEDB was closed there was no successor to the premises and had requested the then President Chandrika Kumaratunga to give the said property to him considering the long stay for 44 years in the subject premises.

But after 8 years that there was a quit notice by the Competent Authority of the Plantations Management Monitoring Division, requesting the petitioner to hand over the premises in suit.

It is contended by the Respondent – Petitioner that the proper application by the competent authority should have been in the Magistrate Courts was one of Recovery of Government Quarters Act, and not under the State Land (Recovery of Possession) Act.

The Applicant - Respondent, as a comprehensive response to the Respondent- Petitioner's claim had stated thus;

That pursuant to the impugned order of the Learned Magistrate, the Respondent was ejected from the afore said land and the premises had been taken over by the Competent Authority accordingly.

It is further asserted by the Complainant- Respondent that in terms of Section 9 of the State Lands(Recovery of Possession) Act No. 7 of 1979 on whom the summons has been served shall not be entitled to contest any of the matters stated in the application except such person may establish that he is in possession or that he possess a valid permit or other written authority of State, granted in accordance with any written law. But it is alleged by the Applicant -Respondent that the Petitioner has not tendered any such document in the Magistrate Court and has no locus standai to make this application to this court.

It is submitted by the Applicant –Respondent that at the inquiry the Petitioner did not produce any document to prove that this land belongs to the Land

Reform Commission. It is stated by the Applicant that the subject land belongs to the Ministry of Plantation and the Competent Authority is also from the said Ministry. Therefore it is the position of the Complainant that if the Petitioner has title to the disputed land it has to be resolved by filing an action in the District Court.

In support of the above proposition the Complainant has adverted court to the case of FAROOK .VS. GUNAWARDENA GOVERNMENT AGENT- 1980 2 SLR 243 which held thus;

“the structure of the Act would also make it appear that where the competent authority had formed the opinion that any land is State Land, even the Magistrate is not competent to question his opinion.”

In opposing the contention of the Petitioner that the quit notice is illegal the Petitioner should have file a writ application in the Court of Appeal, and therefore it is said that the Respondent -Petitioner is not entitled to come by way of Revision.

It is seen from the petition of the Petitioner that there is no claim for restoration as he had been ejected from the land in issue. Therefore the present application of the Petitioner is purely academic, and has no merits to succeed in this action.

In the above setting this Court is of the view that there is no exceptional circumstances averred by the Petitioner as to enable this Court to exercise the extraordinary Revisionary powers recognised by the Constitution.

For the reasons contained above application is dismissed subject to a cost of Rs. 10,000/

Accordingly appeal is dismissed.

JUDGE OF THE COURT OF APPEAL