

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

Court of Appeal case no. CA/PHC/41/2010

H.C. Kandy case no. Rev/72/2008

M.C. Dambulla case no. 95722

M.C. Margrate Perera,

Kotugodalla, Nalanda

Respondent Petitioner Appellant

Vs.

1. Divisional Secretary,

Divisional Secretariat, Naula.

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12

Applicant Respondent Respondent.

Before : H.C.J. Madawala J.

: L.T.B. Dehideniya J.

Counsel : V. Kulathunga with Jeewani Priyanka for the Respondent
Petitioner Appellant.

: S. Dharmawardane DSG for the Applicant Petitioner
Respondent.

Argued on : 16.11.2016

Written submissions filed on : 30.11.2016 and 05.12.2016

Decided on : 31.01.2017

L.T.B. Dehideniya J.

The 1st Applicant Respondent Respondent (1st Respondent) filed an application in the Magistrate Court of Dambulla under State Land (Recovery of Possession) Act seeking an order for ejectment against the Respondent Petitioner Appellant (the Appellant) from a block of land on the premise that it is a state land and the Appellant is in unauthorized possession. The Appellant objected to this application on several grounds. Firstly he argues that this block of land has been alienated under Land Development Ordinance and therefore the State cannot seek relief under State Land (Recovery of Possession) Act. Secondly, he submits that he was in possession for a long period of time and therefore he cannot be evicted under this Act. Thirdly, that the State has not identified the land correctly. The learned Magistrate rejected the objections and issued the order for ejectment. Being dissatisfied with the order, the Appellant moved in Revision in the High Court of Kandy, was also dismissed. This Appeal is from the said order.

Under section 9 of the State Land (Recovery of Possession) Act the scope of the inquiry is limited to for the person noticed to establish that he is in not in unauthorized occupation or possession by establishing that;

1. Occupying the land on a permit or a written authority.
2. It must be a valid permit or a written authority.
3. It must be in force at the time of presenting it to Court.
4. It must have been issued in accordance with any written law.

The party noticed is not entitled to challenge the opinion of the competent authority on any of the matters stated in the application.

Before the State Lands (Recovery of Possession) (Amendment) Act was brought in, the law under section 3(1) of Act, No. 7 of 1979 was that “*Where a competent authority is of opinion that any person is in unauthorized possession or occupation of any State land*”. The Court considered this section and held in the case of Senanayake v. Damunupola [1982] 2 Sri L R 621 where the occupier was in occupation since 1908 on the strength of a deed and challenged the opinion of the competent authority on the basis that the land is a private land. The Supreme Court held in that case that;

“the State Lands (Recovery of Possession) Act was not meant to obtain possession of land which the State had lost possession of by encroachment or ouster for a considerable period of time by ejecting a person in such possession. Section 3 should not be used by a competent authority to eject a person who has been found by him to be in possession of a land in circumstances such as have transpired in this case.”

Thereafter the law was amended by Act No. 29 of 1983 to read the section 3 as;

“(1) Where a competent authority is of the opinion

(a) that any land is State land; and

(b) that any person is in unauthorized possession or occupation of such land.....,

(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1).”

By this amendment, the opinion of the competent authority in relation to the state land was made unquestionable.

It has been held in the case of Farook v. Gunawardane Government Agent Amparai [1980] 1 Sri L R 243 that the Magistrate is not competent to question the opinion of the Competent Authority. The Supreme Court observed that;

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. Alternate relief is given by section 12 which empowers any person claiming to be the owner of a land to institute action against the State for the vindication of his title within 6 months from the date of the order of ejectment and section 13 is to the effect that where action is instituted by a person, if a decision is made in favour of that person, he will be entitled to recover reasonable compensation for the damage sustained by reason of his having been compelled to deliver possession of such land.

It is significant that there is no provision in these two sections to place the person ejected in possession of the land when the action has been decided in favour of the person ejected, even though that person has vindicated his title to the land. It appears, therefore, that the intention of the Legislature was that once the competent authority had decided that any land was State land even after the person claiming to be the owner vindicates his title to the land, he was not to be restored to possession of the land, but only entitled to recover reasonable compensation for the damage sustained including the value of the land by reason of his having been compelled to deliver up possession of such a land.

The Court of Appeal held in the case of Kandaiah v. Abeykoon 1986 Vol. 3 CALR 141 that the opinion of the competent authority is conclusive.

The application filed in this case is to eject the Appellant from the lot No. 1613 of the Plan No. FVP 253 Supplement 22 prepared Surveyor General. It is an admitted fact that a grant was issued to the Appellant under LDO in relation to lot No. 1614 of the said plan. The Appellant's contention is that lot No. 1613 was alienated to her sister but she was in possession of the entire property for a long period of time. She has failed to submit any valid permit or a written authority issued to her by the State in relation to the lot No. 1613. Further she has failed to establish that she is in possession of the said lot for and on behalf of the grantee. If it was established that she was in possession for and on behalf of the grantee, it would have been argued that her possession is grantee's constructive possession. But she does not claim that she is in possession for and on behalf of her sister. Her argument in this case is that she is in possession of the entirety for a long period of time which will not give any prescriptive title to the Appellant since the land being a State Land.

The only defence available to a party noticed under State Land Act is to establish that he/she is in possession or occupation on the strength of a valid permit or a written authority of state. It has been held in the case of Nirmal Paper Converters (Pvt) Ltd. v. Sri Lanka Ports Authority and another [1993] 1 Sri L R 219 that;

Where the petitioner is not a lawful tenant but only a licensee making payments for use and occupation, the owning authority is entitled to avail itself of the provisions of the State Lands (Recovery of Possession) Act. The only ground on which the petitioner is entitled to remain on the land is upon a valid permit or

other written authority of the State as laid down in section 9 (1) of the State Lands (Recovery of Possession) Act and the petitioner did not have the semblance of such a permit or authority.

The State has identified the encroached land as lot No. 1613 of the said plan and the tenement list. The Appellant's argument that the land has not identified properly cannot be sustained. The burden is on the Appellant to establish that her possession of the land described in the application is not unauthorized. The Competent Authority has already formed the opinion that the Appellant is in unauthorized possession. In the present case the Appellant has failed to establish that she is not in unauthorized possession but having a valid permit or a written authority issued under any law to possess the Lot No. 1613 of the Plan No. FVP 253 Supplement 22 of the Surveyor General.

For the reasons stated above, I see no reason 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