

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

In the matter of an Appeal in terms of Article 138
read together with Article 154P of the Constitution
of the Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/41/2011

H.C. Rathnapura case no. 68/2007

M.C. Rathnapura case no. 18234

Gardi Hewaage Sumanawathi,

Vandhagala, Karawita

Respondent Petitioner Appellant

Vs.

Ratnapatambendige Nihal Weerawarna

Nilaweera,

Director,

Plantation Supervision Unit,

Ministry of Plantation,

N0. 55, Vauxhall Street, Colombo 2.

Applicant Respondent Respondent.

Before : H.C.J. Madawala J.

: L.T.B. Dehideniya J.

Counsel : Chathura Amarathunga for the Respondent Petitioner
Appellant.

: Harshana De Alwis with A. Tikirirathne for the Applicant
Respondent Respondent.

Argued on : 27.10.2016

Written submissions filed on 11.01.2017

Decided on : 09.02.2017

L.T.B. Dehideniya J.

The Applicant Respondent Respondent (the Respondent), as the Competent Authority under the State Land (Recovery of possession) Act, instituted action in the Magistrate Court of Rathnapura to eject the Respondent Petitioner Appellant (the Appellant) from a State land. The Appellant objected to this application on the basis that it is a private land. The learned Magistrate, after hearing both parties, issued the order for ejectment. The Appellant moved in revision in the High Court of Rathnapura but was unsuccessful. This appeal is from the order of the High Court.

Under section 9 of the State Land (Recovery of possession) Act, the only defence available to a person summoned is to establish that he/she is in occupation of the said land upon a valid permit or other written authority of the state granted in accordance with any written law and such permit or written authority is in force and not revoked or rendered invalid.

In the case of Muhandiram V. Chairman, No. 111, Janatha Estate Development Board [1992] 1 Sri L R 110 it was held that “In an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the State granted according to any written law. If this burden is not discharged, the only option open to the Magistrate is to order ejectment.”

In the case of Aravindakumar V Alwis and other [2007] 1 Sri L R 316 Sisira De Abrew J. held that “According to the scheme provided in the Act a person who is in possession or occupation of any state land and has been served with quit notice under Section 3 of the Act can continue to be in possession or occupation of the land only upon a valid permit or other written authority of the State described in Section 9 of the Act.

In the present case the Appellant does not claim that he is in occupation of the land upon a valid permit or a written authority of state granted according to any written law. His claim is that the land described in the application for ejectment is a private land. It means that the Appellant is challenging the opinion of the Competent Authority. My view is that he cannot challenge the opinion of the Competent Authority that it is a State land.

State Land (Recovery of Possession) (Amended) Act No. 29 of 1983 has amended the section 3 of the act to read thus;

“(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 Legislature has made the opinion of the Competent Authority in relation to any land that it is a state land, was made unquestionable. Once the notice is issued, unless that person is in occupation upon a valid permit or a written authority he is bound to be ejected and the only remedy is to vindicate his rights under section 12 of

the Act. He is not entitled to challenge the opinion of the Competent Authority in the ejectment proceeding.

Farook v. Gunawardane Government Agent Amparai [1980] 1 Sri L R 243 is a case where the occupant was in possession since 1934. He challenged the quit notice on the basis that it was a private land and he was not given a hearing to establish that fact and it is a breach of natural justice.

The Court held that when the legislature made express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process specified in the Act itself, it is not open for the court to grant relief on the ground that the petitioner had not been heard. It was further held 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.

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 Appellant submits that the affidavit presented to Court does not express the religion of the person sworn and therefore it is not in conformity with the Oath and Affirmation Act. He submits the law in relation to this is decided in the case of Mark Rajendran v First Capital Ltd, Formerly Commercial Capital Ltd [2010] 1 Sri L R 60 where it has been held that it is the Affidavit that breaths life in to the petition. Under the State Land Act, the form of the affidavit that has to be filed with the application is specified in the Act itself. Once the Legislature has expressly enacted the form of the affidavit which requires for a certain type of a case, it has to be followed. The Oath and Affirmation Act is the

general law and the State Land (Recovery of Possession) Act is a special law. The special law prevails over the general law. In the present case the Respondent's affidavit is in conformity with the State Land (Recovery of Possession) Act.

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

The appeal dismissed subject to costs fixed at Rs. 10000.00

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal