

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

Court of Appeal case no. CA/PHC/29/2012

H.C. Hambanthota case no. HCRA 15/2011

M.C. Hambanthota case no. 88440

Resident Business Manager,
Walawa Special Area,
Embilipitiya.

Applicant

Vs.

Abewarna Patabendige Nissanka,
Temple Road, Haabarathawela,
Koggala

Respondent

AND

Abewarna Patabendige Nissanka

Respondent Petitioner

Vs.

1. Hon. Attorney General,
Attorney General's Department,
Colombo 12

1st Respondent

2. Resident Business Manager

Applicant Second Respondent

AND NOW

Abewarna Patabendige Nissanka

Respondent Petitioner

Appellant

Vs.

1. Hon. Attorney General,
Attorney General's Department,
Colombo 12

**1st Respondent Respondent
Respondent**

2. Resident Business Manager
**Applicant Second Respondent
Respondent**

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Chathura Galhena with M. Gunawardane for the
Respondent Petitioner Appellant.

: Zuhri Zain SSC for the Respondent Respondents.

Argued on : 22.02.2017

Written submissions filed on 07.04.2017

Decided on : 09.05.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Hambanthota.

The Applicant Respondent Respondent (hereinafter sometimes called and referred to as the Respondent) instituted action in the Magistrate Court of Hambanthota under section 5 of the State Land (Recovery of Possession) Act to recover possession of a block land where the Respondent Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) was in occupation. The Appellant, though has raised several grounds of appeal in the petition of appeal, his main argument presented to this Court is that the Respondent is not a Competent Authority under the Act and therefore the application is bad in law.

The competent authority who filed this action is the Resident Project Manager of the Walawa Special Area. He pleads that he is the competent authority for the Walawa Special Area under the Mahaweli Authority Act.

Section 18 (1) of the State Land (Recovery of Possession) Act allows a corporate body to authorize any officer generally or specially to be a competent authority. The section reads thus;

18. In this Act, unless the Context otherwise requires-

“competent authority” used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes

.....

(1) an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body.

Section 2(2) of the Mahaweli Authority Act declares that the Mahaweli Authority is a “body corporate”. The section reads thus;

2.(1) With effect from such date as may be determined by the Minister by Notification published in the Gazette, there shall be established an Authority called the Mahaweli Authority of Sri Lanka (hereinafter referred to as the "Authority").

(2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name, and may perform such acts as bodies corporate may by law perform.

Section 5(2) of the Act has made the Director General of the Mahaweli Authority is the chief executive officer. The section reads;

5.(1) The Minister may, with the approval of the President, appoint one of the Directors to be the Director-General of the Authority.

(2) The Director-General shall be the chief executive officer of the Authority.

The Director General of the Mahaweli Authority has specially authorized the present Resident Business Manager of the Walawa Special Area as the Competent Authority for the said area to perform the duties under the State Land (Recovery of Possession) Act by the letter dated 08.04.2015. It is obvious that even prior to the present officer, the former officers who held the post of Resident Business Manager of the Walawa Special Area would have been authorized to perform the duties under the Act.

On the other hand the Appellant cannot question the contents of the application filed under section 5 of the Act. Section 9(2) of the Act precludes the Magistrate from calling any evidence to prove the contents of the application. The section reads;

9. (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.

Under these circumstances, the argument of the Appellant that the Respondent was not a competent authority fails.

The Respondent has not presented any argument before us to establish that he is in occupation under a valid permit or on a written authority issued by the State under law.

Accordingly I dismiss the appeal.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal