

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

In the matter of an application under Article
154(P)(6) read with Article 138 the Constitution of
the Democratic Socialist Republic of Sri Lanka

Court of Appeal case no. CA/PHC/193/06

H.C. Colombo case no. RA 852/2005

M.C. Mount Lavinia case no. 870/S/03

Chairman,
National Housing Development Authority,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Applicant

Vs.

D. Premarathne de Silva,
No. 105/46, Sri Jaya Mawatha,
Rathmalana.

Respondent.

AND

Dewanaththi Premarathna de Silva,
No. 105/46, Sri Jaya Mawatha,
Rathmalana.

Respondent Petitioner

Vs.

Chairman,

National Housing Development Authority,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Applicant Respondent

AND NOW

Dewanaththi Premarathna de Silva,
No. 105/46, Sri Jaya Mawatha,
Rathmalana.

Respondent Petitioner Appellant

Vs.

Chairman,
National Housing Development Authority,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Applicant Respondent Respondent

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Tenny Fernando for the Respondent Petitioner Appellant.

: U. Senasinghe SC for the Applicant Respondent
Respondent.

Argued on : Agreed to dispose on written submissions

Applicant Respondent Respondent written submissions
filed on 05.04.2017

Repondent Petitioner Appellant did not file written
submissions

Decided on : 16.05.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Colombo.

The Applicant Respondent Respondent (hereinafter sometimes called and referred to as the Respondent) instituted action in the Magistrate Court of Mt.Laviniya under the State Land (Recovery of Possession) Act against the Respondent Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant). After inquiry the learned Magistrate issued the ejectment order. Being aggrieved, the Appellant moved in revision in the High Court of Colombo without success. This appeal is there from.

The scope of inquiry under the section 9 of the Act is very limited. The party noticed has to establish that he/she is occupying the land on a permit or a valid written authority issued under law. The competency of the Competent Authority or the opinion of the Competent Authority cannot be called in question.

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. Further in the following judgment it was held that the opinion of the Competent Authority is conclusive.

Farook v. Gunawardane Government Agent Amparai [1980] 1 Sri L R 243

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.

The inquiry under section 9 of the Act is limited to establishing that the person noticed is occupying the land on a valid permit or a written authority issued under law.

Muhandiram v. Chairman, No. 111, Janatha Estate Development Board [1992] 1 Sri L.R. 110

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 present case the Appellant does not produce any permit or a written authority where he is permitted to occupy the land.

The Appellant's contention is that he was in occupation of the land in dispute for more than 20 years. No person can claim prescriptive rights against the State on state lands. On the hand even if the title to the land in dispute is disputed by the party noticed, the remedy is to act under section 12 of the State Land (Recovery of Possession) Act, not to challenge the application to eject in the Magistrate Court.

Under these circumstances, I see no reason to interfere with the findings of the learned Magistrate or the learned High Court Judge.

Accordingly, the appeal is dismissed.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal