

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

Court of Appeal case no. CA/PHC203/2007

H.C. Polonnaruwa case no. 16/20006

M.C. Polonnaruwa case no. 14200

Sinha Arachchige Munasinghe,
Mahaweli Authority of Sri Lanka,
Zone C, Dehiattakandiya.

Applicant

Vs.

A.W.A.Ranaweera,
No.249, Weeralanda,
Ruhunugama

Respondent.

AND

A.W.A.Ranaweera.

Respondent Petitioner

Vs.

Sinha Arachchige Munasinghe.

Applicant Respondent

AND NOW BETWEEN

A.W.A.Ranaweera.

Respondent Petitioner Appellant

Vs.

Sinha Arachchige Munasinghe.

Applicant Respondent Respondent

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : R. Serasinghe for the Respondent Petitioner Appellant.

: Sumathi Dharmawardana DSG for the Applicant

Respondent Respondent.

Argued on : 09.03.2012

Written submissions filed on 12.05.2017

Decided on : 23.05.2017

L.T.B. Dehideniya J.

This is an appeal from the High Court of Polonnaruwa.

The Applicant Respondent Respondent, (hereinafter sometimes called and referred to as the Respondent) as the Competent Authority, instituted action in the Magistrate Court of Polonnaruwa under the State Land (Recovery of Possession) Act to eject the Respondent Petitioner Appellant (hereinafter sometimes called and referred to as the Appellant) from a state land. After inquiry, the learned Magistrate issued the order for ejectment against the Appellant. Being dissatisfied with the order the Appellant moved in revision in the Provincial High Court of Polonnaruwa where the application was dismissed. This appeal is from the said order of the High Court.

The Appellant raised a question of law that the Respondent is not a 'Competent Authority' who can file action under the State land (Recovery of Possession) Act.

The Respondent made this application as the Resident Business Manager of the 'B' Division of the Sri Lanka Mahaweli Authority and as the Additional District Secretary of Ampara/Badulla/Polonnaruwa.

The section 23 of the Mahaweli Authority of Sri Lanka Act No. 23 of 1979 amended by Act No. 59 of 1993 endorses that the State Land (Recovery of Possession) Act applies to special areas and the employs of the Authority, who were authorized in that behalf, by the Authority, can exercise the powers under the Act. The subsection (1) and (3) of section 23 reads thus;

22.(1) The written laws for the time being specified in Schedule B hereto shall have effect in every Special Area subject to the modification that it shall be lawful for the Authority to exercise and discharge in such area any of the powers or functions vested by any such written law in any authority, officer or person in like manner as though the reference in any such written law to the authority, officer or person empowered to exercise or discharge such powers or functions included a reference to the Authority.

(2)

(3) Any power or function which the Authority is authorized by subsection (1) to exercise or discharge, may be exercised or discharged on behalf of the Authority by any director of the Authority or by any employee of the Authority as is authorized in that behalf by the Authority.

The schedule 'B' includes the State Land (Recovery of Possession) Act. In his application for ejectment the Respondent states that he is the competent authority.

The Respondent acts in a dual capacity. In addition to be the Resident Business Manager, he is the Additional District Secretary for the districts of Ampara, Badulla and Polonnaruwa. Under section 18 of the State Land (Recovery of Possession) Act the Government Agent is the competent authority and that expression includes the Additional Government Agent too. The section reads

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

Therefore the Respondent as the Additional District Secretary also has the authority to institute action under the Act.

Under these circumstances, the argument that the 1st Respondent is not the competent authority, fails.

The scope of the inquiry under section 9 of the Act is very limited. Unless the occupier cannot establish that he is in occupation under a valid permit or on a written authority given by the state the Magistrate has to issue the order for ejectment.

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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 has failed to establish that he is in occupation of the State Land under a valid permit or on a written authority. Therefore I see no reason to interfere with the findings of the learned High Court Judge.

Accordingly the appeal dismissed.

Judge of the Court of Appeal

H.C.J. Madawala J.

I agree.

Judge of the Court of Appeal