

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

In the matter of an Appeal against  
judgment of Provincial High Court  
exercising its revisionary jurisdiction.

C A (PHC) / 53 / 2011

High Court of Colombo

Case No. HCRA 72 / 2009

B A Pujitha,  
No. 16,  
Shady Grove Avenue,  
Colombo 03.  
(No. 62,  
J Olcott Mawatha,  
Pettah).

**RESPONDENT - PETITIONER -**  
**APPELLANT**

-Vs-

1. Punna Vijitha Palihakkarawasam  
Wijesekera,  
General Manager of Railways,  
Office of the General Manager of  
Railways,  
Colombo 10.

**APPLICANT - RESPONDENT -**

**RESPONDENT**

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

**RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; Sanjeewa Dassanayake with Dammika Jiminige for the  
Respondent – Petitioner - Appellant.

Hashini Opatha SC for the Attorney General.

Decided on : 2017 - 07 – 18

**JUDGMENT**

**P Padman Surasena J**

Learned counsel for all the Parties when this case came up on 2017-06-27 before us, agreed to have this case disposed of by way of written submissions, They agreed that this Court could pronounce the judgment after considering the said written submissions.

General Manager of Railways by letter dated 2007-04-04 marked X in the appeal brief, has terminated all the agreements he had with the Respondent - Petitioner – Appellant (hereinafter sometimes referred to as the Appellant). The said letter has informed the Appellant that he should hand over the possession of the premises mentioned therein.

As the Appellant had failed to respond to the said request, a quit notice dated 2007-11-12 was issued on the Appellant, by the General Manager of Railways in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act). Thereafter the General Manager of Railways had made an application under section 5 of the Act to the Magistrate's Court of Colombo seeking an order to evict the Appellant from the said premises. Learned Magistrate thereafter had afforded the Appellant an opportunity to submit any valid permit or any other written authority of the State he may have regarding his possession of the said premises. As no such document was produced, learned Magistrate by his order dated 2009-04-22, had made an order under section 10 (1) of the Act evicting the Appellant forthwith from the said premises.

The High Court of Colombo upon an application for revision filed by the Appellant has inquired into this case. The High Court after hearing parties, had by its judgment dated 2011-03-21 affirmed the learned Magistrate's order and had proceeded to dismiss the revision application.

It is against that judgment that the Appellant has filed this appeal in this Court.

Learned counsel for the Appellant in the course of his argument conceded that the Appellant does not have any permit for the occupation of the said premises. He sought to argue that some kind of prior authority had been given to the Appellant by the Railways Department.

However as has been mentioned earlier, General Manager of Railways by letter dated 2007-04-04, has terminated all the agreements he has had with the Appellant and informed the Appellant to hand over the possession of the premises. Thus it is proved that the Appellant has failed to establish that he is in possession or occupation of the said premises upon any written authority of the State granted in accordance with any written law and that such authority is in force and not revoked or otherwise rendered

invalid as required by section 9 of the Act. What the document dated 2007-04-04 (marked **X**), establishes is that all agreements with the Appellant had been revoked.

Both the learned Magistrate as well as the High Court Judge have considered in their judgments the submission made on behalf of the Appellant that there exists an order to evict the Appellant in a case previously filed. However the circumstances intervened thereafter had somehow paved the way for the Appellant to continue in the premises. Be that as it may, as it stands now, the General Manager of Railways by letter dated 2007-04-04, has terminated all the agreements he has had with the Appellant. Thus, the existence of a previous order of eviction is not a bar for the maintenance of this case as has been held rightly both by the Magistrate's Court and the High Court. In any case both the orders are to the same effect, namely orders for eviction. Therefore there is no merit in the submission on behalf of the Appellant regarding the application of the principle of *res judicata* to these proceedings.

Section 9 of the Act which has specified the scope of the inquiry states that the person on whom summons under section 6 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the said premises upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid. The Appellant had failed to prove the requirements of the above section.

This Court in the case of Muhandiram V Chairman, Janatha Estate Development Board<sup>1</sup> had held that in an inquiry under State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish the basis of his possession or occupation.

The only basis such person could be permitted to possess or occupy such land would be upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid<sup>2</sup>.

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<sup>1</sup> 1992 , Sri L R Volume : 1 , Page No : 110

<sup>2</sup> Section 9 of the Act

This Court had further held in that case<sup>3</sup> that if the above burden is not discharged, the only option available for the Magistrate would be to make an order of eviction.

It is therefore the view of this Court that there is absolutely no merit in this appeal.

Thus, this Court decides to dismiss this appeal with costs.

Appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**

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<sup>3</sup> Muhandiram V Chairman, Janatha Estate Development Board (Ibid).