

**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) / 169 / 2010

Provincial High Court

holden at Rathnapura

Case No. RA 12 / 2008

Magistrate's Court Pelmadulla

Case No. 29730

W Jayasuriya,

Near bridge,

Kahawaththa.

**RESPONDENT - PETITIONER -**

**APPELLENT**

-Vs-

1. General Manager,  
Road Development Authority,  
Sethsiripaya,  
Baththaramulla.

**APPLICANT - RESPONDENT -**

**RESPONDENT**

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

**RESPONDENT - RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; Respondent- Petitioner - Appellant is absent and unrepresented.

Manohara Jayasinghe SC for the 1<sup>st</sup> and 2nd Respondents.

Argued on : 2017 – 07 – 21

Decided on : 2017 - 09 - 13

### JUDGMENT

## **P Padman Surasena J**

The Applicant - Respondent - Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the 1<sup>st</sup> Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Pelmadulla seeking an order to evict the Appellant from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2008-01-07 evicting the Appellant from the said land on the basis that he had failed to produce a permit or due authority to remain in the said land.

Being aggrieved by the said order made by the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Sabaragamuwa Province holden at Rathnapura seeking a revision of the order of the learned Magistrate.

The Provincial High Court after the conclusion of the argument, had pronounced its judgment dated 2011 -10-27, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court had therefore proceeded to dismiss the said revision application.

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

Although the Appellant had been present before this Court on the initial dates this case had come up in this Court, he had thereafter failed to appear on the subsequent dates. He has also failed to respond to the notices this Court had sent to him. Nevertheless, this Court has proceeded to consider the merits of his appeal.

The position taken up by the Appellant in this case is that it is not the proper competent authority who has invoked the jurisdiction of the Magistrate's Court in this case.

Section 18, which defines certain terms in the Act, defines the term "Competent authority" as follows;

"... "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. ..."

This section has gone on to include a long list of other authorities also as competent authority for the purposes of the Act. A head of any Government institution created by law, where such land is under the control of such institution and any public officer authorized by the Government Agent and 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 are amongst that list. Further, the 1<sup>st</sup> Respondent has even submitted necessary documents before the Provincial High Court to establish that he indeed is the competent authority for the purposes of this Act. Thus, there is no merit in the argument advanced by

the Appellant that it is not the proper competent authority who has filed the said application.

It must also be noted that section 9 of the Act sets out the scope of the inquiry to be held before the Magistrate in following terms;

"... At such inquiry 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 land 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. ..."

This Court in the case of Muhandiram vs. Chairman, No.111, Janatha Estate Development Board<sup>1</sup> has re-iterated this position in following terms;

" ... Unless the respondent-petitioner had established before the learned Magistrate that he was in occupation of the land stated in the schedule to the application on a valid permit or other written authority of the State, he cannot continue to occupy the said land and in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, the Magistrate has to make

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<sup>1</sup> 1992 (1) SLR 110

an order directing the respondent and his dependents to be ejected from the land. ...”

In the instant case, it is clear upon consideration of the material adduced before this Court, that the Appellant has failed to establish that he is in possession or occupation of the said land 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.

Thus, the appellant has to be necessarily evicted from this land.

For the foregoing reasons, 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**