

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) / 160 / 2010

Provincial High Court

holden at Rathnapura

Case No. RA 74 / 2008

Magistrate's Court Balangoda

Case No. 18916

H Piyadasa,

No. 03,

Kithulgama,

Balangoda.

RESPONDENT - PETITIONER -
APPELLANT

-Vs-

1. Divisional Secretary,
Balangoda.

COMPLAINANT -

RESPONDENT - RESPONDENT

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

RESPONDENT - RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; K V Sirisena for the Respondent – Petitioner - Appellant.

Nuwan Pieris for the 1st and 2nd Respondents.

Decided on : 2017 - 10 - 23

JUDGMENT

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 1st 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 1st Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Balangoda 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 2008-06-20 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 2010 -10-15, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court in that judgment had on that basis proceeded to dismiss the said revision application.

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

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 closer look at the scheme of the section shows that in any case, it is primarily the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated should be the competent authority. In this case, the Divisional Secretary has made the application to the Magistrate's Court as the competent authority. 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 Board¹ 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 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

¹ 1992 (1) SLR 110

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, this appeal must necessarily fail.

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