

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) / 31 / 2014

High Court of Nuwara Eliya

Case No. 21 / 2013 (Revision)

Magistrate's Court Hatton

Case No. 68115/2013

Ammawasi Krishnan,
Kotiyagala Estate Lower Division,
No.9, Housing Scheme,
Block No. 23,
Kotiyagala Estate,
Bagawanthalawa.

RESPONDENT - PETITIONER -
APPELLANT

-Vs-

1. J M Chandrika Priyadarshani,
Plantation Monitoring Officer,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
Colombo.

APPLICANT COMPETENT

AUTHORITY - RESPONDENT

- RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Aravinda Athurupana with Sandamali Madurawala for the Respondent – Petitioner - Appellant.

R C Karunakaran for the Applicant Competent Authority – Respondent – Respondent.

Argued on: 2017-06-28

Decided on : 2017 - 10 - 04

JUDGMENT

P Padman Surasena J

The Applicant Competent Authority - Respondent - Respondent (hereinafter sometimes referred to as the 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 Respondent had thereafter made an application under section 5 of the Act

to the Magistrate's Court of Hatton seeking an order to evict the Appellant from the land described in the schedule mentioned in the said application.

Learned Magistrate, after an inquiry, had pronounced the order dated 2013-07-29 evicting the Appellant from the said land.

Being aggrieved by the said order of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court holden at Nuwara Eliya.

Learned Provincial High Court Judge relying on the judgment in the case of Solaimuththu Rasu V Superintendant Stafford Estate and others¹, by his judgment dated 2014 -04-25, had held that the Provincial High Court does not have jurisdiction to consider the said revision application in view of the conclusions arrived at by the Supreme Court in that judgment.

The Provincial High Court, on that basis, had dismissed the said revision application without going into its merits.

It is that judgment that the Appellant has canvassed in this appeal before this Court.

¹ 2013 Sri. L. R. 25

It is appropriate to commence considering the issue at hand by re visiting the contents of Article 154 (P) 4(b) of the Constitution. It states that a Provincial High Court shall have jurisdiction to issue, according to law: orders in the nature of writs of Certiorari, Prohibition, Procedendo, Mandamus and Quo Warranto against any persons exercising within the province, any power under:

- I. Any law; or
- II. Any statute made by the Provincial Council established for that province; in respect of any matter set out in the Provincial Council List.

It must be noted that this Article does not have any reference whatsoever to the exercise of revisionary jurisdiction by the Provincial High Courts. It is this Article that was the subject matter of discussion in the Supreme Court in the above judgment.

The subject matter under challenge in that case was whether the Provincial High Court has jurisdiction to issue a writ of certiorari to quash a quit notice issued under the State Lands (Recovery of Possession) Act.

What the Supreme Court in that judgment had held is that the jurisdiction conferred on the Provincial High Courts under Article 154 P 4 (b) does not extend to matters in respect of powers relating to recovery/dispossession encroachment or alienation of state lands, since they are not found in the Provincial Council List (List 1) to the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka. This is because the power conferred on the Provincial High Courts by Article 154 P 4 (b) could only be exercised 'in respect of any matter set out in the Provincial Council List' of the Constitution. Thus, the question of law that was settled by the Supreme Court in the said judgment is the fact that the Provincial High Courts do not have writ jurisdiction in respect of such matters.

Revisionary jurisdiction conferred on the Provincial High Courts is a totally different jurisdiction which has been conferred on them by virtue of Article 154 P (3) (b) of the Constitution.

Article 154 P (3) (b) of the Constitution, states as follows;

"...Every such High Court shall-

.... notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province; ... ”

Therefore it is clear that the Provincial High Courts derive its revisionary jurisdiction from Article 154 P (3) (b) and not from Article 154 P 4 (b) of the Constitution. Further, revisionary jurisdiction of Provincial High Court is a jurisdiction, which is quite distinct from its writ jurisdiction.

The Supreme Court in the case of Divisional Secretary Kalutara V Kalupahana Mestrige Jayatissa², a judgment pronounced very recently clearly distinguished the two types of the jurisdictions above referred to when it stated as follows;

“ ... At the stage of the hearing of this appeal, it was argued on behalf of the Applicant, that the order made by the High Court was made without jurisdiction and for that reason is bad in law. Relying on the decision of this court in the case of, The Superintendent, Stafford Estate Vs. Solaimuthu Rasu in S.C Appeal 21/2013 - SC minutes 17th July 2013, it was contended on behalf of the Applicant that the Supreme Court had held,

² SC Appeal 246,247,249 & 250/14, Decided on 2017-08-04.

that there is no basis to invoke the writ jurisdiction of the Provincial High Court on the subject of State Lands, as the subject does not fall within the Provincial Council list.

I do not wish to consider this issue in the present judgment for two reasons. Firstly, in the case referred to, the Supreme Court dealt with the powers of the Provincial High Court under Article 154(P)(4) of the Constitution (writ jurisdiction), whereas in the instant case the Provincial High Court derives jurisdiction under Article 154(P)(3) (power to act in revision). Secondly, this was not an issue on which leave was granted by this court. ...”

Thus, it is the view of this Court that the judgment in the case of Solaimuththu Rasu V Superintendent Stafford Estate and others³, has no application to the revision applications filed in the Provincial High Court against the orders made by the Magistrate’s Court in the applications filed before it under section 5 of the State Lands (Recovery of Possession) Act.

Therefore, the order of the Provincial High Court in this case cannot stand as it has wrongly applied the ratio decidendi of the Supreme Court

³ SC App 21/2013 (SC Special LA 203/2012)

judgment in the case of Solaimuthu Rasu V Superintendent Stafford Estate and others.⁴

In these circumstances, this Court holds that the Provincial High Court does have jurisdiction to entertain the instant revision application. Thus, this Court proceeds to set aside the said order dated 2014 -04-25 and direct the learned Provincial High Court Judge to consider the merits of the said application according to law.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL

⁴ SC App 21/2013 (SC Special LA 203/2012)