

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

In the matter of an application for
revision against judgment of Provincial
High Court exercising its revisionary
jurisdiction.

C A (PHC) APN/ 120 / 2016

Provincial High Court of

Central Province (Kandy)

Case No. Rev. 25 / 2016

Magistrate's Court Kandy

Case No. 82777/15

Abusali Jeyilabdin Manafkan,

No. 7-1,

Nikathanna,

Katugasthota.

RESPONDENT - PETITIONER -
PETITIONER

-Vs-

1. Divisional Secretary,
Divisional Secretariat Office,
Harispaththuwa.

APPLICANT - RESPONDENT -
RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Sandamal Rajapaksha with R Serasinghe for the Respondent -
Petitioner - Petitioner.

Maithri Amerasinghe for the Applicant - Respondent -
Respondent.

Argued on : 2017-06-29

Decided on : 2017 - 10 - 26

JUDGMENT

P Padman Surasena J

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

As the Petitioner 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 Kandy seeking an order to evict the Petitioner from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2016-03-31 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 Petitioner had filed a revision application in the Provincial High Court of Central Province holden at Kandy seeking a revision of the order of the learned Magistrate.

The Provincial High Court after the said application was supported in Court, had refused to issue notices on the Respondents by its order dated 2016 - 05-23, holding that there is no basis to find any illegality in the learned Magistrate.

It is against that order that the Petitioner has filed this application in this Court.

The position taken up by the Petitioner in the Provincial High Court is that the quit notice was not duly served on him. Learned Provincial High Court Judge has refused to issue notices on the Respondents as the Petitioner

had failed to raise the said issues before the Magistrate's Court. Provincial High Court had taken the view that such issues cannot be raised for the first time before the appellate forum.

The above issue appears to be a question of fact in respect of which there is no pronouncement by the original Court.

In any case, the purpose of issuing a quit notice is to provide adequate time for the occupier to vacate the relevant premises. In the case of Gunaratne V Abeysinghe,¹ it was held that the occupier in that case has had adequate time to make arrangements even though the stipulated time of 30 days had not been given. Hence, in that case it was held that no prejudice was caused to the occupier in that case. In the instant case, also the situation is the same.

The other grounds urged by the Petitioner are factual positions, which had not warranted any intervention by the Provincial High Court.

Thus, this Court sees no merit in this application.

¹ 1998 (1) Sri. L. R. 255.

Indeed perusal of the journal entries in the docket does not indicate either it was satisfied that there is a matter to be looked into or that it had issued notices on the Respondent. There is no record that this application had been supported by the Petitioner for notices. Therefore, the Petitioner is anyway not entitled to maintain this application.

For the foregoing reasons, this Court decides to dismiss this application with costs.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL