

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) / 118 / 2008

Provincial High Court of

Central Province (Kandy)

Case No. HCR 33 / 2005

Manoja Jayanetti ,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
No. 55/75,
Vauxhall Street,
Colombo 02.

COMPETENT AUTHORITY -
APPLICANT - PETITIONER -
APPELLANT

-Vs-

Govinda Rajgopal,
92,
JEDB Quarters,
Dunbar Road,
Hatton.

RESPONDENT - RESPONDENT -
RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Manoli Jinadasa for the competent Authority - Applicant -
Petitioner - Appellant.

J C Weliamuna for the Respondent - Respondent - Respondent.

Decided on : 2017 - 11 - 16

JUDGMENT

P Padman Surasena J

Learned counsel for all the Parties when this case came up on 2017-07-25 before us, agreed to have this case disposed of, by way of written submissions they had already filed. They agreed that this Court could pronounce the judgment after considering the contents of the said written submissions they had already filed.

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

As the Respondent had failed to quit, the Appellant had made an application under section 5 of the Act to the Magistrate's Court of Hatton

seeking an order to eject the Respondent from the land described in the schedule mentioned in the said application.

Learned Magistrate, after an inquiry, had pronounced the order dated 2005-03-21 refusing the said application.

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

The Provincial High Court after the conclusion of the argument had pronounced its judgment dated 2008 -09-11, refusing to revise the said order and proceeding to dismiss the said revision application.

Both the learned Magistrate and the High Court Judge had considered in their judgments, the submission made on behalf of the Respondent regarding the existence of an order of Court in the case No. 81729, which had been previously filed.

It is to be noted that the said Magistrate's Court case No. 81729 had been filed under the Government Quarters (Recovery of Possession) Act.

Learned Magistrate in that case had issued an order to evict the Respondent from the quarters relevant to that case.

The corresponding revision application filed in the Provincial High Court with regard to the case¹ under Government Quarters (Recovery of Possession) Act is the case No. HC 73/2000 (Rev). Learned Provincial High Court Judge in that case had set aside the learned Magistrate's order to evict the Respondent from the said quarters on the basis that the lessee of the Estate, Watawala Plantations Company had no authority to issue a quit notice.

The application to the Magistrate's Court in the instant case has been made by the Competent Authority of the Ministry of Plantation Industries.

The question whether it is lawful for such competent authority to issue a quit notice in this kind of a situation² has been considered by this Court in the following cases;

- i. N Chandrabose V Sunil Chandra Kumara De Alwis and two others, [C A (Writ) Application No. 920/2000 decided on 2003-05-12]³,
- ii. Manikkam Muthuvelu V Beynanda Dias and Bogawanthalawa Plantations Ltd, [C A Application No. 573 / 2002 decided on 2004-05-31]⁴, [the Supreme Court had refused leave to appeal application

¹ Case No. 81729.

² Where the relevant state land has been leased out to a company.

³ A copy of the judgment is at page 729 of the brief.

⁴ A copy of the judgment is at page 739 of the brief.

(SC Spl LA No. 171/2004 decided on 2004-11-24) filed against this judgment.⁵

The view expressed by this Court in the above cases is that it is lawful for such a competent authority to initiate recovery proceedings to obtain the possession of state lands under the provisions of State Lands (Recovery of Possession) Act. Therefore, the application filed by the Appellant in the Magistrate's Court in the instant case is lawful.

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 Board⁶ had held that in an inquiry under State Lands

⁵ A copy of the judgment is at page 757 of the brief.

(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 invalid⁷.

This Court had further held in that case⁸ that if the above burden is not discharged, the only option available for the Magistrate is to make an order of eviction.

The Supreme Court in the case of L H M B B Herath, Chief Manager Welfare and Industrial Relations, Sri Lanka Ports Authority V Morgan Engineering (Pvt) Ltd.⁹ also had held that the above is the limited scope of the inquiry, which should be conducted by the Magistrate under section 9 of the Act.

Next question this Court should consider is whether there is any legal bar for such an application to be entertained by Court in view of the presence

⁶ 1992 , Sri L R Volume : 1 , Page No : 110

⁷ Section 9 of the Act

⁸ Muhandiram V Chairman, Janatha Estate Development Board (Ibid).

⁹ SC Appeal 214/2012 decided on 2013-06-27.

of a previous order made by Court in a case filed under the provisions of Government Quarters (Recovery of Possession) Act.

As a precursor to the consideration of the above question, it would be desirable for this Court to proceed to ascertain first whether indeed there is a valid order of Court, which has previously adjudicated the very impugned issue before it.

It is clear that no proceedings under the State Lands (Recovery of Possession) Act had been instituted by the relevant Competent Authority previously. Therefore, the issue whether the Respondent 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 invalid¹⁰ remains an issue which has not been adjudicated by any Court up until now.

Further, this is not an issue that could or should be decided by Court in proceedings instituted under the provisions of Government Quarters (Recovery of Possession) Act. In any case, section 17 of the Act states that the provisions of the Act shall have effect notwithstanding anything

¹⁰ The only scope of the inquiry of such proceedings under section 9 of the State Lands (Recovery of Possession) Act.

contained in any other written law. This was recognized by this Court in the case of Manikkam Muthuvelu V Beynanda Dias and Bogawanthalawa Plantations Ltd.¹¹ also. As has been mentioned before this court has to re-iterate that the Supreme Court had refused leave to appeal application filed against this judgment¹².

On the other hand, a person who occupies a state land may have a valid permit or other written authority of the state at a given time but he may cease to have such authority later on. It can therefore be seen that the question whether a person who occupies a state land has a valid permit or other written authority of the state, is a question which varies with the passage of time. The answer to that question would depend on the time of its verification. This is perhaps why the legislature in its wisdom has included in section 9 of the Act, the phrase " ... and that such permit or authority is in force and not revoked or otherwise rendered invalid..."¹³. This means that in any case, any adjudication whether one possesses or occupies such land upon a valid permit or other written authority of the state granted in accordance with any written law and that such permit or

¹¹ Supra.

¹² Supra.

¹³ Section 9 of the Act

authority is in force and not revoked or otherwise rendered invalid¹⁴ cannot operate as *res judicata* for an indefinite period. This is because it is impossible for such a position to remain static.

Thus, the existence of previous orders both by the Magistrate's Court and the High Court in a case filed under the provisions of Government Quarters (Recovery of Possession) Act cannot operate as *res judicata* against the institution and proceedings of the instant case as the issue to be decided in the instant case is quite different. Therefore, there is no merit in the submission made on behalf of the Respondent regarding the application of the principle of *res judicata* to these proceedings.

The Respondent has failed to establish that he is in possession or occupation of the relevant 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.

This Court therefore decides to allow this appeal. The order of learned Magistrate dated 2005-03-21 as well as the judgment of the Provincial High Court dated 2008-09-11 are hereby set aside. This court directs that the

¹⁴ Section 9 of the Act

order applied for by the Appellant to evict the Respondent from the relevant land be issued forthwith.

Respondent is directed to pay a state cost of Rs. 50,000/=

Learned Magistrate is directed to enforce this order without delay.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL