

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) / 182 / 2014

Provincial High Court of

Western Province (Colombo)

Case No. HCRA 105 / 2012

Magistrate's Court (Fort)

Application No. S/72689/11

New Zealand College of Technological
Studies (Pvt) Ltd,
2nd Floor,
No. 320,
Darley Road,

Maradana,
Colombo 10.

RESPONDENT - PETITIONER -
APPELLANT

-Vs-

Janatha Estate Development Board,
No. 55/75,
Vauxhall Lane,
Colombo 02.

APPLICANT - RESPONDENT -
RESPONDENT

Before: P. Padman Surasena J (P/CA)

K K Wickremasinghe J

Counsel; Dulindra Weerasooriya PC with Kanishka Gunawardena for the Respondent - Petitioner - Appellant.

Charith Galhena with Asela Rajapaksha for the Applicant - Respondent - Respondent.

Argued on : 2017 - 10 - 27

Decided on : 2018 - 02 - 15

JUDGMENT

P Padman Surasena J (P/CA)

This case namely CA (PHC) 182/2014 and CA (PHC) APN 37/2015 are both in respect of the same order pronounced by the Provincial High Court.

While the former is the appeal the latter is the revision application. Both these cases seek to challenge one and the same order pronounced by the learned Provincial High Court Judge dated 2014-09-24. Therefore this judgement should apply to both the above mentioned cases.

The Applicant - 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 Fort seeking an order to evict the Appellant from the premises described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2012-08-03 evicting the Appellant from the relevant premises 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 of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Western Province holden in Colombo 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 2014-09-24, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court on that basis had proceeded to dismiss the said revision application.

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

It is the position of the learned counsel for the Appellant that the provisions of the State Lands (Recovery of Possession Act) as amended cannot be made use of, to evict a person from a floor other than the Ground floor of a multi storied building.

Perusal of wordings in section 3 shows that the provisions of the Act can be used when a competent authority forms the opinion that any land is a state land. The word "state land" has been defined in section 18 of the Act.

The relevant part of section 18 is as follows;

"State land" means land to which the State is lawfully entitled or which may be disposed of by the State together with any building standing

thereon, and with all rights, interests and privileges attached or appertaining thereto and includes -

- a.
- b. land vested in or owned by, or under the control of
 - i.
 - ii. any corporate body established by or under the ..., the state agricultural corporations act, No. 11 of 1972...,

Let us assume for a moment that an unauthorized occupier has constructed multi storied building on a state land. However he takes care not to occupy the ground floor but takes the advantage of fully using the other floors above the ground floor. He ensures that he has nothing left in the ground floor. If the argument put forward by the Petitioner is to be upheld there is no way that the state can recover the possession of that land. The simple reason is that he does not occupy the ground floor. This illustration shows clearly that such an interpretation is absurd and negates the whole purpose of the Act. It will only give a free license for the squatters to unlawfully occupy the state lands with impunity. All what such person needs to do is a simple strategy such as the above.

As has been held by S. N. Silva J (as he then was) in the case of Ihala Pathirana Vs Bulankulame, Director General, UDA¹ 'the clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action'.

In that case also the UDA by an agreement had appointed the Petitioner in that case as manager of a rest house to manage and operate the rest house for a certain period on such terms and conditions. As the Petitioner in that case had breached the said terms and conditions the said agreement had been terminated. It was thereafter that the UDA had served a quit notice under the State Lands (Recovery of Possession) Act.

This Court held in that case that the mere fact that a civil action is possible does not have the effect of placing the land described in the quit notice outside the purview of the State Lands (Recovery of Possession) Act.

Referring to the definition of the phrase 'unauthorized possession or occupation' in section 18 of the Act this Court has held as follows,

¹ 1988 01 SLR 416

"... this definition is couched in wide terms so that, in every situation where a person is in possession or occupation of state land, the possession or occupation is considered as unauthorized unless such possession is warranted by a permit or other written authority granted in accordance with any written law. Therefore I am unable to accept the contention of the counsel for the Petitioner that the land which is the subject matter of an agreement in the nature of the document marked **P 1** comes outside the purview of the State Lands (Recovery of Possession) Act..."

For the foregoing reasons this Court cannot accept the Petitioner's argument.

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, this appeal must necessarily fail. For the foregoing reasons, this Court decides to dismiss this appeal with costs. The application bearing No. C A (PHC) APN 37/2015 must also stand dismissed with costs.

Both cases dismissed with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL