

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) 97 / 2012

Provincial High Court

of Sabaragamuwa Province (Rathnapura)

Case No. HCR (RA) 08 / 2008

Magistrate's Court Pelmadulla

Case No. 29735

K M Sumanasiri,

Near bridge,

Kahawatta.

RESPONDENT - PETITIONER -

APPELLANT

-Vs-

1. General Manager,

Road Development Authority,

Sethsiripaya,

Battaramulla.

APPLICANT - RESPONDENT -

RESPONDENT

2. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENT - RESPONDENT

Before: P. Padman Surasena J (P / C A)

K K Wickremasinghe J

Counsel; Shrihan Samaranayake for the Respondent - Petitioner - Appellant.

Manohara Jayasinghe SC for the Respondent - Respondent.

Argued on : 2017 - 10 - 26

Decided on : 2018 - 03 - 29

JUDGMENT

P Padman Surasena J

The Applicant - 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 Pelmadulla 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 2008-01-07 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 2012-05-30, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court had therefore proceeded to dismiss the said revision application.

It is against that judgment that the Appellant has appealed to this Court.

The position taken up by the Appellant that it is not the proper competent authority who has invoked the jurisdiction of the Magistrate's Court in this case, has been dealt with by the learned Provincial High Court Judge.

Indeed the Appellant has not made any complaint regarding that finding before this Court.

An argument has been advanced by the learned counsel for the Appellant that the documents produced marked ⓐ 1 - ⓐ 6 have established that the Appellant is the owner of the disputed land. This court also has perused the said documents, and has been satisfied that none of those documents has served such a purpose. Indeed they are far from establishing such ownership. Therefore, the said argument by the Appellant must necessarily fail.

It must also be noted that section 09 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 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, the appellant has to be necessarily evicted from this land.

¹ 1992 (1) SLR 110

For the foregoing reasons, this Court decides to dismiss this appeal with an additional cost of Rs. 35,000 Payable to state by the Appellant.

Appeal is dismissed with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL