

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

In the matter of an application under
Article 154P (6) of the Constitution
and the High Court of the Provinces
(Special Provisions) Act No.19 of
1990.

C.A.(PHC) No. 59/2013

P.H.C. Colombo No. HCRA 54/2011

M.C. Fort No. S72342/11

J.A. Seetha
No.64/ A, Karagalla,
Kosgama
Respondent-Petitioner-Appellant

Vs.

Ariyadasa Gamage Mahanama,
General Manager of Railways,
Office of the General Manager
Railways,
No.355.
Colombo10.
**Applicant-Respondent-
Respondent**

Hon. Attorney General
Attorney General's Department,
Colombo 12.
Respondent-Respondent

BEFORE : JANAK DE SILVA, J. &
ACHALA WENGAPPULI, J.

COUNSEL : Respondent-Petitioner-Appellant is absent
and unrepresented.
Maithri Amarasinghe S.S.C. for the Applicant-
Respondent-Respondent.

ARGUED ON : 19th March, 2018

DECIDED ON : 04th May, 2018

ACHALA WENGAPPULI, J.

This is an appeal against the order of the Provincial High Court holden in Colombo, pronounced in a revision application filed against an order made under the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, (hereinafter referred to as the said Act) by the Fort Magistrate's Court.

The Applicant-Respondent-Respondent (hereafter referred to as the Respondent), the General Manager of Railways, moved the Fort Magistrate's Court for an order of eviction of the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") from the portion of State land described in the schedule to his application. After an inquiry, the Magistrate's Court made order for evicting the Appellant from the said portion of State land. The Appellant then invoked revisionary jurisdiction of the Provincial High Court holden in Colombo to set aside

the said order. The High Court by its judgment dated 2nd April 2013 dismissed the petition.

In challenging the legality of the said judgment, the Appellant has stated in her petition of appeal that the High Court was in error when it considered only the Respondent's case and it has failed to consider all the applicable laws. It is further stated by the Appellant that since 1990 she has paid rent annually to the Respondent for the boutique she has constructed on the said State land and she had a valid lease agreement with the Respondent, when he instituted these proceedings.

When this appeal was taken up for hearing on 19th March 2018, the Appellant was absent and unrepresented. She was present in Court with her Counsel on 12th January 2018, when her appeal was fixed for hearing. The Appellant was absent and unrepresented on 21st November 2017 as well, having had sufficient notice of the later date. Nonetheless, this Court will consider her appeal.

The complaint of the Appellant that the High Court has failed to consider the applicable laws and has only considered the Respondent's case needs to be considered in the light of the applicable legal principles.

It is clear from the record that the Magistrate's Court has issued summons on the Appellant in compliance of section 6(1) of the said Act and to show cause as to why she should not be evicted from the said premises. It is also clear that when the Appellant appeared before it, the Magistrate's Court has held an inquiry.

The scope of such an inquiry is clearly demarcated in the provisions of section 9(1) of the said Act. It has clearly been held by this Court in

Muhandiram v Chairman, Janatha Estates Development Board (1992) 1 Sri L.R. 110, *Nirmal Paper Converters v Sri Lanka Ports Authority* (1993) 1 Sri L.R. 219 and *Perera v Divisional Secretary, Naula CA/PHC/41/2008* (C.A. minutes of 31.01.2017), that in such an inquiry, the only ground on which the Appellant is entitled to remain on the State land is upon a production of a valid permit or other written authority of the State, granted according to any written law, which is currently in force.

There was no such permit or any other written authority that was produced enabling the Appellant to occupy the said land in the Magistrate's Court or in the Provincial High Court. In fact, the Appellant has clearly averred in the affidavit filed before the High Court that she occupied the State land without payment of rent or lease rental.

In view of these considerations, we find that the appeal of the Appellant is devoid of any merit and therefore ought to be dismissed.

The appeal of the Appellant is accordingly dismissed without costs.



JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.



JUDGE OF THE COURT OF APPEAL