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

In the matter of an appeal made in terms of Article 154P(6) read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

W.M. Ranjith Wimalasiri Wijethunga,
Residential Project Manager,
Victoria Project,
Mahaweli Autority,
Digana.

PETITIONER.

C.A. (PHC) No. 185/2013
P.H.C.Kandy No. Rev. 49/2012
M.C.Teldeniya No. 6591

Vs.

K.M.N. Kulasekera,
No.383/1,
Park Road,
Teldeniya.

RESPONENT.

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K.M.N. Kulasekera,
No.383/1,
Park Road,
Teldeniya.

RESPONENT -PETITIONER.

Vs.

W.M. Ranjith Wimalasiri Wijethunga,
Residential Project Manager,
Victoria Project,
Mahaweli Autority,
Digana.

APPLICANT-RESPONDENT

And now between

W.M. Ranjith Wimalasiri Wijethunga,
Residential Project Manager,
Victoria Project,
Mahaweli Autority,
Digana.
APPLICANT-RESPONDENT-PETITIONER.

Vs.

K.M.N. Kulasekera,
No.383/1,
Park Road,
Teldeniya.
RESPONDENT-PETITIONER-RESPONENT.

****

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

COUNSEL : Indula Ratnayake S.C. for the Applicant-Respondent-Petitioner.
Lal Wijenayake for the Respondent-Petitioner-Respondent.

ARGUED ON : 03rd May, 2018

WRITTEN SUBMISSIONS BY BOTH PARTIES TENDERED ON : 14th May, 2018

DECICED ON : 25th May, 2018

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ACHALA WENGAPPULI, J.

The Applicant-Respondent-Petitioner (hereafter referred to as the "Petitioner"), by invocation of the appellate jurisdiction of this Court, seeks to set aside the order dated 20th November 2013 of the Provincial High Court holden at Kandy.

The Provincial High Court, in exercising its revisionary jurisdiction, has set aside an order of eviction issued by the Magistrate's Court of Teldeniya on 13th March 2012 under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (hereafter referred to as the "Act").

Upon perusal of the proceedings before both Courts, it is evident that the Petitioner has issued a notice to quit on the Respondent-Petitioner-Respondent (hereafter referred to as the "Respondent") on 23rd August 2011 and has displayed it on the State land described in the schedule to the said notice. Thereafter, the Petitioner instituted proceedings in the Magistrate's Court of Teldeniya, seeking an order of eviction against the Respondent, under Section 5 of the said Act.

After an inquiry, in which the parties were duly represented, the Magistrate's Court has issued an order of eviction on the Respondent. The Respondent has thereafter sought to revise the said order of eviction by invoking revisionary jurisdiction of the Provincial High Court. He was

successful in his endeavour as the Provincial High Court ,by its order dated 4th December 2013, has set aside the order of eviction.

Aggrieved by the said order of the Provincial High Court, the Petitioner lodged an appeal seeking intervention of this Court to set aside the said order of the Provincial High Court.

At the hearing of this appeal, learned State Counsel who appeared for the Petitioner submitted that the Respondent has failed to tender a valid permit or other written authority of the State, which was not revoked or otherwise rendered invalid before the Magistrate's Court and therefore the learned Magistrate has, in compliance of the statutory provisions of the said Act, issued the order of eviction.

However, the learned High Court Judge, after considering the claim of the Respondent that he is in possession of the portion of the State land described in the schedule, on behalf of its permit holder *Kankanamlage Gamini Sarachchandra,* has erroneously concluded that it is unjust to evict the Respondent without making the said *Kankanamlage Gamini Sarachchandraa* party to the case.

It has also considered the fact that the said *Sarachchandra* had been issued with a permit to the land and upon that he has already constructed a house on the said land at a cost of over Rs. 3 Million.

Learned State Counsel contended that the Provincial High Court has considered extraneous factors in revising the order of the Magistrate's Court and therefore the impugned order of the Provincial High Court ought to be set aside.

In his reply, learned Counsel for the Respondent submitted that he was placed in possession of the said allotment of State land by *Sarachchandra* who had a valid permit. It is stressed that the attempt made by *Sarachchandra* to intervene in the proceedings before the Magistrate's Court was unsuccessful. It is submitted that the said refusal of his application to intervene was founded upon several adverse findings, which in turn were made without giving an opportunity for the permit holder to present his case. According to the Respondent, this is an instance of violation of rules of natural justice.

He further submitted that *Sarachchandra* was given a permit on the condition that if he constructed a house within 6 months, he is entitled to have a long lease to the possession of the said State land. He claims that he has satisfied this requirement and there is no document to prove the fact that the permit issued to him was cancelled.

Learned High Court Judge, in allowing the application of the Respondent to revise the order of eviction issued by the Magistrate's Court, concluded that the Petitioner has failed to name *Sarachchandra* as a party and thereby depriving him of an opportunity to tender the permit is unjust.

He also relied on the reasoning of the judgment of the Supreme Court in Appeal No. 138/96 in support of his conclusion that allowing the Petitioner to enforce the eviction order, would have caused *Sarachchandra* grave prejudice, since he (*Sarachchandra*) has paid the lease payments up to 31st October 2006, in respect of the said State land.

Thus, it is clear that the Provincial High Court has decided to exercise its revisionary jurisdiction over the order of eviction on these two grounds.

There is no dispute that the land described in the schedule to the application filed by the Petitioner before the Magistrate's Court is a State land. It is also not disputed that *Sarachchandra* was issued with a permit in relation to the said State land with certain conditions attached. The Respondent has received the quit notice issued by the Petitioner and has replied to it through his Attorney (X7). In the said reply the Respondent informed that *Sarachchandra* is the licensee for the said land and if any legal action is contemplated, it should be instituted against the said licensee.

In view of these factors, it is evident that at the time of the service of quit notice, it was the Respondent who was in possession of the said State land. It is also evident that the Respondent had no "valid permit or other written authority of the State granted in accordance with any written law" to be in possession of the said State land. His claim is that he came into possession with the leave and licence of *Sarachchandra* who had been issued with a permit for the said State land and resided elsewhere when the quit notice was served.

Therefore, the Respondent is clearly a person who is in unauthorized possession or occupation of State land.

Section 3(1) of the Act imposes a duty on the Petitioner to provide for a period not less than 30 days from the date on which the quit notice was issued to comply with it. The quit notice is dated 23.08.2011 and the Respondent was directed to handover vacant possession on or before

30.09.2011. The Petitioner has thereafter filed his application in the Magistrate's Court of Teldeniya on 18.11.2011.

The Respondent did not at any point of time challenge the validity of the said quit notice served on him and sought remedies available under public law. In ***Dayananda v Thalwatte***(2001) 2 Sri L.R. 73, this Court, having observed that " *an aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari and if the application is to compel an authority to perform a duty he would ask for a writ of mandamus and similarly if an authority is to be prevented from exceeding its jurisdiction the remedy of prohibition was available*" proceeded thereafter to hold that "*institution of proceedings in the Magistrates Court in terms of the quit notice is not a determination affecting legal rights.*" It further held that "*it was open for the Petitioner to seek to quash the quit notice by way of certiorari when the determination was made ... or to move in revision at the conclusions of the Magistrate's findings*".

Thus, it is seen that the selection of the best remedy from these options had to be made by the Respondent at the appropriate juncture and the Courts would employ different considerations in evaluating claims under these separate legal remedies. The considerations that might assume importance in an application for the issuance of a prerogative writ, might not be useful in an application made for a discretionary remedy such as revision. The Provincial High Court has fallen into error in its failure to appreciate this inherent distinction between the two distinct legal remedies.

When an application is made under Section 5(1) of the Act, the relevant Magistrate's Court is under a legal duty to issue summons on a Respondent directing him to show cause as to why he should not be ejected from the State land. Section 8(1) and 9(1) of the Act provides for the situation that when such a Respondent appears before Court and states he has cause to show to hold an inquiry.

However, the scope of such inquiry is limited by Section 9(1) to the following, as decided by this Court in C.A./PHC/41/2010 - C.A. minutes of 31.01.2017;

> *"Under section 9 of the State Land (Recovery of Possession) Act the scope of the inquiry is limited to for the person noticed to establish that he is not in unauthorized occupation or possession by establishing that;*
>
> 1. *Occupying the land on a permit or a written authority.*
> 2. *It must be valid permit or a written authority.*
> 3. *It must be in force at the time of presenting it into Court.*
> 4. *It must have been issued in accordance with any written law."*

The Respondent, in an attempt to show cause, sought to tender a permit issued to *Sarachchandra* annexed to his affidavit marked X-1 and stated that he came to occupy the said State land with leave and license of the said permit holder.

The permit, which was issued on 31.10.2005 for a period of one year, could be revalidated upon making yearly payment of Rs. 12,000.00 to the

Petitioner. The receipt marked X-2 confirms that *Sarachchandra* has paid Rs. 36,000.00 on 31.05.2005. That would result in conferring validity to the permit until 31.10.2006. The receipt was issued for payment of rent for the year 2005 and the amount also included payments for unspecified "past dues". As already noted, the quit notice is dated 23.08.2011 and the permit has become an invalid document by then.

When considered in this light, the Respondent's claim of occupying the State land with leave and license of *Sarachchandra* adds nothing to his cause before the Magistrate's Court. Wording of Section 9(1) of the Act to the effect that "such permit or authority is in force and not revoked or otherwise rendered invalid" covers this type of situation. The validity of the permit marked X-1, clearly has lapsed long before the quit notice was issued or has "otherwise rendered invalid" by the failure to pay the annual rent stipulated by the issuing authority.

It is thus clear that the issuance of the order of eviction by the Magistrate's Court on the Respondent who occupied State land without valid permit or authority has been validly made adopting statutorily specified considerations.

The quit notice and the application for an order of eviction were issued in respect of the Respondent who was in unauthorized possession or occupation of State land. The fact that at an earlier point of time a permit was issued to *Sarachchandra* has no relevance to the proceedings before the Magistrate's Court. Clearly *Sarachchandra* was not in possession or occupation of the said State land and when the Petitioner issued quit notice on the Respondent and sought an order of his eviction, it made no

determination on the rights of *Sarachchandra.* Therefore, he is not a necessary party to the proceedings before the Magistrate's Court.

In this respect, it is relevant to note that the Petitioner, in his statement of objections, has averred that *Sarachchandra* never was in possession of the said State land since granting of permit and he made no application to extend validity of the permit after 31.10.2006. In addition, *Sarachchandra* has acted in violation of some of the conditions stipulated in the said permit as he has sublet the land to the Respondent and failed to commence building on the land within the required six-month period. However, it added that the building shown in the photographs was constructed recently without obtaining proper prior approval and therefore the permit holder was clearly in breach of the said conditions.

These assertions were not countered by the Respondent. That being the position, it is abundantly clear that even if *Sarachchandra* was in possession of the State land when the quit notice was issued by the Respondent, he too was in unauthorized occupation or possession of the said State land.

However, the basis on which the Provincial High Court allowed Respondent's application needs further consideration.

It apparently considered that the payment of Rs. 36,000.00 as payment of the annual rent for a three-year period. The receipt does not indicate such a position. As already noted it described the payment as rent for the year 2005 and also for unspecified past dues. The payment was made on the same day on which the permit was issued. Since then there was no payment of rent made either by *Sarachchandra* or by the

Respondent, who came to possess the land through him. This is a clear indication of the status of *Sarachchandra* in relation to the permit since he made only one payment and that too is for the 1st year of occupation of the State land.

The judgment of the Supreme Court of S.C. Appeal No. 138/96 S.C.M. 26.02.1999, relied upon by the Provincial High Court to revise the order of eviction, was made in an application for a prerogative writ. In that matter, an application was made before the apex Court to quash the quit notice issued on the applicant, in spite of making several payments. The Supreme Court has quashed the impugned quit notice on the basis that the competent authority has accepted payment for several years as rent for the disputed portion of the State land by considering that the payment and acceptance of rentals, it cannot be said that the appellants are in *"unauthorized possession or occupation"* and therefore the quit notices are *"ultra vires, invalid and void in law"*.

It is unfortunate that the Provincial High Court did not appreciate that the matter pending before it was a revision of proceedings instituted under the Section 5(1) whereas the judgment of the Supreme Court dealt with the validity of the quit notice in an application for a prerogative writ.

It is our considered view that the learned High Court Judge has misapplied the reasoning of the Supreme Court to the revision application before him.

In ***Nissanka v State***(2001) 3 Sri L.R. 78, it was held that the power of revision can be exercised for any of the following purposes viz ;

1. to satisfy the Appellate Court as to the legality of any sentence/order,
2. to satisfy the Appellate Court as to the propriety of any sentence/order,
3. to satisfy the Appellate Court as to the regularity of the proceedings of such Court.

The order of eviction issued by the Magistrate's Court is not tainted with any of these considerations which makes it liable to be interfered with and therefore, the Provincial High Court has fallen into error when it decided to overturn it exercising revisionary jurisdiction.

Accordingly, we allow the appeal of the Petitioner by setting aside the order of the Provincial High Court dated 20th November 2013.
No costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL