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

In the matter of an Appeal in terms of Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with PART 1 of the Court of Appeal (Procedure for appeals from High Courts established by Article 154P of the Constitution) Rules, 1988.

C.A.(PHC) No. 140/2006
P.H.C. Anuradhapura No. Rev. 43/2004
M.C. Kekirawa No. 17720

Pahalagedara Kumarasiri Jayalath
Divisional Secretary,
Palugaswewa.

Applicant

Vs.

Lesley Pathberiya,
No.222, Dambulla Road,
Habarana.

Respondent

AND BETWEEN

Pahalagedara Kumarasiri Jayalath
Divisional Secretary,
Palugaswewa.

Applicant-Petitioner

Vs.

Lesley Pathberiya,
No.222, Dambulla Road,
Habarana.

Respondent- Respondent

AND NOW BETWEEN

Lesley Pathberiya,
No.222, Dambulla Road,
Habarana.

Respondent-Respondent-Appellant

Vs.

Pahalagedara Kumarasiri Jayalath
Divisional Secretary,
Palugaswewa.
Applicant-Petitioner-Respondent

****

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

COUNSEL : Chandana Premathilake with Yuran Liyanage for the Respondent-Respondent-Appellant

Drushila Jayanthakumar Junior-Assistant-State Attorney for the Applicant—Petitioner-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 25-11-2016 (by the Respondent)

11-01-2017 & 30-05-2018 (by the Appellant)

DECICED ON : 14th June, 2018

****

ACHALA WENGAPPULI, J.

This is an appeal filed by the Respondent-Respondent-Appellant (hereinafter referred to as the "Appellant") against the order of the Provincial High Court, holden in Anuradhapura, delivered on 08.05.2006 allowing an application by the Applicant-Petitioner-Respondent (hereinafter referred to as the "Respondent") to revise an order of Kekirawa Magistrate's Court in case No. 17720, delivered on 18.06.2004.

The Respondent made an application to Kekirawa Magistrate's Court for the eviction of the Appellant from the State land described in its schedule, under Section 5(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (hereinafter referred to as the "Act"). After an inquiry, the Magistrate's Court has made order dismissing the application of the Respondent on the basis that the Appellant has satisfied the Court that the annual permit issued to him has not been cancelled or revoked.

In view of the dismissal of his application, the Respondent has invoked the revisionary jurisdiction of the Provincial High Court to set aside the said order of dismissal. After an inquiry into the revision application, the Provincial High Court made the impugned order setting aside the order of dismissal made by Kekirawa Magistrate's Court.

Being aggrieved by the said order of the Provincial High Court, the Appellant sought intervention of this Court to set it aside.

The appeal of the Appellant was initially rejected by this Court for non-payment of brief fees. Then the Appellant satisfied this Court that he was not served with a notice and his appeal was accordingly restored to the roll on 11.11.2013.

At the hearing of this appeal on 15.05.2018, the parties invited this Court to pronounce judgment on the written submissions. The Appellant has tendered written submissions, initially on 11.01.2017 and by way of a motion, further written submissions on 30-05-2018.

In support of his appeal, the Appellant submits that the Provincial High Court was in error when it failed to consider the following;

a. the permit became cancelled only in relation to a part of the State land and not in its entirety,
b. no extent of land given in the quit notice,
c. the permit was not revoked or rendered invalid otherwise,
d. the Appellant was not given notice of the cancellation of permit or that it would not be renewed,
e. the Respondent acted in violation of the Appellant's "legitimate expectation" of a long-term permit.

These grounds, relied upon by the Appellant in support of his appeal, are based on the question of legal validity of the course of action taken by the Respondent before making his application to Kekirawa Magistrate's Court.

It is evident from the perusal of the provisions contained in the said Act, the starting point of any action by the Respondent under its provisions, is with a formation of an opinion. Section 3(1)(a) and (b),

enables a Competent Authority to form an opinion in relation to two aspects. Firstly, he must form an opinion that the land in question is a State land. Secondly, he must form an opinion that the person in possession of such State land is in unauthorised occupation. If he could form opinion on these two aspects, then the law provides for the next step in the recovery of possession of the State land.

Having formed opinion, the Competent Authority then could issue a quit notice on such unauthorised occupier. If the unauthorised occupier fails to deliver vacant possession by the stipulated date, then the Competent Authority is empowered to seek judicial intervention to recover possession by making an application for an order of eviction.

The Competent Authority need not establish that the land in question is a State land and the person is in unauthorised occupation as per provisions of Section 9(2) of the Act, apart from affirming it in his affidavit to Court that it is so.

In ***Farook v Gunewardene, Government Agent, Apmarai*** (1980) 2 Sri L.R. 243, this Court has held that:

> *"the structure of the Act would also make it appear that where the Competent Authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion."*

Then the only option available for a person, who is in unauthorised possession of a State land in the opinion of the Competent Authority, is to satisfy Court in an inquiry conducted under Section 8 of the said Act that he is in possession of State land upon a "permit or authority in force and

not revoked or otherwise rendered invalid". 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 unauthorised occupation or possession by establishing that;*
>
> 1. *Occupying the land on a permit or a written authority.*
> 2. *It must be a 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."*

Therefore, unless the person who is in possession of the State land, establishes all of the above, the Magistrate's Court has no option but to allow the application by the Competent Authority.

In the instant appeal, the learned Magistrate has clearly applied the relevant legal principles. Unfortunately, the learned Magistrate has fallen into error when he considered the fact that the Appellant has satisfied him that the annual permit issued to the Appellant has not been revoked or rendered invalid by the Respondent. This conclusion conflicts with the opinion of the Competent Authority. In other words, learned Magistrate concluded that the Competent Authority has not revoked the annual permit by issuance of notice of cancellation of the annual permit on the Appellant. In arriving at this conclusion, learned Magistrate relied on

Regulation 214(14) of the ඉඩම් කාර්ය සංග්‍රහය. This is not what the law expects.

Section 9(1) of the Act clearly laid down the scope of an inquiry and the judgments pronounced by superior Court have established binding precedents with clear exposition of the applicable principles of law to a given situation. The Section 9(1) imposes a duty on the person who is in possession of State land to "establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State ... and that such permit or authority is in force and not revoked or otherwise rendered invalid".

The permit issued by the Respondent on 01.06.1994 is subject to the conditions that, unless the permit is renewed at the discretion of the Government Agent, its validity should cease after 31.12.1994.

The Learned Magistrate's conclusion is therefore clearly erroneous as the Appellant has only established that he was issued with an annual permit initially. But the learned Magistrate failed to appreciate the fact that the Appellant did not establish "... such permit or authority is in force and not revoked or otherwise rendered invalid". This is a positive obligation imposed on the Appellant by clear statutory provisions and proof of its negative, that there was no notice of cancellation of his permit by the Competent Authority would not suffice to establish the fact that "... such permit or authority is in force and not revoked or otherwise rendered invalid". This burden always lies with the Appellant.

This position is clearly enunciated by Grero J in ***Muhandiram v Chairman, JEDB***(1992) 1 Sri L.R. 110, where it was held thus;

> *"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-petitioner and his dependents to be ejected from the land."*

In view of the forgoing reasons, this Court concurs with the determination of the Provincial High Court. Therefore, the appeal of the Appellant is clearly devoid any merit and accordingly it ought to be dismissed.

Appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL