

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

In the matter of an application in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Order of the Learned High Court Judge of Matara made in the Provincial High Court of Sourthern Province holden in Matara Revision Application No. HCRA/134/2013 on 28.10.2015.

NAMUNUKUKA PLANTATIONS PLC.

(Formerly known as Namunukula Plantations Ltd)

No.310, High Level Road,

Navinna, Maharagama.

**Case No. CA(PHC)APN 29/2016**

**High Court Matara Case No. 134/2013**

**Magistrate Court Matara Case No. 57846**

**RESPONDENT-RESPONDENT-PETITIONER**

**Vs.**

NIMAL PUNCHIHEWA,

Chairman,

Land Reforms Commission,

P.O. Box:1526,

No: C 82, Hector Kobbekaduwa Mawatha,

Colombo 07.

T.A. SUMANATISSA THAMBUGALA,

Former Chairman,

Land Reforms Commission,

P.O.Box:1526,

No: C 82, Hector Kobbekaduwa Mawatha,

Colombo 07.

**CLAIMANT-PETITIONER-RESPONDENT**

SAMPATH SUBASINGHE ARACHCHI,  
Present Chairman,  
Land Reforms Commission,  
475, Kaduwela Road,  
Battaramulla.

**ADDED CLAIMANT-PETITIONER-RESPONDENT**

**Before:** K.K. Wickremasinghe J.

Janak De Silva J.

**Counsel:**

Kushan De Alwis P.C. with C. Wickremanayake and Rajeev Wijesinghe for the Respondent-Respondent-Petitioner

D.H. Siriwardena for Claimant-Petitioner-Respondent

**Written Submissions tendered on:**

Respondent-Respondent-Petitioner on 28<sup>th</sup> May 2018

Claimant-Petitioner-Respondent on 3<sup>rd</sup> April 2018

**Argued on:** 21<sup>st</sup> February 2018

**Decided on:** 9<sup>th</sup> July 2018

**Janak De Silva J.**

This is an application in revision against the order of the learned High Court Judge of the Southern Province holden in Matara in Revision Application No. HCRA/134/2013 dated 28.10.2015.

The Claimant-Petitioner-Respondent (Respondent) instituted proceedings in the Magistrates Court of Matara in case No. 57846 under the provisions of the States Lands (Recovery of Possession) Act No. 7 of 1979 as amended (Act) to evict the Respondent-Respondent-Petitioner (Petitioner) from the land identified as Wellana Watta. The Petitioner appeared before the Magistrate and took up the position that Wellana Watta is part of Wellana Field of Bisodola Division of the Akuressa Estate, Thelijjawila. The Petitioner claimed that by operation of law, Akuressa Estate was vested in the Land Reform Commission (LRC) and that the ownership and possession of Akuressa Estate was transferred to the Sri Lanka State Plantations Corporation (SLSPC) by the LRC in terms of a notice published in the Gazette Extraordinary No. 181 of 2012 dated 27.02.1982.

The Petitioner further submitted that by Order published in terms of Section 2 of the Conversion of Public Corporation or Government Owned Business Undertaking into Public Companies Act No. 23 of 1987 in the Gazette Extraordinary No. 720/2 dated 22.06.1992, the Petitioner was incorporated to take over the functions of the SLSPC and the Janatha Estate Development Board set out in Part I of the schedule thereto which included the Akuressa Estate. The Petitioner claims that on or about 11.12.1995 a Memorandum of Record was entered into between the SLSPC and the Petitioner by which the SLSPC agreed to lease out the estates mentioned in the schedule thereto to the Petitioner for 53 years which included the Akuressa Estate. A Power of Attorney was also executed in 1995 in favour of the Petitioner enabling it to carry out the management of the estates specified therein including the Akuressa Estate.

Accordingly, it was the position of the Petitioner that it was in possession of Wellana Watta as part of Akuressa Estate under a valid permit/written authority of the State.

The Respondent denied this position and claimed that Akuressa Estate referred to in the documents relied on by the Petitioner and the Wellana Estate in relation to which the application was made under the Act are two different lands situated about 8 miles apart. To corroborate this position the Respondent, with the written submissions filed before the Magistrates Court,

submitted copies of two separate statutory declarations made in terms of section 18 of the LRC Act by the respective owners of Akuressa Estate and Wellana Estate marked as "Y1" and "Y2".

The learned Magistrate concluded that Wellana Watta is part of Wellana Field of Bisodola Division of the Akuressa Estate, Thelijjawila and rejected the position of the Respondent that Akuressa Estate and Wellana Estate are two different lands. He relied on document marked X5 by the Petitioner as part of his show cause and concluded that it was a map prepared by the Survey Department which corroborated this position.

He further held that possession of Akuressa Estate has been given to the Petitioner on a valid permit/written authority and dismissed the application of the Respondent.

The Respondent filed a revision application in the High Court of the Southern Province holden in Matara against the said order of the learned Magistrate. The learned High Court Judge decided that the learned Magistrate erred in concluding that X5 was a map prepared by the Survey Department when in fact it is stated to be "Extracted from sheet 91 prepared and printed by the Survey Department of Sri Lanka".

The learned High Court Judge further held that X5 was not satisfactory evidence to conclude that Wellana Watta was part of the Akuressa estate as it was a map of a large area and a small portion has been darkened and identified as Wellana Watta. The learned High Court Judge set aside the order of the Magistrate Court of Matara and directed the learned Magistrate to issue an order of eviction under the Act. Hence this revision application by the Petitioner.

The Petitioner relied on the following grounds in support of this revision application:

- (i) Respondent is not entitled to invoke the provisions of the Act against the Petitioner.
- (ii) The procedure in the Act cannot be used where there is a dispute on the identity of the land.
- (iii) The Respondent was not the competent authority in respect of the lands vested with the SLSPC.
- (iv) Petitioner has a valid permit/written authority to occupy the land in issue.

### ***Scope of the Act***

The Petitioner submits that the Act has been designed to evict persons who are under obligation to vacate state land which has been given to them on a contractual footing. In support of this proposition the judgment of the Supreme Court in *Senanayake v. Damunupola* [(1982) 2 Sri.L.R. 621] was cited where Victor Perera J. stated (at 628):

“A purposive examination and interpretation of this Law shows that it was enacted to get back possession of State land which had been, given to a person on a contractual footing and where there was an Obligation to vacate and give up possession or occupation on the happening of some event as a necessary consequence...

It was not meant to obtain possession of land which the State had lost possession of by encroachment or ouster for a considerable period of time by ejecting a person in such possession. Section 3 of this Law should not be used by a Competent Authority to eject a person who has been found by him to be in possession of a land in circumstances such as have transpired in this case.”

The long title to the main Act states that it is intended to make provisions for the “Recovery of possession of State land from persons in unauthorized or unlawful occupation thereof”. The main Act did not have a definition of what was meant by "unauthorized possession or occupation". It is in this context that the decision in *Senanayake v. Damunupola* (*supra*) was made.

After the decision in *Senanayake v. Damunupola* (*supra*) the main Act was amended by State Lands (Recovery of Possession) (Amendment) Act No. 29 of 1983. One of the amendments was to include a new definition of the word " unauthorized possession or occupation" to mean “except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law and includes possession or occupation by encroachment upon state land”. In *Shiyam v. Officer-in-Charge, Narcotics Bureau and another* [(2006) 2 Sri. L.R. 156] the Supreme Court held that in case of doubt, it is competent to look at Parliamentary debates on Acts to ascertain the intention of the law.

The Hon. Minister of Land, Land Development and Mahaweli Development during the second reading of the State Lands (Recovery of Possession) (Amendment) Bill [Parliamentary Debates, Volume 24 at pages 1504-5], which was subsequently passed as State Lands (Recovery of Possession) Act No. 29 of 1983, specifically stated that **the amendment is been moved due to the decision of the Supreme Court in *Senanayake v. Damunupola* (supra) which made it difficult to recover land belonging to the State and that recourse to existing law to recover possession of state land was time consuming.** Clearly, the intention of the amendment was to provide a swift and effective procedure by which the State can recover possession of state land instead of existing procedures.

*The legislative language will be interpreted on the assumption that the legislature was aware of existing statutes, the rules of statutory construction, and the judicial decisions and that if a change occurs in the legislative language a change was intended in legislative result* [N.S. Bindra's Interpretation of Statutes; 10<sup>th</sup> ed., page 235]. Therefore, I am of the view that the *ratio decidendi* in *Senanayake v. Damunupola* (supra) is no longer valid.

A competent authority can have recourse to the Act to evict any person who is in unauthorized possession or occupation of state land including possession or occupation by encroachment upon state land. Any possession or occupation without "a valid permit or other written authority of the State granted in accordance with any written law" is unauthorized possession. The procedure in the Act can be resorted to even where a party came into possession of the state land upon an agreement and the agreement has been terminated. The mere fact that the rights and liabilities under such agreement can be the subject matter of a civil action does not have the effect of placing the said state land outside the purview of the Act [*Ruby Edwin Ihalapathirana v. Suriyakumara Wanasinghe Piyatissa Bulankulame, Director General, UDA* (1988) 1 Sri.L.R. 416, (1988) II C.A.L.R. 100, *Walker Sons & Co. Ltd. v. Sri Lanka Ports Authority and another* (C.A. 305/90, C.A.M. of 15.06.1995)].

In this context I wish to consider the decision in *Edwin v. Tillakaratne* [(2001) 3 Sri.L.R. 34] where U. De Z. Gunawardena J. held that the procedure in the Act cannot be resorted to in cases where the land in dispute was acquired under the Land Acquisition Act. The learned Judge relied on the decision in *Senanayake v. Damunupola* (supra) in support of his conclusions. For the reasons articulated earlier I am of the view that the reasoning and conclusions in *Edwin v. Tillakaratne* (supra) is erroneous. We overrule the judgement in *Edwin v. Tillakaratne* (supra) and hold that the procedure in the Act can be invoked even where a person is in "unauthorized possession or occupation" of state land which was acquired under the Land Acquisition Act. The intention of the legislature on this issue is clear as the Hon. Minister of Land, Land Development and Mahaweli Development, during the second reading of the State Lands (Recovery of Possession) (Amendment) Bill (supra,) specifically stated that recourse to existing law to recover possession of state land was time consuming.

#### ***Dispute as to the Identity of the Land***

The learned President's Counsel for the Petitioner submitted that the procedure in the Act is not designed to be used in instances where there is a dispute on the identity of the land.

A person who has been summoned in terms of section 6 of the Act can only 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. He cannot contest any of the matters stated in the application made under section 5 of the Act. One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority State land. This fact cannot be contested by the person summoned and the submission of the learned President's Counsel for the Petitioner that whether the two lots of land which forms the subject matter of the Magistrates Court action are situated within Akuressa Estate or outside is a matter to be decided by a District Court in a land action must fail.

Hence, a dispute on the identity of the land cannot arise for the consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the party summoned is in relation to the state land described in the application. Where it is not, the Magistrate must issue an order of eviction in terms of the Act. In C.A. 1299/87, C.A.M. 14.06.1995, S.N. Silva J. (as he was then) held that if the case of the party summoned is that he is in occupation of another land, then he would not be ejected from the land he is in occupation upon a writ that will be issued in the Magistrate's Court.

The Petitioner submits that the land identified in the application made under section 5 of the Act is in fact Wellana Watta which is part of Wellana Field of Bisodola Division of the Akuressa Estate, Thelijjawila to which the Petitioner has 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. The Respondent submits that Akuressa Estate and Wellana Estate are two different lands situated about 8 miles apart.

The learned Magistrate cannot call for any evidence from the competent authority in support of the application under section 5 of the Act. The burden of establishing lawful occupation or possession is on the party summoned [*Muhandiram v. Chairman, No. 111, Janatha Estate Development Board* (1992) 1 Sri.L.R. 110].

The only evidence submitted by the Petitioner to establish that Akuressa Estate and Wellana Estate is one and the same is the map marked X5. It is an extract of a map on which a small portion of land has been darkened and at the bottom of the map the darkened area has been identified as "BISODOLA DIVISION (Wellana Fields)" in typed script and "(Extracted from Sheet 91 prepared and printed by the survey Department of Sri Lanka.)" typed in the same script. There is no evidence as to who and when the typed script was included on the extract of the map. The document X5 certainly does not establish that Akuressa Estate and Wellana Estate is one and the same land. In fact, it has been considered and acted upon by the learned Magistrate in violation of section 13 of the Survey Act No. 17 of 2002 which prohibits a plan, map or copy or tracing of a plan been received in evidence in any court in Sri Lanka unless such plan or map has been



prepared (a) by or on behalf of the Surveyor General by a registered surveyor duly authorised by him and certified by the Surveyor General or by a registered surveyor duly authorised by him for such purpose; or (b) and certified by a registered licensed surveyor. Furthermore, in terms of section 83 of the Evidence Ordinance such a plan must be proved to be accurate which was not done in this case.

On the contrary, though the competent authority does not have any burden in an inquiry before the Magistrate, the Respondent has produced before the Magistrate the two statutory declarations made in terms of section 18 of the Land Reform Act by the respective owners of Akuressa Estate and Wellana Estate marked as "Y1" and "Y2". These clearly show that Akuressa Estate and Wellana Estate are two distinct parcels of land. The learned Magistrate has merely referred to these two documents without considering their impact on the question of identity. Instead he relied on X5 and concluded that Akuressa Estate and Wellana Estate is one and the same land. As the learned High Court Judge concluded the learned Magistrate has fallen into grave error.

There is a further piece of evidence which establishes that the LRC is the owner of Wellana Estate. The Respondent identified the state land forming the subject matter of the application made under the Act by reference to a preliminary plan No. Mara 2406 dated 2009.05.15 prepared and certified on behalf of the Surveyor General. The tenement list to the said plan identifies the owner of Wellana Estate as the LRC. Section 83 of the Evidence Ordinance states that the Court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor General or officer acting on his behalf were duly made by his authority and are accurate.

***The Respondent was not the competent authority***

The Petitioner submitted that the Respondent was not the competent authority in respect of the state lands vested with the SLSPC. Such an objection is not a matter that can be taken up before the learned Magistrate or in these proceedings. One of the facts to be stated in the application made under section 5 of the Act is that the person making the application is a competent authority for the purposes of the Act. In view of section 6 of the Act, a person who has been summoned cannot contest that the claimant is not a competent authority. That is an issue to be

tested in appropriate proceedings. In *Dayananda v. Thalwatte* [(2001) 2 Sri.L.R. 73 at 81] this Court held that it was open for a party to seek to quash the quit notice by way of certiorari when the determination was made by the competent authority. In fact, the Supreme Court decision in *Karunawathie Jayamaha and Others v. Janatha Estate Development Board and Others* [(2003) 1 ALR 10] relied on by the Petitioner is a case where the vires of the quit notice was successfully impugned in a writ application.

In any event, in view of the conclusions set out above, Wellana Estate and Akuressa Estate are two distinct parcels of land. The owner of Wellana Estate is the LRC and hence the submission of the Petitioner that the Respondent is not the competent authority for the said land fails.

***Petitioner has a valid permit/written authority to occupy the land in issue***

The state land forming the subject matter of this application is Wellana Estate. The Petitioner has failed to produce 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.

For the reasons set out above, I see no reason to interfere with the order of the learned High Court Judge of the Southern Province holden in Matara in Revision Application No. HCRA/134/2013 dated 28.10.2015.

The revision application is dismissed with costs.

The learned Magistrate of Matara is directed to comply with the order made by the learned High Court Judge expeditiously.

Judge of the Court of Appeal

**K.K. Wickremasinghe J.**

I agree.

Judge of the Court of Appeal