

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

In the matter of an Appeal in respect of the order made in HC/NE/ ෧෪ /22/13 by the Provincial High Court of Nuwara Eliya in terms of Section 138(1) and 154(P)(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

(In terms of the Appellate Procedure of an appeal from the High Court to the Court of Appeal - Rule 2 and 3 of the Court of Appeal)

In terms of an application in terms of Section 5 of the State Lands (Recovery of Possession) Act No. 07 of 1979

C.A.(PHC) No. 97/2013

P.H.C. Nuwara Eliya No. HC/NE/Rev/22/2013

M.C. Hatton No. 67951

J.M. Chandrika Priyadharshani,
The Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
No..55/75, Vauxhall Street,
Colombo 02.

Applicant-Competent-Authority

Vs.

Ramaiya Naguleswaran
Kotiyagala Estate Lower Division,
No.9, Housing Scheme,

Plot No.26,
Kotiyagalla Estate, Bogawantalawa.
Respondent

AND BETWEEN

In the matter of an Application for the
exercise of revisionary jurisdiction
under Article 154(P) of the Constitution .

Ramaiya Naguleswaran
Kotiyagala Estate Lower Division,
No.9, Housing Scheme,
Plot No.26,
Kotiyagalla Estate, Bogawantalawa.
Respondent-Petitioner

Vs.

J.M. Chandrika Priyadharshani,
The Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
No..55/75, Vauxhall Street,
Colombo 02.
**Applicant-Competent-Authority-
Respondent**

Ramaiya Naguleswaran
Kotiyagala Estate Lower Division,
No.9, Housing Scheme,
Plot No.26,
Kotiyagalla Estate, Bogawantalawa.
Respondent-Petitioner-Appellant

Vs.

J.M. Chandrika Priyadharshani,
The Competent Authority,

Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
No..55/75, Vauxhall Street,
Colombo 02.

Applicant-Competent-Authority-
Respondent-Respondent

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

COUNSEL : Aravinda R.I. Athurupana for the
Respondent-Petitioner-Appellant
R.C. Karunakaran for the Applicant-
Competent- Authority-Respondent-
Respondent.

ARGUED ON : 25th May 2018

DECIDED ON : 06th July, 2018

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") seeks to set aside an order of the Provincial High Court, holden at Nuwara Eliya, on 08.08.2013, by which it had dismissed his revision application *in limine*. With filing of the said revision application, the Appellant sought to set aside an order of eviction issued against him by the Magistrate's Court of Hatton under

Section 10 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (hereinafter referred to as the said "Act").

The Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") issued a quit notice on the Appellant to handover vacant possession of the land described in the schedule. Upon the failure of the Appellant to hand over vacant possession on the due date, the Respondent made an application under Section 3 of the said Act to the Magistrate's Court.

The Appellant was issued summons by the Magistrate's Court on 05.02.2013, to show cause on 19.03.2013. On that day the Appellant sought permission of Court to tender it in written form on 02.04.13, but thereafter moved for adjournment till 22.04.2013. On that day, the Appellant complied with the order of Court to show cause by tendering an affidavit with annexures marked as R1 to R15. The case was to be called next on 20.05.2013. On 16.05.2013, the Appellant sought to tender further documents marked as R16, R17 and R18, but was directed by Court to move on the due date already fixed for the case to be called and these documents were returned.

On 20.05.2013, the Appellant sought permission of Court to tender "further show cause" and the Court made order accepting it. The matter was fixed for order on 29.07.2013. The Appellant has thereafter tendered an affidavit and the annexed deed of transfer by Land Reform Commission, marked as R19 to the Registry of the Court apparently on

01.07.2013 and tendered written submissions also on 17.07.2013 in which references are made to R19. However, there are no corresponding journal entries to confirm its acceptance by Court except for a seal of the Registry of the Court, which appears on both these sets of documents.

The Magistrate's Court has ordered eviction of the Appellant from the State land with its order dated 29.07.2013.

In support of his appeal, the Appellant submitted that both the Magistrate's Court and the Provincial High Court has failed to consider the title deed marked as R19, which satisfied the statutory provisions of the Section 9(1) of the said Act.

The Respondent, in his reply accused the Appellant of "smuggling" the document R19 into the record without seeking permission of Court and even without a motion in support.

It is correct that the document R19 has found its way into the record without following proper procedure. Permission granted by Court to tender "further show cause" limits to R16, R17 and R18. Therefore the deed R19 was introduced to the case record through the Registry of the Court without obtaining approval of Court and when it reserved order.

However, absence of specific reference to R19 in the order of the Magistrate's Court cannot be interpreted as total failure to consider its contents. The Court in allowing the application of the Respondent to evict the Appellant, concluded that the description of the State land in the application and the description of the Appellant by his show cause are in relation to two different lands (vide page 5 of the Order).

In these circumstances, it is appropriate to consider the validity of this finding of fact, although not canvassed by the Appellant before this Court.

The western boundary of the State land, as described in the schedule to the application is described as "land allocated to milk collecting centre". The western boundary in the land described in R19 "road and Lot No. 34". The schedule in R19 refers to a plan No. 2084/2012 of 30.03.2012 by Surveyor Subramaniam, and this plan was tendered by the Appellant as R2.

The lot No. 36 is allocated to the Appellant by R19 as per plan R2. As Lot No. 36 is depicted in R2, the western boundary to it, is a roadway. To the north-west of Lot No. 36, lies Lot No. 34. Clearly there is no block of land to the exact west from Lot No. 36, but a public road. The Respondent's description of western boundary of the disputed State land by a plot of land allocated for a milk collecting centre, therefore cannot exist as per the description given in plan R2. Thus, it is

obvious that the land shown in R19 is not the land described in the schedule to the application filed by the Respondent.

It is on this basis, the show cause shown by the Appellant was rejected and an order of eviction was made by the Magistrate's Court. The Appellant's contention that the title to the land is vested in the Land Reform Commission and the claim by the Respondent that the land described in the application is a State land could not be resolved by the Magistrate's Court as it had no authority to disregard an opinion of a Competent Authority that it is State land.

The conclusion reached by the learned Magistrate, upon comparison of the boundaries of the disputed land is based on the acceptance of the correctness of the boundaries given in the schedule to the application before it. In doing so, he has acted in conformity with the relevant statutory provisions. The Magistrate's Court has no authority to call for evidence in support of the description of the State land from the Competent Authority as per Section 9(2). The Court has rightly utilized the discrepancy in the schedule of R19 to determine the question whether the Respondent has a "valid permit or other written authority" to occupy the said State land as described in the schedule to the application by the Appellant. The land described in R19 is clearly not the State land in respect of which an order of eviction is made and therefore the Appellant has failed to establish that he has a "valid permit or other written authority" to occupy the said State land.

Mere fact of not referring to R19 specifically in the order of Court, would not vitiate its validity as the Court has clearly considered its contents. The order of the Provincial High Court is also based on this finding of fact to base its own order of dismissing the Appellant's revision application *in limine*.

In the circumstances, we are of the considered view that the appeal of the Appellant is devoid of merit and therefore it ought to be dismissed.

Accordingly, the appeal of the Appellant stands dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL