

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

In the matter of an appeal made under Article 154 P (6)  
of the Constitution of the Democratic Socialist Republic  
of Sri Lanka

H.K.Amarasiri Gunarathna

Director

Suwashanthi Private Hospital

No.11 Maithripala Senanayake Mawatha,

Anuradhapura.

**Case No. CA (PHC) 212/2006**

**H. C. Anuradhapura Case No. (Rev) 21/2005**

**M.C. Anuradhapura Case No. 23670**

**RESPONDENT-RESPONDENT-APPELLANT**

**Vs.**

Dissanayake Mudiyanseelage Senarath Bandara

Director General

Department of Archeology

Sir Marcus Fernando Mawatha,

Colombo 07.

**APPLICANT-PETITIONER-RESPONDENT**

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

Janak De Silva J.

**Counsel:**

Ameen Maharroof for the Respondent-Respondent-Appellant

Kanishka De Silva Balapatabendi State Counsel for the Applicant-Petitioner-Respondent

**Written Submissions tendered on:**

Respondent-Respondent-Appellant on 02.05.2018

Applicant-Petitioner-Respondent on 03.05.2018

**Argued on: 15.03.2018**

**Decided on: 24.07.2018**

**Janak De Silva J.**

This is an appeal against the order of the learned High Court Judge of the North Central Province holden in Anuradhapura dated 02.08.2006.

The Applicant-Petitioner-Respondent (Respondent) instituted proceedings in the Magistrates Court of Anuradhapura in case No. 23670 under the provisions of the States Lands (Recovery of Possession) Act No. 7 of 1979 as amended (Act) to evict the Respondent-Respondent-Appellant (Appellant) from the land more fully described in the schedule to the aforesaid application.

The Appellant in his show cause moved for the dismissal of the said application due to, inter alia, the failure on the part of the Respondent to comply with section 14 of the Act. The learned Magistrate held with the Appellant and dismissed the application.

The Respondent moved in revision against the said order to the High Court of the North Central Province holden in Anuradhapura. The learned High Court Judge revised the order of the learned Magistrate on the basis that the learned Magistrate had incorrectly interpreted section 14 of the Act. Hence this appeal by the Appellant.

Section 14 of the Act reads:

(1) In the exercise, performance and discharge of his powers, duties and functions under this Act a competent authority shall be subject to the direction and control of the Minister in charge of the subject of State lands.

(2) A competent authority shall not exercise any power conferred on him by section 3 in relation to any land vested in, owned' by, or under the control of-

(a) the Sri Lanka Army or the Sri Lanka Navy or the Sri Lanka Air Force, except with the prior approval of the Minister in charge of the subject of Defence;

(b) the Urban Development Authority 'established by the Urban Development Authority Law. No. 41 of 1978, except with the prior approval of the Minister in charge of that Authority;

(c) the Sri Lanka Ports Authority established by the Sri Lanka Ports Authority Act, No. 51 of 1979, except with the prior approval of the Minister in charge of that Authority.

The Appellant submits that in order for the Respondent to evict the Appellant from the state land in dispute such process ought to be subject to the directions and control of the Minister in charge of state lands. If not, the Respondent submits that a competent authority may act on his own accord which may conflict with the control that the Minister exercises over the Respondent. It was submitted that the Respondent had commenced proceedings against the Appellant without the prior approval of the Minister in charge of state lands as such the proceedings cannot be maintained. This submission is tenuous and devoid of any merit.

Section 14 of the Act has two sub-sections which deal with two entirely different situations.

Section 14(1) of the Act allows the Minister in charge of State lands to control and give directions to a competent authority in the exercise, performance and discharge of his powers, duties and functions under this Act. It does not require a competent authority to obtain the sanction of the Minister in charge of State lands prior to exercising, performing and discharging of his powers, duties and functions under the Act. If the Minister in charge of State lands, gives lawful directions to a competent authority, he is bound to follow them. Any unlawful exercise of such power by the Minister is not binding on the competent authority.

On the other hand, section 14(2) of the Act prohibits a competent authority from exercising any power conferred on him by section 3 of the Act in relation to any land vested in, owned by, or under the control of institutions referred to therein without the prior approval of the respective Minister.

If the legislature intended the restriction on the power of the competent authority set out in section 14(2) of the Act to apply in a section 14(1) situation the same language would have been employed in both situations. That has not been done. Therefore, I have no hesitation in rejecting the submission of the Appellant on the need to obtain prior approval of the Minister in charge of state lands where section 14(1) of the Act applies.

On the contrary, section 14(2) of the Act does impose a restriction on the power of the competent authority. It is in this context that Jayasuriya J. held in *Alwis v. Wedamulla, Additional Director General of U.D.A.* [(1997) 3 Sri.L.R. 417] that proceedings in ejectment could be instituted by the Urban Development Authority against a person who is in occupation of land vested in the Urban Development Authority provided such application to eject is authorized and have had the written approval of the Minister of Housing. He held that the proof of grant of such approval is a condition precedent to the institution of proceedings in ejectment.

However, the judgement in *Alwis v. Wedamulla, Additional Director General of U.D.A.* [(1997) 3 Sri.L.R. 417] was set aside by the Supreme Court in *Wedamulla v. Abeysinghe* [(1999) 3 Sri.L.R. 26]. Amerasinghe J. in considering the second ground on which the Court of Appeal based its decision stated as follows:

“With regard to the second ground, it might be assumed that the necessary steps were taken, including the obtaining of the Minister's approval. *Ominia praesumuntur rite et solemniter esse acta.* In fact, the Minister's approval under section 14 (2) of the State Lands (Recovery of Possession) Act had been obtained prior to proceedings for ejectment being taken. The Minister's order is dated the 17th of June, 1996.”

In my view, Amerasinghe J. did not uphold the position of the Court of Appeal that proof of grant of such approval is a condition precedent to the institution of proceedings for ejectment. That is why he sought to rely on the maxim *Ominia praesumuntur rite et solemniter esse acta* which means that *there is a presumption known to the law that all legal and official acts are correctly and duly performed by the relevant parties concerned. Omnia praesumuntur rite et solemniter esse acta (all official-acts are presumed to have been done rightly and regularly)* [per Jayasuriya J. in *Jayasinghe v. Gnanawathie Menike* (1997) 3 Sri.L.R. 410 at 412]. It is only then that Amerasinghe J. additionally refers to the fact that the necessary approval had in fact been obtained.

Therefore, I am of the view that the correct legal position is that even where section 14(2) of the Act applies, the competent authority need not produce the relevant approval with the application made to the Magistrates Court. The scheme of the Act prevents such matters been raised before the Magistrate.

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. [*Nirmal Paper Converters (Pvt) Ltd. v. Sri Lanka Ports Authority* (1993) 1 Sri.L.R. 219]

Where proceedings under the Act is commenced contrary to section 14(2) of the Act, the competent authority is acting *ultra vires* which is an issue to be tested in appropriate proceedings where administrative law principles apply. 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 any event, the present application is not one that comes within section 14(2) of the Act as the land in dispute does not come within that sub-section.

Accordingly, I am of the view that the learned High Court Judge was correct in concluding that the learned Magistrate had misconstrued the scope of section 14 of the Act.

Before proceeding to consider the other grounds urged by the Appellant I wish to state that although I have held that the competent authority need not produce the relevant approval with the application made to the Magistrates Court even where section 14(2) of the Act applies, the procedure will be expedited by the competent authority submitting such approval along with his application for ejection. Such a course of action will certainly obviate separate proceedings challenging the vires of the quit notice on that ground. The point I have made is that merely because the competent authority fails to submit such approval to the Magistrates Court when he initiates proceedings or during an inquiry, that is not a ground to dismiss the said application.

Another ground urged by the Appellant was that he had entered the land in dispute based on a contract and as such no proceedings can be taken under the Act to evict him.

I have no hesitation in rejecting this submission which is the same position taken by the learned Magistrate. 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 [*Ihalapathirana v. 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 any event, the documents produced before the Magistrates Court clearly shows that the permission given to the Appellant to occupy the land in dispute has been terminated by the time proceedings were instituted under the Act.

The Appellant further submitted that the Respondent had failed to avail himself of the right of appeal instead of which he resorted to the application in revision to the High Court. This submission is devoid of merit. A right of appeal is a statutory right and must be expressly created and granted by statute. [*Martin v. Wijewardena* (1989) 2 Sri.L.R. 409]. Section 10(2) of the Act

specifically states that no appeal shall lie against any order of ejection made by a Magistrate under subsection 10(1). Hence the Respondent correctly invoked the revisionary jurisdiction of the High Court. Accordingly, I am of the view that the learned High Court Judge was correct in overruling this objection.

For the foregoing reasons, I see no reason to interfere with the order of the learned High Court Judge of the North Central Province holden in Anuradhapura dated 02.08.2006.

The Appeal is dismissed with costs fixed at Rs. 50,000/=.

The learned Magistrate of Anuradhapura is directed to comply with the aforesaid order of the learned High Court Judge of the North Central Province holden in Anuradhapura expeditiously.

Judge of the Court of Appeal

**K.K. Wickremasinghe J.**

I agree.

Judge of the Court of Appeal