

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

In the matter of an Appeal against the judgment dated 23/10/2012 of the Provincial High Court of the Western Province in terms of Article 154(P) of the Constitution of the Republic of Sri Lanka read with High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

C.A.(PHC) No. 164/2012

P.H.C. Negombo No. HCRA160/2010

M.C. Negombo No. 38337/G

Bernard Mirando,
Grama Niladhari Officer,
No.74/A,
Daluwakotuwa Grama Niladhari
Division,
Daluwakotuwa,
Kochchikade.
Respondent-Petitioner-Appellant

Vs.

Road Development Authority,
"Sethsiripaya", Battaramulla.
Applicant-Respondent-Respondent

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

COUNSEL : Sudharshani Cooray for the Respondent-
Petitioner-Appellant
Manohara Jayasinghe S.C. for the Applicant
-Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 26-06-2018(by the Respondent)
03-07-2018(by the Appellant)

DECIDED ON : 26th July, 2018

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") invokes the appellate jurisdiction of this Court to set aside an order of the Provincial High Court holden in Negombo. With the pronouncement of the said order, the Provincial High Court has dismissed the Appellant's application to revise the order of ejectment issued by the Magistrate's Court of Negombo in case No. G 38377.

Case No. G 38377 of Magistrate's Court of Negombo relates to an application made by the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") made under Section 6(1) of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 as

amended (hereinafter referred to as the Act), to recover possession of Government quarters at No. 74/ A, Daluwakotuwa, Kochchikade belonged to Road Development Authority.

The Respondent claimed that he has issued a notice to quit on 07.01.1998 against the Appellant and upon his failure to handover vacant possession on the due date, he moved Court to issue a writ of possession.

The Magistrate's Court has issued a writ of possession on 02.11.1998 under Section 7(1) of the Act, upon the said application by the Respondent. The Fiscal of the Court reported that he has executed writ of possession on 22.01.1999 by removing the belongings of the Appellant outside the premises of the quarters. He has then handed over the vacant possession to the representative of the Respondent. However, the Appellant has forcibly re-occupied the quarters thereafter disregarding the Court order having used abusive language on the officers of Court.

At a subsequent stage the Respondent has re-issued a quit notice on 18.06.2002 but withdrew it again on 27.12.2002. The Appellant claims that he has challenged the 2nd quit notice by seeking a Writ of Certiorari before this Court. As the Respondent agreed to withdraw the 2nd quit notice, he too has withdrawn his Writ application. However, the Respondent has reserved his right to pursue eviction under the quit notice which has already served.

Thereafter, the Magistrate's Court has issued a writ of possession for the 2nd time on 30.04.2010 and the Appellant sought to revise the said order before the Provincial High Court.

In dismissing the Appellant's application for revision, the Provincial High Court held that there were no exceptional circumstances established by the Appellant. It also noted that the order sought to be revised is dated 02.11.1998 and the Appellant is guilty of laches.

In support of the appeal, learned Counsel for the Appellant made submissions on the basis that the Provincial High Court was in error when it failed to consider the fact that "the quit notice itself is against the provisions of the act" as an exceptional circumstance. In addition, it was contended that there was no undue delay.

The Appellant also contended that the disputed premises is not used as a "residence" on the basis of the interpretation of the term "Government quarters".

In view of the submissions of the Appellant, it is appropriate at this stage to consider whether the Provincial High Court was in error when it dismissed his application for revision.

The Appellant invoked its revisionary jurisdiction to set aside the writ of possession issued against the quarters in which he operated his office as a *Grama Niladhari*. In such an instance, the Provincial High Court should consider the Appellant's application, as per the judgment of *Nissanka v State*(2001) 3 Sri L.R. 78;

1. to satisfy itself as to the legality of the impugned order,
2. to satisfy itself as to the propriety of the impugned order,
3. to satisfy itself as to the regularity of the proceedings of the Court below.

When an application for ejectment is made under Section 7(1) of the Act against an "occupier" of any Government quarters, a Magistrate must issue a writ of possession. He was not conferred with a discretion by the said section to consider any ground other than what is stated in the application. Whether the Government quarters was in fact used by the "occupier" as his residence or for any other purpose is not a relevant consideration before the Magistrate's Court. Similarly, whether the quit notice complies with the relevant statutory provisions or not is also beyond the jurisdiction of the Magistrate's Court. Section 6(4) of the Act is clear as it states that "Every application for ejectment shall be conclusive evidence of the facts stated therein." Therefore, when the Respondent stated that the premises occupied by the Appellant is Government quarters, the Magistrate's Court has no jurisdiction to allow the Appellant to contest that fact.

In these circumstances, when the Provincial High Court examines the validity of the issuance of a writ of possession by a Magistrate's Court,

in the light of the considerations enumerated in *Nissanka v State* there is no basis for it to hold that such an order could be termed as illegal or improper. If the issuance of an order of eviction is not tainted with any such error then there is no basis for the Provincial High Court to interfere with the issuance of writ of possession. The grounds urged by the Appellant are only relevant if he sought judicial review of the quit notice before a competent Court. In *Dayananda v Thalwatte* (2001) 2 Sri L.R. 73 it was held that revisionary jurisdiction cannot be combined with writ jurisdiction.

Therefore, it is our considered view that the appeal of the Appellant is devoid of any merit and accordingly it ought to be dismissed.

The appeal of the Appellant is dismissed with costs fixed at Rs. 25,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL