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

In the matter of an Appeal made in terms of Article 154 P(6) read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Udayasiri Kariyawasam,

Chairman,

Industrial Development Board,

No. 615, Galle Road,

Katubedda,

Moratuwa.

Applicant-Respondent-Petitioner

C.A.(PHC) No. 56/2013

P.H.C. Kandy No. 33/2010

M.C. Kandy No. 17908

Vs.

J. M. R.Bandara Jayasundara,

No.40, Ayurweda Hospital Road,

Pallekale.,

Respondent-Petitioner–Respondent

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

COUNSEL : U. P.Senasinghe S.C. for the Applicant-Respondent-Petitioner
W.D.Weeraratne for the Respondent- Petitioner - Respondent.

WRITTEN SUBMISSIONS
TENDERED ON : 20-07-2018(by the Respondent)
30-07-2018(by the Petitioner)

DECICED ON : 06th August, 2018

****

ACHALA WENGAPPULI, J.

This is an appeal by the Applicant-Respondent-Petitioner (hereinafter referred to as the "Appellant") invoking appellate jurisdiction of this Court, seeking to set aside the order of the Provincial High Court holden in Kandy on 15th May 2013 in a revision application by the Respondent-Petitioner-Respondent (hereinafter referred to as the "Respondent"). In the said revision application, the Respondent sought to set aside an order of ejection issued by the Magistrate's Court of Kandy, upon an application filed by the Appellant under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended.

It is stated in the said application that the Appellant is the Competent Authority, the land described in the schedule is State land and

a quit notice was already served on the Respondent. The Magistrate's Court directed the Respondent to show cause. In his affidavit, the Respondent claimed that the land in question in fact belonged to Mahaweli Authority of Sri Lanka and the Appellant, Sri Lanka Industrial Development Board, being another State entity, is contesting for its title with the said Mahaweli Authority.

Having considered the Respondent's claim of contest between two State entities as regard to the title of the land under dispute, the Magistrate's Court very correctly held that it is not a matter the Respondent can agitate before it and he could not challenge the averments in the application under Section 5, and proceeded to issue ejectment order. It appears from the case record that the Respondent has initially lodged an appeal against the said order of ejectment.

However, he later moved the Provincial High Court to revise the said order of ejectment primarily on the basis that the Magistrate's Court had failed to consider that the Appellant is not the Competent Authority and it has failed to consider the documents tendered before it marked as X6 to X15.

After an inquiry, the Provincial High Court by its order dated 15th May 2015 has set aside the order of ejectment issued by the Magistrate's Court. It relied on the judgment of ***Senanayaka v Damunupola***(1992) 1 Sri L.R. 621 in relation to its finding on the determinability of the competency of the Competent Authority as well as the title to the disputed land.

Being aggrieved by the said order, the Appellant sought intervention of this Court by preferring an appeal against the said order, to

set it aside on the basis the permit issued to the Respondent has become invalid after 31.12.2005 and with the amendments made to principle enactment Act by the provisions of the State Lands (Recovery of Possession) Act No. 29 of 1983, once a quit notice is issued by a Competent Authority, then that land is deemed to be State land.

The order of the Provincial High Court is erroneous on two fundamental points. Firstly, it failed to appreciate the jurisdiction of the Magistrate's Court over such an application. Secondly if failed to note the fact that the Respondent is challenging the validity of the quit notice on an application to revise the order of ejectment issued by the Magistrate's Court.

If a party wishes to challenge the validity of a quit notice issued by a Competent Authority, it must advise itself properly as to the nature of remedy it should seek from competent Court. In ***Dayananda v Thalwatte*** (2001) 2 Sri L.R. 73, referring to a preliminary objection raised on this point, Jayasinghe J states thus;

> *"I hold that the application for revision in terms of Article 138 and on application for Writs of Quo Warranto, Certiorari and Prohibition under Article 140 of the Constitutions cannot be combined as they are two distinct remedies available to an aggrieved party and for that reason the Petition is fatally flawed."*

As per the principle enunciated in this judgment, when the Respondent sought to challenge the validity of a quit notice issued by the Appellant, in a revision application on an ejectment order and not in an application for judicial review, his application is "fatally flawed."

The Magistrate's Court has no jurisdiction to inquire into the question of competency of the Competent Authority as the relevant statutory provisions does not authorise it to undertake such an inquiry. The reason for this limitation could be found in the provisions contained in Section 6(1) and (4) of the State Lands (Recovery of Possession) Act.

Once a Competent Authority claims in the application to the Magistrate's Court that he is the Competent Authority in respect of the State land under Section 6(1)(a)(i) of the State Lands (Recovery of Possession) Act, that assertion has to be taken as "conclusive evidence" as per the provisions of Section 6(4). In view of these clear and unambiguous statutory provisions, it is clear that the Magistrate's Court has not been conferred with jurisdiction to inquire into the competency of the Competent Authority. As already noted the Magistrate's Court has correctly applied the relevant principles and issued the ejectment order but the Provincial High Court has fallen into error in revising it on a wrong appreciation of the applicable statutory provisions.

In relation to the applicability of the judgment of ***Senanayaka v Damunupola*** (supra), De Silva J, in CA(PHC)APN 29/2016 - decided on 9th July 2018, observed that "... the *ratio decidendi* in *Senanayaka v Damunupola*(supra) is no longer valid" since the amendment Act No. 29 of 1983 was enacted which was brought in view of the said judgment " ... *to provide a swift and effective procedure by which the State can recover possession of State land...*".

Therefore, having considered the submissions of the parties carefully, we are of the view that the appeal of the Appellant ought to be

allowed. Accordingly, the order of the Provincial High Court on 15th May 2015 is hereby set aside by this Court. The order of ejectment issued by the Magistrate's Court on 18th May 2010 is affirmed.

The appeal of the Appellant is allowed. Parties will bear their costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL