

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

In the matter of an application for Revision in
terms of Article 138 of the Constitution of the
Democratic Socialistic Republic of Sri Lanka.

Court of Appeal Revision Application

No. CA/MC/REV/13/2017

Magistrate Court/Hatton

Case No. 58988/12

Jeyaweera Mudiyanalage
Chandrika Priyadharshani,
Competent Authority,
Plantation Monitoring Division,

Ministry of Plantation Industries,
No.55/75, Vauxhall Lane,
Colombo 12.

APPLICANT

Vs.

Sinnaiah Selvanayagam,
14/9, Hursing Home Road,
Hatton.

RESPONDENT

AND NOW BETWEEN.

Jeyaweera Mudiyanalage
Chandrika Priyadharshani,
Competent Authority,
Plantation Monitoring Division,
Ministry of Plantation Industries,
No. 55/75, Vauxhall Lane,
Colombo 12.

APPLICANT- PETITIONER.

Vs.
Sinnaiah Selvanayagam,
14/9, Hursing Home Road
Hatton.

RESPONDENT-RESPONDENT.

Before : E.A.G.R. Amarasekara, J.

Counsel : K.V.S. Ganesharajan with Suganthini Suppiah, Deepiga Yogarajah and Sarah George Instructed by Sharmila Hind.

Decided on : 2018.09.14.

E.A.G.R. Amarasekara, J.

The Applicant Petitioner has filed this Revision Application praying inter-alia the following reliefs;

- a. To issue notice on the Respondent-Respondent.
- b. To issue an interim order staying further proceedings in the Magistrate's Court of Hatton Case No. 58988/12 until the final determination of this application.
- c. To issue an interim order restraining the Respondent-Respondent from taking any further steps on the basis of the said order dated 23.06.2017 made in the Magistrate's Court of Hatton case No.58988/12 until the final determination of this application.
- d. To set aside the order dated 23.06.2017 made by the Magistrate's Court of Hatton in Case No. 58988/12.
- e. To make an order ejecting the Respondent-Respondent from the land and premises more fully described in the Application filed under State Lands (Recovery of Possession) Act No. 07 of 1979 as amended.
- f. To make an order restoring the Lessee Wattawala Plantation to the said land and premises and placing it in the possession of the land and premises more

fully described in the application filed under State Lands (Recovery of Possession) Act No. 07 of 1979 as amended.

g. To grant costs.

The sequence of events that paved the way for this application is as follows;

1. As per the amended Petition, the Applicant Petitioner (hereinafter called and referred to as the Petitioner) filed an application under and in terms of the State Lands (Recovery of Possession) Act No. 07 of 1979 as amended, against the Respondent- Respondent (herein after called and referred to as the Respondent) to recover the land and premises more fully set out in the said application marked as P1 with the Petition.
2. The Respondent filed the statement of objection and/or show cause marked as P2 with the Petition.
3. After considering the written submissions (P3 and P4) filed by both the parties, the learned Magistrate of Hatton made an order in favour of the Petitioner ejecting the Respondent. (vide P5)
4. As per the petition, this order was carried out and the Respondent was ejected from the aforesaid land and premises
5. The Respondent filed an application for Revision in this court to set aside the said order of the learned Magistrate and this court set aside the said order of the learned Magistrate. The Petitioner's application to the Supreme Court was withdrawn by the Petitioner.
6. Meanwhile Watawala Plantation Ltd, the Lessee of the Petitioner filed an action in the District Court of Hatton as there is a Deed issued by the Land Reform commission in favour of the wife of the Respondent.
7. The Respondent moved Magistrate's Court of Hatton to issue a writ to restore the possession of the said land and premises to him, and after hearing the oral submissions of both the parties, the learned Magistrate made order dated 23.06.2017 marked as P9, placing the Respondent in possession of the said land and premises.
8. The Petitioner filed this Application against the said order dated 23.06.2017.

As per the written submissions tendered, pending this application and the District Court case, the Respondent was put back in possession of the said land and premises as a result of the order marked P9 made by the learned Magistrate.

Since the order which ejected the Respondent and placed the Petitioner in possession of the said land and premises was set aside by this court by its order dated 28.06.2016 marked as P6F and the Special leave to Appeal application was withdrawn by the Petitioner, the order of this court setting aside the order of the learned Magistrate marked P5 is the valid order with regard to the application filed by the Petitioner under the State Land (Recovery of Possession) ordinance.

Hence the order ejecting the Respondent from the said land and premises by the Magistrate is not valid. Further, the placing of the Petitioner in possession of the said land and premises is not based on a valid order. In other words, the learned Magistrate placed the petitioner in possession on the strength of an invalid order.

Magistrates' courts or any court has inherent power to repair the injuries done by its Act. (see *Jane Nona Vs Jayasooriya* (1986) 1 CALR 315. *Sirinivasa Thero vs. Saddassi Thero* 63 NLR 31) A court whose Act has caused injury to a suiter has an inherent power to make restitution. This power is exercisable by a court of original jurisdiction as well as by the Supreme Court (see *Sivapathalingam Vs Sivasubramaniam* (1990) 1 SLR 378).

It is not relevant whether the respondent prayed for restoration in his application to revise the order of the learned Magistrate dated 09.08.2012 marked as P5. As per the said application marked P6A, the Respondent had prayed for a stay order restraining the Petitioner from taking steps to eject him from the premises. This indicates that at the time the said application was filed in this court, the ejection of the Respondent had not taken place. It should be noted that the Petitioner has not revealed the date of ejection of the Respondent from the premises after the order marked P5 which was vacated by this court.

However, the Magistrate's Court order marked as P9 dated 23.06.2017 is an order that repairs the injuries caused by its Act based on an invalid order.

I do not see that there is any ground for a successful case for the Petitioner. Hence, I dismissed this application without issuing notice on the Respondent.

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E.A.G.R Amarasekara.

Judge of the Court of Appeal.