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

In the matter of an Appeal in terms of Article 154(ශ) of the Constitution read with High Court of the Provinces (Special Provisions) Act.

B.A. Premalal,
No.08, 1st Lane,
Galpoththa Road,
Nawala,
Rajagiriya.
**Respondent-Petitioner-Appellant**

**C.A.(PHC) No. 128/2012**
**P.H.C. Colombo No. HCRA 68/2009**
**M.C. Fort No. 67283/07**

**Vs.**

Vijitha Palihakkara, Wijesekera,
General Manager Railways,
Department of Railways,
P.O. Box 355,
Colombo.
**Applicant -Respondent-Respondent**

Hon. Attorney General,
Attorney General's Department,
Colombo 12.
**Respondent-Respondent**

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

COUNSEL : Sanjeewa Dissanayake with Dilini Premasiri for the Respondent-Petitioner-Appellant
Manohara Jayasinghe S.C. for the Applicant–Respondent-Respondent & Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 22-06-2018( by the Respondent)
03-07-2018 (by the Appellant)

DECICED ON : 26th September, 2018

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**ACHALA WENGAPPULI, J.**

The Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") has invoked the appellate jurisdiction of this Court, seeking to set aside an order dated 2nd February 2012, in case No. HCRA 68/2009 of the Provincial High Court holden in Colombo. In the said revision application, the Appellant sought to set aside an ejectment order dated 22nd April 2009, issued by the Magistrate's Court of Colombo in case No. 67283/07, upon an application filed by the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") under Section 5 of the State Land (Recovery of Possession) Act No. 7 of 1979 as amended.

In support of his appeal, the Appellant contended that the Provincial High Court was in error when it rejected his plea of *Res Judicata* in the instant matter and in addition it failed to consider the following factors before it held against the Appellant;

i. that he had a legitimate expectation to carry one his business in the dispute premises as "he has got the approval to renew the Lease Agreement",

ii. the Appellant had constructed a building with his own funding with the approval of the Respondent and therefore there is an "implied agreement" between them,

iii. the Provincial High Court had failed to consider "compensation or an alternate place of business".

In order to appreciate the grounds of appeal of the Appellant in its proper context, it is relevant to refer to the factual background, as revealed from the material placed before the Provincial High Court, in a chronological order.

It is claimed by the Appellant that he has operated a small shop upon a rent agreement with Colombo Municipal Council since 1989 and in 1990, he had put up a building with his own funding with the approval of CMC and continued to occupy it. The said business premises was allocated

with the assessment No. 62Q. Thereafter, the Respondent granted a "permit/agreement" bearing the reference of B18/1992 and in 2006, certain additional conditions were agreed upon by the parties and a new agreement was signed in March 2007 for the period commencing from 2008 and ending on 2009.

The Respondent, after serving a quit notice dated 30.10.2002 on the Appellant to vacate the disputed premises made an application to Court for an order of ejectment in application No. 50439/05 on 03.06.2003. When the Appellant informed Court that he had paid up all dues, the Court made order to "lay by" the said application until advice of the Attorney General is obtained. There was no final order made by the Court to the application of the Respondent.

With his letter dated 04.04.2007, the Respondent has informed the Appellant of the termination of the lease agreement and directed him to handover the vacant possession of the disputed premises on or before 10.05.2007. The Respondent further informed the Appellant that his failure to comply with the said direction would result in initiating legal action to recover possession of the said premises.

Thereafter, the Respondent had then issued the 2nd quit notice on the Appellant on 16.07.2007 and upon his failure to vacate the said premises,

another application is made under case No. 67283/07 seeking an order of ejectment from Court.

At the inquiry before the Magistrate's Court, some of these factors were brought to the notice of Court by the Appellant. However, the Magistrate's Court had issued the ejectment order on 02.04.2009.

It is contended on behalf of the Appellant that the application bearing No. 67283/07 could not be maintained upon the plea of *Res Judicata* since the Respondent had failed to eject the Appellant in an already issued ejectment order in application No. 50439/05 in 2004 for the same business premises.

The plea of *Res Judicata* was considered by the Magistrate's Court, and in its order dated 22.04.2009, the said plea was rejected. The basis on which the said plea was rejected is that there is an agreement entered into by the Appellant and the Respondent in 2003 in respect of the said premises. However, this agreement was terminated by the Respondent on 10.05.2007 and therefore the plea of *Res Judicata* raised by the Appellant was rejected by Court. Then it further concluded that since the Appellant had failed to establish that he has a valid permit, or any other written authority to occupy the said premises, the Court should issue an order of ejectment. It is further noted by the Magistrate's Court that the Appellant

had failed to seek relief under Section 12 of the State Lands (Recovery of Possession) Act.

When the Appellant sought to challenge the validity of the said order of ejectment in HCRA 68/2009, the Provincial High Court dismissed his petition as no exceptional circumstances were established to exercise its revisionary jurisdiction.

In ***Wammoo & two Others v Menon*** 66 N.L.R. 289, Basnayake C.J. was of the view that;

> *"Where there has been a breach in the case of a contractual relationship like that between landlord and tenant, it is open to the parties by agreement or conduct to renew the contractual relationship either expressly or tacitly. Where there has been such a renewal, it is not open to the landlord to go back on it and proceed as if there had been no renewal. The acceptance of rent without more, after notice of termination of a monthly tenancy, has been held, in the absence of other facts which indicate the contrary, to amount to a tacit renewal of the contract of tenancy. After such a tacit renewal, it has been held that the landlord is not entitled to go back on it and sue for ejectment as if the notice of termination was in force. In such a case a fresh notice of termination is necessary before an action in ejectment can be instituted. But the renewal tacit or otherwise does not deprive the landlord of the right to sue for arrears of rent though he cannot*

*pray ejectment. We are therefore of the opinion that the learned Commissioner is wrong in his conclusion."*

In the appeal before us, the 1st quit notice and the legal effect of the ensuing application for the ejectment of the Appellant has lapsed due to subsequent agreement of lease entered into by the Appellant and the Respondent. The lease agreement was duly terminated by the Respondent with prior notice to the Appellant. There was no challenge by the Appellant to the termination of the said lease agreement. After the day on which the lease agreement was deemed terminated, the Respondent took steps to issue the 2nd quit notice and upon the Appellant's failure to handover vacant possession of the disputed premises as per the said notice, an application was made to the relevant Magistrate's Court, seeking his ejection under the provisions of the State Lands (Recovery of Possession) Act.

The Respondent has therefore acted according to the applicable statutory provisions and the Magistrate's Court had correctly rejected the plea of *Res Judicata* raised by the Appellant. This conclusion by the Magistrate's Court could be justified, in view of the reasoning contained in the judgment of ***Wammoo & two Others v Menon*** (supra). Upon consideration of the material before the Provincial High Court, it justifiably concluded that there were no exceptional circumstances disclosed in the Appellant's petition.

The other grounds of appeal, as raised by the Appellant and reproduced above, are considerations applicable in judicial review and, owing to that reason, has no relevance to the determination of a revision application before the Provincial High Court. The Appellant invoked revisionary jurisdiction of the Provincial High Court and did not seek to challenge the validity of the issuance of 2nd quit notice by the Respondent by seeking a prerogative Writ to quash it.

In view of the considerations that are referred to in the preceding paragraphs, we are of the firm view that the appeal of the Appellant is devoid of any merit.

We, accordingly make order dismissing the appeal of the Appellant with costs fixed at Rs. 10,000.00.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**