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

In the matter of an Appeal against the judgment of the Provincial High Court of Uva Province holden in Badulla dated 29.08.2012 under and in terms of Article 138 read with Article 154 of the Constitution Democratic Socialist Republic of Sri Lanka .

Dadamgodage Don Wijepala
Wicramaratne of
114/1, "Sudu Medura",
Mahiyanganaya
Respondent-Petitioner-Appellant

C.A.(PHC)Appeal No. 118/2012
P.H.C./Uva/Badulla Revision Application No. 112/2011
M.C. Mahiyanganaya Case No. 79846

Vs.

1. Dissanayake Mudiyanselage Nimal Dissnayake
Divisional Secretary, Mahiyanganaya
Divisional Secretariat,
Mahiyanganaya
Substituted-Applicant - Respondent-Respondent
2. Hon. Attorney General
Attorney General's Department
Colombo 12.
Respondent-Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	Ashoka Fernando with A.R.R. Siriwardana for the Respondent-Petitioner-Appellant Nuwan Peiris S.C. for the Substituted-Applicant– Respondent-Respondent and Respondent-Respondent.
WRITTEN SUBMISSIONS TENDERED ON	:	25-06-2018(by the Appellant)
ARGUED ON	:	31-07-2018
DECICED ON	:	05th October, 2018

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ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") invokes the appellate jurisdiction of this Court, seeking to set aside an order dated 29.08.2012 of the Provincial High Court of *Uva* Province holden in *Badulla,* in PHC/Uva/Badulla/ Revision No. 112/2011 by which his application to revise an order of ejectment dated 17.11.2011, issued by *Mahiyangana* Magistrate's Court bearing Case No. 79846, was dismissed by the said Provincial High Court.

In an application to *Mahiyangana* Magistrate's Court, under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as emended (herineafter referred to as the "Act"), the Applicant-Respondent-

Respondent (hereinafter referred to as the "Respondent") sought an order of ejectment against the Appellant from the portion of State land described in the schedule to his application.

At the inquiry before the Magistrate's Court, the Appellant tendered a large number of documents (V1 to V23) seeking to satisfy Court that he was in occupation of the said State land on "constructive possession", an inference that should have drawn upon the contents of those documents.

The factual position as per those documents is as follows.

The Appellant is the Chairman of *Edwin Wickramarathna Memorial Foundation,* an Organisation registered under Voluntary Social Service Organisations (Registration and Supervision) Act No. 31 of 1980, since 2005.

On 30.05.2006, the Appellant was issued a Development Permit (V16) under Section 8 of the Urban Development Authority Act No. 41 of 1978, with approval for construction of a building, in respect of the State land in dispute. This permit was issued by the Chairman of *Mahiyangana* Pradesheeya Sabha with a condition that it is valid for a period of one year and could be renewed upon payment of Rs. 250.00 payable annually. The estimated cost of the proposed building is about Rs. 22 Million (V14). Presidential Fund released Rs. 500,000.00 for the construction (V20). District Secretary of Badulla reported to the Auditor General that funds would be allocated from the decentralised budget for the construction of the said building (V21).

The Provincial Secretary of *Mahiyangana* informed the Chairman of *Mahiyangana* Pradesheeya Sabha, by his letter dated 16.08.2005 (V8) that a

part of the land of public playground would be made available to the Appellant's foundation on a long term lease.

On 10.03.2006, Director of Urban Development Authority for Uva Province recommended the release of the land for the foundation (also marked as V8). The Land Commissioner, directed the Provincial Secretary of *Mahiyangana* to tender certain documents to consider the proposed grant of long lease to the Appellant's foundation (V6). *Mahiyangana* Pradesheeya Sabha informed Provincial Secretary of *Mahiyangana* on 06.11.2006 that it had no objection to the proposed long lease of the disputed State land in favour of the Appellant's foundation (V13). The Appellant has authorised the release of the disputed land to himself as the Minister of Lands of the Uva Provincial Council on 09.05.2007 (V11).

The Magistrate's Court, having considered these documents, made the impugned order of ejectment on the basis that none of the documents tendered by the Appellant indicate that he had a valid permit or other written authority to be in possession of the disputed State land.

When the Appellant sought to revise the said order of ejectment by the Magistrate's Court before the Provincial High Court, it dismissed his application on the basis that there is no illegality of the said order of ejectment. It particularly considered the fact that the document dated 05.09.2007 issued by the Ministry of Lands of the *Uva* Provincial Council (marked V11), which had granted its approval to lease out the disputed land to the Appellant's foundation, was signed by the Appellant himself as the Minister of Lands of the Uva Provincial Council and therefore has no legal validity.

In challenging both these orders, the Appellant contended that;

a. the order of ejectment is illegal on the basis that;
    i. it failed to consider the "constructive possession" as established by the documents tendered before it,
    ii. it failed to consider the fact that the quit notice and the application for ejectment are "*ex facie* untenable in law and *void ab initio*" upon the Respondent's failure to comply with the mandatory provisions of the Forms of the said Act,
    iii. it failed to consider the Respondent acted in "an arbitrary and a bias manner" superseding his earlier decisions,
    iv. it had erroneously decided that the sole authority is the Respondent, "without approval of the Minister in charge of the UDA",

b. order of dismissal by the Provincial High Court is erroneous on the basis that;
    i. it failed to consider the "constructive possession" in favour of the Appellant,
    ii. V16 is a valid authority for the Appellant,
    iii. the Respondent cannot institute proceedings before the Magistrate's Court without "revoking" the "constructive possession/implied approval of possession"

iv. it failed to consider that there was no valid affidavit before the Court supporting the application under Section 5 of the Act,

v. it failed to consider the application before the Magistrate's Court is bad in law since the Respondent is not the sole authority,

vi. if failed to consider the Appellant had a valid written authority,

vii. it failed to consider that all parties are not before Court,

viii. if failed to consider the Respondent had no authority to issue quit notice.

ix. It has held there is an alternate remedy under Section 12 of the said Act,

It is evident from these grounds, on which the Appellant sought to challenge the validity of the order of ejectment and order of dismissal, that the *Mahiyangana* Magistrate's Court has the jurisdictional authority to question the competency of the Respondent when he makes an application under Section 5 of the said Act as the competent authority.

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 had 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 had not been conferred with jurisdiction to inquire into the competency of the

Competent Authority. This limitation on the jurisdiction even extends to the description of the land as State land in such applications.

In ***Farook v Gunewardene, Government Agent, Apmarai*** (1980) 2 Sri L.R. 243, this Court has held that *"the structure of the Act would also make it appear that where the Competent Authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion."*

The Appellant's claim of "constructive possession" in relation to provisions of State Lands (Recovery of Possession) Act, is a totally an alien and unknown concept. This Court had consistently held, when an application under Section 5 is made, its jurisdiction is circumscribed to Section 8 and 9(1) of the Act.

The only option available for a person, who is in unauthorised possession of a State land in the opinion of the Competent Authority, is to satisfy Court in an inquiry conducted under Section 8 of the said Act. The scope of such inquiry is limited by Section 9(1) to the following, as decided by this Court in C.A./PHC/41/2010 - C.A. Minutes of 31.01.2017;

> *"Under section 9 of the State Land (Recovery of Possession) Act the scope of the inquiry is limited to for the person noticed to establish that he is not in unauthorised occupation or possession by establishing that;*
>
> 1. *Occupying the land on a permit or a written authority.*
> 2. *It must be valid permit or a written authority.*
> 3. *It must be in force at the time of presenting it into Court.*
> 4. *It must have been issued in accordance with any written law."*

Therefore, unless the person who is in possession of the State land, establishes any of the above, the Magistrate's Court has no option but to allow the application by the Competent Authority.

The Appellant placed heavy reliance on the "written authority" issued to him by "himself" marked as V11. It would suffice merely to say it is *per se* illegal. Even if a different individual were to sign the said letter as the Minister of Lands of the Uva Provincial Council, yet it will have no legal validity as such a decision is clearly a transgression of the powers of a Provincial Council.

In ***Superintendent of Stafford Estate and two Others v Solaimuttu Rasu***(2013) 1 Sri L.R. 25, the Supreme Court held thus;

> *"Provincial Councils in exercising" rights in and over land, land settlement, land tenure, transfer and alienation of land, land use, land settlement and improvement "to the extent set out in Appendix II (conferred by List 1) are limited to administering, controlling and utilizing such State Lands as are given to them. "In terms of article 1.2 State Land is made available to the Provincial Council by the Government. In the background of this Constitutional arrangement it defies logic and reason to conclude that State Lands is a Provincial Council subject in the absence of a total subjection of State Lands to the domain of Provincial Councils."*

Another contention raised by the Appellant is that the quit notice issued on him by the Respondent is "*ex facie* untenable in law and *void ab initio*" and both Courts, particularly the Provincial High Court, had failed to consider this position.

In ***Dayananda v Thalwatte***(2001) 2 Sri L.R. 73, this Court, observed that;

> *" an aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari and if the application is to compel an authority to perform a duty he would ask for a writ of mandamus and similarly if an authority is to be prevented from exceeding its jurisdiction the remedy of prohibition was available"* proceeded thereafter to hold that *"institution of proceedings in the Magistrates Court in terms of the quit notice is not a determination affecting legal rights."* It further held that *"it was open for the Petitioner to seek to quash the quit notice by way of certiorari when the determination was made ... or to move in revision at the conclusions of the Magistrate's findings".*

The Appellant sought to revise only the order of ejectment as the substantial relief in his revision application filed before the Provincial High Court. There was no challenge to the validity of the quit notice in that application. Even if he did challenge it, the Provincial High Court could not have determined the validity of the said quit notice as per the above quoted judicial precedent.

Thus, it is seen that the selection of the best remedy from these options had to be made by the Appellant at the appropriate juncture and the Courts would employ different considerations in evaluating claims under these separate legal remedies. The considerations that might assume importance in an application for the issuance of a prerogative writ, might not be useful in an application made for a discretionary remedy such as

revision. The Appellant misdirected himself in his failure to appreciate this inherent distinction between the two distinct legal remedies.

The challenge by the Appellant to the affidavit that had been filed by the Respondent in support of his application under Section 5 of the Act, was mounted for the first time in this Court. In his revision application, there was no mention of such a ground although he challenged the legality of the order of ejectment. This being a mixed question of fact and law, the Appellant cannot raise it before this Court for the first time. However, the supporting affidavit of the Respondent sufficiently complies to the format of Form C of the said Act.

In view of the forgoing, it is our considered opinion that the appeal of the Appellant is devoid of any merit whatsoever. In the circumstances, we affirm both orders sought to be impugned by the instant appeal.

The appeal of the Appellant is dismissed with costs fixed at Rs. 50,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL