

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

In the matter of an appeal against the
judgment of the High Court of the
Western Province holden at Colombo

CA (PHC) No. 04/2012

PHC of Colombo Case No. HCRA/38/2006

M.C. Maligakanda Case No. 85485

Kottal Bedde Vidanelage Dharmasiri,
The Director General,
Urban Development Authority,
No. 27, D.R. Wijewardana Mawatha,
Colombo 10.

Presently at

“Sethsiripaya”,
Sri Jayawardanepura, Kotte,
Battaramulla.

Plaintiff

Vs.

Sarath Dahanayake,
No. 231, Deans Road,
Colombo 10.

Defendant

AND BETWEEN

Sarath Dahanayake
No. 231, Deans Road,
Colombo 10.

Defendant-Petitioner

Vs.

Kottal Bedde Vidanelage Dharmasiri,
The Director General,
Urban Development Authority,
"Sethsiripaya",
Sri Jayawardanepura, Kotte,
Battaramulla.

Plaintiff-Respondent

AND NOW BETWEEN

Sarath Dahanayake
No. 231, Deans Road,
Colombo 10.

Defendant-Petitioner-Appellant

Vs.

Kottal Bedde Vidanelage Dharmasiri,
The Director General,
Urban Development Authority,
"Sethsiripaya",
Sri Jayawardanepura, Kotte,
Battaramulla.

Plaintiff-Respondent-Respondent

Sumeda Rathnayake,
The Director General,
Urban Development Authority,
"Sethsiripaya",
Sri Jayawardanepura, Kotte,
Battaramulla.

Added-Respondent

**Before: P. Padman Surasena, J / President of the Court of Appeal
Arjuna Obeyesekere, J**

Counsel: Bandula Wellala for the Defendant – Petitioner - Appellant

Ms. Chaya Sri Nammuni, State Counsel for the Plaintiff –
Respondent – Respondent and Added Respondent

Written Submissions of the

Appellant tendered on: 13th August 2018

Written Submissions of the

Respondents tendered on: 08th October 2018

Decided on: 10th October 2018

Arjuna Obeyesekere, J

When this matter was mentioned before this Court on 11th July 2018, learned Counsel for all parties moved that this Court pronounce judgment on the written submissions that would be tendered by the parties.

This appeal has been filed by the Defendant – Petitioner – Appellant (the Appellant) against the Director General of the Urban Development Authority (the Respondent), seeking to set aside the judgment delivered on 12th January 2012 by the learned High Court Judge of the Western Province holden at Colombo and the judgment of the learned Magistrate of Maligakanda delivered on 8th June 2004.

The facts of this matter very briefly are as follows.

Acting under the powers vested in terms of Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended (the Act), the Respondent had served the Appellant with a quit notice dated 26th May 2003 requiring the Appellant to vacate the land referred to in the Schedule to the said Quit Notice with his dependants, if any, and to deliver vacant possession of such land, on or before 30th June 2003.

As the Appellant failed to comply with the said quit notice, the Respondent, by an application for ejectment dated 28th July 2003 instituted action under Section 5 of the Act, seeking to eject the Appellant from the premises mentioned in the said application, which is identical to the land referred to in the said quit notice. In the said application, the Respondent had stated that he is the Competent Authority for the purposes of the Act and that the land described in the schedule to the application is, in his opinion, State land. It was further stated that the Petitioner is, in his opinion, in unauthorized possession or occupation of such land. The said application was accompanied by an affidavit of the Respondent and the quit notice served on the Appellant. This

Court has examined the said application and is of the view that the said application for ejectment is in accordance with the provisions of the Act.

The learned Magistrate had thereafter issued summons in terms of Section 6 of the Act to the Appellant requesting him to show cause as to why he should not be ejected from the land as prayed for in the application for ejectment.

In the show cause filed on his behalf, the Appellant took up the position that the description of the land has not been properly set out in the Schedule to the application for ejectment as well as the quit notice and that the Colombo Municipal Council has issued the Appellant with a valid authorisation to occupy the said land.

The scope of the Inquiry that has to be held by the learned Magistrate and the defences that could be taken up by a person against whom an application has been filed for ejectment have been set out in Section 9 of the Act, which reads as follows:

"At such inquiry the person on whom summons under section 6 has been served **shall not be entitled to contest any of the matters stated in the application under section 5** except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid."

Thus, a person on whom a quit notice has been served and against whom action has been filed for ejection is not entitled to contest any of the matters stated in the application for ejection. The defence of such person is limited to producing a valid permit or a written authorization of the State, granted in accordance with any written law, in respect of the said land. Accordingly, the jurisdiction of the Magistrate's Court is limited to examining if the person sought to be ejected has a valid permit or a written authorisation to occupy the land from which such person is sought to be ejected.

This position has been considered in several judgments of the Supreme Court and this Court. In Nirmal Paper Converters (Pvt) Limited vs Sri Lanka Ports Authority¹ it was held as follows:

“the only ground on which the petitioner is entitled to remain on this land is upon a valid permit or other written authority of the State as laid down in section 9 (1) of the State Lands (Recovery of Possession) Act. He cannot contest any of the other matters.”

In Herath vs Morgan Engineering (Pvt) Limited², the Supreme Court, referring to Section 9 of the Act, held as follows:

“Thus, one could see that a limitation has been placed on the scope and ambit of the inquiry before the Magistrate. The Magistrate can only satisfy him whether a valid permit or any other written authority of the

¹ 1993 1 Sri LR 219.

² SC Appeal No. 214/2012 – SC Minutes of 27th June 2013 – Judgment of Sripavan J (as he then was)

State has been granted to the person on whom summons has been served.”

Although this Court is of the view that the role of the learned Magistrate was limited to ascertaining whether the Appellant had a valid permit or a written authorisation of the State in respect of the land, the learned Magistrate, by his judgment delivered on 8th June 2004 had considered each of the above issues raised by the Appellant. The learned Magistrate, after carefully analysing the description of the land, has held that the land from which ejection is sought had been clearly identified in the application for ejectment. He had also correctly analysed the requirements of Section 9 of the Act and held that the Appellant had not produced a valid permit or a written authority of the State granted in accordance with any written law and for that reason, had rejected the explanation offered by the Appellant. This Court has examined the said judgment and is of the view that the learned Magistrate has correctly applied the provisions of the Act and that it is in accordance with the law.

Being dissatisfied with the said judgement, the Appellant filed a revision application in the High Court of the Western Province holden at Colombo on 17th February 2006, which was twenty months after the delivery of the judgment of the learned Magistrate. The learned High Court judge considered the submissions made on behalf of the Appellant and dismissed the said revision application, having held that the Appellant had failed to adduce any exceptional circumstances as to why the High Court should exercise its revisionary jurisdiction and as the Petitioner was guilty of laches, which has not been explained. This Court has considered the judgment of the learned High

Court Judge and is of the view that the learned High Court Judge was right when she dismissed the revision application of the Petitioner.

Being dissatisfied with the said judgment of the learned High Court Judge, the Appellant filed this appeal before this Court. Four arguments have been taken up in the written submissions tendered on behalf of the Appellant. The first and the most important argument is that the Appellant had been issued with a license by the Colombo Municipal Council for the years 2016 and 2017 and that the Appellant is in possession of the said land by virtue of these licenses.

These documents or similar documents issued for previous years had not been produced before the learned Magistrate or the learned High Court Judge. Therefore, the Appellant is not entitled to the benefit of these documents. Further, the said documents have found their way to the record through the written submissions and thus, do not form part of the appeal brief. This Court has nevertheless examined the said licenses, annexed to the written submissions marked as 'P1' and 'P2', and note that they have been issued by the Colombo Municipal Council to the Appellant for the years 2016 and 2017 to 'keep a garage' on the said premises. 'P1' and 'P2', quite apart from being issued by the Colombo Municipal Council which is not the owner of the land, does not authorise the Appellant to possess the said premises. At the most, it permits the Appellant to operate a garage on the said premises. This Court is in agreement with the submission of the learned State Counsel that 'P1' and 'P2' are neither a valid permit nor a written authority contemplated by Section 9 of the Act, thereby rendering the Appellant in unauthorised possession of the land in question and liable to ejectment.

The other three arguments, namely that there is no proof that the quit notice has been served on the Appellant, that the Respondent has not obtained the approval of the Minister prior to sending the quit notice and that the land has not been identified are all matters that are clearly outside the scope of Section 9 of the Act and matters which the learned Magistrate does not have jurisdiction to inquire into. As this is an appeal arising from a revision application made to the High Court against an order of the learned Magistrate, this Court is of the view this Court too would not have the jurisdiction to examine the said arguments.

This Court is of the view that to do so, would be overstepping the statutory mandate conferred on the courts by the Act, as set out in the following passage in Herath vs Morgan Engineering (Pvt) Limited³:

“If the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. An interpretation of section 9 which defeats the intent and purpose for which it was enacted should be avoided.”

Be that as it may, this Court must observe that the first of the other three arguments was not taken up before the learned Magistrate, the second

³ Supra.

argument is without merit as the Minister of Housing has in fact granted approval to issue the quit notice, as required by Section 14(2)(b) of the Act and the final argument has been quite rightly rejected by the learned Magistrate, after having considered the facts before him.

In the above circumstances, this Court does not see any basis to set aside the judgment of the learned High Court Judge and therefore proceeds to dismiss this appeal. This Court, having taken into consideration the fact that the application for ejectment was filed in the Magistrate's Court in 2003 and that the Appellant has been in unauthorized possession or occupation of the premises without a valid permit or any other written authority granted in accordance with any written law for a long period of time, orders the Appellant to pay a sum of Rs. 25000/- as costs to the Added Respondent.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal