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

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

Divisional Secretary,
Divisional Secretariat,
Galewela.
Applicant- Respondent-Appellant

C.A.(PHC)Appeal No. 47/2014
P.H.C. Kandy Case No.06/2011(Rev)
M.C. Mt. Kandy CaseNo. 13794

Vs.

Waligama Arachchige Budhdhinatha Dias Dharshana,
Niyandhagala,
Pannipitiya
Respondent-Petitioner-Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	Maithri Amarasinghe S.C. for the Applicant-Respondent-Appellant W. J.P. Silva for the Respondent-Petitioner- Respondent.
WRITTEN SUBMISSIONS TENDERED ON	:	25-09-2018(by the Respondent) 03-10-2018 (by the Appellant)
DECICED ON	:	07th November, 2018

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ACHALA WENGAPPULI,

In this appeal, the Applicant-Respondent-Appellant (hereinafter referred to as the "Appellant") seeks to set aside an order of the Provincial High Court of the Central Province holden in *Kandy* dated 19.06.2014 in a revision application No. Rev. 06/2011. The said revision application of the Respondent-Petitioner-Respondent (hereinafter referred to as the "Respondent") was filed seeking to set aside an order of ejectment issued on him by the Magistrate's Court of *Dambulla* upon an application under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (hereinafter referred to as the "Act").

After inquiry upon the revision application filed by the Respondent, the Provincial High Court had set aside the order of ejectment by adopting

the reasoning of the judgment of ***Senanayake v Damunupola***(1982) 2 Sri L.R. 621 and an unreported judgment of the Supreme Court in SC Appeal No. 138/96. It further "suggested" that the Respondent to obtain a report from the Surveyor General indicating whether the land in dispute is located within the final partition plan of the partition action No. P2374 of the District Court of Matale and FVP No. 349 or not.

The basis of the said order was the Respondent's claim that the land in dispute is a private land as per the final partition plan of partition action No. P2374 of the District Court of Matale.

In making his application under Section 5 of the State Lands (Recovery of Possession) Act before the Magistrate's Court of Dambulla, the Appellant had informed Court that he has already issued a quit notice on the Respondent and upon his failure to handover vacant possession of the land described in schedule to the application, he seeks an order of Court under Section 5 of the said Act.

The Magistrate's Court, after an inquiry to which the Respondent submitted his position that the land in dispute is a private land, made order of ejectment since he failed to tender a valid permit or written authority to remain in possession of the said land. It also held that the Respondent has failed to establish the identity of the disputed land, when

compared with the land described in the schedule to the application and the material tendered by the Respondent.

This Court has consistently held that when a Competent Authority has already formed an opinion that a particular land is a State Land and having served a quite notice on its occupier, makes an application thereafter to the Magistrate's Court under Section 5 of the said Act, the Magistrate's Court has no jurisdiction to undertake an inquiry as to the status of the land in dispute whether it is a State land or a privately owned land.

In ***Farook v Gunewardene, Government Agent, Amparai*** (1980) 2 Sri L.R. 243, it was 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 basis for this determination is the statutory provisions contained in Section 9(1) of the State Lands (Recovery of Possession) Act where it is stated that " *At such inquiry the person on whom summons under Section 6 has been served shall not be entitled to contest any matters stated in the application under Section 5 ...".*

Section 5 of the said Act contains statutory provisions to indicate that when a Competent Authority makes an application under its provisions, he

must set forth that "the land described in the schedule to the application is a State land, ...". The effect of sub section 9(1) of the said Act is to make this assertion an incontestable fact before the Magistrate's Court to a Respondent. In addition, Section 9(2) of the said Act debars any Magistrate's Court from calling any evidence from the Competent Authority in support of such an application.

In view of these clear and unambiguous statutory provisions, it is abundantly clear that the Magistrate's Court had not been conferred with jurisdiction to inquire into the assertions by a Competent Authority in an application under Section 5 of the said Act.

Except for this error of considering an incontestable fact, the order of the Magistrate's Court in ejecting the Respondent from the State land described in the schedule to the application is affirmed by this Court as it had otherwise correctly applied the relevant principles and issued the ejectment order. But the Provincial High Court has fallen into error in revising it on a mis appreciation of the applicable legal principles. The order of the Provincial High Court is clearly 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 claim that the land in dispute is a State land 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 claim of State land which in turn would challenge the validity of quit notice issued by a Competent Authority, it must advise itself properly as to the nature of remedy it should seek from a 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 the claim of the Appellant that the land in which the Respondent is in unauthorised possession is a State land in a revision application against an ejectment order made by the Magistrate's Court and not in an application for judicial review, his application is "fatally flawed."

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 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...*". The other judgment relied upon by the Provincial High Court, the judgment of ***Jayamaha and Others v JEDB and Others*** S.C. Appeal No. 138/96 - decided on 26.02.1999 was decided on a different factual setting. In the said appeal, the Appellant, who had been served with a quit notice, tendered to Court several receipts by the Competent Authority had accepted payments as rentals. Considering this factual position, their Lordships issued a Writ of Certiorari to quash the quit notice as the Appellant was not in "*unauthorised possession or occupation*". The facts are therefore clearly distinguishable from that of the instant appeal before us.

In relation to the claim of the Respondent that the land in dispute is in fact not a State land but private land owned by him, Section 12 provides remedy for such claims. In CA No. 1299/87 decided on 14.06.1995, where a Writ of Certiorari was sought to quash the issuance of a quit notice, it was decided that " *...the notice is the first step in the process of recovering possession of State land from persons in unauthorised possession or occupation. It does not relate to title and any dispute as to title should be resolved in an action that may be filed as provided in Section 12 of the Act.*"

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 19th June

2014 is hereby set aside by this Court. The order of ejectment issued by the Magistrate's Court on 24th November 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