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

In the matter of an Appeal against the judgment dated 07.06.2012made by the Provincial High Court of the Western Province holden in Colombo in Application No. HCRA/59/2011.

M. J. Rodrigo Kanndappa
No. 185/17,
Wasala Road,
Colombo 13.
Respondent-Petitioner-Appellant

C.A.(PHC)Appeal No. 159/2012
P.H.C. Colombo Case No. HCRA 59/2011
M.C. Colombo No. 48506/05/09

Vs.

Hewahategе Sumanapala
The Commissioner of Local Government, Department of Local Government, Western Province,
Torrington Square,
Colombo 07
Applicant -Respondent-Respondent

Mrs. Chandrani Samarathunga
The Commissioner of Local Government, Department of Local Government, Western Province,
Torrington Square,
Colombo 07
Added Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	M. Pathum Wickremaratne with Prasanna Liyanaarachchi for the Respondent-Petitioner-Appellant C. Nilanduwa for the Added–Respondent.
WRITTEN SUBMISSIONS		
TENDERED ON	:	10-09-2018(by the Respondent) 20-09-2018 (by the Appellant)
DECICED ON	:	07th November, 2018

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ACHALA WENGAPPULI, J.

This is an appeal by the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") against an order of dismissal of his revision application to set aside an order of ejectment issued by the Magistrate's Court of Colombo in case No. 48506/05/09.

The Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") had made an application under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, to the Magistrate's Court of Colombo, seeking eviction of the Appellant from the State land described in the schedule to the said application.

In his show cause addressed to the Magistrate's Court, the Appellant claimed that he was in possession of the said land for a period of over 30 years and tendered utility bills and other documentary proof in support of his claim. He also alleged that this application is a result of an attempt by a third party to take possession of the State land in dispute. He prayed from the Magistrate's Court to grant him sufficient time to find alternative accommodation.

At the conclusion of the inquiry under Sections 8 and 9 of the said Act, the Magistrate's Court made order dated 22.02.2011, ejecting the Appellant as he failed to establish that he is in possession of the said State land upon a valid permit or other written authority.

Being aggrieved by the said order, the Appellant sought to challenge its validity before the Provincial High Court of the Western Province holden in Colombo in revision application No. HCRA 59/2011. In his petition addressed to the Provincial High Court, the Appellant stated that the Respondent instituted action against him under the provisions of State Lands (Recovery of Possession) Act No. 7 of 1979 whereas, he should have moved under Government Quarters (Recovery of Possession) Act since the premises described in the schedule to the application to the Magistrate's Court in fact is one among several official quarters known as *"laundry houses"* belonging to Colombo Municipal Council.

The Provincial High Court, in its order dated 07.06.2012, having noted that the Appellant had failed before the Magistrate's Court to establish that he is in possession of the said State land upon a valid permit or other written authority, proceeded to dismiss his revision application as

no exceptional grounds exists to interfere with the findings of the lower Court.

In support of his appeal against the said order of the Provincial High Court, the Appellant now contends before us that;

a. the Respondent acted in violation of Section 14(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979 by instituting action before the Magistrate's Court without the Hon. Minister's prior approval to recover the State land,
b. the Appellant did possess a valid permit to be in possession of the State land

The 1st ground of appeal of the Appellant is based on the provisions of Section 14(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979. The said sub section reads as follows:-

> *"In the exercise, performance and discharge of his powers, duties and functions under this Act a competent authority shall be subject to the direction and control of the Minister in charge of the subject of State lands."*

Section 3(1)(a) of the State Lands (Recovery of Possession) Act conferred authority on the Competent Authority to issue a quit notice on any person who is in unauthorised possession or occupation of State land and directing such person to deliver vacant possession of such land to him or other authorised officer on the date specified in the said quit notice, if he is of the opinion that such land is a State land.

If the person who is in unauthorised possession or occupation of such land fails to deliver vacant possession as directed in the quit notice, the Competent Authority is then empowered by Section 5 of the said Act to make an application for an order of ejection from the relevant Magistrate's Court against the person who is in such unauthorised possession or occupation.

None of these statutory provisions imposed a pre-condition of obtaining prior approval of the relevant Minister in exercising powers conferred upon him under Sections 3 and 5 of the said Act. However, the Competent Authority is statutorily bound to "*direction and control of the Minister in charge of subject of State lands*". In relation to the instant appeal, there is no such claim by the Appellant made to any of the Courts below.

In any event the Appellant cannot challenge the invocation of the provisions of Section 5 of the State Lands (Recovery of Possession) Act in the instant appeal. If the Appellant wishes to challenge the institution of legal proceedings without approval of the relevant Minister in charge of State lands which in turn could be considered as a challenge to 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 Appellant sought to challenge the invocation of the provisions of the State Lands (Recovery of Possession) Act by the Respondent and thereby claiming that the Appellant is in unauthorised possession of State land, in a revision application and not in an application for judicial review, his application is "fatally flawed."

The 2nd ground of appeal relates to the possession of the State Land upon a valid permit or other written authority. The Appellant had tendered an agreement of long lease entered into by himself and National Housing Development Authority apparently in respect of the same property as per the assessment number and the street name. This document was tendered annexed to the Appellant's written submissions addressed to this Court marked "X" and is dated 27.09.2016.

The order of ejection is dated 22.02.2011 while the order of the Provincial High Court is dated 07.06.2012. The lease agreement was entered into more than four years since the order of dismissal of the revision application made by the Provincial High Court.

In considering the legal validity of both these orders in the instant appeal, this Court should not consider any fresh material that had not been placed before any of the lower Courts when the parties agitated their

respective claims before them. This Court had held in CA (PHC) 41/14 decided on 02.05.2017 that:-

> *"As revision is supervisory in nature, and the learned High Court Judge in exercising the revisionary jurisdiction can only supervise what has already been submitted in the lower Court. The said document had not been tendered in the lower Court, hence the learned High Court Judge in exercising revisionary jurisdiction is debarred from supervising the said document"*

In any event the lease agreement did not exist when the Provincial High Court considered the Appellant's revision application and therefore it had made a correct order after assessing the material placed before him. The appellate jurisdiction of this Court is defined in Article 138(1) of the Constitution.

Article 138(1) reads as follows;

> *"The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any court of First Instance, ..."*

The Provincial High Court could not have made any other order other than to dismiss the revision application of the Appellant for want of exceptional circumstances from the material placed before it by the parties.

This Court would therefore, consider the validity of the Provincial High Court only against the material placed before it by the contesting parties. Having considered the material , this Court finds no error either in fact or law in the order of the Provincial High Court.

In view of the considerations contained in the preceding paragraphs, we are of the considered opinion that both these orders are legally valid, having made upon consideration of the applicable law and the material placed before those Courts. This Court affirms both these orders.

The appeal of the Appellant is accordingly dismissed. In consideration of the facts of the appeal, no order for costs is made against the Appellant.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL