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

In the matter of an Appeal from the order dated 11.02.2014 made by the Provincial High Court of Uva Province holden in Badulla in the exercise of its jurisdiction under Articles 154P 138(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Samarakoon Mudiyanselage Bandara Menike, of
Nuwara Kade,
Meegahakiwula
Respondent-Petitioner-Appellant

C.A.(PHC)Appeal No. 16/2014
P.H.C. Badulla Case No. 02/2014(Rev)
M.C. Badulla CaseNo. 33752

Vs.

Divisional Secretary,
Office of the Divisional Secretary,
Meegahakiwula
Petitioner -Respondent-Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	Dr. Sunil Cooray for the Respondent-Petitioner-Appellant U.P. Senasinghe S.C. for the Petitioner–Respondent-Respondent.
WRITTEN SUBMISSIONS TENDERED ON	:	09-10-2018(by the Appellant) 16-10-2018 (by the Respondent)
DECICED ON	:	07th November, 2018

****

ACHALA WENGAPPULI, J.

This is an appeal filed by the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") seeking to set aside an order of dismissal of her revision application No. HC/02/2014/Revision, made by the Provincial High Court of *Uva* Province holden in *Badulla,* upon holding the view that it had no jurisdiction to entertain the said revision application as per the judgment of the Supreme Court in ***The Superintendent, Stafford Estate, Ragala and Others v SolaimuthuRasu*** (2013) 1 Sri L.R. 25.

In his application No. 33752, filed under section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent")

sought an order of ejectment of the Appellant from the State land described in its schedule.

After an inquiry, the Magistrate's Court of Badulla, by its order dated 10.01.2012, had issued an order of ejectment against the Appellant. The Appellant had thereafter invoked revisionary jurisdiction of the Provincial High Court to have the said order of ejectment set aside. The Provincial High Court dismissed her application on 11.02.2014 *in limine* for want of jurisdiction.

Being aggrieved by the said order of dismissal, the Appellant seeks to challenge its validity on the basis that the Provincial High Court had erroneously held that it had no jurisdiction to entertain her revision application.

The Provincial High Court, in its impugned order, has held that in view of the reasoning of the Supreme Court judgment of ***The Superintendent, Stafford Estate, Ragala and Others v Solaimuthu Rasu,*** it has no jurisdiction to entertain the revision application filed by the Appellant as its subject matter concerns a State land.

This determination by the Provincial High Court is challenged by the Appellant and she submits to this Court that "... *what the Supreme Court has decided in that case was that the Provincial High Courts have no jurisdiction to issue a writ in respect of State lands because State land is not a devolved subject. The Supreme Court has not decided, and could not have decided, and had no basis to decide, that the Provincial High Courts have no jurisdiction to exercise revisionary jurisdiction where the land in question is a State land.*"

In his reply, the Respondent submits that the said Supreme Court judgment "... *should not be interpreted beyond the appointed boundaries. Because Article 154P(3)(6) grants parallel jurisdiction to revise any "order", and it does not matter whether such order "relates or involves" State land or crime. Legislative and Constitutional power relating to criminal law were not devolved as much as power over State land; but once the Magistrates Courts exercise such jurisdiction, then Provincial High Courts are rendered competent to exercise revisionary jurisdiction only as a matter of revision of that Court"* (emphasis is original).

In view of the submissions of the Appellant this Court must consider the question whether the Provincial High Court could exercise revisionary jurisdiction over an order of ejectment issued by the Magistrate's Court, upon an application under section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979.

Article 154P(3)(b) confers jurisdiction to a Provincial High Court to;

> *"notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the Province";*

In addition, Article 154P(3)(c) also provide jurisdiction to;

> *"exercise such other jurisdiction and powers as Parliament may, by law, provide."*

Section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 made the provisions of the written law applicable *mutatis*

mutandis to applications made to the Court of Appeal for revision of any conviction, sentence or order by a Magistrate's Court.

It is clear upon plain reading of the Article 154P(3)(b) and (c) that it does not impose any restriction to the scope of the revisionary jurisdiction it had conferred upon the Provincial High Court over the Magistrates and Primary Courts which are located within the province. Section 5 of the High Court of the Provinces (Special Provisions) Act also does not contain any such restriction in its scope. Thus, it seems that the Provincial High Court could exercise revisionary jurisdiction over any order issued by the Magistrate's Court unless such exercise is specifically prevented by law.

We now proceed to consider the reasoning of the Supreme Court, in the light of above considerations.

The question of law that had been presented before their Lordships was;

> *"Did the Court of Appeal err by deciding that the Provincial High Court has jurisdiction to hear cases where dispossession or encroachment or alienation of State lands is/ are in issue?"*

Having considered the relevant Articles of the Constitutions and judicial precedents, the apex Court has decided that;

> *" ...the Court of Appeal erred in law in holding that the Provincial High Court of Kandy had jurisdiction to issue a writ of certiorari in respect of a quit notice issued under State Lands (Recovery of Possession) Act as amended."*

Article 154P(4)(b) confers the Provincial High Courts with jurisdiction to issue:-

"orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under

(i) any law; or

(ii) any statutes made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List."

Their Lordships thereafter proceeded to answer the question of law presented before them as follows;

"The question of law considered by this Court is thus answered in the affirmative."

It is clear that the *ratio* of the said judgment of the Supreme Court is that the Provincial High Court has no jurisdiction to entertain an application under Article 154P(4)(b) of the Constitution in relation to State lands. There is no reference to Article 154P(3)(b) of the Constitution in the said judgment, which had conferred revisionary jurisdiction to Provincial High Courts established under Article 154P of the Constitution. Although the question of law presented before the apex Court had been formulated in wider terms, their Lordships have answered it only in relation to provisions contained in Article 154P(4)(b). We are therefore inclined to accept the submissions of the Appellant on this point.

Therefore, the reference contained in the said judgment to the effect that " *it is unfortunate that the Court of Appeal fell into cardinal error of holding*

that the Provincial High Court has jurisdiction to hear and determine applications for discretionary remedies in respect of quit notices under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended" should be understood in the context of Article 154P(4)(b) only.

In view of the foregoing reasons, we are of the considered view that the Provincial High Court had fallen in to error in holding that it had no jurisdiction to entertain an application for revision under Article 154P(3)(b) of the Constitution, upon misapplication of the principle of law enunciated in the judgment of ***The Superintendent, Stafford Estate, Ragala and Others v Solaimuthu Rasu.*** This Court has already held the identical view on this point in CA(PHC) No.149/2014 - decided on 17.06.2015.

Accordingly, we allow the appeal of the Appellant and further direct the relevant Provincial High Court to proceed with the inquiry into the revision application and to make an order on its merits.

Considering the circumstances under which this appeal is made, we make no order for costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL