

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

In the matter of an Appeal in terms  
of Article 154(Ϟ) of the Constitution  
read with High Court of the  
Provinces (Special Provisions) Act.

Vincent Peter Ranasinghe,  
No.27, Swasthika Udyanaya,  
Kandy Road,  
Peliyagoda

**Respondent-Petitioner-Appellant**

**C.A.(PHC)Appeal No. 129/2012**

**P.H.C. Colombo Case No. HCRA 86/2009**

**M.C. Mt. Colombo CaseNo. 67282/07**

Vs.

Vijitha Palihakkara Wijesekera,  
General Manager Railway  
Office of the General Manager  
Railway,  
P.O.Box 355,  
Colombo 10

**Applicant -Respondent-  
Respondent**

Hon. Attorney General  
Attorney General's Department,  
Colombo12.

**Respondent-Respondent**

**BEFORE** : JANAK DE SILVA, J. &  
ACHALA WENGAPPULI, J.

**COUNSEL** : Respondent-Petitioner-Appellant is  
absent and unrepresented  
Manohara Jayasinghe S.C. for the  
Applicant – Respondent-Respondent  
& the Respondent-Respondent.

**ARGUED ON** : 10<sup>th</sup> September 2018

**DECIDED ON** : 16<sup>th</sup> November, 2018

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**ACHALA WENGAPPULI, J.**

The Respondent-Petitioner-Appellant (hereinafter referred to as the “Appellant”) has invoked the appellate jurisdiction of this Court, seeking to set aside an order dated 2<sup>nd</sup> February 2012, in case No. HCRA 86/2009 of the Provincial High Court holden in Colombo. In the said revision application, the Appellant sought to set aside an ejectment order dated 22<sup>nd</sup> April 2009, issued by the Magistrate’s Court of Colombo in case No. 67282/07, upon an application filed by the Applicant-Respondent-Respondent (hereinafter referred to as the “Respondent”) under Section 5 of the State Land (Recovery of Possession) Act No. 7 of 1979 as amended.

This Court had issued notice on the Appellant through the fiscal of the District Court of Colombo and it was reported that the said notice was served on him on 04.07.2018. When this appeal was mentioned on

25.07.2018, the Appellant was absent and unrepresented. However, this Court fixed his appeal for hearing on 10.09.2018 and the parties were directed to tender written submissions if any. On the date of the hearing of the appeal also the Appellant was absent and unrepresented. Nonetheless, this Court will consider his appeal.

In his petition of appeal, the Appellant contended that the Provincial High Court had failed to consider the material available before it in his favour. Further, he stated in the appeal that he was occupying the State land upon an agreement of lease. He claimed that he could not tender the said agreement before the Magistrate's Court due to the failure of the Respondent to issue a copy. It is also claimed that the Appellant had legitimate expectation to continue the occupation of the State land in respect of which an order of ejectment was issued by the Magistrate's Court.

It is claimed by the Appellant that he has operated a small shop upon a rent agreement with the Colombo Municipal Council since 1989 and in 1990, he had put up a building with his own funding with the approval of Colombo Municipal Council and continued to occupy it. Thereafter, the Appellant and the Respondent have entered into an agreement of rent on 01.09.1999.

With his letter dated 04.04.2007, the Respondent had informed the Appellant regarding the termination of the said rent agreement and directed him to handover the vacant possession of the disputed premises on or before 10.05.2007. The Respondent further informed the Appellant,

upon his failure to comply with the said direction would result in initiating legal action to recover possession of the said premises.

Thereafter, the Respondent had issued quit notice on the Appellant on 16.07.2007 and upon his failure to vacate the said premises, an application is made seeking an order of ejectment from Court in case No. 67282/07.

At the inquiry before the Magistrate's Court these factors were brought to the notice of Court by the Appellant. However, the Magistrate's Court had issued the ejectment order on 22.04.2009.

When the Appellant sought to challenge the validity of the said order of ejectment in HCRA 86/2009, the Provincial High Court dismissed his petition as no exceptional circumstances were established to exercise its revisionary jurisdiction.

The lease agreement was duly terminated by the Respondent with prior notice to the Appellant. There was no challenge by the Appellant to the termination of the said lease agreement. After the day on which the lease agreement deemed terminated, the Respondent took steps to issue quit notice and upon the Appellant's failure to handover vacant possession of the disputed premises as per the said notice, an application was made to the relevant Magistrate's Court, seeking his ejection under the provisions of State Lands (Recovery of Possession) Act.

The Respondent had therefore acted according to the applicable statutory provisions and the Magistrate's Court had correctly issued the order of ejectment upon the failure of the Appellant to satisfy Court that he had a valid permit. Upon consideration of the material before the

Provincial High Court, it rightly concluded that there were no exceptional circumstances disclosed in the Appellant's petition.

In view of the considerations that are referred to in the preceding paragraphs, we are of the firm view that the appeal of the Appellant is devoid of any merit.

We, accordingly make order dismissing the appeal of the Appellant with costs fixed at Rs. 10,000.00.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**