

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

In the matter of an Application in terms of Article 138 of the Constitution read with the High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended and Article 154 (P)(3) of the Constitution.

K. Kamalraj
No.05, Power House Road,
Jaffna
(No.09, Power House Road,
Jaffna)

Respondent-Petitioner-Petitioner

C.A.(PHC)APN No. 123/2017
H.C. Jaffna Case No.2218/2017
M.C. Jaffna Case No.1847/S/17

Vs.

Ponampalam Thayanathan
Competent Authority
Divisional Secretary,
Divisional Secretariat,
Jaffna.

**Applicant-Respondent-
Respondent**

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

COUNSEL : Respondent-Petitioner-Petitioner is absent
and unrepresented.
Nirmalan Wigneswaran SSC for the
Applicant-Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 16-11-2018(by the Respondent)

DECIDED ON : 13th December, 2018

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Petitioners (hereinafter referred to as "Petitioners") in their application Nos. CA (PHC) APN 123 to 130 /2017, have invoked revisionary jurisdiction of this Court in terms of Article 138 of the Constitution, seeking to set aside a common order made by the Provincial High Court of the Northern Province holden in Jaffna in respect of H.C. Jaffna Revision Application Nos. 2210/17, 2211/17, 2212/17, 2213/17, 2215/17, 2216/17, 2217/17 and 2218/17 on 09.08.2017 dismissing them.

In invoking revisionary jurisdiction of the Provincial High Court with their applications, the Petitioners sought to challenge the validity of

orders of ejectment made by the Magistrate's Court of Jaffna in Case Nos. M.C. 1839/S/17, M.C. 1840/S/17, M.C. 1841/S/17, M.C. 1842/S/17, M.C. 1844/S/17, M.C. 1845/S/17, M.C. 1846/S/17, and M.C. 1847/S/17 on 24.07.2017.

The case Nos. M.C. 1839/S/17 to M.C. 1847/S/17 except M.C. 1843/S/17 were instituted by the Applicant Respondent-Respondent (hereinafter referred to as the "Respondents" since the Petitioners have added Hon. Attorney General also as "Respondent" before this Court) under Section 5(1) of the State Lands (Recovery of Possession) Act No. 7 of 1997 seeking orders of Court in ejecting the Petitioners from the State lands described in the schedules to these set of applications.

It is admitted in the petitions tendered to this Court that the Petitioners were duly represented with legal assistance before the Magistrate's Court on 20.07.2017 and have tendered receipts issued by the Municipal Council of Jaffna by which it had accepted rentals and other payments in relation to the premises that the Petitioners have occupied. The Respondent had then moved for orders of ejectment against the Petitioners upon their failure to show cause and the Court made orders of ejectment on 24.07.2017.

It is against the said orders of ejectment the Petitioners sought relief from the Provincial High Court seeking its revisionary jurisdiction. Their complaint to the said Court was that it had made order ejecting them *"without giving any opportunity to show cause/ hearing/ inquiry in terms of the State Lands (Recovery of Possession) Act as amended"*. After the applications

were supported in open Court, it is stated by the Petitioners that the Provincial High Court had proceeded to dismiss their petitions *in limine*.

Complaint of the Petitioners in challenging the said orders is the failure of the Provincial High Court to appreciate their claim that they were deprived of an opportunity to show cause and that it had also failed to consider that the Magistrate's Court made these orders against provisions contained in Sections 7 and 9 of the State Lands (Recovery of Possession) Act.

At the time of support of these applications for revision before this Court on 18.08.2017, the Petitioners have informed this Court of the fact that they were already been evicted from the State land and sought to add Hon. Attorney General as a "Respondent".

Thereafter, the Petitioners showed no interest in pursuing their applications by absenting themselves and without taking steps to have any legal representation on their behalf.

At the hearing, the Respondents agreed to tender written submissions in support of both the orders that are impugned by the Petitioners by their revision applications.

It is noted that the main thrust on the legality of the said impugned orders is that the Petitioners were not given an opportunity to show cause as to why an order of ejectment should not be made against them. They relied on the provisions contained in the Sections 7 and 9 of the State Lands (Recovery of Possession) Act in support of their claim.

However, as already noted the Petitioners have admitted that they were represented before the Magistrate's Court of Jaffna in relation to these cases that had been instituted by the Respondent seeking their eviction and they did only tender receipts issued by the Municipal Council of Jaffna confirming acceptance of rentals and other payments.

This admission runs contrary to their claim that they were not given an opportunity to show cause by the Magistrate's Court. Section 7 empowers the Magistrate's Court to issue an order of ejectment if the Respondent before it "*informs the Court that he has no cause to show against the order of ejectment.*" Section 9 of the said Act sets out the scope of the inquiry, if a respondent seeks to show cause, by limiting the role of a respondent to "*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.*"

The Magistrate's Court had clearly afforded an opportunity to the Petitioners to show cause. They had no "*valid permit or other written authority of the State*" the Court could take cognizance of. Therefore, the orders of ejectment issued by the Magistrate's Court has the legal validity. The Provincial High Court, when an obviously valid order is challenged on clearly a frivolous ground in seeking relief under revisionary jurisdiction of the said Court, which is a discretionary remedy in nature, is justified in dismissing such applications *in limine*.

In the written submissions of the Respondent, it is rightly contended that the Petitioners are not entitled to any relief from this Court due to

their failure to exercise due diligence in pursuing their applications, their failure to satisfy the existence of any exceptional circumstances and the futility of their applications in view of the fact that already the orders of ejectment were carried out by the Respondent.

As pointed out by the learned Senior State Counsel for the Respondents, even at this late stage there is no "*valid permit or other written authority*" tendered by the Petitioners for their possession or occupation of State land.

In view of the above considerations, we see no merit in the applications of the Petitioners and therefore make order dismissing the application Nos.CA (PHC) APN 123/2017, 124/2017, 125/2017, 126/2017, 127/2017, 128/2017, 129/2017, and 130/2017.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL