

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

In the matter of an Appeal under  
Section 9 of the High Court of the  
Provinces (Special Provisions ) Act  
No. 19 of 1990.

P. Dona Padmaseeli

No. 180/2/115,

People's Park,

Colombo 11

**Respondent-Petitioner-Appellant**

**C.A.(PHC)Appeal No. 131/2010**

**P.H.C. Colombo Case No.139/2008(Rev)**

**M.C. Colombo Case No. 11774/5/91**

Vs.

N.D. Dixon (Retired)

Director General,

Hillary Prasanna de Silva, Present

Director General,

Urban Development Authority,

No.27,

D.R. Wijewardane Mawatha,

Colombo 10.

**Applicant -Respondent-**

**Respondent**

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

**COUNSEL** : Jacob Joseph with Sandamali Madurawala  
for the Respondent-Petitioner-Appellant  
Nirmalan Wigneswaran S.S.C. for the  
Applicant-Respondent-Respondent.

**WRITTEN SUBMISSIONS**

**TENDERED ON** : 25-09-2018( by the Appellant)  
17-09-2018 (by the Respondent)

**DECIDED ON** : 13<sup>th</sup> December, 2018

\*\*\*\*\*

**ACHALA WENGAPPULI, J.**

This is an appeal by the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") against an order of the Provincial High Court of the Western Province holden in Colombo, made in revision application No. HCRA 139/2008 on 21.07.2010, challenging the validity of an order of ejection dated 12.08.2008, made by the Magistrate's Court of Colombo in case No. 11774/5/91.

In the matter before the Magistrate's Court, instituted by the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") under Section 5(1) of the State Lands (Recovery of Possession) Act No. 7 of 1997, he has sought an order of Court ejecting the Appellant from the State land described in its schedule.

After an inquiry, during which the Appellant was afforded an opportunity to show cause, the Magistrate's Court made the impugned order of ejection as sought by the Respondent.

Thereafter, the Appellant sought to challenge its legality before the Provincial High Court on the basis that she had already deposited Rs. 50,000.00 on 16.05.1994 with the Urban Development Authority with a view to purchase it and he therefore had a "legitimate expectation" to occupy the said premises.

This contention was rejected by the Provincial High Court as it held that the Appellant has failed to establish that she is in possession or occupation of the State 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 and therefore the order of ejection is legally valid.

In support of her appeal before us, the Appellant contended that the application under Section 5(1) is invalid since the Respondent did not have authority to institute action and the proper person who could have instituted such action is the Chief Executive Officer of the Joint Venture Company in terms of Section 19(e) of the UDA Act No. 41 of 1988.

The Appellant, in her affidavit tendered to the Magistrate's Court confined her claim to the fact that she made a payment of Rs. 50,000.00 with a view to purchase the premises but the UDA had failed to finalise the transaction citing various reasons. Only in the Provincial High Court that the Appellant had advanced this proposition. In effect the Appellant sought to challenge the validity of the application under Section 5(1) of the

State Lands (Recovery of Possession) Act before the Provincial High Court in her revision application against the order of ejection.

There is no dispute to the fact by the Appellant that she was served with a quit notice by the Respondent, prior to making an application to the Magistrate's Court under Section 5(1) of the State Lands (Recovery of Possession) Act. The Appellant did not at any point of time made an attempt to challenge the validity of the said quit notice served on her seeking remedies that are available under public law.

In *Dayananda v Thalwatte* (2001) 2 Sri L.R. 73, this Court, having observed that;

*" ... an aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari and if the application is to compel an authority to perform a duty he would ask for a writ of mandamus and similarly if an authority is to be prevented from exceeding its jurisdiction the remedy of prohibition was available"*

The Court then proceeded thereafter to hold that ;

*"institution of proceedings in the Magistrates Court in terms of the quit notice is not a determination affecting legal rights."*

It further held that;

*"it was open for the Petitioner to seek to quash the quit notice by way of certiorari when the determination was made ... or to move in revision at the conclusions of the Magistrate's findings".*

The Provincial High Court had reviewed the order of ejectment by the Magistrate's Court in the light of the applicable statutory provisions contained in the State Lands (Recovery of Possession) Act. Therefore, the order of the Provincial High Court in dismissing the petition of the Appellant could not be challenged on the basis that the said Court did not consider the material relevant to its determination.

We are not inclined to accept the submissions of the Appellant and conclude that the appeal of the Appellant is devoid of any merit.

The appeal of the Appellant is accordingly dismissed with costs fixed at Rs. 15,000/=.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**