

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

In the matter of an Appeal under Article 154(P)(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 11 of the High Court of the Provinces (Special Provisions) Act No. 1990.

C.A.(PHC)Appeal No. 48/2014

P.H.C. Kandy Case No. 01/2013(Rev)

M.C. Case No. 53280/12

Commissioner of Local Government
Provincial Department of Local
Government - Central Province
Secretariat Building,
Kandy.

Applicant -Respondent-

Appellant

Vs.

Matiwala Kumbure Rajapakshe
Gedara Chandrasena,
No.09B, Malpana,
Kengalla.

Respondent-Petitioner-Respondent

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

COUNSEL : Ranga Dayananda for the Respondent-
Petitioner-Appellant
H.P.Nimal Jayasinghe with Situ
Bandara Ratnayake for the Respondent-
Petitioner-Respondent.

ARGUED ON : 23rd October 2018

DECIDED ON : 16th January, 2019

ACHALA WENGAPPULI, J.

The Applicant-Respondent-Appellant (hereinafter referred to as the "Appellant") invokes appellate jurisdiction of this Court seeking to set aside an order of the Provincial High Court of the Central Province holden in Kandy in revising an order of ejectment issued by the Magistrate's Court of Kandy against the Respondent-Petitioner-Respondent (hereinafter referred to as the "Respondent").

In making an application under Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (hereinafter referred to as the said "Act"), the Appellant has sought an order of ejectment against the Respondent from the State land described in the schedule to the said application.

The Respondent, in his show cause, has set up a prescriptive title to the State land claiming possession over a period of fifty years. It is also claimed by the Respondent that after their acquisition of prescriptive title, previous owners of this property have transferred their rights over it to the District Development Council of Kandy by deed No. 1144, executed by Notary *Keppetipola* on 28.08.1985.

After considering the position placed by the Respondent in his show cause before it, the Magistrate's Court made order ejecting him from the disputed State land since the Respondent has failed to satisfy him that he has a "valid permit or other written authority of the State granted in accordance with any written law and that permit or authority is in force and not revoked or otherwise rendered invalid" as per Section 9(1) of the State Lands (Recovery of Possession) Act No. 9 of 1979, issued an order of eviction on 06.12.2012.

The Respondent moved in revision of the said order of ejectment before the Provincial High Court. After an inquiry, it had set aside the order of ejectment having observed that the impugned order of the lower Court was issued based on the failure of the Respondent to produce a valid permit or any other written authority authorising him to be in possession of the said State land.

The Provincial High Court revised the said order of ejectment on the basis that the Respondent has clearly established the fact that he was in possession of the disputed land over 50 years and as per the judgment of *Senanayake v Damunupola* (1982) 2 Sri L.R. 621 in such a situation a competent authority should not repossess a land placing reliance on the provisions of the State Lands (Recovery of Possession) Act. In addition, it had relied on the unreported judgment of SC Appeal No. 138/96.

Being aggrieved by the said order of the Provincial High Court, the Appellant lodged an appeal challenging its validity on the basis that it had failed to properly apply legal provisions in the State Lands (Recovery of Possession) Act.

In support of their ground of appeal, the Appellant contended that Section 9 of the said Act places a limitation on the Magistrate's Court as to the scope of the inquiry it should conduct when an application is made for an order of ejectment. The Appellant relied on the judgments of *Muhandiram v Chairman, JEDB* (1992) 1 Sri L.R. 110 and *Nirmal Paper Converters (Pvt) Ltd., v Sri Lanka Ports Authority* (1982) 2 Sri L.R. 621 where it has been held that the only ground on which the Respondent in an application of an order of ejectment is entitled to remain in the land, as per the statutory provisions of Section 9(1) of the said Act, is to establish that he is in possession or occupation upon a valid permit or other written authority of the State granted according to the written law.

The Supreme Court in its judgment of *Divisional Secretary of Kalutara & Others Vs. Jayatissa* SC Appeal Nos. 246 to 249 and 250 of 2014 - decided on 04.08.2017 where one of the questions that arose for

determination by their Lordships was *“Has the Court of Appeal erred in law by holding that the Competent Authority is required to prove whether the State land was vested in the Government as acquired when section 9(2) of the State Lands (Recovery of Possession) Act specifically precludes the Magistrate from calling evidence from the Competent Authority to support the application for ejection ?”*.

After an analysis of the statutory provisions and judicial precedents, the said question of law was answered by the apex Court by holding that *“The Court of Appeal erred in law by holding that the Competent Authority is required to prove that the land was vested in the Government or acquired, in terms of Section 9 (2) of the State Lands (Recover of Possession) Act.”*

The said judgment also considered the situation where it is alleged that *“the right or title of the State of the disputed land is doubtful”* in relation to the provisions of the said Act. Their Lordships have concluded that even if it is the case, the provisions of the said Act *“provides a remedy to a legitimate owner to vindicate his rights by filing an action in the District Court in terms of Section 12 of the Act and in terms of Section 13, the State becomes liable to pay damages if it is established that the property in issue does not belong to the State”* and added that *“The Court of Appeal misdirected itself in holding that the title of the State is doubtful when the ownership is beyond the scope of a Magisterial inquiry under the provisions of the Act.”*

Thus, it is clear that the Provincial High Court had fallen in to grave error when it considered the question of title in relation to an inquiry

under Section 9(1) of the State Lands (Recover of Possession) Act and decided to exercise its revisionary powers over a legally valid order of ejection.

In consideration of the above, we set aside the order of the Provincial High Court dated 27.06.2014 by allowing the appeal of the Appellant.

Parties will bear their costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL