

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

In the matter of an Appeal in terms  
of Article 138 read with Article  
154(P)6 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka .

C.A.(PHC)Appeal No. 58/2014

P.H.C. Kandy Case No. 17/2011Rev.

M.C. Kandy Case No. 13794

The Univesity of Peradeniya

1<sup>st</sup> Petitioner

Udaya Dewapriya Dodanwala

Acting Registrar

Univesity of Peradeniya

Peradeniya.

Petitioner-Respondent-Petitioner

Vs.

Herath Disawage Lalitha

No. 17, Halmahikandura

Rajawaththa,

Peradeniya.

Substituted Respondent-Petitioner-

Respondent

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

COUNSEL : Nayomi Kahawita SC for the 1<sup>st</sup> Petitioner  
and Petitioner-Respondent-Petitioner  
Sahan Kulatunga with Sameera Ekanayake  
for the Substituted-Respondent -Petitioner-  
Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 01-10-2018( by the Appellant)  
28-11-2018 (by the Respondent)

DECIDED ON : 16<sup>th</sup> January, 2019

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ACHALA WENGAPPULI, J.

The 1<sup>st</sup> Petitioner and the Petitioner-Respondent-Petitioner (hereinafter referred to as the “Appellants”) invokes the appellate jurisdiction of this Court, seeking to set aside the order of the Provincial High Court of the Central Province holden in Kandy dated 09.06.2014 in Rev/17/2011, by which it has revised an order of eviction issued by the Magistrate’s Court of Kandy in respect of an application made by the Appellants under Section 5(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, against the Respondent-Petitioner-Respondent and later substituted Respondent-Petitioner-Respondent (hereinafter referred to as the “Respondent”).

In their application to the Magistrate's Court the Appellants sought an eviction order on the Respondent who failed to deliver vacant possession of the State land upon service of a quit notice issued on 26.08.2008. This was after the quashing of an quit notice that had been issued by the Appellants on 16.07.2001 by this Court by its order dated 25.05.2007 in C.A. Application No. 1586/01. The Appellants have thereafter made an application to the Magistrate's Court seeking an order of ejection on 11.11.2008.

The Magistrate's Court had issued summons on the Respondent who tendered his show cause to the said Court on 31.08.2009. During the ensuing inquiry, the Respondent presented his claim on the basis that the land in question belongs to Sri Lanka Railways Department and he occupies it under a lease agreement, which claim is supported by a letter issued by the Chief Engineer of Sri Lanka Railways Department. He further claims that it was his father who initially obtained the said lease and later succeeded as the lessee upon his father's demise.

Learned Magistrate, after considering the order issued by this Court quashing the earlier quit notice issued by the Appellants, has correctly applied the governing legal principles to the application of the Appellant and 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 05.11.2009.

The Respondent thereafter moved the Provincial High Court to revise the said order of ejection. In his petition to the Provincial High Court, it was stated by the Respondent that there is an inquiry conducted by the Land Commissioner over a dispute between the Appellants and the Sri Lanka Railways upon a vesting order by which the 2<sup>nd</sup> Petitioner-Respondent-Petitioner relied on to assert that he is the competent authority.

In delivering its order, the Provincial High Court concluded that the Respondent has claimed that he paid annual rent for the land to Sri Lanka Railways Department and as per the reasoning of the judgment of the Supreme Court in S.C. Appeal No. 138/96 acceptance of such payment rebuts the presumption of unlawful occupation and therefore, the order of eviction should be set aside.

The Appellants contended before this Court that the scheme of the State Lands (Recovery of Possession) Act "... which is *executory simplicitor* in character does not operate on the premise of ascertaining or establishing the title of the Competent Authority to a State land but rather on the premise of calling upon and asserting the unlawful occupier to establish his or her "entitlement to occupy" the State land by adducing evidence in the form of written permit or written authority issued by the State."

They relied on the judgments of *Nirmal Paper Converters (Pvt) Ltd., v Sri Lanka Ports Authority* (1993) 1 Sri L.R. 219 and *Muhandiram v Janatha Estates Development Board* (1992) 1 Sri L.R. 110 to impress upon this Court to their contention that the only ground on which the occupier could remain in possession and occupation of a State land subject to the recovery proceedings under the State Lands (Recovery of Possession) Act is by the production of a valid permit or written authority issued to such State land and that is the only consideration a Magistrate's Court could take into consideration in such proceedings.

The Appellants also relied on the Judgment of the Supreme Court in *Divisional Secretary Kalutara & Others Vs. Jayatissa* SC Appeal Nos. 246 to 249 and 250 of 2014 - decided on 04.08.2017 where the 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 ejectment ?*".

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 (Recovery of Possession) Act."

In view of the judgment of the Supreme Court, it is thus reiterated that the Magistrate's Court has no power to call upon the Appellant to substantiate his opinion that the Respondent is in unlawful occupation of State land, in view of the provisions contained in Section 9(2) of the State Lands (Recovery of Possession) Act and even if the land considered to be of private ownership, the Act has provided for such a situation in Section 12.

It is rather unfortunate that the Provincial High Court has ventured into consider the validity of the quit notice and to disregard the opinion formed by the Appellants that the Respondent is in unlawful occupation of State land in a revision application where the issuance of an eviction order is challenged.

In *Nissanka v State*(2001) 3 Sri L.R. 78, it was held that the power of revision can be exercised for any of the following purposes viz;

1. to satisfy the Appellate Court as to the legality of any sentence/order,
2. to satisfy the Appellate Court as to the propriety of any sentence/order,
3. to satisfy the Appellate Court as to the regularity of the proceedings of such Court.

The order of eviction issued by the Magistrate's Court is not tainted with any of these considerations which makes it liable to be interfered with. The judgment of the Supreme Court in S.C. Appeal No. 138/96 - S.C.

minutes of 26.02.1999, on which the Provincial High Court has relied on to exercise powers of revision, was in fact made in respect of an application to challenge the validity of the quit notice issued by the Competent Authority. In quashing the quit notice, the apex Court held that due to the payment and acceptance of rentals, it cannot be said that the appellants are in "unauthorised possession or occupation".

However, the Magistrate's Court is not empowered to challenge the opinion of the competent authority as per the judgments of *Farook v Gunewardene, Government Agent, Amparai* (1980) 2 Sri L.R. 243 and C.A.(PHC) APN No. 46/2000 - C.A. minutes of 19.11.2004 and its jurisdiction is limited to the scope of Section 9. Therefore, the Provincial High Court has fallen into error when it decided to overturn the order of ejectment of the Magistrate's Court in the exercise of its revisionary jurisdiction.

This finding derives validity from the judgment of the Supreme Court in *Divisional Secretary Kalutara & Others Vs. Jayatissa* (Supra) since it has been held that:-

*"It must be noted that the Respondent had invoked revisionary jurisdiction of the High Court, which is a discretionary remedy. Thus, if relief is to be granted, the party seeking the relief has to establish that, not only the impugned order is illegal, but also the nature of the illegality is such, that it shocks the conscience of the*

*Court, the High Court, it appears had not considered the criteria aforesaid in setting aside the order of the Magistrate."*

In view of the above reasoning, we are of the considered view that the impugned order of the Provincial High Court ought to be set aside by allowing the appeal of the Appellants.

Accordingly, we set aside the order of the Provincial High Court dated 09.06.2014 as prayed for by the Appellants and affirm the order of the Magistrate's Court dated 05.11.2009 for the ejection of the substituted Respondent from the State land described in the schedule to the application of the Appellants.

Appeal is allowed. Parties will bear their costs.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**