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

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

C.A.(PHC)Appeal No. 93/2014
P.H.C. Kandy Case No. 67/2011(Rev)
M.C. Kandy Case No. 33503/10

Industrial Development Board
No.165, Galle Road,
Katubedda,
Moratuwa

1st Appellant

Chairman,
Industrial Development Board,
No.165, Galle Road,
Katubedda,
Moratuwa

Applicant -Respondent- Appellant

Vs.

M. Chandrakumar,
No.165,
Ayojanagama,
Pallekale

Respondent-Petitioner-Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	Nuwan Peiris S.C. with Sumalika Sooriyaarachchi for the Respondent-Petitioner-Appellant W.D. Weeraratne for the Applicant–Respondent-Respondent.
ARGUED ON	:	18th October 2018
DECICED ON	:	25th January, 2019

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ACHALA WENGAPPULI, J.

This is an appeal by the 1st Appellant and Applicant-Respondent Appellant (hereinafter referred to as the "Appellants") challenging validity of an order of the Provincial High Court of the Central Province holden in Kandy dated 27.08.2014 by which it had set aside an order of ejectment issued by the Magistrate's Court on 07.07.2011 in case No. 33503.

In making an application against the Respondent-Petitioner-Respondent (hereinafter referred to as the "Respondent") 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 Appellants have sought an order of ejectment against him from the two plots of land described in the

schedule to the said application. The Appellants have averred in their affidavit that the Respondent has failed to handover vacant possession of the State lands that are described in the schedules to the quit notice served on him on or before the date specified therein.

At the inquiry, the Respondent claimed that he operated a dairy farm in the said lands for an unspecified length of time. He raised preliminary objection to the application for ejectment on the basis that;

a. There is no confirmation of the service of quit notice attached to the application,
b. There is no supporting material to confirm the Appellant's claim that the land "belongs" to Industrial Development Board.

The Magistrate's Court, having considered the cause shown by the Respondent issued an order of ejectment against the Respondent as prayed for by the Appellant.

Thereupon, the Respondent sought to set aside the said order of ejectment by invoking revisionary jurisdiction of the Provincial High Court on similar objections, he raised before the Magistrate's Court. It was stated by the Respondent that the affidavit of the Appellants does not conform to the specified format and there is no proof of service of the quit notice.

In delivering its order, now being impugned by the Appellants by the lodgement of the instant appeal, the Provincial High Court has held that the lands described on the schedules to the quit notice and application under Section 5 of the said Act are different to each other and therefore the application is defective.

The Appellants, in support of their appeal contended that the Respondent's claim that the land is not vested with them is wrong in law and the change of the Competent Authority who issued quit notice and filed application for ejectment, does not affect the validity of the proceedings.

Respondent sought to counter the Appellant's contention by submitting that the Appellants are "not the owners of the land in suit but it belongs to Mahaweli Authority". He also contended that the Appellants have failed to serve quit notice which has been issued by one person while the application for ejectment made by another and thereby violated rules of natural justice. He also relied on the ground that the identification of the corpus is defective owing to its mis-description, since the plan No. 120 was prepared by Surveyor *Dayaratne* as per the quit notice, but the application refers to a plan prepared by a different surveyor and therefore the order of the Provincial High Court is "demonstrably correct".

Upon perusal of the impugned order of the Provincial High Court, it is observed that the compelling reason which made it to exercise revisionary jurisdiction was an apparent mismatch in the description of the State lands in the quit notice and the application under Section 5 of the Act.

The jurisdiction of the Magistrate's Court, in an inquiry under Section 9 of the Act is well defined in the oft quoted judgment of ***Muhandiram v Chairman, JEDB*** (1992) 1 Sri L.R. 110, where Grero J held:-

> *"Under Section 9(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979, the person on whom summons has been served (in this instance, the respondent-petitioner) shall not be entitled to contest any of the matters stated in the application under Section 5 except that such person may establish that he is in possession or in 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 written authority is in force and not revoked or otherwise rendered invalid.*
>
> *The said section clearly reveals that at an inquiry of this nature, the person on whom the summons has been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law. The burden of proof of that fact lies on that particular person on whom the summons has*

been served and appears before the relevant Court. In this case the burden was on the respondent-petitioner to establish the fact that he had a valid permit or other written authority of the State to occupy the land which is stated in the schedule to the application of the Competent Authority."

It must be noted that the Magistrate's Court in fact had referred to the said judgment in its order and had applied the principle of law enunciated therein in issuing the order of ejectment.

The judgment of the Supreme Court in ***Divisional Secretary Kalutara and another v Jayatissa*** SC Appeal 246 - 249 and 250 /14 decided on 04.08.2014. It was emphasised by the apex Court that;

" ... the Respondent had invoked Revisionary jurisdiction of High Court, which is 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 criterial aforesaid in setting aside the order of the Magistrate. The learned Magistrate correctly relied on the criteria set down in the decision of ***Farook v Government Agent, Amparai*** *..."*

In ***Farook v Gunewardene, Government Agent, Amparai*** (1980) 2 Sri L.R. 243, it has been held that:-

> *"When the Legislature has made express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process described in the Act itself, it is not for this Court to grant relief on the ground that the petitioner has not been heard. Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land."*

In this instance too, as it did in ***Divisional Secretary Kalutara and another v Jayatissa*** (supra), the Provincial High Court had wrongly exercised its revisionary jurisdiction to set aside perfectly a legal order made by the Magistrate's Court. The ground on which it proceeded to set aside the order of the Magistrate's Court has not even been raised by the Respondent before that Court and it had gone on a voyage of discovery to find a basis to intervene. The consideration of title of the State Land is a

total irrelevant consideration to the Magistrate's Court as well as to the Provincial High Court in view of the judgment of the Supreme Court in ***Divisional Secretary Kalutara and another v Jayatissa*** SC Appeal 246 - 249 and 250 /14 decided on 04.08.2014.

There was no challenge by the Respondent to the validity of the quit notice before an appropriate forum. He however, made an attempt to challenge its validity, that too in a circuitous route, before the Magistrate's Court. As already discussed, the jurisdiction of the Magistrate's Court is circumscribed to the extent specified in Section 9(1) of the Act and had been well defined by several binding judicial precedents. The validity of the decision of the Competent Authority to issue a quit notice could not be challenged collaterally in a revision application.

It is important to remind us of a very relevant principle of law pronounced in relation to these two distinct jurisdictions. In ***Dayananda v Thalwatte*** (2001) 2 Sri L.R. 73, this Court has held that the revisionary jurisdiction cannot be combined with writ jurisdiction. The Provincial High Court has fallen in to error when it combined these two jurisdictions whilst ignoring the binding precedents, in making the impugned order.

We hold that the appeal of the Appellants is with merit and therefore ought to be allowed by setting aside the order of the Provincial High Court.

Although irrelevance in those proceedings, the alleged mis-description of the State land, as observed by the Provincial High Court is apparently an erroneous conclusion. We have carefully considered the description of the two instances where the lands were described and found no differences in its description on the plan, boundaries and in extent.

The order of the Provincial High Court dated 27.08.2014 is set aside by this Court. We affirm the order of the Magistrate's Court dated 07.07.2011.

Accordingly, the appeal of the Appellants is allowed.

No costs.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL