

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

In the matter of an Appeal in terms  
of Section 331 of the Code of  
Criminal Procedure Act No. 15 of  
1979 (as amended) read with  
Article 138 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

C.A.(PHC)Appeal No. 117/2005

H.C. Colombo Case No. HCR 646/2004(Rev)

M.C. Colombo Case No. 87723/5

Upali Kurukulasooriya,  
No. 654/2,  
Jayagath Mawatha,  
Himbutuwelagoda,  
Kelaniya

**Respondent-Petitioner**

**Appellant**

Vs.

01. Chairman,  
National Housing Development,  
Authority,  
Sir Chiththappalam A. Gardiner  
Mawatha,  
Colombo 02.

**Applicant-Petitioner-Respondent-  
Respondent**

02. Hon. Attorney General  
Attorney general's Department,  
Colombo 12.

**Respondent-Respondent**

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

COUNSEL : M.D.J. Bandara for the Respondent-  
Petitioner-Appellant.  
Nuwan Peiris S.C. for the Applicant –  
Petitioner-Respondent-Respondent and the  
Respondent-Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 04-12-2018( by the Appellant)

DECIDED ON : 01<sup>st</sup> February, 2019

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ACHALA WENGAPPULI, J.

The Respondent-Petitioner -Appellant (hereinafter referred to as the “Appellant”) has invoked appellate jurisdiction of this Court; seeking to set aside an order of the Provincial High Court of the Western Province holden in Colombo in his Revision Application No. HCRA 646/04 on 26.05.2005.

In the said revision application, the Appellant sought to revise an order of ejection, made by the Magistrate’s Court of Colombo in case No. 87723/5 upon an application by the Applicant-Respondent-Respondent (hereinafter referred to as the “Respondent”) under Section 5 of the State

Lands (Recovery of Possession) Act No. 7 of 1979 as amended, in relation to State land described in its schedule.

At the inquiry before the Magistrate's Court, the Appellant raised preliminary objections to the invocation of the jurisdiction of Court on the basis that the Respondent is not the Competent Authority who could make the application before it and there was no proof of service of the quit notice on the Appellant, a requirement prior to initiating ejectment proceedings.

With the pronouncement of its order on 06.08.2004, the Magistrate's Court rejected the preliminary objections raised by the Appellant and since he failed to produce any valid permit or other valid written authority of the State granted in accordance with any written law, proceeded to issue the impugned order of ejectment.

The Appellant had thereafter sought to revise the said order of ejectment before the Provincial High Court on the following basis as stated in his petition;

- a. the Magistrate's Court has failed to consider the fact that the Respondent has handed over possession of the State land to the Appellant and therefore he is in lawful occupation,
- b. the Magistrate's Court has failed to consider the Respondent's failure to comply with the statutory requirements of the Act,
- c. the Magistrate's Court has failed to consider that the ejectment proceedings were initiated by the Respondent at the behest of a third party,

d. the Magistrate's Court has failed to consider that the Appellant's claim that he was not been issued with a notice to quit.

After an inquiry into the application of the Appellant, the Provincial High Court refused his application and proceeded to dismiss his petition.

Being aggrieved by the said order, the Appellant now seeks to set aside the said order of dismissal upon following grounds of appeal:-

- i. the Provincial High Court has failed to consider the fact, that the affidavit filed by the Respondent before the Magistrate's Court seeking to eject the Appellant did not contain a prayer seeking such relief and the failure of the Magistrate's Court to consider this objection to its jurisdiction,
- ii. the Provincial High Court has failed to consider that there was correspondence between the Appellant and the Respondent indicative of a decision to authorise the Appellant's possession of the disputed State land after obtaining necessary legal clearance from the local authority,
- iii. the Provincial High Court has failed to consider the failure of the Respondent to give 30-day notice prior to institution of ejectment proceedings as per the relevant statutory provisions.

The contention of the Appellant in support of above reproduced grounds of appeal is that they could be considered as exceptional circumstances which warrants intervention of the Provincial High Court under its revisionary jurisdiction.

In dealing with the grounds that had been urged before the Provincial High Court, it had stated that the Magistrate's Court has considered the material placed before that Court and since there was no valid permit or other valid written authority produced by the Appellant authorising him to occupy the State land, the order of ejectment issued by the lower Court is legally valid. The Provincial High Court also noted that in an inquiry before the Magistrate's Court upon an application for ejectment order, that Court has no power to inquire into any other extraneous matters that had been raised by the Appellant.

The scope of the inquiry in such an application is clearly spelt out in the statutory provisions in Section 9(1) of the State Lands (Recovery of Possession) Act. The only consideration before the Magistrate's Court is whether the respondent before it has produced a valid permit or other valid 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 to be in possession of the State land. This was the collective reasoning contained in the judgments of *Kandiah v Abeykoon* Sri Skantha Law Reports Vol IV, p.9, *Muhandiram v Chairman JEDB* (1992) 1 Sri L.R. 110 and *Nirmal Paper Converters (Pvt.) Ltd. v Sri Lanka Ports Authority and another* (1993) 1 Sri L.R. 219.

The claim that the affidavit of the Respondent has no prayer addressed to the Magistrate's Court seeking ejectment of the Appellant is clearly made on an erroneous understanding of the applicable statutory procedure. The affidavit that should be tendered to Court by the Respondent, should conform to the Form C of the Schedule to the State Lands (Recovery of Possession) Act No. 7 of 1979. Form C did not impose such a requirement on the Respondent in the said format of the affidavit.

In the instant appeal, there had been some correspondence indicating that the Respondent has taken some steps to authorise the Appellant's occupation of State land by the Respondent. Due to the failure to secure necessary approval of the local authority that process was stalled. However, the fact that the Appellant had no valid permit or other written authority of the State granted in accordance with any written law when he was directed to show cause by the Magistrate's Court remain unassailed.

Therefore, the order of ejectment is a legally valid order as correctly held by the Provincial High Court.

In *Divisional Secretary, Kalutara and another v Jayatissa* SC Appeal Nos. 246, 247, 249 and 250/14 decided on 04.08.2017, the Supreme Court held that;

*"It must be noted that the Respondent had invoked Revisionary jurisdiction of the 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 Court."*

Therefore, it is clear that the Appellant had failed to satisfy the Provincial High Court that the impugned order of ejection is illegal and that the nature of illegality is such that it shocks the conscience of Court.

In view of the foregoing, we are of the view that the appeal of the Appellant is devoid of any merit.

Therefore, the appeal of the Appellant is dismissed with costs fixed at Rs. 10,000.00

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**