

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

In the matter of an Appeal from the  
Judgment of the Provincial High  
Court (Uva) in terms of Article 138  
of the Constitution of the Republic  
of Sri Lanka.

**C.A.(PHC)Appeal No. 159/2010**

**P.H.C. (Badulla) Case No. 149/2008(Rev)**

**M.C. Badulla Case No. 98788**

01. Tissa Abeywickrama (President)  
Badulla Sports Club  
Racecourse Road, Badulla  
and now at  
Tissa Chemist, Dharmadutha Road,  
Badulla.
  02. H.L. Gunadasa (Secretary)  
Badulla Sports Club  
Racecourse Road, Badulla
- Respondent-Petitioner -Appellants**

**Vs.**

01. Ratnayake Mudiyansele Tissa  
Bandara Hathiyaldeniya,  
Commissioner of Local Government,  
Office of the Commissioner of Local  
Government,  
Martin Silva Mawatha,  
Badulla
  02. Badulla Municipal Council
- Applicant-Respondent-Respondent**  
**Added-Respondent-Respondent**

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

**COUNSEL** : A.I. Irfana for the Respondent-Petitioner-  
Appellants  
Chaya Sri Nammuni SSC for the  
Applicant – Respondent-Respondent.  
Sarath Walgamage with Sanjeevani Herath  
for the Added-Respondent-Respondent

**WRITTEN SUBMISSIONS**

**TENDERED ON** : 25-09-2018( by the Appellants)  
25-09-2018( by the Applicant-Respondent)  
21-01-2019(by the Added-Respondent)

**DECIDED ON** : 14<sup>th</sup> February, 2019

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**ACHALA WENGAPPULI, J.**

This is an appeal by the Respondent-Petitioner-Appellants (hereinafter referred to as the “Appellants”) against an order of dismissal of their application for *Restitutio Integrum* by the Provincial High Court of Uva Province holden in Badulla in Revision Application No. 149/2008. In the said application, the Appellants sought to revise an order of the Magistrate’s Court in case No. 98788, by which an order of ejectment was made under State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, by the said Court.

On 02.05.2008, the Applicant-Respondent-Respondent issued a quit notice under Section 3 of the said Act and upon the Appellants failure to hand over vacant possession of the State land described in its schedule, an application was made before the Magistrate's Court seeking an order of ejectment.

At the inquiry before the Magistrate's Court, the Appellant only sought to challenge the competency of the Competent Authority in making an application for their ejectment.

In delivering its order, the Magistrate's Court noted that the Appellants have failed to produce a valid permit or authority and therefore an order of ejectment was issued on 20.10.2008. The said order of ejectment had been executed by the Fiscal of Court on 25.10.2008.

The Provincial High Court, in its impugned order dismissed the application to revise the order of ejectment on the basis that there were no exceptional circumstances to interfere with the legally correct order of ejectment issued by the Magistrate's Court.

It is the contention of the Appellants that the order of ejectment was made in violation of rules of natural justice. This submission was made on the footing that there was no opportunity afforded to the Appellants to show cause "on facts". It is the claim of the Appellants that they raised a

preliminary objection and with the ruling on it, the Magistrate's Court has proceeded to "*making an order in the main case*" to eject the Appellants from the said premises. It is also claimed by the Appellants that the Provincial High Court has erroneously dismissed their application on the basis of futility.

The Appellant relied on the reasoning of the judgment of the Supreme Court in *Diluni Abeyratne v Jaykay Marketing Service` and another* S.C. Appeal No. 199/2012 - decided on 24.03.2015 in support of his submissions on violation of rules of natural justice.

It is clear that the Appellant's primary contention is that they were deprived of an opportunity to show cause "on facts" by the Magistrate's Court. This Complaint should be examined by this Court.

The journal entries of the certified copy of the proceedings before the Magistrate's Court reveal that the Appellants were present in Court on 11.08.2008 and sought time to tender "written show cause". On 25.08.2008 the Appellants have tendered their "written show cause". The Court pronounced its order on 20.10.2008 after the Respondent's reply on 13.10.2008.

Section 6(1) of the State Lands (Recovery of Possession) Act states that upon receipt of an application under Section 5 it shall forthwith issue

notice on the Respondent to show cause "*why such person and his dependents, if any, should not be ejected from the land ...*". If the Respondent appears before Court and states that he has cause to show, then the Court should inquire into it. Section 9 of the said Act specifically demarcates the scope of such an inquiry. Section 9(1) states:-

*"At such inquiry the person on whom summons under Section 6 has been served 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 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 authority is in force and not revoked or otherwise rendered invalid."*

The Appellants, in showing cause sought only to challenge the competency of the Competent Authority. This is in clear violation of the clear statutory provisions contained in Section 6(1) since the Appellant sought to contest "*... the matters stated in the application under section 5.*" Section 5(1)(a)(i) requires the Respondent to set forth that "*... he is a competent authority for the purpose of this Act*" and Section 6(1) prevents any Respondent to an application under Section 5, to contest that fact.

Section 6A imposes a duty on the Magistrate's Courts to dispose of applications under Section 5 within two calendar months.

It is clear what the Legislature has intended in enacting these provisions of law. The opportunity provided for any Respondent in an application under Section 5 to show cause is restricted to “... *establish that he is in possession or 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 authority is in force and not revoked or otherwise rendered invalid.*” The statutory provisions have not provided for show cause “on facts” or otherwise as claimed by the Appellants in their submissions.

In *Muhandiram v Chairman, JEDB* (1992) 1 Sri L.R. 110, it was held that the onus is on the person summoned to establish the basis of his possession or occupation and if that burden is not discharged, the only option available for the Magistrate would be to make an order of eviction.

The Appellants, when they were asked to show cause in an application under Section 5 of the State Lands (Recovery of Possession) Act, they must advise themselves properly of what the law expects of them. The Magistrate’s Court is not the forum before which a Respondent could challenge the legal status of a Competent Authority in view of the statutory provision already referred to on this judgment. Clearly the Appellants have been given an opportunity by the Magistrate’s Court to show cause if they had any and when they failed to tender any valid permit or authority, it is left with no other option but to issue the order of eviction. This is exactly what the Court did.

The judgment relied upon by the Appellants have no relevancy to the instant appeal since the question before their Lordships was whether the failure to tender written submissions would render the matter being dismissed without considering its merits.

After consideration of the submissions of the parties, we are of the view that the appeal of the Appellant is bereft of any merit.

We therefore affirm the orders of the Provincial High Court as well as of the Magistrate's Court and make order dismissing the appeal with costs fixed at Rs. 25,000.00.

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**