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

In the matter of an Appeal under and in terms of the provisions of the Constitution against the judgement dated 05.08.2013 in case No. 38/2010 (Revision) of the Provincial High Court of the Central Province holden in Kandy.

C.A.(PHC)Appeal No. 106/2013
P.H.C. Kandy Case No. 38/2010(Rev)
M.C. Kandy Case No. 18916

Ratnayake Mudiyanselage
Muthubanda Ratnayake,
No.253/09, Nugaanga,
Colombo Road,
Pilimathalawa.
Respondent-Petitioner-Appellant

Vs.

Herath Mudiyanselage Wijesiri Pathirana,
Director of Education for Central Province,
Department of Central Education-Kandy.
Applicant-Respondent-Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	Chandana Wijesooriya with Wathsala Dulanjani for the Respondent-Petitioner-Appellant Maithri Amarasinghe SC for the Applicant-Respondent-Respondent.
WRITTEN SUBMISSIONS TENDERED ON	:	02-08-2018 (by the Respondent) 30-01-2019 (by the Appellant)
DECICED ON	:	15th February, 2019

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ACHALA WENGAPPULI, J.

This is an appeal by the Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") seeking to set aside the order of the Provincial High Court of the Central Province holden in Kandy dated 05.08.2013 in Revision Application No. 38/2010 by which he sought to revise an order of ejectment made by the Kandy Magistrate's Court against him, under State Lands (Recovery of Possession) Act No. 7 of 1979, was refused.

In the application under Section 5(1) of the said Act, the Applicant-Respondent-Respondent (hereinafter referred to as the "Respondent") sought an order of ejectment against the Appellant from the land described in its schedule.

At the inquiry before the Magistrate's Court, the Appellant stated in his affidavit that he owns the State land described in the schedule to the application by the Respondent upon title derived from a partition decree in Case No. P3226 and, in addition, the plan referred to in the said schedule by the Respondent could not be accepted as a valid plan.

The Magistrate's Court, in delivering its order of ejectment on the Appellant stated that the dispute as to the title of the land could not be resolved before it in an inquiry under Section 9(1) of the State Lands (Recovery of Possession) Act and upon the Appellants failure to tender valid permit or written authority, proceeded to issue an order of ejectment.

Upon the issuance of the order of ejectment, the Appellant has invoked revisionary jurisdiction of the Provincial High Court to have it set aside. The application before that Court was laid by for some time, facilitating parties to resolve the dispute before the District Court in case No. DLM 124/09. However, since the parties have failed to appraise the Provincial High Court of the outcome of the matter before the District

Court, the impugned order was made by the said Court refusing the Appellant's application.

Being aggrieved by the said order, the Appellant sought to challenge its validity on the basis that the Appellant has acquired paper and prescriptive title to the disputed State land which has a common boundary with *Pilimatalawa* Primary School and the plan upon which the Respondent has described it in the schedule to his application " *... has been prepared out of the whims and fancies of the school administration.*"

The Appellant relies on the reasoning of the judgment of ***Senanayake v Damunupola*** (1982) 2 Sri L.R. 621 to impress upon this Court that "*... the Respondents are trying to recover the possession of the portion of land claimed by them, from which they had been purported ousted a long time ago.*"

Relying on the said dicta of the Supreme Court, the Appellant submits that " *... the learned Magistrate and the Honourable Judge of the Provincial High Court failed to appreciate this correct position of law and thereby erred in holding the Respondent could recover the possession of the subject matter under the State Lands (Recovery of Possession) Act.*"

In the unreported judgment of ***Divisional Secretary Kalutara and another v Jayatissa*** (SC Appeal Nos. 246,247,249 & 250/14 - decided on

04.08.2017) referring to the judgment of ***Senanayake v Damunupola*** it is stated by the Supreme Court, that ;

> *" in the said case a "notice to quit" issued in terms of Section 3 of the Act had been challenged by way of a writ and there had not been an order of the Magistrate under Section 5 of the Act. In the said case it had been pointed out that part of the land occupied by the "notice to quit" included part of the residential premises of the appellant and the matter, however, had not reached the Magistrates Court. what was in issue was the legality of the administrative action taken by the Government Agent."*

Their Lordships have recognised an important distinction between the cases where the quit notice issued and challenged without an application from order of ejectment and the cases where there is already an order of ejectment made by the Magistrate's Court subsequent to the issuance of the quit notice.

The judgment of ***Senanayake v Damunupola*** is in relation to the validity of the quit notice issued by the Competent Authority under public law remedies. The considerations that are applicable in determining the validity of a quit notice could not be utilised in an inquiry under Section 9(1) of the State Lands (Recovery of Possession) Act.

In any event in ***Namunukula Plantations PLC v. Nimal Punchihewa and another*** - CA(PHC)APN 29/2006 - decided on 09.07.2018 De Silva, J. (with Wickramasinghe, J. agreeing) has held that the ratio of ***Senanayake v Damunupola*** is *"no longer valid"* for the reasons set out there.

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(1) of the said Act specifically demarcates the scope of such an inquiry as it 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." (emphasis added)

The Appellant, in his attempt to show cause before the Magistrate's Court, sought only to challenge the title of the State land. This approach by the Appellant is contrary to the clear and unambiguous statutory provisions contained in Section 6(1) since he sought to contest "... *the matters stated in the application under section 5."* Section 5(1)(a)(ii) requires the Respondent to set forth in his affidavit that "... *the land described in the schedule to the application is in his opinion State land"* and Section 6(1) prevents any Respondent to an application under Section 5, to contest that fact.

This position is clearly recognised in the judgment of ***Divisional Secretary Kalutara and another v Jayatissa*** (supra) as it has been held by the Supreme Court;

"In the present case, it had reached the Magistrates Court and order for eviction had been issued and what is challenged is the legality of the order made by the Magistrate. The Act, however, 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."

In these circumstances, it is our considered view that the dispute as to the title of the State land by the Appellant falls outside the scope of the inquiry under Section 9(1) and the learned Magistrate has correctly stated that position in his order. The Provincial High Court, in affirming the order of the Magistrate's Court, adopted the views expressed by Grero J in ***Muhandiram v Chairman, JEDB*** (1992) 1 Sri L.R. 110 and dismissed the Appellant's application. We concur with the order of the Provincial High Court as well as the order of the Magistrate's Court and accordingly affirm both those orders as they are legally correct.

The appeal of the Appellant is accordingly dismissed 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