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

In the matter of an Appeal against the order of the Provincial High Court of the Sabaragamuwa Province holden in Kegalle in Case No. 3938 (Revision) in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A.(PHC)Appeal No. 79/2012
P.H.C. Kegalle Case No. 3938(Rev)
M.C. Ruwanwalla Case No. 27463

01. Thalduwa Lekam Gamaralalage Seelawathi,
Miyanakolathanna,
Deloluwa,
Dehiovita.

02. Peththa Waduge Lakshman Wijesuriya,
D24/16C, Miyanakolathanna,
Deloluwa,
Dehiovita.

Respondant -Petitioner-Appellant

Vs.

J.C.M. Priyadarshani ,
Competent Authority,
Ministry of Plantation Industries,
Vauxhall Street,
Colombo 2.

Applicant- Respondent- -Respondent

BEFORE	:	**JANAK DE SILVA, J. &** **ACHALA WENGAPPULI, J.**
COUNSEL	:	Nuwan Bopage with Chathura Weththasinghe for the Defendant-Petitioner-Appellants Asthika Devendra with Wasantha Sandaruwan for the Complainant-Respondent-Respondent.
WRITTEN SUBMISSIONS TENDERED ON	:	03-09-2019(by the Respondent) 03-09-2019(by the Appellant)
DECICED ON	:	22nd February, 2019

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ACHALA WENGAPPULI, J.

This is a matter where the Respondent-Petitioner-Appellants have lodged an appeal to this Court, seeking intervention to set aside an order of dismissal made by the Provincial High Court of Sabaragamuwa Province holden in Kegalle, upon their application to revise an order of ejectment issued by the Magistrate's Court of Ruwanwella under Section 7 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended.

In making an application for the issuance of an order of ejectment against the 1st Respondent-Petitioner-Appellant, the Applicant-

Respondent- Respondent (hereinafter referred to as the "Respondent") has described the State land in the schedule to his application as a parcel of land, which is in extent of approximately 10 perches with a common boundary to the adjoining State land in respect of which the said Appellant had been issued with a permit under the Land Development Ordinance.

When she was summoned to show cause by the Magistrate's Court, the 1st Respondent-Petitioner-Appellant stated in her affidavit that the Respondent is not the Competent Authority who could seek her ejectment and the land she is in possession is a land that had been encroached upon by her father when it was referred to as part of *Tantiriyagala Mukalana* long time ago. It is also stated by her; that at a subsequent stage, a permit was issued in respect of the said land on 11.11.1982. The said permit was tendered to the Magistrate's Court, marked as V1.

In fact, the application for her ejectment was initiated upon the complaint of the Management of *Sapumalkanda* Estate, that had been addressed to the Divisional Secretary of the area on 27.07.1999, informing him of the encroachment by the 1st Respondent-Petitioner-Appellant onto Estate land which is also State land.

She had been served with a quit notice dated 25.04.2000 by the Respondent and upon her failure to handover vacant possession on the due date as per the said notice, an application seeking her ejectment was made to the Magistrate's Court by the Respondent on 03.06.2001.

In view of the position taken up by the 1st Respondent-Petitioner-Appellant, the Magistrate's Court, has in its order dated 02.05.2002,

observed that there is a confusion in relation to the description of boundaries of the State land in respect of which an order of ejectment is sought as described in the schedule to the application and the State land in respect of which a permit had been issued in favour of the 1st Respondent Petitioner-Appellant. Having noted that the Court had no power to call for evidence in support of the boundaries, nonetheless it proceeded to issue an order of ejectment as prayed for by the Respondent. In appreciating the legitimate rights of the 1st Respondent-Petitioner-Appellant, the Court made a further order to the effect that if and when a writ of execution is sought, it had to be made in relation to a survey plan.

As a result of this order, a tracing has been prepared by Sri Lanka Survey Department. In the tracing No. KE/DHO/2007/99, the areas of encroachment by the 1st Respondent-Petitioner-Appellant had been clearly demarcated by the Surveyor General and upon the material presented before the Court, it made a further order on 27.07.2010 issuing the writ of execution. At the time of making this subsequent order, the 2nd intervenient Respondent-Petitioner-Appellant (erroneously described as 2nd Accused-Petitioner-Appellant in the petition of appeal) sought to intervene before the Magistrate's Court as an added party on the basis that if a writ of execution is issued against the 1st Respondent-Petitioner-Appellant, his rights too would be substantially prejudiced.

The Magistrate's Court has refused the 2nd intervenient-Respondent-Petitioner-Appellant's application to intervene in making the said order on 27.07.2010.

With their joint application to revise the said orders of the Magistrate's Court, the 1st Respondent-Petitioner-Appellant and the 2nd intervenient-Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellants") sought to challenge them before the Provincial High Court, on the basis that the Respondent had no authority to make an application for ejectment since he is not the Competent Authority over the State land. The Appellants also claimed that the order of the Magistrate's Court made on 02.05.2002 has been made *per incuriam*.

The Provincial High Court, by its order dated 10.08.2012 dismissed the revision application filed by the Appellants. It has held since the Magistrate's Court has clearly excluded the portions of State land that overlap on the land in respect of which the order of ejectment was made, it finds no illegality in the impugned order and therefore the Appellants have failed to establish any exceptional circumstances that warranted its intervention.

In support of their appeal before this Court, the Appellants contended that;

i. the Respondent has failed to properly identify the State land,
ii. the order of the Magistrate's Court on 02.05.2002 had been issued without properly identifying the land,
iii. the said order could not be executed,
iv. the 1st Respondent-Petitioner-Appellant has not encroached onto any State land as per the tracing,

v. the Competent Authority had no authority to make the application for ejectment,

vi. the Appellants are not guilty of laches,

vii. the Appellants have shown exceptional circumstances.

It is clear from the above grounds of appeal, that the Appellants are under a clear misconception about the jurisdiction of the Magistrate's Court, when an application under Section 5(1)(b) of the State Lands (Recovery of Possession) Act No. 7 of 1979 and when it proceeds to inquire from a Respondent, to whom summons were served and who has appeared before Court and inform that he has cause to show as to why an order of ejectment should not be made against him.

This Court has in numerous judgments expressed its view on the scope of the inquiry under Section 9(1) of the State Lands (Recovery of Possession) Act.

Section 9 of the said Act is as follows;

> " *(1) 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.*

(2) *It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5."*

It is evident from plain reading of the provisions contained in Section 9(1), the Legislature did not envisage a situation where legal competency or the standing of a Competent Authority to make an application under Section 5, should be allowed to contest by a Respondent, after such an application for ejectment has been filed before the Magistrate's Court in view of the statutory provisions contained therein.

Section 5(1)(a)(i) requires the Competent Authority to declare that *"he is a competent authority for the purposes of this Act."* Cumulative effect of the provisions contained in both subsections of Section 9 clearly has taken away any opportunity to contest that assertion by a Respondent named in such an application since sub Section 9(1) states *"... 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..."*. Section 6(2) restricts any Magistrate's Court to *"... call for any evidence from the competent authority in support of the application under section 5."* Thus, when a Competent Authority asserts in an application under Section 5 that *"he is a competent authority for the purposes of this Act"* any person on whom summons under section 6 has been served shall not be entitled to contest that fact before the Magistrate's Court.

This position has been clearly laid down in ***Farook v Gunewardene, Government Agent, Amparai***(1980) 2 Sri L.R. 243 as follows;

> *"At the inquiry before the Magistrate, the only plea by way of defence that the petitioner can put forward is "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." Section 9(2) is to the effect that the Magistrate cannot call for any evidence from the competent authority in support of the application under section 5, which means that the Magistrate cannot call upon the competent authority to prove that the land described in the schedule to the application is a State land."* (emphasis added).

In respect of the complaint by the Appellants that the Court faulted by *"not identifying the corpus"*, it must be observed that, in view of the above quoted provisions of law, there is no legal requirement imposed on the Magistrate's Court to "identify the corpus" prior to issuance of an order of ejectment, if sought by a Competent Authority under Section 5 of the State Lands (Recovery of Possession) Act.

The Magistrate's Court, in this instance, *ex mere motu*, directed the Respondent to make out a survey plan with definite and identifiable boundaries. This situation is an unfortunate result of the irresponsible

conduct of the public officials who were concerned with the issuance of a permit under Land Development Ordinance in favour of the 1st Respondent-Petitioner-Appellant, for a parcel of State land which shared a common boundaries with another larger extent of State land, possessed by another entity at that time identified as *Deegala Estate*.

The schedule to the said permit, which had been issued in respect of a parcel of a State land in an extent of ½ an acre, had made no reference to a plan in describing the boundaries in respect of the State land to which the said permit was issued. Instead, the permit merely refers to following boundaries in its description of the State land;

North	:	Public Road
East	:	*Deegala* Estate
South	:	*Deegala* Estate
West	:	Dried stream.

It appears that someone made a visual description of the boundaries to the State land described in the said permit. The tracing prepared by the Surveyor General upon the direction of the Magistrate's Court clearly shows that all the lands which are located to the south of the *Dehiowita-Deraniyagala* public road are State lands, inclusive of the parcel that had been described in the permit issued to 1st Respondent-Petitioner-Appellant and the lands described as *Deegala Estate*.

The Magistrate's Court had taken a pragmatic approach when it foresaw that there could be a difficulty in executing its writ if it is issued as

per the schedule to the application and therefore directed the Respondent to produce a survey plan. This course of action adopted by the Magistrate's Court, though not legally sanctioned by any of the provisions of the said Act, could not be faulted due to the peculiar circumstances of this appeal. The 2nd order that had been made by the Magistrate's Court on 27.07.2010, was in relation to the said clearly demarcated and identified parcel of State land, which had already been described in the schedule to the application of the Respondent.

The Magistrate's Court, in advising the Appellants as to their legal entitlement in view of its order of ejectment, has explained to the Appellants of the provisions contained in Sections 12 and 13 of the State Lands (Recovery of Possession) Act.

In dismissing the Appellant's application for revision of the ejectment orders by the Magistrate's Court, the Provincial High Court had correctly decided that there is no illegality in the orders that had been canvassed before it.

It has been stated in ***Divisional Secretary Kalutara and another v Jayatissa*** SC Appeal Nos. 246,247,249 & 250/2014 - decided on 04.08.2017, that in considering revision applications, a Court would take in to account that;

> *" ... if relief 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 material presented before the Provincial High Court by the Appellant does not qualify under any of these considerations.

Therefore, it is our considered opinion that the appeal of the Appellants is devoid of any merit. In the circumstances, the appeal of the Appellants stands 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