

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

In the matter of an Appeal in terms
of Article 138 and 154(P) of the
Constitution and the Provisions of
the High Court of the Provinces
(Special Provisions) Act No. 19 of
1990.

C.A.(PHC)Appeal No. 146/2013

P.H.C. Colombo Case No. HCRA 32/2010

M.C. Mt. Lavinia Case No. 4046/S/09

Mrs. P.K. Thuduwage,
No.90A, C. Grade,
Ratmalana Irrigation Housing
Complex,
Ratmalana.

Respondent-Petitioner- Appellant

Vs.

Engineer P.K. Padmakeerthi,
Divisional Irrigation Director,
Colombo Division,
Jawatta Road,
Colombo 5.

**Substituted-Applicant-Respondent-
Respondent**

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

COUNSEL : Geeshan Rodrigo with Rangana
Warnasinghe for the Respondent-
Petitioner-Appellant
Suranga Wimalasena SSC for the
Substituted - Applicant-Respondent-
Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 18-02-2019(by the Respondent)

DECIDED ON : 01st March, 2019.

ACHALA WENGAPPULI, J.

The Respondent-Petitioner-Appellant (hereinafter referred to as the "Appellant") invokes the appellate jurisdiction of this Court, seeking to set aside an order of the Provincial High Court of the Western Province holden in *Colombo* dated 18.09.2013. With the pronouncement of the said order in case No. HCRA 32/2010, the Provincial High Court has dismissed the Appellant's application to revise a writ of possession issued by the Magistrate's Court of *Mt. Lavinia* in case No.4046/S/09.

Case No. 4046/S/09 of the Magistrate's Court of *Mt. Lavinia* refers to an application made by the Applicant-Respondent-Respondent

(hereinafter referred to as the "Respondent") under Section 6(1) of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 as amended (hereinafter referred to as the "Act"), to recover possession of a unit of Government quarters that had been placed under the control of Irrigation Department, situated at No. 90/ A, *Ratmalana* Irrigation Housing Complex, *Ratmalana*.

The Appellant has retired from the Government employment on 15.10.2007 and the Respondent claimed that he has issued the Appellant a notice directing her to handover vacant possession of said quarters on 19.02.2009. Upon her failure to handover vacant possession on the due date, the Respondent moved Court to issue a writ of possession.

The Magistrate's Court has issued writ of possession on 05.02. 2010 under Section 7(1) of the Act, upon the said application by the Respondent.

It appears that the Magistrate's Court has issued notice on the Appellant and afforded an opportunity for her to file "objections". In the said "objections" the Appellant challenged the competency of the Respondent to make an application before the Magistrate's Court seeking her ejection. However, the Magistrate's Court, having rejected her challenge to the standing of the Respondent as the Competent Authority, issued a writ of possession.

At that stage the Appellant has invoked revisionary jurisdiction of the Provincial High Court seeking to challenge the validity of the issuance of writ of possession. In dismissing the Appellant's application for revision, the Provincial High Court has held that there was no illegality in the issuance of writ of possession by the Magistrate's Court.

Being aggrieved by the said order of dismissal the Appellant sought intervention of this Court.

The Appellant was represented before this Court on 13.12.2017 upon notice and it appears that she has collected her copy of the appeal brief on 23.11.2017. The appeal of the Appellant was thereafter fixed for hearing by this Court on 08.06.2018 and thereafter re-fixed for 03.09.2018 after directing the parties to tender their submissions in writing. On 03.09.2018, the parties informed Court that the appeal could be disposed upon their written submissions. The parties were then given a further opportunity to tender written submissions while the date for judgment was fixed for 26.10.2018. Neither party tendered any written submissions before that date and therefore the Court fixed the matter for oral hearing on 07.12.2018 without pronouncing its judgment.

When the appeal was taken up for hearing on 07.12.2018 an application was made by the Appellant for a postponement on his personal grounds, but the Court, acting upon the prior agreement of the parties, again fixed this appeal for judgment on written submissions. The Appellant thereafter did not take any interest in her appeal and opted to disregard the direction of Court in her repeated failure to tender written submissions.

In spite of the contumacious conduct of the Appellant in relation to her appeal, this Court would nevertheless consider it.

Perusal of her petition of appeal reveals that she sought to challenge the validity of the order of the Provincial High Court in its failure to consider *inter alia* the Respondent's competency as the Competent

Authority, the policy decision of the Government to handover the quarters to the Appellant, the Appellant's legitimate expectation in view of this policy.

When an application for ejectment is made under Section 7(1) of the Act against an "occupier" of any Government quarters, a Magistrate must issue a writ of possession. The Magistrate's Court was not conferred with a discretion by the said section to consider any ground other than what is stated in the application. Whether the Respondent is the Competent Authority or not could not be decided by the Magistrate's Court in view of the statutory provisions contained in Section 6(1)(a)(i) and Section 6(4) of the said Act. Section 6(4) is clear as it states that "*Every application for ejectment shall be conclusive evidence of the facts stated therein.*" Therefore, when the Respondent stated that he is the Competent Authority in the application seeking a writ of possession against the present Appellant, the Magistrate's Court has no power to allow the Appellant, who was the Respondent before it, to contest that fact.

In these circumstances, when the Provincial High Court examines the validity of the issuance of a writ of possession by a Magistrate's Court, there was no basis for it to hold that such an order as illegal or improper. If the issuance of writ of possession is not tainted with any error on law, then there was no basis for the Provincial High Court to interfere with the order of the Magistrate's Court. The other ground stated by the Appellant in her petition regarding a Government policy and her legitimate expectations are relevant considerations if she sought judicial review of the quit notice before a competent Court. In *Dayananda v Thalwatte* (2001) 2 Sri L.R. 73,

it was held that revisionary jurisdiction cannot be combined with writ jurisdiction of this Court.

Therefore, it is our considered view that the appeal of the Appellant is devoid of any merit and accordingly it ought to be dismissed.

The appeal of the Appellant is dismissed with costs fixed at Rs. 50,000.00.

JUDGE OF THE COURT OF APPEAL

JANAK DE SILVA, J.

I agree.

JUDGE OF THE COURT OF APPEAL