

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. 176/2014

P.H.C. Colombo Case

No. HCRA183/2011(Rev)

M.C. Mt. LaviniaCase

No. 5475/S/11

M.A. Weerasena,

No.77A, 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 : G. Rodrigo for the Respondent-Petitioner-
Appellant
Nuwan Peiris S.C. for the Substituted-
Applicant-Respondent-Respondent.

DECIDED ON : 08th 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 30.04.2014. With the pronouncement of the said order in case No. HCRA 183/2011, the Provincial High Court has dismissed the Appellant's application to revise the issuance of writ of possession by the Magistrate's Court of *Mt. Lavinia* in case No.5475 /S/11.

Case No. 5475/S/11 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. 77/ A, Irrigation Housing Complex, *Ratmalana*.

The Appellant has been transferred out of the Irrigation Department under which he was permitted to occupy the said unit of the Government Quarters. His agreement to occupy the quarters too had passed its terminal date. The Respondent thereupon issued a notice dated 07.02.2011 on the Appellant to handover vacant possession of said quarter he occupies, on or before 08.04.2011. Upon his failure to handover vacant possession of the said quarters on the due date, the Respondent moved Court seeking writ of possession.

The Magistrate's Court has issued writ of possession on 25.11. 2011 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 upon his request, afforded an opportunity for him to raise "preliminary objections" for the application of the Respondent. In the said "preliminary objections" the Appellant challenged the competency of the Respondent to make an application before the Magistrate's Court seeking his ejection. However, the Magistrate's Court, having rejected his challenge to the standing of the Respondent as the Competent Authority, issued the writ of possession by its order on 25.11.2011.

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. It also held that the Respondent is the Competent Authority who could move for the issuance of writ of possession against the Appellant.

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

The Appellant was represented before this Court on 15.03.2018, upon being noticed and his appeal was fixed for hearing on 13.09.2018. He has obtained his copy of the appeal brief on 31.05.2018. Thereafter, the Appellant was represented when his appeal was taken up for hearing on 13.09.2018. On 13.09.2018 parties moved Court to pronounce its judgment on the written submissions and they were afforded an opportunity to tender the same on or before 01.11.2018. Judgment was to be pronounced on 16.11.2018. On that day the judgment could not be pronounced due to the failure of both parties to tender their submissions. However they reiterated their desire to have a judgment pronounced on the written submissions. Accordingly, they were given yet another opportunity to tender submissions on or before 08.03.2019, after re-fixing judgment for today. However, the Appellant, displayed his lack of interest to prosecute

this appeal, by the repeated non compliance of the direction to tender written submissions.

In spite of the continuation conduct of the Appellant, this Court would nevertheless consider his appeal.

Perusal of his petition of appeal reveals that he sought to challenge the validity of the order of the Provincial High Court in its failure to consider the Respondent's competency as the Competent Authority to seek his eviction.

When an application for ejection 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 ejection 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 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 justification for the Provincial High Court to interfere with the issuance of writ of possession. The other ground stated by the Appellant in his petition regarding a Government policy are relevant considerations if he 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