

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

C.A (PHC) 44/2016

HC Revision/Kandy/25/16

MC Kandy /82777/15

The Divisional Secretary,
Divisional Secretarial Office,
Harispattuwa.

Applicant

Vs.

Abusali Jeyilabdin Manafkin,
No.7/1, Mikathanna,
Katugastota.

Respondent

AND

Abusali Jeyilabdin Manafkin,
No.7/1, Mikathanna,
Katugastota.

Respondent-Petitioner

Vs.

The Divisional Secretary,
Divisional Secretarial Office,
Harispattuwa.

Applicant-Respondent

AND NOW

Abusali Jeyilabdin Manafkin,

No.7/1, Mikathanna,

Katugastota.

Respondent-Petitioner-

Appellant

Vs.

The Divisional Secretary,

Divisional Secretarial Office,

Harispattuwa.

Applicant-Respondent-

Respondent

Before : **Prasantha De Silva J.**

S.U.B Karaliyadde J.

Counsel: P.K. Prince Perera with R.M.C Ekanayake and K.K. Farooq for the
Respondent-Petitioner-Appellant.

R. Gooneratne S.C for the Applicant-Respondent-Respondent.

Written Submissions 08.01.2020 by the Respondent-Petitioner-Appellant.

tendered on: 07.01.2020 by the Applicant-Respondent-Appellant.

Argued on: 10.03.2021

Decided on: 30.04.2021

Judgment

The Applicant being the Divisional Secretary-Harispaththuwa filed an Application under the State Lands (Recovery of Possession) (amending) Act No 07 of 1979 as amended in the Magistrate Court of Kandy against the Respondent namely Abusali jeyilabdin Manafkin, seeking to eject the Respondent and his dependants in occupation of the land described in the schedule to the said Application; on the basis that the said land is a state land and the Respondent is in unauthorized or illegal occupation of the land and he has failed and neglected to act in accordance with the provisions of the Section 4 (b) of the State Land (Recovery of Possession) (amending) Act as amended [hereinafter referred to as the Act].

It appears that the Applicant exhibited the Notice of Quit on the land in question and after receiving summons, the Respondent filed an Affidavit and stated that;

- a. No proper Quit Notice was served on the Appellant as mandated by the provisions of the State Land (Recovery of Possession) Act and by not sending the Notice of Quit, the Respondent has prevented the Appellant from obtaining a writ;
- b. The corpus had not been properly identified by the Respondent.
- c. Previously the Respondent had made an identical Application in the Magistrate Court of Kandy in case bearing No. 59106/2012 against the father of the Appellant on the same land and the said Application was correctly dismissed and the Respondent never made an Appeal against the said Order.
- d. The Respondent having failed to eject the father of the Appellant, created a land without proper identification and filed this case.
- e. The conduct of the Respondent is *mala fide*.

Applicant was allowed to reply to the Affidavit of the Respondent, thus counter Affidavit was filed by the Applicant. Together with the said counter Affidavit, the Respondent produced a purported Notice to Quit marked as P4 and a report of the Grama Niladhari marked as P3.

It is seen that in the said report P3, the said Grama Niladhari has stated that although he visited the Respondent to deliver the Quit Notice, but the Respondent did not accept the same, thus it was accordingly affixed on the new construction.

However, the Learned Magistrate had taken up the matter for inquiry and allowed parties to file Written Submissions.

Thereafter, the Learned Magistrate of Kandy delivered the Order on 31.03.2016 directing to evict the Respondent from the subject land.

Being aggrieved by the said Order the Respondent-Petitioner has invoked the Revisionary Jurisdiction of the High Court of the Central Province Holden in Kandy.

The said Revision application was supported on 23.05.2016 and the learned High Court Judge of Kandy, refused to issue notice on the Respondent-Petitioner, on the basis that;

- a. The Appellant has failed to take up the position that the failure to issue due Quit Notice by the Respondent to the Appellant in terms of the State Land (Recovery of Possession) Act as a Preliminary issue,
- b. A preliminary issue raised for the 1st time cannot be considered in a Revision Application,

- c. Thus, the Appellant had failed to adduce any exceptional circumstances before the Court to issue Notice to the Respondent,

Being aggrieved by the said Order dated 23.05.2016, the Respondent-Petitioner-Appellant [hereinafter referred to as the Appellant] has preferred this appeal to this Court.

On behalf of the Appellant, it was submitted that the Learned High Court Judge has erroneously refused to issue Notice on the Applicant-Respondent-Respondent [hereinafter referred to as the Respondent] on the basis that on the ground as to the non-service of Notice to Quit, as it has been raised for the first time in appeal.

On the contrary, the Respondent together with the Counter Affidavit, produced a purported Notice to Quit marked P4 and a report of the Grama Niladhari marked as P3. As such, it is apparent that the issue regarding the non-service of the Quit notice was raised at the inquiry before the Magistrate, thus the said findings of the learned High Court Judge is *ex-facie* erroneous.

It was the contention of the Appellant that in terms of Section 3 of the Act, when Notice to Quit cannot be served in such manner, the Competent Authority is vested with Power to serve the Notice to Quit and the Power must be exercised in the manner set out in Section 3 of the Act. Nevertheless, in the instant case the said Power has been wrongly assigned to the said Grama Niladhari and/or the Grama Niladhari has taken over the Power of the Competent Authority.

Apparently, the said section enacts that “where the competent authority considers such service impracticable or inexpedient, exhibit such Notice in a conspicuous place in or upon that land.”

It was further submitted that the Grama Niladhari himself had decided that service of Notices impracticable and inexpedient.

As such, it was submitted by the Appellant that the assumption of Power under Section 3 of the Act by Grama Niladhari is contrary to the specific provisions of Law which require only the competent authority to exercise such power.

In this respect, the Court draws the attention to the Judgment of **Alwis Vs Additional Director General U.D.A** reported in [1997 (3) S.L.R 417]. In this case, the Appellant has failed to establish that she was in fact the competent Authority at the time of the Order of the Magistrate.

Jayasuriya J. imposed a requirement in this Judgment that the Petition and Affidavit filed in the Magistrate's Court ought to have set out and pleaded such delegation or appointment. There is no averment in the Affidavit and in the documents filed that the powers of the Director General have been delegated.

In this instance, it is worthy to note that in the Notice of Quit signed by the Divisional Secretary as the competent authority had delegated powers to the Grama Niladhari namely S.M.S.R Samarakoon in view of P4.

The said Grama Niladhari had informed by his letter dated 26.03.2015 [P3] to the Divisional Secretary, who is the competent authority that since the Respondent refused to accept the Notice to Quit, it was affixed on the new construction.

As such, the competent authority has exercised powers in the manner set out in Section 3 of the said Act thus the Notice of Quit was properly served on the Respondent in compliance with Section 3 of the Act.

However, the learned Magistrate dealt with the said issue and decided not to consider the said ground as a ground to reject the Application of the Applicant-Respondent-Respondent.

It was established in the Case of **Muhandiram Vs Chairman JEDB** reported in *1992 (1) S.L.R 110* by *Justice Grero* – which held that;

“In an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the state grant according to any Written Law – if this burden is not discharged, the only option open to the Magistrate is to Order ejection.

Similarly, *Justice Dehideniya* held in the case of **M.C Margaret Perera Vs Divisional Secretary Naula [C.A/ PHC/41/2010] (C.A Minutes 31.01.2017)** the scope of an inquiry under section 9 of the State Lands (Recovery of Possession) Act is limited to;

1. Occupying the land on a permit or a written authority.
2. It must be a valid permit or a written Authority.
3. It must be in force at the time of presenting it to Court.
4. It must be in force at the time of presenting it to Court.
5. It must have been issued in accordance with any Written Law.

Further it was held that the party noticed is not entitled to challenge the opinion of the competent authority on any matters stated in the Application.

Therefore, it is clear that in an action to recover Possession of a State Land, the only available defense for the Possessor sought to be evicted from the subject Land, is to establish that he is in Possession or Occupation of the land upon a valid Permit or other Written authority of the State granted according to any Written Law.

Apparently, the Respondent-Petitioner-Appellant has not submitted any document, valid permit or grant to substantiate the fact that he had written permission or authority to occupy the state land in question.

Therefore, in the absence of Written authority or a valid permit to occupy the State land at the time of serving the Notice of Quit, the Learned Magistrate has correctly issued the eviction order against the Respondent-Petitioner-Appellant.

Be that as it may, it appears that in Section 9 (1) stipulates another restriction on the Respondent which was dealt by *Justice Wengappuli* in the Case of **J.M Chandrika Priyadharshani** [The competent authority] Vs **Loku Hettiarachchige Seneviratne**. [C.A Minutes 13.07.2018].

” 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 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.

Furthermore, Section 5(1) imposes a duty on the Competent Authority to set out certain facts in his Application for ejection and has included these factors in Section 5 (1)(a) and (b).

Section 5 (1) (a) (i) of the Act reads that he is a Competent Authority for the purpose of this Act.

In terms of Sections 5 (1) (a) (i) and Section 9 (1) it is clear that the intention of the Legislature is to impose a restriction on the Respondent in an application for ejection, the Respondent is precluded by contesting before the Magistrate's Court against the claim by the Competent Authority, in terms of the Application made under Section 5 of the Act.

In view of the foregoing reasons, we are of the view that the grounds of Appeal raised on behalf of the Appellant are without merit thus the Appeal has to be dismissed.

As such, we are not inclined to interfere with the Order dated 31.03.2016 by the Learned Additional Magistrate and the Order dated 23.05.2016 by the Learned High Court Judge.

Hence, the said impugned Orders are affirmed and the Appeal is dismissed with costs fixed at Rs.25,000/-.

JUDGE OF THE COURT OF APPEAL

S.U.B Karaliyadde J.

I agree.

JUDGE OF THE COURT OF APPEAL