

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

Court of Appeal Case No. **CA(PHC) 211/2015**

HC (Avissawella) 09/2014 REV.

MC (Avissawella) 61743

In the matter of an Appeal against the
Judgment of the Provincial High Court
of Avissawella dated 07th October 2015.

Jayaweera Mudiyanseelage Chandrika
Priyadarshani,
Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Lane, Colombo 02.

Plaintiff

Vs.

Masanam Money,
Talduwa Estate, Avissawella.

Defendant

AND BETWEEN

Masanam Money,
Talduwa Estate, Avissawella.

Defendant-Petitioner

Vs.

Jayaweera Mudiyanseelage Chandrika
Priyadarshani,
Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Lane, Colombo 02.

Plaintiff-Respondent

AND NOW BETWEEN

Masanam Money,
Talduwa Estate, Avissawella.

Defendant-Petitioner-Appellant

Vs.

Jayaweera Mudiyanseelage Chandrika
Priyadarshani,
Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Lane, Colombo 02.

Plaintiff-Respondent-

Respondent

Before : **Prasantha De Silva J.**

K.K.A.V Swarnadhipathi

Counsel: Mr. S.P.B Dissanayake for the Respondent-Petitioner-Appellant.

Mr. Priyantha Alagiyawanna A.A.L for the Plaintiff-Respondent-Respondent.

Written Submissions

tendered on: 10/11/2021 by the Respondent-Petitioner-Appellant.

14/07/2021 by the Plaintiff-Respondent-Respondent.

Decided on: 30/11/2021

Prasantha De Silva J

Judgment

This is an Appeal against the Order of the Learned High Court Judge of the Sabaragamuwa Province holden in Ratnapura dated 07.10.2015.

The Plaintiff-Respondent [hereinafter sometimes referred to as the Respondent] made an Application on 31.12.2012 in terms of Section 3 of the State Land (Recovery of Possession) Act No 07 of 1979 as amended, to the Magistrate Court of Avissawella to evict the Respondent -Petitioner-Appellant [hereinafter referred to as the Appellant] from the State land described in the schedule in the application.

After supporting the application, the Notice of Quit was sent to the Appellant with the application. It appears that the Appellant had shown cause against the said application by way of statement of objections dated 6.12.2013.

It was submitted on behalf of the Appellant that the Appellant was recruited to the post of Office Assistant to the Talduwa Estate Office of Malawatta Valley Plantation Limited, with effect from 1st July 1994. The Appellant was provided quarters from the Talduwa Estate on free of rent and the Appellant was occupying the Quarters since 1994.

Although the Appellants services were terminated in 1996, he was never informed or requested to Quit from the Quarters after the termination from the services by the Management of Malwatte Valley Plantation Limited.

It was further submitted that the Appellant had spent his own money to repair the quarters with the oral consent of the Management of the Malawatte Valley Plantation Limited.

The Appellant had taken up the position that the Legislature had not permitted Plantation companies which had taken estates on lease to apply provisions of state lands (Recovery of Possession) Act No.07 of 1979 as amended to eject the persons occupying the estate quarters.

However, the Learned Magistrate had delivered the order to eject the Appellant from the quarters, led by the Appellant.

Being aggrieved by the said Order dated 29.08.2014, the Respondent-Petitioner-Appellant had invoked the Revisionary Jurisdiction of the Provincial High Court of Avissawella. After filing of written submissions by both the parties, the Learned High Court Judge delivered the Order affirming the said Order of the Learned Magistrate.

This Appeal is made against the said Order of the Provincial High Court dated 07.10.2015 by the Respondent-Petitioner-Appellant.

It was the position taken up by the Appellant in this Appeal that the land in dispute is a state land, vested to the Janatha Estate Development Board (JEDB). In 1992, the government had taken a decision to vests the estates owned by Janatha Estate Development Board (JEDB) and Sri Lanka State Plantation (SLSPC) with the formation of the conversion of Public Corporation or government owned business undertakings into public Companies Act No 23 of 1987.

On the above decision of the government, the estate which was managed by the Janatha Estate Development Board (JEDB) and Sri Lanka State Plantation Corporation (SLSPC) were vested to the Public Companies incorporated under the provisions of the Act No 23 of 1987, order published by the Extra Ordinary Gazette No. 720/2 dated 22.06.1992.

According to the said gazette, it was submitted that, Talduwa Estate which was managed by the Janatha Estate Development Board (JEDB) was vested to the Malwatte Valley Plantation Limited. As a result of the said conversion of the estates, Janatha Estate Development Board (JEDB) no longer has the control over the estates vested to the Public Companies. Thus, the Janatha Estate Development Board (JEDB) has no authority over the Talduwa Estate, since 22.06.1992.

As such, it was the contention of the Appellant that since then, Talduwa Estate is managed and controlled by the Malwatte Valley Plantation Limited. Thus, Talduwa Estate was not re-

vested to the Janatha Estate Development (JEDB) and the Janatha Estate Development (JEDB) had no control or function over Talduwa Estate.

Furthermore, it was submitted by the Appellant that Malwatte Valley Plantation Limited was incorporated under the Companies Act No 17 of 1982, under the provisions of conversions of Public Corporations or Government Owned Business undertakings into Public Companies. Therefore, it is governed by the Companies act.

Hence, the Respondent cannot act as a competent authority of the Talduwa Estate and has no lawful power or authority to make an application under the State Lands (Recovery of Possession) Act to the Magistrates Court to obtain an Order to evict the Appellant. Thus, it was contended that the Learned Magistrate has no jurisdiction to act upon the application of the Respondent for ejection of the Appellant from the disputed premises.

On the contrary, it was submitted on behalf of the Respondent that Section 3 of the conversion of public corporations or government owned business undertaking in to public companies Act No 23 of 1987 has enacted that the properties of the corporation are vested with the companies.

As a matter of fact, thus the companies have been granted lease for a period of 53 years. The Gazette No. 720/2 dated 22.06.1992 as referred by the Appellant even does not state that immovable properties were vested with the companies. Accordingly, the ownership of the land is remained with the state, Janatha Estate Development (JEDB).

In view of the aforesaid position of the Respondent, it was cited the case of **Mrs. D.F Ganesha Vs Manoja Jayanethi – competent authority Ministry of Plantation Industries, CA (Writ) Application No.714/2008** decided on 18.10.2010 – by *Sriskandarajah J.*

In this Judgment, it was referred to S.C Appeal No 19/2005 dated 25.10.2006, the applicant in the said case was Bogawantalawa plantation Limited was an Estate vested with the land Reform Commission and later with the Sri Lanka Plantation Corporation [SLPC}.

Apparently, the Respondent in the said case was an employee of the SLPC and was permitted to occupy the land in question on payment of a sum of Rs. 50/- per month as rent.

Subsequently, the estates vested with he SLPC were leased to Companies established in terms of the conversion of Public Corporations or Government owned business undertakings into public Companies Act No 23 of 1987. Bogawanthalawa Plantations Ltd was thus incorporated by an Order dated 22.06.1992 made in terms of the Act. The Bogawanthalawa Estate within which the land occupied by the Respondent is admittedly situated was leased by the SLPC to Bogawathalawa Plantations Ltd by the lease bearing No 83 dated 18.01.1994. The lease is for a period of 99 years and contains a provision for prior termination.

On these facts, the Supreme Court held in the said Case said that the land remained vested in the Sri Lanka State Plantation Corporation. Therefore, the State lands (Recovery of Possession) Act would apply to eject a person in illegal occupation of these lands.

In the said case, the Supreme Court recognized the power and entitlement of the competent authority appointed under the state lands (Recovery of Possession) Act to issue notices of Quit to eject the occupier from a state land.

Having considered the said findings of the Supreme Court, His Lordship *Justice Sriskandarajah* emphasized in the case of **Mrs. D.F Ganesha Vs. Manoja Jayanetti – competent authority (supra)**, “the lessee of the subject matter is a private concern has no relevance as long as the land is vested with the JEDB.

In view of the aforesaid findings, it is apparent that the contention of the Appellant that the Respondent in the instant case has no authority to initiate these proceedings has no basis. It is to be noted that the Respondent had formed the opinion in terms of Section 3 of the Act being the Competent Authority that the land in question is a state land and served the notice of Quit to the Appellant.

In such circumstances, it is the burden of the Appellant to prove that she is in occupation or possession of the land in question, on a valid permit or other written authority of the state grant according to any other written Law. If this burden is not discharged by the Appellant the only option to the Magistrate to make an Order for ejection. The said position was established in the case of **Muhandiram Vs Chairman JEDB 1992 (1) S.L.R 110**.

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) of the said Act 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

K.K.A.V Swarnadhipathi.

I agree.

JUDGE OF THE COURT OF APPEAL