

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

Court of Appeal Case No: CA
(PHC) 208/2015

Ratnapura High Court Case No:
HCRA 64/2013

Rakwana Magistrate's Court
Case No: 55359

In the matter of an Appeal under Section 11
of the High Court of Provinces (Special
Provisions) Act No.19 of 1990 read with
Article 154P (3) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

J.M.C. Priyadharshani
Competent Authority Director,
Plantation Management Supervision Unit,
Ministry of Plantation Management,
No.55/75, Vauxhall Lane,
Colombo 02.

Complainant

Vs.

Sinniah Amirthalingam Delgin (B Division)
Hedarly Estate,
Rakwana.

Respondent

AND

Sinniah Amirthalingam Delgin (B Division)
Hedarly Estate,
Rakwana.

Respondent-Petitioner

Vs.

J.M.C. Priyadharshani
Competent Authority Director,
Plantation Management Supervision Unit,
Ministry of Plantation Management,
No.55/75, Vauxhall Lane,
Colombo 02.

Complainant-Respondent

AND NOW

Sinniah Amirthalingam Delgin (B Division)
Hedarly Estate,
Rakwana.

Respondent-Petitioner-Appellant

Vs.
J.M.C. Priyadharshani
Competent Authority Director,
Plantation Management Supervision Unit,
Ministry of Plantation Management,
No.55/75, Vauxhall Lane,
Colombo 02.
Complainant-Respondent-Respondent

Before : **Prasantha De Silva, J.**

K.K.A.V. Swarnadhipathi, J.

Counsel: N. De Zoysa for the Respondent-Petitioner-Appellant.
Nishanthi Mendis for the Complainant-Respondent-Respondent.

Written Submissions 19.11.2021 by the Respondent-Petitioner-Appellant.
tendered on: 06.01.2022 by the Complainant-Respondent-Respondent.

Decided on: 01.04.2022

Prasantha De Silva, J.

Judgment

The Complainant being the Competent Authority of the Plantation Management Supervision Unit has filed an application in terms of Section 5 of the State Lands (Recovery of Possession) Act No. 07 of 1979, in the Magistrate's Court of Rakwana, seeking to eject the Respondent from the land described in the schedule to the said application.

The Respondent appeared before the Magistrate's Court on notice and had shown cause by way of objections. The inquiry was disposed by way of written submissions as agreed upon by the parties. Thereafter, the learned Magistrate delivered the Order in terms of Section 10 (1) of the said Act and made an Order on 06.11.2013, allowing the application of the Complainant to eject the Respondent from the subject land.

Being aggrieved by the said Order, the Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa holden in Rathnapura. The Complainant-Respondent had filed objections and raised a preliminary objection in respect of jurisdiction. After written submissions were filed by both parties the learned High Court Judge delivered the Order on 11.11.2015 upholding the said preliminary objections and dismissed the application of the Respondent-Petitioner *in limine*. Being aggrieved by the said Order, the Respondent-Petitioner-Appellant has preferred this appeal to the Court of Appeal.

It is pertinent to note that the learned High Court Judge has solely relied upon the Supreme Court decision made in the case of *The Superintendent, Stafford Estate and Others Vs. Solaimuthu Rasu [2013 (1) S.L.R 25]*, which held that the Provincial High Court has no jurisdiction to hear cases where recovery/dispossession, encroachment or alienation of state lands is/are in issue. It was further held that since powers relating to recovery/dispossession of state lands, encroachment or alienation of state lands are not in the Provincial Council List in the 13th Amendment to the Constitution, any review pertaining to such matter cannot be gone into by the Provincial High Court.

It is to be noted that the learned High Court Judge referred to the Case *Mohamed Safayar Siththi Fathima Vs. Divisional Secretary Nikaweratiya CA (PHC) 85/2012 C.A Minutes 13.03.2014*, which followed the *Solaimuthu Rasu's* Case [*supra*] and *Justice Salam* held that, “This is an appeal preferred against the Order of the learned High Court Judge, who exercised the revisionary jurisdiction in respect of an Order made by the learned Magistrate under the State Land (Recovery of Possession) Act No.07 of 1979.”

In terms of the said Judgment of the Supreme Court in *Solaimuthu Rasu's* Case [*supra*], Appeal preferred against the Order of the High Court cannot be maintained and the appeal has to be dismissed *in limine*.

Moreover, the learned High Court Judge placed on record the decision in *Wallawita Kankanamlage Mahinda Vs. Herath Mudiyansele Naudasena SC (SPL) LA 211/2013 S.C Minutes 20.01.2014*, in which their Lordships and the Ladyship held that, “in view of the Judgment of this Court in *Solaimuthu Rasu's* Case, the High Court of Badulla has no jurisdiction to hear and determine this matter. These proceedings are misplaced in law”. It was an appeal against the Order given in revision affirming an eviction Order made by the learned

Magistrate in respect of an application under the provisions of the State Land (Recovery of Possession) Act. Hence, the learned High Court Judge is of the view that any matter relating to the “State Lands” cannot be reviewed in any manner in the Provincial High Court.

It is relevant to note that the *ratio decidendi* of the Judgment in ***Solaimuthu Rasu***’s case, which held that the Provincial High Court had no jurisdiction to issue writs under Article 154P (4) of the Constitution pertaining to the state lands.

In order for the Provincial High Courts to exercise writ jurisdiction, the issue should be one that falls within the purview of the Provincial Council list. Since the subject-state lands does not fall within the purview of the Provincial Council list, Provincial High Court is not empowered to issue writs under Article 154P (4) of the Constitution in respect of matters pertaining to state lands.

Next, Court draws the attention to Article 154P (3) (b) of the Constitution of the Democratic Socialist Republic which stipulates that,

“Every such High Court shall notwithstanding anything in Article 138 and subject to any Law, exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate’s Courts and Primary Courts within the province”.

It is noteworthy that revisionary jurisdiction in terms of Article 154P (3) (b) of the Constitution, has not excluded the power to exercise appellate or revisionary jurisdiction regarding state lands.

It was held in the case of ***Jayawardhane Vs. Deen [(2015)1 SLR 181]*** that High Court has jurisdiction to hear and determine cases relating to state lands, acting in revision. In view of the case of ***Divisional Secretary Kalutara Vs. Kalupahana Mestrige Jayatissa (unreported) SC Appeal 246,247,249 & 250/14 (Judgment delivered on 04.08.2017)***; the Supreme Court did not consider the objection to jurisdiction of the High Court which was taken up on behalf of the Applicant in such case. “*I do not wish to consider this issue in the present Judgment for two reasons. Firstly, in the case referred to, the Supreme Court dealt with the powers of the Provincial High Court under Article 154P (4) of the Constitution (writ jurisdiction), whereas in the instant case, the Provincial High Court derives jurisdiction under Article 154P (3)*

(power to act in revision). Secondly, this was not an issue on which leave was granted by this Court".

In this context, the attention of Court was drawn to Section 12 of High Court of the Provinces (*Special Provisions*) Act No. 9 of 1990 which is as follows;

12. (a) Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application;

Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it is expedient to do so, order that such appeal or application be transferred to such High Court, and such High Court shall hear and determine such appeal or application.

(b) Where the Court of Appeal decides to hear and determine any such appeal or application, as provided for in paragraph (a), the proceedings pending in the High Court shall stand removed to the Court or Appeal for its determination.

(c) No appeal shall lie from the decision of the Court of Appeal under this Section to hear and determine such appeal or application or to transfer it to a High Court.

(d) Nothing in the preceding provisions of this Section shall be read and construed as empowering the Court of Appeal to direct a High Court established by Article 154P of the Constitution to hear and determine any appeal preferred to the Court of Appeal from an Order made by such High Court in the exercise of the jurisdiction conferred on it by paragraph (4) of Article 154P of the Constitution.

It is to be noted that the Respondent-Petitioner-Appellant had invoked the revisionary jurisdiction of the Provincial High Court of Ratnapura in terms of Article 154P (3) (b), and not under Article 154P (4) of the Constitution.

Therefore, it appears that the learned High Court Judge has misconstrued the Articles of the Constitution and also relied on the Judgment of '*Solaimuthu Rasu*' expressing his view that any matter relating to state lands could not be reviewed in any manner in the Provincial High Court. As such, it is apparent that the Order made by the learned High Court Judge dismissing the revision application made by the Respondent-Petitioner-Appellant is made Per Incuriam. Therefore, the impugned Order dated 11.11.2015 is set aside. Accordingly, it is seen that the High Court of Rathnapura is the proper forum to decide this application for revision.

Hence, we send this case back to the Provincial High Court of Rathnapura, to hear and determine the application bearing No HCRA 64/2013 on its merit. Thus, the appeal is allowed and Registrar is directed to send the case record back to the High Court of Rathnapura forthwith.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL