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

An appeal in relation to an Order of the High Court under Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Provincial High Court (*Special Provisions*) Act No. 19 of 1990.

Court of Appeal Case No:
CA (PHC) 153/2017

Anuradhapura High Court Case No:
RE 32/17

Anuradhapura Magistrate's Court Case No: 74193

Yasin Bawa Abdul Majid,
Director General of Irrigation (Acting),
Department of Irrigation,
No. 230,
Bauddhaloka Mawatha,
Colombo 07.

Applicant

Vs.

Wilfred Wandaslot,
Nuwara Wewa Reserve,
No. 597 (A),
J.R.Jaya Mawatha,
Stage 01,
Anuradhapura.

Respondent

AND BETWEEN

Wilfred Wandaslot,
Nuwara Wewa Reserve,
No. 597 (A),
J.R.Jaya Mawatha,
Stage 01,
Anuradhapura.

Respondent-Petitioner

1. Yasin Bawa Abdul Majid,
Director General of Irrigation (Acting),
Department of Irrigation,
No. 230,

Bauddhaloka Mawatha,
Colombo 07.

Applicant-Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

AND NOW BETWEEN

Wilfred Wandaslot,
Nuwara Wewa Reserve,
No. 597 (A),
J.R.Jaya Mawatha,
Stage 01,
Anuradhapura.

Respondent-Petitioner-Appellant

1. Yasin Bawa Abdul Majid,
Director General of Irrigation (Acting),
Department of Irrigation,
No. 230,
Bauddhaloka Mawatha,
Colombo 07.

Applicant-Respondent-Respondent

2. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent-Respondent

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

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

Counsel: Chathura Galhena A.A.L with Dharani Weerasinghe A.A.L for the Respondent-Petitioner-Appellant.
S. Dunuwila S.C for the Applicant-Respondent.

Both parties agreed to dispose this matter by way of written submissions.

Writen Submissions
tendered on: 07.04.2022 by the Respondent-Petitioner-Appellant.

Decided on: 23.05.2022

Prasantha De Silva, J.

Judgment

This is an appeal emanating from an Order of the learned High Court Judge of Anuradhapura dated 11.09.2017, dismissing the application of the Respondent-Petitioner without having issued notices on the Respondents. It appears that the Acting Director General of Irrigation being the competent authority had made an application in terms of Section 5 (1) of Act No. 07 of 1979, State Lands (Recovery of Possession) to eject the Respondent from the land described in the schedule to the application.

Subsequent to the inquiry, the learned Additional Magistrate had allowed the said application of the Applicant-Respondent and ordered to eject the Respondent-Petitioner and his agents from the land in question. Being aggrieved by the said Order, the Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Anuradhapura.

It was the contention of the Respondent-Petitioner-Appellant [hereinafter sometimes referred to as the Appellant], that the Applicant-Respondent-Respondent [hereinafter sometimes referred to as the Respondent] being the Director General of Irrigation is not a competent authority within the meaning of Section 05 read with Section 28 of the said Act.

In this respect, the attention of Court was drawn to the case of ***Muhandiram Vs. Chairman No. 111, Janatha Estates Development Board [1992] 1 SLR 110***, which held that in terms of Section 9 (1) of the State Lands (Recovery of Possession) Act No. 07 of 1979 [hereinafter referred to as the Act], the person on whom summons have been served (Appellant in the case in hand) shall not be entitled to contest any of the matters stated in the application under Section 05 **except that such person may establish that he is in possession or in occupation of the land upon a valid permit or other written authority granted by State in accordance with any**

written law and that such permit or written authority is in force and not revoked or otherwise rendered invalid.

The said Section clearly reveals that at an inquiry of this nature, the person on whom summons have been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State, granted according to the written law. The burden of proof of that fact lies on that particular person on whom summons have been served and appears before the relevant Court. In this case the burden was on the Respondent-Petitioner to establish the fact that he had a valid permit or other written authority of the State to occupy the land which is stated in the schedule to the application of the Competent Authority.

However, it is apparent that the Appellant had failed to establish it in terms of Section 09 of the said Act, that is the Appellant was in occupation of the land described in the schedule to the application by the Competent Authority upon a valid permit or any other written authority granted by State to him.

It was held in ***Gunaratne (Alexis Auction Rooms) Vs. Abeysinghe (Urban Development Authority) [1988] 1 SLR 255*** that it is the burden of the occupier to establish that he is in occupation of the land on a valid permit or other written authority of the state. Since the Appellant has failed to establish that he is in occupation or possession of the land in question in accordance with Section 9 (1) of the said Act, there is no alternative for the learned Magistrate, other than to allow the application of the Competent Authority. As such, it is apparent that the Order dated 04.11.2016 of the learned Magistrate is legal.

In Section 3 (1) of the Act, stipulation of not less than 30 days has been specified for the benefit of the occupier, to vacate and deliver the vacant possession of the land in question.

In the instant case, it appears that the quit notice is dated as 17.07.2015 and the application for ejectment was filed on 01.10.2015. Thus, the Respondent-Petitioner-Appellant had been given approximately 75 days to vacate the land in question before legal proceedings were instituted. As such, no substantial prejudice has been caused to the Respondent-Petitioner-Appellant for whose benefit the time requirement was introduced. Thus, the competent authority giving more than 30 days to vacate the premises is a sufficient compliance with Section 3 of the Act.

Since the competent authority had sufficiently complied with the procedure or formal rules stipulated in the Act, it clearly manifests that no prejudice has been caused to the Appellant. Hence, the Appellant is precluded from alleging any procedural irregularity or impropriety occurred to the Appellant.

However, the Appellant had taken up the position that the Respondent being the Director General of Irrigation is not a competent authority within the meaning of Section 05 as interpreted in Section 18 of the State Lands (Recovery of Possession) Act. It was submitted that in terms of Section 18 of the Act, it requires such Department or Institution to be a body created by law. According to the official website of the Department of Irrigation, it was established on 15th May 1900, consequent to a report made by the Governor of West Ridgway. For the foregoing reasons, it was argued that Department of Irrigation not being a Department created by law, does not fall within the ambit of Section 18 of the Act.

It is interesting to note that during the period of establishing the Department of Irrigation in 1900, there was no Parliament established in the country. Only the Governor could make proclamations and had the legal authority to create a body corporate. As such, the Appellant has not substantiated his contention that the Department of Irrigation was not created by Law. Thus, the Appellant's said position that Respondent is not the competent authority in terms of law is not needed to be considered. Therefore, the learned Magistrate has correctly decided that the Director General of Irrigation is a competent authority capable of instituting action to obtain an order of ejection in terms of the State Lands (Recovery of Possession) Act.

In view of the aforesaid reasons, it is imperative to note that the Appellant cannot allege that the Order of the learned Magistrate is illegal, irregular and procedurally improper. Hence, there is no miscarriage of justice or any injustice caused to the Appellant to exercise the revisionary jurisdiction of the Provincial High Court.

Since revisionary jurisdiction is a discretionary remedy to grant relief, the Appellant has to establish not only the impugned order is illegal but also that the nature of the illegality is such, it shocks the conscience of Court.

In view of the findings of the learned High Court Judge, it was held that the Appellant had not disclosed any exceptional circumstances which warrant the intervention of the Provincial High

Court for revision and had dismissed the application of the Respondent-Petitioner-Appellant affirming the Order of the Magistrate.

Hence, we see no reason for us to interfere with the Order of the learned High Court Judge dated 25.09.2017 and the Order dated 04.11.2016 made by the learned Magistrate.

Therefore, we dismiss the appeal with costs fixed at Rs. 10,500/-.

The Appellant has stated in the petition of appeal that he has been in possession of the impugned land in question for well over 20 years and that Appellant has developed the land, constructed a house with electricity and water and paid assessment tax. Therefore, this Court after considering the aforesaid facts, has decided to grant some sort of a relief to the Appellant by allowing the Appellant to take steps in finding out alternative accommodation before 31st of December 2022 or if he is so desirous, Court allows the Appellant to explore the possibility of getting a permit from the relevant authority to continue occupying the impugned land in question.

We direct the learned Magistrate not to issue a writ of ejectment until 31st of December 2022.

Appeal dismissed.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL