

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

Petition in Revision filed against the Judgment dated 22.01.2019 of the High Court of Western Province delivered in Revision Application bearing No. High Court, Colombo, Case No. 06/2019 (Rev), Primary Court of Colombo, case 82284/17/M.

Court of Appeal Case No:
CA (PHC) APN 32/2019

High Court Colombo Case No:
HC/06/2019/Rev

Magistrate's Court Colombo Case No:
82284/17/M

Sri Lanka Land Reclamation and Development
Co-operation,
No. 03, Sri Jayawardhanapura Mawatha,
Welikada,
Rajagiriya.

Plaintiff

Vs.

P. Mariyasekar,
No. 153/15, Nawala Road, Narahenpita,
Colombo 05.

Respondent

AND

P. Mariyasekar,
No. 153/15, Nawala Road, Narahenpita,
Colombo 05.

Respondent-Petitioner

Vs.

Sri Lanka Land Reclamation and Development
Co-operation,
No. 03, Sri Jayawardhanapura Mawatha,
Welikada,
Rajagiriya.

Plaintiff-Respondent

AND NOW BETWEEN

P. Mariyasekar,
No. 153/15, Nawala Road, Narahenpita,

Colombo 05.

Respondent-Petitioner-Petitioner

Vs.

Sri Lanka Land Reclamation and Development
Co-operation,
No. 03, Sri Jayawardhanapura Mawatha,
Welikada,
Rajagiriya.

Plaintiff-Respondent-Respondent

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.

Counsel: Ms. Buddhika Gamage A.A.L for the Respondent-Petitioner-Petitioner.
Ms. Sabrina Ahamed S.C for the Plaintiff-Respondent-Respondent.

Argued on: 23.02.2022

**Written Submissions
tendered on:** 28.02.2022 by the Respondent-Petitioner-Petitioner.
27.08.2020 by the Plaintiff-Respondent-Respondent

Decided on: 27.05.2022

Prasantha De Silva, J.

Order

Sri Lanka Land Reclamation and Development Co-operation being the Plaintiff-Respondent-Respondent [hereinafter sometimes referred to as the Respondent], made an application in the Magistrate's Court of Colombo in case bearing No. 82284/17/M under State Lands (Recovery of Possession) Act No. 07 of 1979 to eject the Respondent-Petitioner-Petitioner [hereinafter sometimes referred to as the Petitioner] from the land described in the schedule to the application.

Subsequent to the filing of objections with documents marked X1 and X2 by the Petitioner, the learned Magistrate directed the parties to file their respective written submissions. Thereafter, the learned Magistrate delivered the Order on 27.11.2018 against the Petitioner by allowing the application of the Respondent and ordering the Petitioner and his dependents to be ejected from the land in question.

Being aggrieved by the said Order dated 27.11.2018, the Petitioner invoked the revisionary jurisdiction of the Provincial High Court of Western Province holden in Colombo in case bearing No. HC/06/2019/Rev. The said application was supported on 22.01.2019 and the learned High Court Judge had dismissed the application of the Petitioner *in limine*, on the basis that there were no sufficient grounds to issue notice on the Respondent.

Being aggrieved by the said Order delivered by the learned High Court Judge on 22.01.2019, the Petitioner had moved in revision to this Court on the basis that the impugned Order of the High Court had caused a miscarriage of justice, and thus becomes palpably wrong and incorrect due to the following reasons:

- a. the said Orders are contrary to law and the evidence and material placed before the Magistrate's Court;
- b. the learned High Court Judge has erred in law by not considering the fact that possession had not been recovered under Section 42 of the Land Acquisition Act;
- c. the learned High Court Judge has erred in law by not considering legal principles of the case *Edwin v. Tillakaratne [2001] 3 S.L.R. 34*

It was submitted on behalf of the Petitioner that this land belongs to Petitioner's mother by virtue of Deed bearing No. 6912 dated 23.12.1988 attested by P.M Patabandige Notary Public which had been registered under the Land Registry folios. After the death of the Petitioner's mother, Petitioner has become the owner of the property, where he lives until now.

It was further submitted that as per Section 38(a) of the Land Acquisition Act, notice was gazetted to acquire the land in question by the State. At that time, the Petitioner's mother had claimed for Lot 09 and Lot 10. Thereafter, notice to acquire land as per Section 05 of the said Act had been

gazetted by the State again and at that time, the Petitioner's mother had made a claim for Lots 09 and 10.

Subsequently, section 07 notice also had been gazetted by the State and they had prepared a new preliminary plan No. 3186 and land had been subdivided as follows; Lots 01 to 09 and Lots 14 to 26. According to the said Plan No. 3186, although the extent of the entire land is 573.92P, they had published notices under Section 05 and 38(a) only for an extent of 502.4P and under Section 07 notice they had published for an extent of 71.5P, without publishing notice under Section 38 (a) and Section 05. As such, the Petitioner contended that the Respondent is not entitled to recover the above-mentioned extent without following the proper procedure under the Land Acquisition Act.

It was further submitted by the Petitioner that by subdividing Lot 10 in Plan No.62, the extent of the land has been changed and an extent of 16P has not been gazetted under Section 38 (a) and Section 05 of the Act. Furthermore, under Section 42(1) of the Land Acquisition Act, State has to complete the acquiring process by ejecting the occupants. However, Lot 10 had not been handed over to the State by the Petitioner or any other occupant.

However, it was brought to the notice of Court by the Plaintiff-Respondent-Respondent that;

- a) The corpus land forms a part of a large marshy area of State Land which was acquired by the State in 1995 for the purpose of maintaining a reservation for a water retention area;
- b) The area is depicted in Tracing Plan No 062 made on 07.11.1992⁵ and also depicted in Surveyor General's Preliminary Plan bearing No 8136⁶ ;
- c) The Minister had thereafter made the declaration in terms of the proviso to Section 38A of the Land Acquisition Act on 19.04.1995 (Vide 1R1⁷) ;
- d) The Divisional Secretary had taken immediate possession of the area acquired on 11.06.1996⁸ and handed over the same to the SLLRDC;
- e) Notices under Section 05 and 07 of the Land Acquisition Act were promulgated in Extra Ordinary Gazette bearing No. 958/4 dated 13.01.1997 and No. 1318/ 6 dated 10.12.2003 respectively and steps under the Land Acquisition Act were taken and concluded.

Nevertheless, it was the contention of the Petitioner that the possession of the subject land can be recovered in terms of the Land Acquisition Act and that Respondent is not entitled to recover the possession under State Land (Recovery of Possession) Act.

This issue has been already discussed in the case of *Edwin Vs. Tillakaratne [supra]*. In this matter, the Petitioner had been in occupation of the Lot in question even prior to the acquisition of the land by the State. Despite the acquisition by the State, the Petitioner continued to occupy the portion of land shown as Lot 2 in the plan marked as RR1. *Edwin Vs. Tillakaratne [supra]* was a case where the right to eject the Petitioner existed solely by virtue of the Land Acquisition Act and the State acquired ownership also by virtue of the said Act.

As such, rights vested in the State by virtue of the acquisition under the relevant statute can be enforced only in the way contemplated and authorized by the same statute. The right (of ownership) and remedy (procedure in ejectment) after the State had acquired the land are both given by the same Act, so to speak, *uno flatu* (in one breath) one cannot be dissociated or disentangled from the other. Thus it held,

- (i) When the statutory scheme embodied in the Land Acquisition Act itself provides a procedure for ejectment or remedy it must in the generality of cases, be taken to exclude any other procedure or remedy.
- (ii) Application that had been made to the Magistrate's Court in pursuance of Section 05 of the State Lands (Recovery of Possession) Act cannot be proceeded with.

In the said case, it was referred to the case of *Senanayake Vs. Damunupola [1982] (2) SLR 621* in which it was held that State land (Recovery of Possession) Act No. 7 of 1979 was not meant to obtain possession of land which the state had lost possession of by encroachment or ouster for a considerable period of time by ejecting a person in such possession. Section 03 of this Law should not be used by a Competent Authority to eject a person who has been found by him to be in possession of a land in circumstances such as have transpired in the said case.

However, *Justice Janak De Silva*, in the case of *Namunukula Plantations PLC Vs. Nimal Punchihewa CA (PHC) APN 29/2016* [C.A.M 09.07.2018] has overruled the aforesaid case upon

a comprehensive analysis of the State Land (Recovery of Possession) Act and had emphasized that;

“The decision in *Edwin Vs. Tillakaratne [2001] 3 S.L.R. 34* where *U. De Z. Gunawardena J.* held that the procedure in the Act cannot be resorted to in cases where the land in dispute was acquired under the Land Acquisition Act. The learned Judge relied on the decision in *Senanayake Vs. Damunupola [1982] 2 S.L.R 82* in support of his conclusions. For the reasons articulated earlier, I am of the view that the reasoning and conclusions in *Edwin Vs. Tillakaratne [supra]* are erroneous. We overrule the judgment in *Edwin Vs. Tillakaratne [supra]* and hold that the procedure in the Act can be invoked even where a person is in “unauthorized possession or occupation” of state land which was acquired under the Land Acquisition Act. The intention of the legislature on this issue is clear as the Hon. Minister of Land, Land Development and Mahaweli Development, during the second reading of the State Lands (Recovery of Possession) (Amendment) Bill (*supra*) specifically stated that recourse to existing law to recover possession of state land was time consuming.”

Consequent to the decision in *Senanayake Vs. Damunupola [supra]*, the main Act was amended by State Lands (Recovery of Possession) (Amendment) Act No. 29 of 1983. One of the amendments was to include a new definition to “unauthorized possession or occupation” to mean “except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law and includes possession or occupation by the encroachment upon state land”. Therefore, it is apparent that the case *Edwin Vs. Thilakaratne [supra]* relied upon by the Respondent-Petitioner-Petitioner is not applicable in the present context.

It is imperative to note that although the Petitioner was given the opportunity to show cause before the learned Magistrate as per Section 06 of the State Land (Recovery of Possession) Act, Petitioner had failed to prove that he is in possession or occupation of the subject land upon a valid permit or other written authority of the State. Thus, the learned Magistrate had correctly determined that the Petitioner has not had a legal permit or license to occupy the impugned state land, and had held that the Petitioner had to be ejected in terms of the law.

In view of the aforesaid reasons, it is observable that no exceptional circumstances exist for the Petitioner to invoke the revisionary jurisdiction of the Provincial High Court of Colombo.

Hence, we see no reason for us to interfere with the Order of the learned High Court Judge dated 22.01.2019 and the Order of the learned Magistrate dated 27.11.2018.

Thus, we dismiss the revision application made by the Respondent-Petitioner-Petitioner with cost fixed at Rs 25,000/-.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL