

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

In the matter of an application under Article 154P (6) of the  
Constitution, read with Article 138 thereof.

I.M.C. Priyadarshani,  
Competent Authority,  
Plantation Management Monitoring Division,  
Ministry of Plantation & Industries,  
11<sup>th</sup> Floor,  
Sethsiripaya, Stage II,  
Battaramulla.

**Applicant**

**Appeal No.CA(CHC)89/2016**

HC Provincial Sabaragamuwa

(Revision)HCRA 33/2016

MC Ratnapura 33198

**Vs.**

Athukoralage Sujith Sanjeewa Athukorala  
07 Kanuwa, Mathuwagala,  
Kiriella.

**Respondent**

**AND BETWEEN**

Athukoralage Sujith Sanjeewea Athukorala  
07<sup>th</sup>, Mile Post, Matuwagala,  
Kiriella.

**Respondent-Petitioner**

**Vs.**

01. J.M.C. Priyadarshani Competent Authority,  
Plantation Management Monitoring Division,  
Ministry of Plantation & Industries,  
11<sup>th</sup> Floor,  
Sethsiripaya, Stage II, Battaramulla.

**Applicant-Respondent**

02. Chairman,  
Land Reform Commission,  
C.82, Hecter Kobbakaduwa Mawatha, Colombo 07.

**2<sup>nd</sup> Respondent**

**AND NOW BETWEEN**

Athukoralage Sujith Sanjeewa Athukorala, 7<sup>th</sup> Mile  
Post, Matuwagala, Kiriella.

**Respondent-Petitioner-Appellant**

**Vs.**

01. J.M.C.Priyadarshani Competent Authority,  
Plantation Management Monitoring Division,  
Ministry of Plantation & Industries,  
11<sup>th</sup> Floor,  
Sethsiripaya, Stage II, Battaramulla.

**Applicant-Respondent-Respondent**

02. Chairman,  
Land Reform Commission,  
C.82, Hecter Kobbakaduwa Mawatha, Colombo 07.

**Respondent-Respondent**

**Before:** **PRASANTHA DE SILVA – J.**  
**K.K.A.V. SWARNADHIPATHI, J.**

**Counsel:** Ranga Dayananda  
For the Respondent-Petitioner-Appellant  
Maithree Wickramasinghe, P.C. With R. Jayathunga  
For the Applicant-Respondent-Respondent.

**Argument:** By written submissions

**Decided on:** 15.06.2022

**K.K.A.V. SWARNADHIPATHI, J.**

### **JUDGMENT**

The Applicant-Respondent-Respondent filed papers at the Magistrate Court of Rathnapura to eject the Respondent-Petitioner-Appellant from the land described in the schedule to the application dated 15.09.2015. The Appellant appeared before the Magistrate and informed Court that the land belongs to the Land Reform Commission (Respondent-Respondent), and the Appellant is in the process of obtaining a Deed for the land. A Date was given to file objections of the Appellant.

However, he failed to do so even though four days were given. The learned Magistrate proceeded to deliver the order. On 06.06.2016, the learned Magistrate pronounced the order allowing the Applicant's application. Giving reasons, the Magistrate had stated that the Appellant had failed to satisfy Court producing documents as described in Section 9 of the State Land Recoveries Act No.7 of 1979.

Aggrieved by this order, the Appellant appealed to the Provincial High Court of Ratnapura. At the High Court, the Appellant had taken the position that he had shown reasons why he should not be ejected to the Magistrate, which the Magistrate did not consider.

The Appellant had pleaded that Applicant had failed to show the land from which he is to be ejected. However, he had been in occupation in the land he is enjoining from 2001. He had produced documents with his written submissions issued by the Respondent-Respondent of the present application before the Magistrate Court.

Section 9(1) of the State Lands (Recovery of Possession) Act No.7 of 1979 reads thus;

"The person on whom summons has been served shall not be entitled to contest any of the matters stated in the application under Section 5 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 of the State granted in accordance with any written law and that such permit or written authority is in force and not revoked or otherwise rendered invalid".

Even though the Appellant had produced documents with his objections to the Magistrate, he failed to forward any document described in the above Section. Therefore, the conclusion of the Magistrate stands unquestionable.

However, this Court must look into the order of the High Court. At the High Court, these facts were set before Court. The Learned High Court Judge had taken the position that the High Court has no jurisdiction regarding an order pronounced by a learned Magistrate regarding State lands. Aggrieved by the order dated 09.08.2016 by the High Court of Ratnapura, the Appellant had appeared to this Court. The decision in *Solaimuthu Rasa Vs. The Superintendent, Stafford Estate (2013 ISLR 25)* had influenced the High Court Judge to come to a conclusion.

The Appellant argues the decision in the above case was in respect of a Writ of Certiorari to quash a quit notice which will have no bearing on the present case. Before discussing this issue, it is best to decide whether the Appellant has a right to appeal against the order from the High Court in the present context.

When perusing the Appeal, it is clear that the Appellant had come before this Court under Article 154 P (6) of the Constitution. This Article speaks of a final order or judgment. As the order of the High Court Judge is not a final order but made on jurisdiction only without considering the merits of the application, he cannot invoke the jurisdiction of this Court by an appeal. In *D.P.P. Senanayaka Vs. H.G.C. Jayantha and two Others (SC Appeal 41/2015) S.C.M. 4.8.2017* held, "In order to decide whether an order is a final judgment or not, in my view that the proper approach is the approach adopted by *Lord Esther in Salaman Vs. Warner (1891) 1 QB 734*" Therefore, it is clear that only when proceedings are terminated.

Therefore, refusal of notice will not stop proceedings under Section 10(2) of State Land Recoveries Act No.7 of 1979, the right to appeal against the learned Magistrate's ejectment order had been barred. By Urban Development Projects (Special Provisions) Act (No. 2 of 1980). Also had taken away the right of Appeal in *C.A. Gunaratne Vs. Abeysinghe 1983 (2) S.L.R.* discussed Section 10(2).

There is no appeal against an ejectment order regarding State Land Recoveries Act ordered by a Magistrate. As the Appellant had not invoked the proper jurisdiction of this Court, I am compelled to uphold the preliminary objection of the Applicant-Respondent-Respondent.

I dismiss the Appeal without costs.

**Judge of the Court of Appeal**

**PRESANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**