

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

**LANKA**

Estate Superintendent,  
Competent Authority,  
Janatha Estate Development Board,  
Monaragala.

**Petitioner**

**Vs.**

U.K.G.Wimalaratne,  
No 227, Kumaradola Road,  
Monaragala.

**Respondent**

Court of Appeal Case No:  
**CA (PHC) 212/17**

High Court of Monaragala :  
**56/2017**

Magistrate's Court of Monaragala:  
**82466**

**AND BETWEEN**

U.K.G.Wimalaratne,  
No 227, Kumaradola Road,  
Monaragala.

**Respondent-Petitioner**

**Vs.**

1. Estate Superintendent,  
Competent Authority,  
Janatha Estate Development Board,  
Monaragala.
2. Honourable Attorney General,  
Attorney General's Department,  
Colombo 12.

**Petitioner-Respondents**

**AND NOW BETWEEN**

U.K.G.Wimalaratne,  
No 227, Kumaradola Road,  
Monaragala.

**Respondent-Petitioner-Appellant**

**Vs.**

1. Estate Superintendent,  
Competent Authority,  
Janatha Estate Development Board,  
Monaragala.

2. Honourable Attorney General,  
Attorney General's Department,  
Colombo 12.  
**Petitioner-Respondent-Respondents**

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

**Counsel:** Nadee Karunaratne for the Respondent-Petitioner-Appellant.  
Rasika Dissanayake with Shabbar Auzair for the 1<sup>st</sup> Petitioner  
Respondent-Respondent.  
A.Gajadeera S.C for the 2<sup>nd</sup> Petitioner-Respondent-  
Respondent.

Both Parties agreed to dispose the matter by way of Written Submissions.

Written Submissions 07.12.2021 by the Respondent-Petitioner-Appellant.  
tendered on: 27.01.2022 by the Petitioner-Respondent-Respondent.  
01.05.2022 by the Respondent-Petitioner-Appellant.

Order delivered on: 30.09.2022

**Prasantha De Silva, J.**

### **Judgment**

This is an appeal preferred against the Order made by the learned High Court Judge of Monaragala on 06.12.2017 dismissing the revision application filed against the Order of the learned Magistrate of Monaragala dated 20.11.2017 in case bearing No. 82466. It appears that Estate Superintendent of Janatha Estate Development Board being the competent authority had filed an application bearing No. 82466 in terms of Section 6 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969, to recover possession of the premises described in the schedule of the application.

The Respondent namely U.K.G. Wimalaratne had been in possession of the said premises and upon serving the notice of the said application, the Respondent had shown cause why he should not be quit from the subject premises by the competent

authority. Subsequently, the learned Magistrate pronounced the Order in favour of the competent authority, allowing the application to evict the Respondent from the subject premises.

Being aggrieved by the said Order, the Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Monaragala, in case bearing No. 56/2017. After the application was supported, the learned High Court Judge dismissed the application of the Respondent-Petitioner *in limine* on the ground that Respondent-Petitioner had not shown the learned Magistrate's Order as *ex-facie* wrong in law.

Being aggrieved by the said Order of the learned High Court Judge dated 06.12.2017, the Respondent-Petitioner-Appellant (hereinafter sometimes referred to as the Appellant) had preferred this appeal to the Court of Appeal. The Appellant pointed out that the competent authority had made the application by way of a notice to the Magistrate's Court under Section 3 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969. However, the learned Magistrate had pronounced the Order taking into consideration the provisions of 'State Land (Recovery of Possession) Act' and not under the Government Quarters (Recovery of Possession) Act. Thus, the Appellant contended that the impugned Order of the learned Magistrate is fundamentally wrong in law.

Court draws the attention to the Order of the learned Magistrate where the learned Magistrate states that;

“යු.කේ.ඒ. විමලරත්න යන අයට එකී ඉඩමෙන් අස් කිරීමේ දැන්වීමක් විධිමත් ආකාරයෙන් භාර දී ඇති බවට (ආ) ආකෘතිය සමග ඉදිරිපත් කර ඇති (ඇ) ආකෘතිය අනුව දිවුරුම් ප්‍රකාශය මගින් තහවුරු කර ඇති අතර එකී අස් කිරීමේ දැන්වීම අනුව ක්‍රියා කිරීම වගඋත්තරකරු පැහැර හැර ඇති බවට කරුණු දක්වා ඒ අනුව උපලේඛනගත ඉඩමෙන් වගඋත්තරකරු නොරපා සන්නකය අත්පත් කර ගැනීමට ඉල්ලීමක් කර ඇත. රජයේ ඉඩම් සන්නකය අත්පත් කර ගැනීමේ පනතේ ආකෘති අනුව (අ) (ආ) (ඇ) ආකෘතිය අනුව විධිමත්ව ඉල්ලීම කර ඇති බවට සෑහීමකට පත්වෙමි.”

It appears that the said form (ආ) filed by the Respondent-Competent Authority is under the Government Quarters (Recovery of Possession) Act No. 7 of 1969 and not under the State Lands (Recovery of Possession) Act No. 7 of 1979. However, the

learned Magistrate had referred to the said form (എ) under the State Lands (Recovery of Possession) Act No. 7 of 1979 instead of Government Quarters (Recovery of Possession) Act No. 7 of 1969.

In this instance, Court draws the attention to Section 7 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 which stipulates that;

“(1) Upon receipt of an application for ejectment in respect of any Government quarters, a Magistrate’s Court shall forthwith issue, and if need be reissue, a writ of possession to the Fiscal requiring and authorizing such Fiscal before a date specified in the writ, not being a date earlier than three or later than seven clear days from the date of the issue of such writ, to deliver possession of such quarters to the competent authority or other authorized person specified in the quit notice relating to such premises. Such writ shall be sufficient authority for the said Fiscal or any police officer authorized by him in that behalf to enter such quarters with such assistants as the Fiscal or such officer shall deem necessary and to give possession accordingly, and to eject the occupier and his dependents, if any, from such quarters.

(2) Notwithstanding anything in any other law, the issue or re-issue of a writ of possession under subsection (1) shall not be stayed in any manner, by reason of any steps taken or proposed to be taken in any court with a view to questioning the issue or re-issue of such writ of possession or the quit notice in pursuance of which such writ of possession is issued or re-issued.

(3) Nothing in this Act shall be read and construed as precluding any person who claims to have been unlawfully ejected from Government quarters under this section from instituting an action for damages or other relief.”

According to the said Section, it is seen that in an ejectment in respect of any government quarters, Magistrate has to issue a writ of possession forthwith on a date specified in the writ, not being a date earlier than 3 days or later than 7 days from the date of issuing such writ. It is to be observed that State Lands (Recovery of Possession) Act No. 7 of 1979, Sections 10 and 11, deal with delivering possession of subject land to the Competent Authority forthwith.

In this respect, Court draws the attention to the Preamble of Government Quarters (Recovery of Possession) Act No. 7 of 1969 as well as the State Lands (Recovery of Possession) Act No. 7 of 1979. The Preamble of Government Quarters (Recovery of Possession) Act No. 7 of 1969 states, “An Act to make provisions for the recovery of possession of quarters provided by or on behalf of the government or a public corporation for the occupation of persons, and for matters connected therewith or incidental thereto”. The Preamble of State Lands (Recovery of Possession) Act No. 7 of 1979 states, “An Act to make provisions for the recovery of possession of state lands from persons in unauthorized possession or occupation thereof and for matters connected therewith or incidental thereto”.

It is worthy to note that both Acts, State Lands (Recovery of Possession) Act No. 7 of 1979 and Government Quarters (Recovery of Possession) Act No. 7 of 1969 have made provisions for the recovery of possession of the subject premises. It is observable that there is not much difference between the two Acts, State Lands (Recovery of Possession) Act and Government Quarters (Recovery of Possession) Act.

Therefore, it is worthy to note that no material prejudice has been caused to the Appellant under the Order made to evict the Respondent from the subject matter by the learned Magistrate referring to the State Lands (Recovery of Possession) Act instead of Government Quarters (Recovery of Possession) Act in his Order.

Therefore, Court holds that the learned Magistrate has proceeded with the application of the Competent Authority under Government Quarters (Recovery of Possession) Act although the learned Magistrate had inadvertently referred to State Lands (Recovery of Possession) Act in his order dated 20.11.2017.

It is apparent that no material prejudice is caused to the Respondent-Petitioner-Appellant in this matter due to the inadvertence of the learned Magistrate indicating the State Lands (Recovery of Possession) Act instead of Government Quarters (Recovery of Possession) Act in his Order. Thus, I hold that it is not a ground to set aside the impugned Order of the Magistrate.

This aspect of Law is emphasized by *De Silva J.* in ***W.M. Mendis & Co. Vs. Excise Commissioner [1999] 1 SLR 351 in 356*** that *Falsa demonstratio non nocet cum de corpore vel persona constat* (a false description does not harm if there be sufficient

certainty as to the subject-matter or the person) and *Falsa demonstratio non nocet cum decorpore vel persona constat* (any inaccuracy in description is to be overlooked if the subject-matter or person is well-known). As such, Court *ex mere motu* acts and corrects the Act referred in paragraph 1 of the Order dated 20.11.2017 as ‘...1979 අංක 07 දරණ රජයේ ඉඩම් (සන්නකය ආපසු ලබාගැනීමේ) පනතේ...’ and in the last paragraph of the Order “..... රජයේ ඉඩම් (සන්නකය අත්පත් කර ගැනීමේ) පනතේ 09 වන වගන්තිය.....” which had occurred due to inadvertence. In the case at hand, I’m of the view that the error in question is a harmless one which has occurred due to inadvertence and not egregious or damaging to the party concerned.

Thus, it is apparent that the objection raised on behalf of the Appellant is highly technical in nature. On this premise, the Court draws the attention to the Judgment by Justice Samayawardhena in *Methodist Trust Association of Ceylon Vs. Divisional Director of Education of Galle and Others [CA/WRIT/192/2015] CA Minutes 08.01.2019* in which his Lordship observes that,

“Although disposing of cases on technical grounds is easy and speedy. But that is not what the aggrieved party expects from Court. The aggrieved party wants case to be disposed of on merits rather than on technical grounds. It is generally the wrongdoer who cannot meet the case on merits, tries to cling on technical objections to defeat justice. We must understand that we are working in Courts of Law and not in Academies of Law and therefore, in my view, we must, as much as possible, try to dispose of cases on merits rather than on highly technical grounds.”

It is settled law 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.

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.

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 20.11.2017 of the learned Magistrate is well-founded.

In view of the said observations, we are inclined to apply the legal maxim *Nunc Pro Tunc* [now for then] and correct the name of the Act as Government Quarters (Recovery of Possession) Act No. 7 of 1969 instead of State Lands (Recovery of Possession) Act No. 7 of 1979.

Hence, the objection raised on behalf of the Appellant to revise or set aside the impugned Order of the learned Magistrate is rejected by this Court and the appeal is dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

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

I agree.

**JUDGE OF THE COURT OF APPEAL**