

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

LANKA.

In the matter of an application for revision under Article 138 of the Constitution of the Republic of Sri Lanka.

Court of Appeal Case No:
CA (PHC) APN 122/2020

High Court Homagama Case No:
REV/15/2020

Magistrate's Court Kaduwela Case No:
3641/17/66

Homelands Holdings (Private)
Limited,
No. 1060, Pannipitiya Road,
Battaramulla.

Petitioner

Vs.

01. W.A. Prasanna Buddhika
No.35, Kohilawatta,
Angoda.

02. T.A. Jayanthi Mala Perera,
No.431, Achcharihena, Welivita,
Kaduwela.

03. Thebuwana Acharige Ariya
Rathnawathie,
No.431, Achcharihena, Welivita,
Kaduwela.

2nd Party Respondents

04. Welagedara Acharige
Gnanawathie,
No.431/A/1, Pulunkanaththa
Road,
Achcharihena, Welivita,
Kaduwela.

05. Ukwatta Acharige Dunila
No. 431/A/3, Pulunkanaththa
Road,
Achcharihena, Welivita,
Kaduwela.

06. Dampe Arachchige Sunil
Rukmani,
431/A/2, Pulunkanaththa Road,
Achcharihena, Welivita,
Kaduwela.

Intervenient Respondents

AND BETWEEN

Homelands Holdings (Private)
Limited,
No.1060, Pannipitiya Road,
Battaramulla.

**1st Party Petitioner-
Petitioner**

Vs.

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Kaduwela.

2nd Party Respondent-Respondents

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Kaduwela

**Intervenient Respondent-
Respondents**

AND NOW BETWEEN

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**1st Party Petitioner-Petitioner-
Petitioner**

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**2nd Party Respondent-
Respondent-Respondents**

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Gnanawathie,
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Kaduwela.

06. Dampe Arachchige Sunil
Rukmani,
431/A/2, Pulunkanaththa Road,
Achcharihena, Welivita,
Kaduwela.

**Intervenient Respondent
Respondent-Respondents**

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

Counsel: W. Dayaratne P.C with R. Jayawardene for the 1st Party-
Petitioner-Petitioner-Petitioner.
Charles De Silva with K. Seneviratne for the 2nd and 3rd Party
Respondent-Respondent-Respondents.

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

Written Submissions 05.07.2022 by the 1st Party-Petitioner-Petitioner-Petitioner.
tendered on: 12.08.2022 by the 2nd and 3rd Party Respondent-Respondent
Respondents.

Decided on: 22.11.2022

Prasantha De Silva, J.

Judgment

It appears that the 1st Party Petitioner has invoked the revisionary jurisdiction of this Court seeking to revise the Order of the learned High Court Judge of Homagama dated 18.08.2020 which refused to issue notice in revision application bearing No. 15/2020 and dismissed the application *in limine*.

On behalf of the Petitioner-Petitioner-Petitioner [hereinafter referred to as the 1st Party Petitioner], it was submitted that the subject matter of the instant action is a large area of a land called "Elston Estate", owned and possessed by 25 persons by title deeds since 1981. The said owners wanted to sell this property and they had entered into 20 Agreements to Sell with the 1st Party Petitioner. Consequently, the 1st Party Petitioner took steps to clear the said property and develop it for the

purpose of sale in March 2017. However, the 2nd Party Respondents had forcibly entered the said land and claimed possession. The 1st Party Petitioner had reported the said dispute to Mulleriyawa Police and the Police filed Case No.1864/10 under Section 81 of the Code of Criminal Procedure Act to restrain the 2nd Party Respondents and to bind them over. However, the said dispute could not be settled with the 2nd Party Respondents and the 1st Party Petitioner was forcibly dispossessed on 02.04.2017 from the larger portion of the said land by the 2nd Party Respondents and by the Intervenant Respondents.

The 1st Party Petitioner had filed information in the Magistrate's Court of Kaduwela under Section 66 (1) (b) of the Primary Courts' Procedure Act No. 44 of 1979 and prayed to restore the said land back into possession by evicting the 2nd Party Respondents and other Intervenant Respondents.

The learned Magistrate being satisfied that there was a breach of peace threatened or likely to be threatened as a result of the said dispute, had issued notices on the 2nd Party Respondents and made an order to affix notices on the land. After affixing notices, the Intervenant Respondents who claimed possession too were added.

After the 1st Party Petitioner and all the Respondents filed their respective affidavits together with the documents and counter affidavits, Court had allowed them to file written submissions.

The learned Magistrate, who was acting as the Primary Court Judge made an Order on 06.02.2018 dismissing the petition of 1st Party Petitioner on the ground that the information was filed after a lapse of 2 months as the 1st Party Petitioner has been forcibly dispossessed on 02.04.2017 and in terms of Section 68 (3), the 1st Party Petitioner should file the information within 2 months from 02.04.2017. However, the said information had been filed on 05.06.2017, just after the lapse of 2 months.

Furthermore, the learned Magistrate held that the 2nd Party Respondents and Intervenant Respondents were in possession of the land in dispute.

Being aggrieved by the said order, the 1st Party Petitioner invoked the revisionary jurisdiction of the Provincial High Court of the Western Province holden in

Homagama seeking to restrain the Respondents from possessing the 1st Party Petitioner's entire land as irreparable and irremediable injustice would cause the 1st Party Petitioner. Thus, prayed for a stay order staying further proceedings of the Magistrate's Court Case No. 3641/17/66. However, the Court issued only notices on the 1st to 6th Respondents.

Thereafter, the 1st Party Petitioner filed another petition and affidavit on 05.04.2018 before the learned High Court Judge together with the annexures showing wanton destruction which were caused by the Respondents and moved Court for a stay order.

The learned High Court Judge had disregarded the position taken up by the Petitioner and made an order varying the order of the learned Magistrate by advancing the date of dispossession of the 1st Party Petitioner as 03.03.2017 and dismissed the application of the Petitioner, on the basis that even if the 1st Party Petitioner has filed information on 31.05.2017 according to the new plaint register, it is still out of time.

Being aggrieved by the said order of the learned High Court Judge dated 04.06.2018, the 1st Party Petitioner had filed a revision application bearing No.CA (PHC) APN 68/18 in the Court of Appeal seeking to revise the said order of the learned High Court Judge. The Court of Appeal had revised and set aside the order of the learned High Court Judge dated 04.06.2018 and further ordered the present learned High Court Judge to hear the 1st Party Petitioner's revision application bearing No. Rev.05/2018. The learned High Court Judge after hearing both parties had made an order on 29.01.2020 setting aside the order of the learned Magistrate of Kaduwela dated 06.02.2018 and directing the learned Magistrate to make an order considering all documents filed by the parties.

Consequently, the learned Magistrate of Kaduwela made an order on 01.06.2020 stating that two months prior to the date of filing the information on 31.05.2017, the 1st Party Petitioner had not been in possession of the corpus. Further, it was held that the 2nd Party Respondent and Intervenant Party Respondents were in possession of the subject matter and hence, had dismissed the 1st Party Petitioner's application.

Being aggrieved by the said Order of the learned Magistrate dated 01.06.2020, the 1st Party Petitioner had filed revision application bearing No. Rev15/2020 in the High Court of Homagama seeking to revise the said Order. However, the learned High Court Judge had made his order on 18.08.2020 dismissing the application of the 1st Party Petitioner even without issuing notice on the Respondents.

It was submitted on behalf of the 1st Party Petitioner that on 13.08.2020 when the Counsel for the 1st Party Petitioner moved to support the said application for revision, the learned High Court Judge vehemently objected to the Counsel supporting the same and gave the following reasons.

- i. The 1st Party Petitioner has not presented an application in terms of Section 66 of the Primary Courts' Procedure Act that it was dispossessed by the Respondents and one Priyadarshani Lankathilaka Kumari had filed an affidavit but her name did not appear in the caption of the petition and also that she had merely said that she was Senior Assistant Managing Director and the affidavit had been filed with her knowledge and perusing the documents.
- ii. In terms of the said affidavit she has pleaded that the 1st Party Petitioner had been dispossessed by the 1st, 2nd & 3rd Respondents and in paragraph 18-20 she has said that there was a breach of peace.
- iii. He has also considered the document produced marked "X-57" made by one John Ganegoda on 05.04.2017 claiming that his possession has been disturbed by the Respondents by threatening him from entering the said land and chased him and therefore if there was a breach of peace it was only for him and not for the 1st Party Petitioner. Therefore, there was no evidence before the learned Magistrate that the 1st Party Petitioner has been dispossessed by the Respondents and also there was no evidence of a dispute between the 1st Party Petitioner and the Respondents in terms of Section 66 of the Primary Courts' Procedure Act causing breach of peace.
- iv. He further said that 1st Party Petitioner has fraudulently submitted forged documents and tried to take over possession and it had not come to court with clean hands.

- v. At that stage, the Counsel for the 1st party Petitioner moved to make submissions despite the learned High Court Judge's displeasure but made his submissions and supported his application for notice.

Court draws attention to the Order dated 18.08.2020, which states;

“මෙම නඩුවේ වග උත්තරකරුවන්ට නොතීසි නිකුත් කිරීමට පදනමක් නොමැති බව තීරණය කරමින් ප්‍රතිශෝධන ඉල්ලීම නිශ්ප්‍රභා කරමි”.

Being aggrieved by the said Order of the learned High Court Judge dated 18.08.2020 the 1st Party Petitioner had invoked the revisionary jurisdiction of this Court to have the said Order revised and/or set aside on the following grounds;

- a) The said order is erroneous and contrary to law.
- b) All the grounds raised by the learned High Court Judge were not raised by anyone of the Respondents in the original Court and the learned High Court Judge in exercise of revisionary jurisdiction cannot raise new grounds in the exercise of appellate jurisdiction which are all questions of law.
- c) It is the same High Court Judge who made order on 29.01.2020 to the learned Magistrate of Kaduwela to make his order considering all the material placed before him on its merits and therefore in the exercise of appellate jurisdiction by way of revision he cannot raise preliminary objection on the information filed and affidavits, and documents submitted by the parties.
- d) The learned High Court Judge who held there was no dispute causing breach of peace, has held that the order made by the learned Magistrate on 01.06.2020 is just and reasonable when it is settled law that the jurisdiction to the learned Primary Court Judge to hear an application made under Section 66 of the Primary Courts' Procedure Act comes only when there is breach of peace or likelihood and therefore if there is no breach of peace there is no jurisdiction to the Learned Magistrate to entertain the said application.
- e) The learned High Court Judge totally disregarded the submissions made by the Counsel for the 1st Party Petitioner when he supported the notice on 13.08.2020 and made derogatory remarks to the Counsel erroneously blaming that he had uttered falsehood in Courts.

Having considered the aforesaid grounds to make this application for revision, it is seen that the 1st Party Petitioner has substantiated that exceptional circumstances exist to invoke the revisionary jurisdiction of this Court.

It is to be noted that the learned High Court Judge held there was no dispute causing breach of peace.

It is settled law that the jurisdiction for the learned Primary Court Judge to hear an application made under Section 66 of the Primary Courts' Procedure Act comes only when there is breach of peace or a likelihood of it. Therefore, when the High Court Judge held there is no breach of peace, there is no jurisdiction and the only order the learned Magistrate could have made was to dismiss the petition for want of jurisdiction.

It is worthy to note that there was clear and cogent evidence of a breach of peace and Mulleriyawa Police had filed an information on 07.03.2017 in case bearing No. 1864/17 under Section 81 of the Code of Criminal Procedure Act.

It is evident that the owners of the impugned land had entered into an agreement to sell the said property with the 1st Party Petitioner and has handed over the possession to the Petitioner. Thereafter, the Petitioner had employed two security officers from Ceylinco Security Services to protect the land. On 02.03.2017, the Respondents had entered the land and started erecting fences.

Subsequently, the Mulleriyawa Police had removed the fence erected by the Respondents and warned them not to enter the impugned land. However, the Respondent had entered the impugned land on 02.04.2017 and had started erecting huts in different areas of the land and dispossessed the Petitioner of the same.

It clearly shows that there was a breach of peace threatened between the 1st Party Petitioner and the Respondent. Thus, the learned Magistrate who was acting as the Primary Court Judge had jurisdiction to entertain the information filed in terms of Section 66 (1) (b) of the Primary Courts' Procedure Act.

Since this matter arising out of the Order of the learned Magistrate dealt with an application under Section 66 of the Primary Courts' Procedure Act, it is incumbent

upon the Court to adjudicate in terms of Section 68 (1) and 68 (3) of the Primary Courts' Procedure Act who was in possession of the disputed land two months prior to the date of filing of information.

It was the finding of the learned Magistrate and the learned High Court Judge that the 1st Party Petitioner was dispossessed from the premises in dispute on 02.04.2017. Thus, in terms of Section 68 (3) of the Primary Courts' Procedure Act, it appears that the party was forcibly dispossessed within a period of two months immediately before the date on which the information was filed. The Court draws the attention to the Order made by the learned High Court Judge on 29.01.2019, where he found that according to the case register marked and produced as “၆၉၂၃(၃)”, the information was filed on 31.05.2017.

It is apparent that since the 1st Party Petitioner was dispossessed on 02.04.2017, and the information was filed on 31.05.2017, hence the information was filed within a period of two months prior to the date on which the information was filed.

Therefore, in terms of Section 68 (3) of the Primary Courts' Procedure Act, I hold that the 1st Party Petitioner is entitled to be restored to possession of the disputed land and have all disturbances of such possession prohibited. As such, the learned Magistrate and the learned High Court Judge had erred in Law by holding against the 1st Party Petitioner.

In view of the foregoing reasons, we are inclined to set aside the Order of the learned Magistrate dated 06.02.2017 and the Order made by the learned High Court Judge dated 18.08.2020.

Court observes that the 1st Party Petitioner has prayed in prayer (b) and (c) of the Petition to revise or set aside the Order of the learned High Court Judge dated 18.08.2020 and to have him directed to hear this application on its merits and to set aside the Order of the learned Magistrate of Kaduwela dated 06.02.2017 in case No. 3641/17/66 considering the merits of its application.

However, the 1st Party Petitioner has not prayed to restore the possession of the 1st Party Petitioner, instead, has prayed to send this case to the High Court of the province to hear the application on its merits.

In this instance, Court submits that Part VII of the Primary Courts' Procedure Act is introduced to resolve minor disputes relating to land where the breach of peace is threatened or likely to be threatened and to adjudicate the matter within a three months period of time. No right of appeal is conferred by the Primary Courts' Procedure Act against the Order of the Primary Court Judge. Therefore, it is clear that the intention of the Legislature is to resolve the dispute among the parties expeditiously to maintain peace and preserve *status quo*.

Hence, this Court is not inclined to send this case back to the High Court of the province to re-hear the matter.

Although the 1st Party Petitioner has not sought to reinstate the possession of the 1st Party Petitioner, we allow this revision application deciding in favour of the 1st Party Petitioner and we direct the learned Magistrate to issue a writ to restore possession of the 1st Party Petitioner-Petitioner-Petitioner and evict the 2nd Party Respondent-Respondent-Respondents and the Intervient Respondents from the land in dispute in terms of prayer (f) of the petition of the 1st Party Petitioner.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL