

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

LANKA

In the matter of a revision application under and in terms of Article 138 read with Article 145 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Revision
Application Case No:
CA/PHC/APN/130/2020

Galle High Court Revision
Application No: **556/20**

Galle Additional Magistrate's
Court Case No: **10529**

Samanyadhikari,
Sri Lanka Plantation Corporation,
No. 21, Miraniya Street,
Colombo 12.

Applicant

Vs.

D.V. Charmasiri,
"Vijaya", Yakgaha,
Walahanduwa.

Respondent

AND THEN

Dippitiya Vithanage Dharmasiri,
No: 198/2/U, Galketiyawatta, Yakgaha,
Walahanduwa.

Respondent-Petitioner

Vs.

Samanyadhikari,
Sri Lanka Plantation Corporation,
No. 21, Miraniya Street,
Colombo 12.

Applicant-Respondent

AND NOW BETWEEN

Dippitiya Vithanage Dharmasiri,
No: 198/2/U, Galketiyawatta, Yakgaha,
Walahanduwa.

Respondent-Petitioner-Petitioner

Vs.

Samanyadhikari,

Sri Lanka Plantation Corporation,
No. 21, Miraniya Street,
Colombo 12.

Applicant-Respondent-Respondent

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

Counsel: Asela Serasinghe for the Respondent-Petitioner-
Petitioner.
Shani Perera A.S.A with Rajika Aluwihare S.C for the
Applicant-Respondent-Respondent.

Inquiry on: 07.03.2022

**Written Submissions
Tendered on:** 19.08.2021 by the Applicant-Respondent-Respondent.
09.03.2022 by the Respondent-Petitioner-Petitioner.

Decided on: 16.11.2022

Prasantha De Silva, J.

Order

Applicant being the competent authority, Sri Lanka Plantation Corporation, had filed action against the Respondent, D.V. Dharmasiri in the Magistrate's Court of Galle in case bearing No. 10529, under the provisions of the State Lands (Recovery of Possession) Act No. 07 of 1979 in order to recover the possession of the state land which forms the subject matter in the instant case.

The position taken up by the Applicant was that the subject matter of this application, which is described in the schedule as a state land is unlawfully occupied by the Respondent. The Respondent has failed to vacate the subject land despite a quit notice being served in terms of Section 03 of the State Lands (Recovery of Possession) Act. Hence, the Respondent has failed to comply with Section 4 (b) of the Act, the Appellant has instituted the instant action in the Magistrate's Court of Galle.

Upon the notice being served on the Respondent, the Respondent was to appear and show cause why the Respondent and his dependents, should not be ejected from the subject land. Accordingly, Respondent showed cause and objected to the issuance of the Ejectment Order on several grounds. Thereafter, the inquiry concluded allowing both parties to file written submissions. Consequently, the learned Magistrate delivered the Order on 20.05.2020 in favour of the Applicant and issued an Order of ejectment against the Respondent and his dependents from the subject land.

Being aggrieved by the said Order dated 20.05.2020, the Respondent-Petitioner invoked the revisionary jurisdiction of the of the Provincial High Court of Galle by way of revision application bearing No. 56/20, dated 01.06.2020.

Thereafter, the Applicant-Respondent had filed statement of limited objections and raised several preliminary objections against the issuance of notice for the Respondent-Petitioner to quit the from the subject land.

On 30.07.2020, the Respondent-Petitioner and the Applicant-Respondent had agreed that the matter could be concluded if it was first found that the Applicant-Respondent is the competent authority in terms of the provisions of the said Act.

The learned High Court Judge of the Provincial High Court of Galle held that by Order dated 13.10.2020, the Applicant-Respondent was in fact the competent authority in terms of the State Lands (Recovery of Possession) Act No.07 of 1979 and dismissed the Respondent-Petitioner's application.

Being aggrieved by the said Order, the Respondent-Petitioner-Petitioner [hereinafter sometimes referred to as the Petitioner] has preferred this revision application to this Court. Pursuant to the Applicant-Respondent-Respondent [hereinafter sometimes referred to as the Respondent] filing the statement of objections, Court allowed both parties to file written submissions to conclude this matter.

It appears that the following questions of law and facts were raised on behalf of the Petitioner to determine the issue in hand. It was the contention of the Petitioner that the learned Magistrate and learned High Court Judge have applied the incorrect

law on who should be considered as the proper “Competent Authority” in terms of Section 18 of the State Lands (Recovery of Possession) Act.

The learned Magistrate in the Order dated 20.05.2020 has held as follows:

“ඒ අනුව මෙම නඩුවේ දී සාමාන්‍යාධිකාරී ශ්‍රී ලංකා රාජ්‍ය වැවිලි සංස්ථාව විසින් කරන ලද ඉල්ලීමේදී සාමාන්‍යාධිකාරී ශ්‍රී ලංකා රාජ්‍ය වැවිලි සංස්ථාව නියම බලධරයා වන්නේ ද යන්න සලකා බැලිය යුතුය. රජයේ ඉඩම් සන්නකය (ආපසු ලබා ගැනීමේ) පනතට 1997 කරන ලද සංශෝධනය අනුව, The head of other government department or institution being a department of institution created by law, where there property is under the control or such department or institution යනුවෙන් සඳහන් වේ. ඒ අනුව මෙම නඩුව ඉල්ලුම්කාර සාමාන්‍යාධිකාරී ශ්‍රී ලංකා රාජ්‍ය වැවිලි සංස්ථාව යන අය එකී අර්ථ නිරූපණය යටතට ගැනෙන නියම බලධරයා වෙනුවෙන් සලකිය හැකි බවට තීරණය කරමි.”

It is seen that the learned High Court Judge in his Order dated 13.10.2020 has held as follows:

“එම නීතිමය තත්ත්වය **Bhashwara Senanka Gunarathne, the Chairman, Sri Lanka Tourism Development Authority Vs. Ganeshapillei Kalipillai, CA (PHC) 141/2015 C.A.M 26.02.2020** හිදී පහත පරිදි තීරණය විය.

Section 18 of the Act states thus;

‘Competent authority’ used in relation to any land means the Government Agent an Additional Government Agent or an Assistant Government Agent of the District in which the land is situated and, includes,

Section 18 (h) of the Act states thus;

‘The head of any other Government Department or institution being a department or institution created by law, where such land is under the control of such department or institution’.

Therefore, delegation of power from the members of the authority to the Chairman to act as competent authority would not arise since the Chairman as the head of the authority has every right to make this application to Court in terms of Section 18 of the Act according to the decision of **Bhashwara Senanka Gunarathne, the Chairman, Sri Lanka Tourism Development Authority Vs. Ganeshapillei Kalipillai [supra].**”

However, it was the contention of the Petitioner that the learned Magistrate and High Court Judge have applied the incorrect legal principles to determine who the ‘competent authority’ was. It was submitted that this incorrect application of law amounts to an ‘exceptional circumstances’ and that it had caused a grave prejudice to the Petitioner.

In this respect, the case of *Wedamulla Vs. Abeysinghe [1999] 3 SLR 26* was cited and this endorsed the legal position that where a ‘corporate body’ is involved, only an officer generally or specifically authorized by the said corporate body can be considered as the ‘competent authority’.

It was held as follows, *inter alia*

“The State Lands (Recovery of Possession) Act provides that where a quit notice has been issued to a person in unauthorised possession or occupation of any State land and such person fails to comply with such notice, any “competent authority” may make an application in writing in the prescribed form to the Magistrate’s Court having jurisdiction setting forth the matters referred to in Section 5 (1) (a) and praying for the recovery of such land and for an order of ejectment of the person in possession or occupation (see Sections 3, 4 and 5 of the State Lands (Recovery of Possession) Act, No. 07 of 1979 as amended by Act No. 29 of 1983). “Competent Authority” includes an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of such corporate body. (Section 18 State Lands (Recovery of Possession) Act as amended by Section 5 (h) of Act No. 58 of 1981).

In the matter before me, the Appellant was by name and designation appointed the ‘competent authority’ by the Board of the Urban Development Authority in whom the land in question was vested. He had every right, therefore, to make an application for the possession of the land and for ejectment of the Respondent. Admittedly, as the learned Judge of the Court of Appeal observes, a corporate body has then the right to sue and be sued. However, he overlooked the fact that proceedings under the State Lands (Recovery of Possession) Act are required to be initiated by a ‘competent authority’.”

However, the learned Magistrate and the High Court Judge have held on the incorrect legal position that the State Plantations Corporation is a *government department or institution*.

In the Court of Appeal, it was held in *Alwis Vs. Wedamulla Additional Director General UDA [1997] 3 SLR 417* by Jayasuriya, J. that the Magistrate had no jurisdiction to entertain the State Lands (Recovery of Possession) action due to following reasons:

“The Urban Development Authority Act (as amended) states that the Urban Development Authority is a body corporate which can institute proceedings and also be sued in legal proceedings. Thus, it is a legal persona which could have instituted proceedings even in its own name. In addition the statute provides for the ‘competent authority’ to institute proceedings on behalf of the Urban Development Authority. Having regard to the definition of the term “Competent Authority” in the Urban Development Authority Act, it is manifest that the Additional Director General is not a Competent Authority. If there had been a delegation of powers, rights and functions of the Director-General of the Urban Development Authority to the Additional Director-General, then the petition and affidavit filed in the Magistrate’s Court ought to have set out and pleaded such delegation or appointment. There is no averment in the affidavit and in the documents filed that the powers of the Director-General have been delegated on A. Wedamulla, the Additional Director-General did not have a locus standi and a right and status to institute these proceedings.

Secondly, the proceedings in ejectment could be instituted by the Urban Development Authority against a person who is in occupation of land vested in the Urban Development Authority provided such applications to eject are authorised and have had the written approval of the Minister of Housing. Thus, the statutory provisions of the Urban Development Authority Act and the State Lands (Recovery of Possession) Act set out a condition precedent for the filing of applications for ejectment before the Magistrate’s Court and even if an application is wrongly accepted without such authority, the learned Magistrate would not have jurisdiction, without the satisfaction of the condition precedent, to further exercise jurisdiction upon such application.

Persons affected by an intention to institute proceedings in ejectment on the part of officials, frequently make representations and submissions to the Minister and after consideration of such representations, the Minister may or may not grant written approval. The proof of grant of such approval is a condition precedent to the institution of proceedings in ejectment and, compare the provisions of Sections 104 and 147 of the Criminal Procedure Code and Sections 97(1) and 135 of the Code of Criminal Procedure Act. The obvious intention of these statutory provisions in the State Lands (Recovery of Possession) Act is to protect the private person from frivolous and vexatious proceedings in ejectment. There is no averment either in the affidavit or in the documents filed before the learned Magistrate that the Minister of Housing has authorised and approved the proceeding in question to eject the Respondent-Petitioner from this land. Though the amended statutory provisions of the State Lands (Recovery of Possession) Act has precluded a Respondent from challenging and impugning the notice served on him, still such Respondent is entitled to urge successfully before the Magistrate that a condition precedent for the filing of the application has not been fulfilled by the Petitioner. The giving of notice under Section 3 of the said Act is only a mere step in the commencement of proceedings to secure such ejectment.

Hence the learned Magistrate had no jurisdiction to entertain this application and he also had no jurisdiction even if he had wrongly entertained it, to exercise further jurisdiction in conducting the proceedings upon this application.

Therefore, it is manifest that the application is defective in these respects and it is one that ought not to have been entertained by the Magistrate on account of the failure to comply with the condition precedent for the exercise of jurisdiction. These points have been strenuously urged by the learned President's Counsel before this court, belatedly under the guise of filing a statement of objections, the Applicant-Respondent is seeking to rectify defects omissions and deficiencies in the application filed before the Magistrate. I hold that this Court is not the forum for the correction of defects and deficiencies which have been perpetrated in filing proceedings before the Magistrate."

It was submitted that in the 'quit notice' and 'application for ejection' under Section 5 in the case at hand, there is no averment in the averment/documents to specify that the State Plantations Corporation had appointed the Respondent and that the Respondent has been generally or specially authorized to act as the 'competent authority'. Therefore, it is submitted that the learned Magistrate had no jurisdiction to entertain this 'application for ejection'.

Also, in the Court of Appeal Case of ***Banda Vs. President, MPSC Ltd, Medirigiriya and another [2003] SLR 193***, the Court endorsed the view that where the properly constituted 'competent authority' is in dispute, all actions taken on such application are null and void. Court held as follows:

"Under Section 18(1)(gg) of the State Lands (Recovery of Possession) Act, a Divisional Secretary can delegate his powers under the Act to "any other public officer". The term Public Officer, has been defined in Article 170 of the Constitution as a person holding a paid office under the Republic. He is a person who is elected for a term by the members of the cooperative society. Therefore, the President of a MPCS is not a public officer and accordingly the Divisional Secretary has no power to delegate his powers under the Act to such a person. The delegation being invalid, all acts done under such purported delegation are also invalid.

Accordingly, I hold that the President of the MPCS Medirigiriya had no lawful power or authority to make an application under the State Lands (Recovery of Possession) Act to the Magistrate's Court to obtain an order to evict the Appellant. Therefore, all actions taken or all orders made under such invalid application are null and void and has no force or avail in law. Accordingly, I allow the appeal and set aside the order of the High Court dated 24.05.2000 and the order of the Magistrate, Hingurakgoda dated 03.06.1999 and dismiss the application made by the President, MPCS Medirigiriya dated 30.10.1998 as the Magistrate's Court had no jurisdiction to entertain and act upon the said application. The Appellant is entitled to a sum of Rs. 5000/- payable by the MPCS, Medirigiriya."

It was argued on behalf of the Petitioner that according to the above determination, the learned Magistrate and the learned High Court Judge have incorrectly concluded that the "State Plantations Corporation" is an entity which falls within the definition

of Section 18 (h) of the State Lands (Recovery of Possession) Act. It was submitted that Section 18 (h) does not apply to corporate entities such as the “State Plantations Corporation.

In view of the aforesaid judicial decisions, it was contended by the Petitioner that both in the Magistrate’s Court and the High Court, the orders are based on an incorrect legal basis, and in terms of the binding judicial precedent of the Supreme Court and the persuasive judicial decisions of the Court of Appeal, the orders against the Petitioner in the Magistrate’s Court and High Court deserve to be set aside.

It is observable that in terms of Section 2 of the Sri Lanka State Plantations Corporation Act, the said Corporation is a “Corporate body” which reads as follows; “Establishment of the Sri Lanka State Plantations Corporation.

(1) There shall be established a Corporation which shall be known as the ‘Sri Lanka State Plantations Corporation’ and which shall consist of the persons who are from time to time appointed under Section 3 as the members thereof. (2) The Corporation shall be deemed to be established on the date with effect from which its first members are appointed under Section 03.

(3) The Corporation shall have perpetual succession and a common seal, and may sue and be sued in the name assigned to it by subsection (1)”.

Therefore, it is seen that Section 18 (l) should apply to the State Plantations Corporation in order to determine who the “Competent authority” is. In terms of the State Lands (Recovery of Possession) Act, Section 18 (l) reads as follows:

“In this Act, unless the Context otherwise requires-

‘Competent authority’ used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the District in which the land is situated and, includes-

(1) an officer generally or specially authorised by a corporate body, where such land is vested in or owned by or under the control of, such corporate body.”

Therefore, it was submitted on behalf of the Respondent that in terms of Section 18 (h) of the Act the head of any Government Department or Institution being a department or institution created by law, where such land is under the control of

such department or institution can be considered as the competent authority under the Act.

Moreover, in terms of Section 18 (1) of the Act, any officer who is generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body can be considered as a competent authority under the Act.

Accordingly, in terms of the documents marked R2 and R3 annexed to the statement of objections filed by the Respondent, it is evident that the Respondent has been duly authorized to act as the competent authority by the Sri Lanka State Plantations Corporation. As such, it is evident that the Respondent is the competent authority in terms of the Act having legal standing to prefer an application under the Act.

In any event, the Petitioner is not lawfully entitled to contest that the Respondent is not the competent authority in terms of the Act. In the case of *Namunukula Plantations PLC. Vs. Nimal Punchihewa CA (PHC) APN 29/2016 C.A.M 09.07.2018*, it was held that;

“The Petitioner submitted that the Respondent was not the competent authority in respect of the state lands vested with the SLSPC. Such an objection is not a matter that can be taken up before the learned Magistrate or in these proceedings. One of the facts to be stated in the application made under Section 5 of the Act is that the person making the application is a competent authority for the purposes of the Act. In view of Section 6 of the Act, a person who has been summoned cannot contest that the claimant is not a competent authority.”

Further, the application preferred by the Respondent to the learned Magistrate clearly depicts the boundaries of the land which forms the subject matter of the application. As such, the Petitioner’s contention that the land cannot be identified with certainty clearly fails.

The Petitioner further contends that the land in question is a private land. However, in terms of Section 9 of the Act, it is very clear that the learned Magistrate is not empowered to inquire into such a contention. If the land is in fact a private land,

the correct course of action for the Petitioner would have been to vindicate his title in terms of Section 12 of the Act.

The aforementioned position has been clearly set out in ***Namunukula Plantations PLC Vs Nimal Punchihewa [supra]*** where it was held that;

“A person who has been summoned in terms of Section 6 of the Act can only establish that he is in possession or 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 authority is in force and not revoked or otherwise rendered invalid. He cannot contest any of the matters stated in the application made under Section 5 of the Act. One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority State Land. This fact cannot be contested by the person summoned....”

It is relevant to note that the Respondent has at all times followed the procedure stipulated in the Act in recovering possession of the state land which forms the subject matter of this application. In such circumstances, Court observes that there are no grounds whatsoever which warrant the revision of the Order of the learned Magistrate dated 20.05.2020.

According to the proceedings dated 30.07.2020, both parties, agreed that the matter could be concluded if the learned High Court Judge comes to a conclusion on whether the Respondent is the competent authority in terms of the Act.

It is noteworthy that the Petitioner has explicitly agreed that the revision application could be dismissed if it is found that the Respondent is the competent authority under the State Lands (Recovery of Possession) Act.

By order dated 13.10.2020, the learned High Court Judge had very correctly come to a finding that the Respondent is the competent authority in terms of Section 18 of the Act. As already established above, in terms of either Section 18(h) or 18(l) the Respondent can be considered as the competent authority under the Act. As such, there are no grounds to challenge the legality of the Order dated 13.10.2020 in that regard.

As such, we see no reason for us to interfere with the Order of the learned High Court Judge of Galle dated 13.10.2020 and the Order made by the learned Magistrate dated 20.05.2020. Hence, I hold that the competent authority appointed by the Sri Lanka State Plantations Corporation is entitled to invoke the provision of the State Lands (Recovery of Possession) Act in respect of the impugned land in the instant action and the Quit Notice is validly issued on the Respondent-Petitioner-Petitioner. Thus, the Applicant-Respondent-Respondent is entitled to have the Order of the learned Magistrate dated 20.05.2020 executed.

Therefore, we dismiss the application of the 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