

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

In the matter of an application under Section
5 of the State Lands (Recovery of Possession)
Act No. 07 of 1979 as amended.

CA Application No: CA/MC/RV/24/2014

MC Hatton Case No: 83195/2014

Sampath Subasinghe Arachchi,
The Chairman,
Land Reform Commission,
No. 475, Kaduwela Road,
Battaramulla.

Applicant.

Vs.

Watawala Plantation PLC.
No. 60, Dharmapala Mawatha,
Colombo 07.

Respondent.

AND NOW BETWEEN

An application for Revision against
the Order made by the Magistrate's
Court of Hatton.

Watawala Plantation PLC.
No. 60, Dharmapala Mawatha,
Colombo 07.

Respondent-Petitioner.

Vs.

Sampath Subasinghe Arachchi,
The Chairman,
Land Reform Commission,
No. 475, Kaduwela Road,
Battaramulla.

Applicant-Respondent.

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

Counsel: K.V.S. Ganesharajan A.A.L with Y. Deepika A.A.L for the Respondent-Petitioner.
Dr. Sunil Cooray A.A.L with Sudhashini Cooray A.A.L for the Appellant-Respondent.

Written Submissions 15.12.2021 by the Appellant-Respondent.
tendered on: 29.12.2021 by the Respondent- Petitioner.
Argued on: 08.11.2021.
Decided on: 13.01.2022.

Prasantha De Silva, J.

Order

Applicant being the ‘competent authority’ has filed an application bearing No. 83195/2014 under Section 5 of the State Lands (Recovery of Possession) Act No. 07 of 1979 as amended, seeking *inter-alia* an Order ejecting the Respondent and others holding under the Respondent from the land described in the said application.

Thereafter, the Respondent entered appearance and filed objections together with documents to show cause his entitlement to be in possession of the land in dispute. The matter was fixed for inquiry and it was disposed by way of written submissions and the learned Magistrate delivered the Order granting reliefs as prayed for in favour of the Applicant.

Being aggrieved by the said Order of the learned Magistrate dated 12.12.2014, the Respondent-Petitioner filed a revision application bearing No.59/2014 in the Provincial High Court of Central Province (holden in Nuwara Eliya). When it came up in the said High Court, the learned High Court Judge indicated that it did not have jurisdiction to hear and determine the said revision application. Thereafter, the Respondent-Petitioner had withdrawn the said application from the said High Court and filed the instant revision application in the Court of Appeal.

It appears that, the Respondent-Petitioner has invoked the revisionary jurisdiction of the Court of Appeal against the Order made by the learned Magistrate in terms of State Lands (Recovery of Possession) Act No. 07 of 1979 as amended. When this matter came up before us for hearing, the learned Counsel for the Applicant-Respondent had raised a preliminary objection in respect of the jurisdiction of the Court of Appeal with regard to the maintainability of the revision application filed by the Respondent-Petitioner.

Therefore, the main question of Law to be decided is whether the Court of Appeal has jurisdiction to hear and determine a revision application of such nature.

It is observable that the Counsel for the Applicant-Respondent had relied upon the *ratio decidendi* of the Judgment, ***The Superintendent, Stafford Estate & Two others Vs. Solaimuthu Rasu (2013) 1 SLR 24*** which decided that the Provincial High Court had no jurisdiction to issue writs under Article 154P (4) of the Constitution in relation to matters concerning State Lands.

It was held that, for the Provincial High Court to exercise writ jurisdiction, the issue should be one that falls within the purview of the Provincial Council list. Apparently, the subject of State Lands does not fall within the said list. As such, the Provincial High Court could not issue writs under Article 154P (4) of the Constitution in respect of matters connected with State Lands.

In this respect, Court draws the attention to Article 154P (3) (b) of the Constitution of the Democratic Socialist Republic which states;

“Every such High Court shall-notwithstanding anything in Article 138 and subject to any Law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and Orders entered or imposed by Magistrate’s Courts and Primary Courts within the Province”.

It was submitted by the Respondent-Petitioner, that, it seems that, the learned Judge of the High Court of Central Province (holden in Nuwara Eliya) had obviously followed the Judgment of ***The Superintendent, Stafford Estate & Two others Vs. Solaimuthu Rasu [supra]***, which is a writ application. However, as many Judgments and authorities have held that, the High Court acting

under Article 138 of the Constitution, has jurisdiction to try and hear revision applications relating to State Lands.

In this respect, it is noteworthy that invoking the revisionary jurisdiction in terms of Article 154P (3) (b) of the Constitution, has not excluded the power to exercise the appellate or revisionary jurisdiction regarding State Lands.

It was held in the Case of *Jayawardena Vs. Deen (2015) SLR 181*, the High Court has jurisdiction to hear and determine Cases relating to State Lands, acting in revision.

It was cited the Case of *Divisional Secretary Kalutara Vs. Kalupahana Mestrige Jayatissa (unreported) SC Appeal 246,247,249 & 250/14 (Judgment delivered on 04.08.2017)*; the Supreme Court did not consider the objection to jurisdiction of the High Court which was taken up on behalf of the Applicant in such Case. *"I do not wish to consider this issue in the present Judgment for two reasons. Firstly, in the Case referred to, the Supreme Court dealt with the powers of the Provincial High Court under Article 154P (4) of the Constitution (writ jurisdiction), whereas in the instant Case, the Provincial High Court derives jurisdiction under Article 154P (3) (power to act in revision). Secondly, this was not an issue on which leave was granted by this Court"*.

In this backdrop, the attention of Court was drawn to Section 12 of High Court of the Provinces (*Special Provisions*) Act No. 9 of 1990 which is as follows;

12. (a) Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application;

Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be transferred to such High Court, and such High Court shall hear and determine such appeal or application.

(b) Where the Court of Appeal decides to hear and determine any such appeal or application, as provided for in paragraph (a), the proceedings pending in the High Court shall stand removed to the Court of Appeal for its determination.

(c) No appeal shall lie from the decision of the Court of Appeal under this Section to hear and determine such appeal or application or to transfer it to a High Court.

(d) Nothing in the preceding provisions of this Section shall be read and construed as empowering the Court of Appeal to direct a High Court established by Article 154P of the Constitution to hear and determine any appeal preferred to the Court of Appeal from an Order made by such High Court in the exercise of the jurisdiction conferred on it by paragraph (4) of Article 154P of the Constitution.

Accordingly, it is the contention of the Respondent-Petitioner that the High Court of Nuwara Eliya is the proper forum to decide this application for revision.

In this instance, it is relevant to note that the Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Nuwara Eliya in terms of Article 154P (3) (b), and not under Article 154P (4) of the Constitution.

Hence, it is apparent that the learned High Court Judge has misconstrued the Articles of the Constitution and also relied in the Judgment of '*Solaimuthu Rasu*' expressing his view that the revision application bearing No. 59/2014 filed by the Respondent-Petitioner should be filed before the Court of Appeal.

It was submitted by the Petitioner-Respondent; the intention of the Legislature was that, the local matters, including matters coming up from Magistrate's Court Orders regarding State Lands (Recovery of Possession), the Provincial High Court of the Province should try such matters. If the litigants flock to file revision applications in the Court of Appeal despite the fact that the relevant Provincial High Court has power and jurisdiction to hear and determine such matters, the intention of the Legislature is made futile under Act No. 19 of 1990.

Our attention was brought to the Court of Appeal Judgment delivered on 19.06.2020 in *CA PHC 200/16 Ella Addara Gedara Dasanayake Vs. J.M.C. Priyadharshani*, where *Dr. Ruwan Fernando J.* emphasized that the Court of Appeal has concurrent jurisdiction to hear and determine revision application of this nature, decided that the Order refusing to grant notices by High Court is liable to be set aside and sent the Case back to the High Court to try the Case on its merits; without hearing the matter in the Court of Appeal on its merits.

It appears that in the said Case *CA PHC 200/16*; although despite the fact that the Court of Appeal had jurisdiction to hear and determine the appeal on its merits, the Case was sent back to the High Court for re-hearing on its merits.

In terms of Section 5D (1) of the High Court of the Provinces (*Special Provisions*) Act No. 54 of 2006 as amended, "where any appeal or application in respect of which the jurisdiction is granted to a High Court established by Article 154P of the Constitution by Section 5A of this Act is filed in the Court of Appeal, such appeal or application, as the case may be, may be transferred for hearing and determination to an appropriate High Court....."

The said High Court shall hear and determine such appeal or application as the Case may be, as of such appeal or application was directly made to such High Court.

In view of Section 5D (1), we transfer this application bearing No. 24/2014 to the Provincial High Court of Nuwara Eliya to hear and determine this matter.

Hence, the said Order may be sent to the President of the Court of Appeal to take appropriate steps in terms of Section 5D (1) of the High Court of the Provinces (*Special Provisions*) Act No. 54 of 2006 to transfer this application to the Provincial High Court of Nuwara Eliya.

JUDGE OF THE COURT OF APPEAL

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

I agree.

JUDGE OF THE COURT OF APPEAL