

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** of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

CPA No.87/22

Wasantha Devi Serasinghe

PHC Colombo No.HC/RA/82/22

375/24,

MC Maligakanda No.13978/21

Arnold Rathnayaka Mawatha,
Colombo 10.

The Respondent-Petitioner-
Petitioner

CPA No.88/22

Deniya Gamage Nandana de Silva

PHC Colombo No.HC/RA/83/22

375/25,

MC Maligakanda No.13979/21

Arnold Rathnayaka Mawatha,
Colombo 10.

The Respondent-Petitioner-
Petitioner

CPA No.89/22

Hallala Hewa Gamage Thilaka

PHC Colombo No.HC/RA/91/22

Padmini

MC Maligakanda No.13981/21

375/31,

Arnold Rathnayaka Mawatha,

Colombo 10.

The Respondent-Petitioner-

Petitioner

CPA No.90/22

B. N. Somalatha

PHC Colombo No.HC/RA/85/22

375/36,

MC Maligakanda No.13984/21

Arnold Rathnayaka Mawatha,

Colombo 10.

The Respondent-Petitioner-

Petitioner

CPA No.91/22

1. W. L. Samanthi Renuka

PHC Colombo No.HC/RA/88/22

375/33,

MC Maligakanda No.13983/21

Arnold Rathnayaka Mawatha,

Colombo 10.

2. Weerasekarage Anush Thilina

375/33,

Arnold Rathnayaka Mawatha,

Colombo 10.

The Respondent-Petitioner-
Petitioner

CPA No.92/22

Baddegama Gamage Thanoja

PHC Colombo No.HC/RA/89/22

Liyonika

MC Maligakanda No.13970/21

375/01,

Arnold Rathnayaka Mawatha,

Colombo 10.

The Respondent-Petitioner-
Petitioner

CPA No.93/22

Balasuriyage Piyasillie Perera

PHC Colombo No.HC/RA/87/22

375/13,

MC Maligakanda No.13975/21

Arnold Rathnayaka Mawatha,

Colombo 10.

The Respondent-Petitioner-
Petitioner

CPA No.94/22

Chinthani Kaluarachchi

PHC Colombo No.HC/RA/90/22

375/26,

MC Maligakanda No.13980/21

Arnold Rathnayaka Mawatha,

Colombo 10.

The Respondent-Petitioner-
Petitioner

Vs.

Alwila Dewage Prabhath Indika

Prasanna

Provincial Commissioner (Western
Province)

No. 204, Denzil Kobbakaduwa

Mawatha,

Battaramulla.

The Applicant-Respondent-
Respondent

Before : Sampath B. Abayakoon, J.

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

Counsel : Shantha Jayawardena with Pasiduni Fernando
instructed by Tharushika Fernando for the
Respondent-Petitioner- Petitioners

Supported on : 12-09-2022

Order on : 22-09-2022

Sampath B Abayakoon, J.

This is an application by the respondent-petitioner-petitioner (hereinafter referred to as the petitioner) seeking to get the Order dated 26-08-2022 pronounced by the learned Provincial High Court Judge of Western Province holden at Colombo revised in terms of the revisionary jurisdiction vested in this Court.

As the petitioner has sought to support this application for an Order of stay of the proceedings before the Magistrate Court of Maligakanda Case Number 13978/2021 on the basis of utmost urgency, without giving notice to the respondents mentioned in the application, this Court allowed the petitioner to support this application for a stay Order on the first instance and to get notices issued on the respondents without notice to the applicant-respondent-respondent.

The learned Counsel for the petitioner was allowed to support this application along with CPA/0088/22, CPA/0089/22, CPA/0090/22, CPA/0091/22, CPA/0092/22, CPA/0093/22 and CPA/0094/22 as all the matters raised in the above-mentioned applications are similar and since one Order can be pronounced with regard to all the applications before this Court in that regard.

This is a matter where the Provincial Commissioner of Local Government, acting as a competent authority for the purposes of the State Lands (Recovery of Possession) Act has issued quit notices to the petitioners requiring them to vacate the premises and the land mentioned in the respective quit notices issued in terms of the said Act.

It appears from the averments in the petitions that the petitioners, have gone before the Court of Appeal seeking to quash the notice issued by way of a Writ of Certiorari. It is clear from the averments that although the petitioners have sought a stay order in the said writ applications, it has been refused. However, a formal notice of the application for writ has been issued by the Court of Appeal.

The Provincial Commissioner of Local Government has instituted the above-mentioned Magistrate Court actions in order to get the relevant persons evicted from the lands and the premises mentioned in the respective applications instituted before the Magistrate Court of Maligakanda.

The learned Magistrate of Maligakanda after giving each of the petitioners an opportunity to show cause as to why the respective eviction orders should not be made, has rejected the reasons given by the petitioners and has ordered that the respective petitioners shall be evicted from the lands and premises mentioned in the respective applications filed.

Being aggrieved by the said Orders, the petitioners have filed the mentioned revision applications before the High Court of the Western Province holden in Colombo.

The learned High Court Judge, having listened to the submissions made on behalf of the petitioners, by his order dated 26-08-22 has refused to issue stay orders as sought by the petitioners and has refused to issue notice on the respective applications and thereby, has dismissed the relevant applications by the petitioners.

It is against this Order that the petitioners have come before this Court seeking this Court's indulgence to exercise the extraordinary discretionary jurisdiction of revision vested in this Court, while also seeking a stay order in order to stay the proceedings before the Magistrate Court of Maligakanda in the respective applications.

The revisionary power of this Court is a discretionary remedy that can be exercised only upon exceptional circumstances.

In the case of **Vanik Incorporation Ltd. Vs. Jayasekara (1997) 2 SLR 365**, it was held:

“Revisionary powers should be exercised where a miscarriage of justice occurred due to a fundamental rule of procedure being violated, but only

when a strong case is made out amounting to a positive miscarriage of justice.”

In the case of **Dharmaratne Vs. Palm Paradise Cabanas (2003) 3 SLR 24, Gamini Amarathunga J** observed thus;

“Existence of exceptional circumstances in the process by which the court select the cases in respect of which the extraordinary method of rectification should be adopted. If such a selection process is not there, revisionary jurisdiction of this Court will become a getaway of every litigant to make a second appeal in the grab of a revision application or to make an appeal in situations where the legislature has not given a right of appeal.

The practice of Court is to insisting the existence of exceptional circumstance for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed.”

In their petitions before this Court, the petitioners have mentioned several grounds in averment 40 of the petition stating that the said grounds constitute exceptional circumstances that warrant the exercise of the revisionary jurisdiction of this Court.

Before considering whether the grounds mentioned and matters stated in support of the said grounds by the learned Counsel before this Court in support of a stay order and notice are considered, I would like to reproduce what **A.W.A. Salam J. (P/CA)** observed in the case of **Ananda Sarath Paranagama Vs. Dhammadhinna Sarath Paranagama and Others, CA (PHC) APN 117/2013, HC Galle HCRA 32/13** decided on 07th august 2014 at page 04;

“The term ‘revision’ means the examination of a decision with a view to correction. The material points that may arise for consideration in a revision application inter alia are whether a subordinate Court has exercised jurisdiction which is not vested in it in law or whether it has failed to exercise such jurisdiction which is so vested or has acted in the exercise of the

jurisdiction illegally or in excess of jurisdiction or with material irregularity. In other words, strictly speaking, a revision application calls for the correction of errors concerning illegalities and patent irregularities which are of such magnitude that call for the discretionary powers of Court to correct them.

Hence it is the duty of a High Court and the Court of Appeal vested with the revisionary jurisdiction under the Constitution to ensure that the revisionary powers of such Courts are not invoked as a matter of course, at the expense of a successful party in the original Court having to needlessly wait for the fruits of his victory to be reaped.

Inasmuch as the facts of this case are concerned, the trend of authority not being in favour of the exercise of the discretionary remedy unless upon the applicant showing the existence of special circumstances warranting the clemency of Court to exercise the revisionary jurisdiction, the petitioner was obliged to adduce special or exceptional circumstances. This is a condition precedent to entertain the revisionary application by the High Court.”

The learned Counsel for the petitioners in his submissions before this Court urged several grounds which has not been advanced before the learned Magistrate of Maligakanda or the learned High Court Judge of the Western Province. It is the considered view of this Court that the learned Counsel is precluded from taking up arguments which has not been taken up before the High Court for the learned High Court Judge’s consideration as it is against the Order of refusal to issue notice and a stay order by the learned High Court Judge of the Western Province, the petitioners have come before this Court. I find that in the order pronounced by the learned Magistrate of Maligakanda, the learned Magistrate has considered the matters taken up, having a good understanding of the scope of an inquiry in relation to an application made under the State Lands (Recovery of Possessions) Act.

For matter of clarity, I would now reproduce the relevant Section 09 of the State Lands (Recovery of Possessions) Act No. 7 of 1979 as amended.

Section 9 (1). At such inquiry, the person on whom summons under section 6 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 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 of authority is in force and not revoked or otherwise rendered invalid.

Section 9 (2). It shall not be competent to the magistrate court to call for any evidence from the competent authority in support of the application under section 5.

It is therefore clear that any inquiry held under the provisions of the Act would be for a limited purpose of finding out whether a party who was served with a summons under section 6 of the Act, was in possession of a valid permit or any other written authority given by the State in accordance with law.

As determined correctly by the learned High Court Judge, I am unable to find that the petitioners have produced any valid permit or authority as required by law. It is clear that the jurisdictional objection taken up before the Magistrate has been correctly reconsidered by the learned High Court Judge to come to a finding that the learned Magistrate was correct in his determination in that regard. The learned High Court Judge has correctly observed that the application which was supported by an affidavit filed before the learned Magistrate was in order and the objections raised challenging the validity of the affidavit have no merit. The learned High Court Judge has also considered the order pronounced by this Court in the respective writ applications filed by the petitioners in refusing to grant stay orders as sought in the said writ applications before deciding on the application in revision filed before the learned High Court Judge. The learned High Court Judge has well considered the matters that need the

attention of the High Court in an application in revision and has come to a correct finding that the petitioners have failed to satisfy that exceptional circumstances are in existence that warrants the intervention of the High Court.

I have no reasons to disagree with the findings of the learned High Court Judge in refusing to issue a stay order and to issue notices as well as the order of the learned Magistrate of Maligakanda in ordering the eviction of the petitioners from the respective premises and land mentioned in the application before the learned Magistrate.

For the reasons stated above, I refuse to issue any stay order as sought and refuse to issue notice to the respondents mentioned, as the respective applications before this Court are devoid of any merit.

Hence, the application is dismissed.

Judge of the Court of Appeal

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

I agree.

Judge of the Court of Appeal