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

In the matter of an application under and in terms of Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 11 of the High Court of the Provinces (Special Provinces) Act No.19 of 1990 and Supreme Court Rules published in the Government Extraordinary Gazette bearing No. 549/6 dated 13th March 1989.

CA (PHC) Appeal No: 116/2013

HC of Kandy: Rev/35/2012

Magistrate's Court Kandy: 41182

The Commissioner of Local Government,
Central Province,
Department of Local Government,
Secretariat Building,
Kandy

**Applicant**

**Vs.**

Mawela Tholangamuwe Gedara Karunaratne,
Mawela Motors,
62nd Mile Post,
Kadugannawa

**Respondent**

**AND BETWEEN**

Mawela Tholangamuwe Gedara Karunaratne,
Mawela Motors,
62nd Mile Post,
Kadugannawa

**Respondent-Petitioner**

**Vs**

The Commissioner of Local
Government,
Central Province,
Department of Local Government,
Secretariat Building,
Kandy

**Applicant -Respondent**

**AND NOW BETWEEN**

The Commissioner of Local
Government,
Central Province,
Department of Local Government,
Secretariat Building,
Kandy

Presently at

Department of Local Government –
Central Province,
Provincial Council Complex,
Pallekele,
Kundasale

**Applicant- Respondent-Petitioner**

**Vs.**

Mawela Tholangamuwe Gedara
Karunaratne,
Mawela Motors,
62nd Mile Post,
Kadugannawa

**Respondent-Petitioner-Respondent**

| | |
|---|---|
| **Before:** | **Prasantha De Silva, J.**<br>**K.K.A.V. Swarnadhipathi, J** |
| Counsel: | Uditha Egalahewa, PC. with Ranga Dayananda AAL and Tharushi Buddhadasa AAL for the Applicant- Respondent-Petitioner<br><br>Anura Meddagedara, PC. with Srilal Danadeniya and N. Kannangara AAL instructed by Varners for the Respondent-Petitioner-Respondent<br><br>Both counsel agreed to dispose this matter by way of Written submissions |
| Written Submissions: filed on | 26.01.2023 for the Applicant-Respondent-Appellant<br>03.08.2018 for the Respondent-Petitioner-Respondent<br>31.07.2018 for the Applicant-Respondent-Appellant |
| Delivered on: | 30.03.2023 |

**Prasantha De Silva, J.**

## Judgment

The Applicant being the Commissioner of Local Government Central Province has filed an application in the Magistrate's Court of Kandy in terms of Section 5(1) of the State Lands (Recovery of Possession) Act No. 07 of 1979 [as amended] (hereinafter referred to as 'the Act') against the Respondent namely M.T.G. Karunaratne seeking an order to have the Respondent and his dependents ejected from the said land as the Respondent has failed to act in terms of Section 4(b) of the said Act after receipt of the quit notice dated 06.06.2011 issued under Section 3 of the Act.

The Respondent had appeared before the Magistrate's Court and had been afforded an opportunity to show cause. Although the Respondent tendered documents marked වි$_1$ to වි$_6$, it appears that no permit, license or grant was produced in evidence to show compliance with section 9 of the Act.

However, after the inquiry, the learned Magistrate had made an Order on 08.03.2012 allowing the application of the Applicant and ordering to evict the Respondent from the impugned land. Being aggrieved by the said order, the Respondent-Petitioner-Respondent had

invoked the revisionary jurisdiction of the Provincial High Court of the Central Province holden in Kandy in case bearing No. Rev/35/2012 seeking to have the said order of the learned Magistrate revised or set aside. The Respondent-Petitioner-Respondent had taken up the position that the commissioner of local government is not the competent authority to institute proceedings under the State Lands (Recovery of Possession) Act.

It is relevant to note, the learned High Court Judge having inquired into the matter had held that the impugned land does not belong to the Kadugannawa Urban Council. Therefore, the Applicant-Respondent-Petitioner (Appellant) does not have the locus standi to institute proceedings for recovery of possession under the Act. Accordingly, he has upheld the position of the Respondent-Petitioner and revised the said order of the learned Magistrate dated 08.03.2012.

Being aggrieved by the said Order, the Applicant-Respondent-Petitioner (Appellant) (hereinafter sometimes referred to as the 'Appellant') has preferred this appeal seeking to have the order dated 03.09.2013 by the learned High Court Judge set aside. It was the contention of the Respondent-Petitioner-Respondent (hereinafter sometimes referred to as the 'Respondent') that the impugned land was not vested with the Kadugannawa Urban Council and that Appellant is not the competent authority to institute proceedings for recovery of possession under section 5 of the State Lands (Recovery of Possession) Act. Thus, it was contended that the Applicant-Respondent-Petitioner (Appellant) has no locus standi to institute proceedings in the Magistrate's Court of Kandy.

On behalf of the Respondent it was contended that at no point of time was the impugned land vested with the Kadugannawa Urban Council and that Appellant, has no right or title to the land. On behalf of the Appellant, it was submitted that the impugned land is a state land, and the competent authority is the Commissioner of Local Government of Central Province.

The attention of Court was drawn to Section 9 of the State Lands (Recovery of Possession Act). Thereby, the Respondent cannot question in the Magistrate's Court whether the Appellant is in fact the competent authority, or whether the subject matter is a state land as contemplated in section 9 of the Act (cursus curiae).

Section 9 states

(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 or authority is in force and not revoked or otherwise rendered invalid.

(2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 52.

In terms of section 5 of the Act, it should be stated in the application that the person making the application is a Competent Authority for the purposes of the Act. According to section 6 of the Act, a Person who has been summoned cannot contest that the Claimant is not the Competent Authority.

In **Divisional Secretary Kalutara and another vs Kalupahana Mestrige Jayatissa,** [SC Appeal Nos. 246,247,249 & 250/14; SC Minutes of 4th August 2017] court held that,

> "…the main question that needs to be considered is whether there is a requirement to establish the title of the State to the land, by the Competent Authority, in an application made to have an order for ejectment issued under the provisions of the Act. When one considers the structure of the Act, all what is required is for the Competent Authority to form the opinion that the person is in unauthorised possession or occupation of any State land and the Competent authority can serve "notice to quit" under the Act.
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> In considering the provisions of the Act, his lordship Justice Abdul Cader stated that "where the competent authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion. **Farook v. Goonewardena Government Agent Amparai1980 2 S.L.R 243**. In the said case his lordship went on to state that:
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> "the magistrate cannot call for any evidence from the Competent authority in support of the application under section 5, which means the Magistrate cannot call for any evidence from the competent authority to prove that the land described in the schedule to the application is State land. Therefore, the petitioner did not have an opportunity of raising the question whether the land is a state land or private land before the magistrates" (page 245).
>
> Thus, it appears that the Court of Appeal had fallen into error when it held that the Appellant had failed to prove that the land in question was either vested in the State or acquired by the State." (at pages 7-8)

In the case of **Udagedara Waththe Anusha v Divisional Secretary of Uva Paranagama** [CA (Writ) Application No. 293/2017; SC Minutes of 14th November August 2019] Justice

Obeysekere referring to the above judgement in SC Appeal No. 250/2014 mentioned above held that,

> "The above reasoning of the Supreme Court reflects the correct legal position for the factual situation where the Competent Authority, having formed an opinion that a particular land is State land, issues a quit notice, and thereafter files an application for ejectment in the Magistrate's Court. In such a situation, the learned Magistrate cannot question the legality or reasonableness of such opinion, nor can the learned Magistrate consider the title of the person who is sought to be ejected. As stated earlier, the scope of the inquiry before the Magistrate's Court is circumscribed by the provisions of Section 9, so that the learned Magistrate can only inquire from the respondent, as to whether he has a valid permit or written authority of the State granted in accordance with any written law and if so, whether such permit or authority is in force. If the respondent cannot say 'yes' to both, the learned Magistrate does not have any choice, and is required to issue the order for ejectment. This is the strict legal regime put in place by the Act, which has been referred to in **Divisional Secretary Kalutara and another vs Kalupahana Mestrige Jayatissa.**

Justice Obeysekera, however, went on to state in that case,

> "This Court therefore takes the view that when exercising its jurisdiction in terms of Article 140, it is entitled to consider the reasonableness and the legality of the basis on which the Competent Authority formed his opinion as required by Section 3(1) of the Act."

Therefore, this court concludes that, under section 9 of the Act, the Magistrate Court cannot require the Competent Authority to adduce evidence to establish that the land in question is a state land or whether the Competent Authority has such authority. Any remedy that may lie to question the *ultra vires* or unreasonableness of the opinion formed by the Competent Authority under section 3 of the Act should be addressed by way of a writ Application under the Article 140 Constitution. Parties may be able to require the Competent Authority to justify the basis of its opinion if the opinion formed by the Competent Authority regarding the state ownership of the land is unreasonable in such a writ application. Even in such an event Court cannot consider the title of the State which is a remedy available under Section 12 of the Act or in an *Actio Res Vindicatio.* Court can only require the Competent Authority to produce evidence on which he formed the opinion that state is lawfully entitled to the said land to consider whether the Competent Authority acted illegally or unreasonably.

It is important to note that the State Lands (Recovery of Possession) Act was initially enacted on 25.01.1979 to make provision for the recovery of possession of 'state lands' from persons in unauthorized possession or occupation of state lands. It clearly manifests that State Lands

(Recovery of Possession) Act No. 7 of 1979 was enacted to provide an expeditious method for recovery of state lands without the state being forced to go through a cumbersome process of protracted civil action and consequent appeals.

In the case of ***Muhandiram Vs Chairman J.E.D.B [ 1992(1) SLR 110]***, deals with the said position.

> "The said section clearly reveals that at an inquiry of this nature, the person on whom the summons has been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law. The burden of proof of that fact lies on that particular person on whom the summons has been served and appears before the relevant Court."

Similarly, it was held in the case of ***Nimal Paper Converters (Pvt) Ltd Vs Sri Lanka Ports Authority [1993 (1) SLR 219]*** that the only ground on which the Petitioner is entitled to remain on the land is upon a valid permit or other written authority of the state as laid down in Section 9(1) of the State Land (Recovery of Possession) Act and that he cannot contest any of the other matters.

In view of the aforesaid judicial pronouncements, it is crystal clear that the only defense available for the Respondent is to show that he has a valid permit or other written authority from the state where he has been granted authority according to section 9 of the Act. In the instant case, it is seen that the Respondent has not adduced evidence at the inquiry to the fact that he was in possession of the impugned land with a valid permit or written authority of the state.

The scope of the inquiry before the Magistrate is circumscribed strictly to two matters. The Magistrate has no jurisdiction to go beyond what has been mandated by the Act. The Act particularly states that the Magistrate shall not call for any evidence in support of the application, which shall be made in the form prescribed by the Act.

In the instant case, Magistrate's Court of Kandy had issued summons on the Respondent in compliance with Section 6(1) of the Act. The Respondent-Petitioner-Respondent was allowed to show cause as to why he should not be evicted from the said premises.

In view of section 9 of the said Act, it is incumbent upon the Respondent to prove his entitlement to remain on the state land upon a production of a valid permit or other written

authority of the State, granted according to any other written law which is currently in force. It is relevant to note that no such permit or any written authority had been produced at the inquiry before the Magistrate. Thus, the Respondent had not discharged the burden cast on him in terms of Section 09 of the Act. As such, the leaned Magistrate has been correct in making an order to eject the Respondent.

Hence, it is apparent that the learned High Court Judge has not properly evaluated the applicable legal provisions in the said Act but misled himself and come to an erroneous conclusion and held against the Applicant-Respondent-Petitioner (Appellant).

The learned Magistrate has made his Order dated 08.03.2012 within the purview of the said provisions of the State Lands Recovery of Possession Act. Therefore, the Respondent-Petitioner-Respondent cannot challenge it on the basis of illegality or any impropriety. Thus, the Respondent-Petitioner-Respondent is not entitled to invoke the revisionary jurisdiction of the High Court as there are no exceptional circumstances for Respondent-Petitioner-Respondent to have the Order of the learned Magistrate set aside.

As such, I hold that the learned High Court Judge has erred in law and made the Order dated 03.09.2013 erroneously. Therefore, we set aside the said Order of the learned High Court Judge and affirm the order of the learned Magistrate dated 08.03.2012.

Hence, we allow this appeal.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL