

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

In the matter of an application for appeal against order in the revision application by the High Court of Kegalle dated 09.08.2018 against the order dated 17.09.2015 by the Magistrate Court of Ruwanwella under the Provincial High Court Act No. 19 of 1990 (Special Provisions) read together with Section 154(G) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal
Case no: CA (PHC) 151/2018

HC (Kegalle)
Case no: REV 4953/15

Ruwanwella Magistrate Court
Case no: 58119/Ejectment

Divisional Secretary,
Bulathkohupitiya

Applicant

Vs

Walideniye Gedera Gamini Sarath Kumara,
Welikanda Area,
Bulathkohupitiya

Respondent

AND

Walideniye Gedera Gamini Sarath Kumara,
Welikanda Area,
Bulathkohupitiya

Respondent –Petitioner

Divisional Secretary,
Bulathpkohupitiya

Applicant- Respondent

Attorney General,
Attorney General’s Department
Colombo 12.

Respondent

AND BETWEEN

Walideniye Gedera Gamini Sarath Kumara,
Welikanda Area,
Bulathpkohupitiya

Respondent –Petitioner-Appellant

Divisional Secretary,
Bulathpkohupitiya

Applicant- Respondent-Respondent

Attorney General,
Attorney General's Department,
Colombo 12.

Respondent- Respondent

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

Counsel: M. J. Wimalarathna and Sriyani Manamperi for the Respondent-
Petitioner-Appellant
Amasara Gajadeera, SC for the Respondent

Both Counsel agreed to this matter by way of written submissions.

Written Submissions: 10.06.2022 for Respondent-Petitioner-Appellant
filed on 31.05.2022 for Applicant- Respondent-Respondent

Delivered on: 30.03.2023

Prasantha De Silva, J.

JUDGMENT

The Divisional Secretary of Bulathkohupitiya being the applicant has issued a 'Quit Notice' in terms of section 3 of the State Lands (Recovery) of Possession Act No. 07 of 1979 (hereinafter referred to as 'the Act') dated 04.03.2015 directing the Respondent namely Gamini Sarath Kumara to vacate the premises more fully described in the schedule to the said Quit Notice and handover the vacant possession of the same on or before 10.04.2015.

It appears that the Respondent had taken up the position that the said Quit Notice was not properly served on him. However, the Grama Niladhari by his letter dated 09.03.2015 had informed that the said Quit Notice was delivered on 09.03.2015 and the Respondent's wife had refused to accept it in the absence of the Respondent (husband). Consequently, the Quit Notice was displayed in the impugned premises sought to be vacated.

The Respondent had contended before the Magistrate Court that the Applicant had failed to comply with the requirements of 30 days' notice stipulated in section 3(1)(b) of the Act.

The Respondent had contended that the time period from the date the Quit Notice was served on him and the date of institution of action in the Magistrate's Court is less than 30 days therefore, the Applicant had failed to comply with a mandatory requirement laid down in the Act.

The Respondent argued that the said Quit Notice was served on him on 12 March 2015 and the time limit imposed on him to vacate the premises was on 10 April 2015, which is less than a month

The said Quit Notice was sent via registered post on 04.03.2015 and it was handed over to the Respondent on 12.03.2015. Which is 28 days prior to the date mentioned on the Quit Notice to vacate the premises. Thus, it is apparent that the Respondent is not materially prejudiced by serving the Quit Notice 28 days prior to date on which the Respondent is required to vacate the premises.

Afterwards, Applicant had filed an application for ejectment on 06.05.2015 in the Magistrate Court of Ruwanwella seeking an order of ejectment. It is seen that the Respondent was given more than 30 days to vacate the impugned premises by the time of institution of action. In fact, Respondent had nearly 54 days to vacate the premises.

As such, the objection taken up by the Respondent that he was not given 30 days' notice to vacate the premises is of no weight to dismiss the application for ejectment.

It appears that the Learned Judge of the High Court has observed that the 30 days requirement has been fulfilled by the Applicant-Respondent. To this effect, the Learned High Court Judge has relied upon the dictum of *Gunaratne v Abeysinghe (1958) 1 Sri L. R. 225*, which emphasised that,

“the stipulation of 30 days' notice in section 3(1) is for the benefit of the occupier and authority may specify a date less than 30 days or longer period. Though the quit notice given less than 30 days is defective in form if the Respondent had 30 days' time before ejectment proceedings were filed requirement of section 3(1) must be treated as satisfactorily complied”

Furthermore, In *Gunaratne (Alexis Auction Rooms) v. Abeysinghe (Urban Development Authority)*, the Supreme Court took the view that giving notice under section 3(1) is mandatory, however, giving less than 30 days' notice would not ipso facto vitiate the Quit Notice, if no prejudice is caused thereby.

His lordship Justice Thambiah at page 262-263 stated as follows:

“The object of the State Lands (Recovery of Possession) Act, No. 7 of 1979 is the speedy recovery of possession of State lands from persons in unauthorised possession or occupation. The object of giving notice is to tell the occupier that he must vacate the land and hand over possession; otherwise, the Competent Authority will resort to, the speedy remedy provided for in the Act. The giving of notice under s. 3(1) to vacate

and hand over possession is a mandatory requirement and must be complied with, and that has been done in this case. It seems to me that the stipulation of 30 days in s. 3 (1) has been inserted for the benefit of the occupier. The Competent 6 Authority, at his discretion, may specify a date not less than 30 days or a longer period, having regard to the type of premises to be dealt with, e.g., if it is factory premises, he might specify 90 days to enable the occupier to dismantle the equipment and find an alternate site. The notice that was given in this case was defective in form it gave only 15 days to vacate. In the words of De Smith “breach of procedural or formal rules is likely to be treated as a mere irregularity if no substantial prejudice has been suggested by those for whose benefit the requirements were introduced.”

In that case, “The Quit Notice is dated 10.10.83 The application for ejection was filed on 24.1.84, i.e. the Petitioner had 106 days to move out before legal proceedings were instituted. In addition, on Petitioner’s own request, the learned Magistrate granted him a further 2 weeks for occupation. Thus, no substantial prejudice has been caused to the occupier for whose benefit the time requirement was introduced. In my view, the requirement in s. 3(1) of Act, No. 7 of 1979, that a minimum of 30 days be given to vacate must be treated as directory and there has been a substantial compliance with the time requirement specified in s. 3(1) of the Act.”

As such, the rule in section 3(1)(b) of Act is not mandatory but directory. Thus, the learned High Court judge had correctly concluded that the requirements of 30 days’ notice had been fulfilled by the Respondent and affirmed the order of the learned Magistrate.

In this instance the Court wishes to draw the attention to section 9 of the Act, (reproduced below)

(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 5.

Pursuant to section 9 of the Act, the only defense available to Respondent is that he had ‘a valid permit or other written authority of State granted in accordance with any written law’ to prove that he had legal rights to occupy the said premises.

In the instant case, however, the Respondent-Petitioner-Appellant had not adduced any evidence to indicate that he is in possession of the said premises on a valid permit or written authority of the

state. The scope of the inquiry before the Magistrate court is limited to strictly two grounds, (i) He has no jurisdiction to go beyond what has been mandated by the Act; and (ii) the Magistrate should not call evidence from the competent authority in support of the Application.

In view of the aforesaid, the technical objection raised on behalf of the Respondent-Petitioner-Appellant in terms of section 3(1)(b) of the Act on the requirements of 30 days' notice does not absolve the Respondent-Petitioner-Appellant of his liability for not vacating the state land as required by the Quit Notice.

Therefore, the learned Magistrate has correctly held with Applicant-Respondent-Respondent and made an order to eject the Respondent-Petitioner-Appellant from the impugned premises.

As such, I hold that the Respondent-Petitioner-Appellant did not have any exceptional grounds to invoke the revisionary jurisdiction of the High Court of Kegalle to revise the order of the learned Magistrate dated 17.09.2015.

Thus, the learned High Court Judge had correctly dismissed the application of the Respondent-Petitioner-Appellant. We see no reason for this court to interfere with the said order of the learned Magistrate Court Judge dated 17.09.2015 and order of the learned High Court Judge dated 09.08.2018.

Therefore, this appeal is dismissed with costs 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