

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

*In the matter of an application for an Appeal under and in terms of Article 154P (6) read with Articles 138 and 139 of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 54 and 58 of the Primary Courts Procedure Act No:44 of 1979 (as amended).*

Court of Appeal Case No:  
**CA (PHC) 250/2017**

Provincial High Court (Kurunegala)  
No:  
HCR 35/2015

Magistrate's Court (Kurunegala) No.  
51274/L

Karunarathne Mudiyansele Somasiri  
(Power of Attorney holder of Tiron  
Lawrence Nawarathne de Alwis)  
131, Gettuwana, Kurunegala.

**Informant-Petitioner**

**Vs.**

1. Municipal Council  
*Kurunegala.*
2. Gamini Peramunage,  
Mayor,  
Municipal Council, Kurunegala.
3. P.K.S. Chandralatha,  
Municipal Commissioner,  
Municipal Council, Kurunegala.
4. D. M. Buddhika Dissanayake,  
Municipal Engineer,  
Municipal Council, Kurunegala.

**Respondents**

**AND**

Karunarathne Mudiyansele Somasiri  
(Power of Attorney holder of Tiron  
Lawrence Nawarathne de Alwis)  
131, Gettuwana, Kurunegala.

**Informant-Petitioner**

1. Municipal Council,  
Kurunegala.
2. Gamini Peramunage, Mayor,  
Municipal Council, Kurunegala.
3. P.K.S. Chandralatha,  
Municipal Commissioner,  
Municipal Council, Kurunegala.
4. D. M. Buddhika Dissanayake,  
Municipal Engineer,  
Municipal Council, Kurunegala.

**Respondent - Respondents**

**AND NOW BETWEEN,**

1. Municipal Council,  
*Kurunegala.*
4. Gamini Peramunage  
Mayor,  
Municipal Council, Kurunegala.
5. P.K.S. Chandralatha,  
Municipal Commissioner,  
Municipal Council, Kurunegala.
6. D. M. Buddhika Dissanayake  
Municipal Engineer,  
Municipal Council, Kurunegala.

**Appellants**

**Vs.**

Karunarithne Mudiyansele Somasiri  
(Power of Attorney holder of Tiron  
Lawrence Nawarathne de Alwis)  
131, Gettuwana, Kurunegala.

**Informant-Petitioner-Respondent**

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

**Counsel:** Sapumal Banadara with Gangulali de Silva Dayaratna and Chamika Guruge for the 1<sup>st</sup> -4<sup>th</sup> Appellants.  
Buddhika Gamage with Rangana Warnasinghe for the Respondent

Parties agreed to dispose this matter by way of written submissions

Written Submissions

filed on: 11.01.2023 for the Informant-Petitioner-Respondent.  
19.04.2022 for the Respondent-Appellants.

Decided on: 14.03.2023

**Prasantha De Silva, J.**

## **Judgment**

### **Factual Background**

The Informant-Petitioner Tyron Lawrence Navaratne De Alwis had instituted action bearing No. 51274/L on 19.11.2012 in the Magistrate's Court of Kurunegala in terms of Section 66(1)(b) of the Primary Courts' Procedure Act No. 44 of 1979 against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents in respect of a land dispute between the Informant-Petitioner and the said 1<sup>st</sup> – 4<sup>th</sup> Respondents. The said 1<sup>st</sup> – 4<sup>th</sup> Respondents are Municipal Council Kurunegala, the Mayor of Municipal Council Kurunegala, Municipal Commissioner Kurunegala and Engineer of Municipal Council Kurunegala respectively.

The learned Magistrate who was acting as the Primary Court Judge having inquired into the matter had dismissed the said action on 16.01.2013. Matter was dismissed by the learned Magistrate on the basis that the court has no jurisdiction to adjudicate the said matter which falls within the purview of 4<sup>th</sup> schedule referred in sections 32 and 33 of the Judicature Act as the 1<sup>st</sup> – 4<sup>th</sup> Respondents are Police officers.

Being aggrieved by the said order, Informant – Petitioner- Petitioner has invoked the revisionary jurisdiction of the Provincial High Court of North Western Province holden in Kurunegala in case bearing No. HCR 18/2013. Following which, the learned High Court Judge had held that the Magistrate’s Court / Primary Court has jurisdiction to hear and determine the said matter and had sent the case back to the Magistrate’s Court of Kurunegala to have the proceedings continued under Section 66(1)(b) of the Primary Courts’ Procedure Act.

Thereafter, the case had proceeded before the learned Magistrate and after the conclusion of the case, the learned Magistrate had delivered the order on 21.04.2015 dismissing the impugned action on the ground that there was no breach of peace or a likelihood of such to exercise jurisdiction under Section 66(1)(b) of the Primary Courts’ Procedure Act No. 44 of 1979.

Against the said order of the learned Magistrate, the Informant– Petitioner has moved in revision to the Provincial High Court of Kurunegala to have the said order dated 21.04.2015 set aside. The learned High Court Judge had held that there was a breach of peace or breach of peace likely to be threatened and that the learned Magistrate/Primary Court Judge had jurisdiction to proceed under Section 66 of the Act and had set aside the said order dated 21.04.2015.

Being dissatisfied with the said order, the 1<sup>st</sup> – 4<sup>th</sup> Respondent-Respondent-Appellants (hereinafter sometimes referred to as the Appellants) had preferred this appeal seeking to have the said order of the learned High Court Judge revised and the order of the learned Magistrate dated 21.04.2015 affirmed.

### **Legal Issues**

In this respect, this Court draws the attention to Judgment in case bearing ***No.CA (PHC) 161/98 [C.A.M 21.06.2010]*** where it was emphasized by Sisira De Abrew, J. that if the learned Magistrate decided to issue notice on the Respondent on a private information filed in terms of Section 66(1)(b) of the Primary Courts’ Procedure Act, it is obvious and presumed that he does so after satisfying himself that there was a threat or a likelihood of a breach of peace.

Therefore, it can be concluded that learned Magistrate has jurisdiction to hear and determine the instant case under Section 66(1)(b) of the Primary Courts' Procedure Act. The rationale underlying the above is in view of section 114(d) of the Evidence Ordinance which states "Courts will have to presume that Judicial Acts have been regularly performed". Therefore, the learned High Court Judge has been correct when he decided by his order dated 30.11.2017 that the learned Magistrate has jurisdiction to hear and determine the instant case. The learned High Court Judge further had ordered the learned Primary Court Judge to inquire into the said case bearing No. 51274/L and to make an appropriate order.

In such a situation, it is a duty of the learned Primary Court Judge who was holding the inquiry to determine as to who was in possession of the land in dispute on the date on which information was filed under Section 68(1) of the Act and make an order as to who is entitled to possession of the land in dispute. Moreover, if the Primary Court Judge is satisfied that any person who had been in possession of the disputed land has been dispossessed within a period of two months immediately before the date on which the information was filed, the learned Primary Court Judge may make a determination to that effect and make an order directing the party dispossessed be restored to possession and prohibit all disturbances of such possession otherwise than under the authority of an order or decree of a competent Court.

In this instance, it is submitted that the intention of the Legislature in introducing Part VII of the Primary Courts' Procedure Act No. 44 of 1979 is to prevent a breach of peace and not to embark on a protracted trial. That is precisely the reason why, Section 67(1) of the Primary Courts' Procedure Act has given a three-month and one week period for a matter to be concluded.

As the information in the instant action was filed on 19.11.2012 under the Section 66(1)(b) of the Act which is almost 10 years ago, we direct the learned Magistrate/Primary Court Judge to decide the matter within a period of three months from the date of this Judgment, based on available material such as affidavits, counter affidavits, annexed documents, complaints, statements made by parties to the Police Station, written submissions, and the order made by the Learned High Court judges.

The Registrar is directed to send the original case records of the Magistrate's Court and the High Court pertaining to this matter to the respective Courts.

The learned Magistrate/Primary Court Judge is hereby directed to deliver a fresh order for the case bearing No. 51274/L on or before 30.06.2023 on the available evidence, in terms of Section 68(1) or 68(3) of the Primary Courts' Procedure Act as applicable.

In view of the aforementioned reasons, we dismiss the appeal of the 1<sup>st</sup> - 4<sup>th</sup> Respondent-Respondent-Appellants with cost fixed at Rs. 50,000/-.

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

**JUDGE OF THE COURT OF APPEAL**

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