

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

In the matter of an Appeal under
Article 154p (6) of the Constitution of
The Democratic Socialist Republic of
Sri Lanka

CA (PHC) 26/98
HC Kandy: HCR 37/96
MC Nawalapitiya: 30359

Divisional Secretary,
Pasbage Korale,
Nawalapitiya.

Applicant

Vs.

Leslie Olagasekara,
39/18, Ambagamuwa Road,
Nawalapitiya.

Respondent

Leslie Olagasekara,
39/18, Ambagamuwa Road,
Nawalapitiya.

Petitioner-Respondent

Vs.

Divisional Secretary,
Pasbage Korale,
Nawalapitiya.

Respondent-Respondent

Leslie Olagasekara,
39/18, Ambagamuwa Road,
Nawalapitiya.

Petitioner-Appellant

Vs.

Divisional Secretary,
Pasbage Korale,
Nawalapitiya.

Respondent-Respondent

BEFORE : **K.T. Chitrasiri, J**

W.M.M. Malinie Gunaratne, J.

COUNSEL: I. Kroon for the Petitioner - Appellant

Suranga Wimalasena , SSC. for the Respondent - Respondent

Argued on : 24.09.2014

Written Submissions filed on: 26.03.2015

Decided on: 01.09.2015

Malinie Gunaratne, J.

The Applicant – Respondent – Respondent (hereinafter referred to as the Respondent) instituted proceedings under the Case No. 30359, against the Respondent – Petitioner – Appellant (hereinafter referred to as the Appellant) in the Magistrate’s Court of Nawalapitiya under the Provisions of State Land

(Recovery of Possession) Act No. 7 of 1979. It was filed on 29.07.1993 seeking for an order from the Magistrate's Court to eject the Appellant from the premises morefully described in the schedule to the application.

The learned Magistrate pronounced the order granting relief sought by the Respondent and made order to eject the Appellant.

Being aggrieved by the said order of the learned Magistrate, the Appellant preferred an application dated 19.03.1996 that bears the No. 37/96, to the High Court of Kandy, seeking the order of the learned Magistrate be revised. The learned High Court Judge pronounced the Judgment dated 16.01.1998, affirming the order of the learned Magistrate, and dismissed the Appellant's application.

The Appellant has preferred this appeal in this Court seeking to set aside the said Orders of the learned Magistrate and the High Court Judge.

When this matter was taken up for argument on 24.09.2014, both Counsel submitted, that the cases bearing Nos. CA (PHC) 22/98, CA (PHC) 23/98, CA (PHC) 24/98, CA (PHC) 25/98 and CA (PHC) 26/98 are on the same facts and the decision in one of those matters will have the same effect to all the five Appeals. Therefore, they moved that the case bearing No. CA (PHC) 26/98 be taken up for argument. They further submitted that they are agreeable to abide by the decision in CA (PHC) 26/98 in respect of other four cases as well.

Accordingly, when this matter was taken up for argument, the Counsel for the Appellant raised the following legal issue with regard to the validity and maintainability of the application made by the Respondent in the Magistrate's Court of Nawalapitiya.

The said legal issue was:

“Whether the Respondent can resort to the provision of the State Land (Recovery of Possession) Act, since the land in question has been vested with the State under the provisions of Assisted Schools and Training Colleges (Supplementary Provision) Act No. 8 of 1961, which provides the provisions to eject unauthorized occupants” ?

Upon the said legal issue been raised, parties were directed to file written submissions.

In the written submissions filed in this Court by the learned Senior State Counsel, it is asserted that, at the time of the Respondent taking initial steps to eject the Appellant and the other Appellants in the connected cases, under the provisions of the State Land (Recovery of Possession) Act, the Appellant in CA (PHC) 23/98, filed a Writ Application No. 62/92 in the Court of Appeal seeking to quash the quit notice sent by the Respondent.

The learned Senior State Counsel brought to the notice of the Court, a copy of the said judgment is attached in page 28 marked as A 1, of the brief of this case.

As per the said judgment, the Petitioner in that case had preferred the Petition seeking a mandate in the nature of a Writ of Certiorari to quash the quit notice dated 30.12.1991, sent by the competent authority, requiring the Petitioner to vacate the premises occupied by the Petitioner and to hand over the possession of such premises as she was in unauthorized possession of a State land.

The Petitioner had challenged the aforesaid quit notice on five grounds. Among the grounds challenged, in the said Writ Application by the Petitioner (d) and (e) reads as follows as per the said judgment:

(d) As the premises in question was vested in the State under the Provisions of the Assisted Schools and Training Colleges (Supplementary Provisions Act No.8 of 1961) the Petitioner can be ejected only under the Provisions of that Act.

(e) The State Lands (Recovery of Possession) Act has no application to the land in question.

The contention of the learned Senior State Counsel was, that the Court of Appeal has already decided that the premises in question is a State land and the Respondent as the Competent Authority, reasonably exercising his powers has issued the impugned quit notice to the Petitioner as he had the legal right to issue it. Hence, in a previous instance, the Court of Appeal has already decided the same legal issue raised by the Counsel for the Appellant in favour of the Respondent, and now it cannot be canvassed again.

It is important to note, that the Petitioner in that case or the other petitioners had not challenged the decision of the Court of Appeal. Their failure to challenge it, in my view, is that all the Petitioners have conceded by their silence and acceptance, that the said land and premises belong to the State and the Respondent is entitled to resort to the provisions of the State Land (Recovery of Possession) Act and they can be evicted from the land in suit under the provision of the said Act.

It is significant to note, that the learned Counsel for the Appellant, in the instant case, has raised the same legal issue on 29/09/2014, with having the

knowledge that the Court of Appeal has already decided the said legal issue in relation to the same subject matter between the same parties, on 20.05.1993 in favour of the Respondent.

Hence I regret to say that the learned Counsel for the Appellant has not disclosed all relevant material facts fully and frankly to this Court. He cannot say that he had no knowledge of the decision of the Court of Appeal, since he has been participating having represented the Appellant in this case in the proceedings of the Magistrate's Court and also in the High Court. When perused the brief, it clearly shows that in both Courts the decision of the Court of Appeal has been disclosed by the Respondent. Moreover, it is relevant to note, in the Revision Application filed by the Appellant in the High Court of Kandy, it is stated and conceded the facts and the decision (vide page at 20 paragraph 16 and 17 of the Petition) of the Court of Appeal which is mentioned above.

It is important to note, even in the written submissions filed by the learned Counsel for the Appellant has not mentioned, that the legal issue raised by him in this Court, has been already decided by the Court of Appeal.

Accordingly, I am of the view that the Appellant cannot raise the same legal issue in this case, which had been already decided by the Court of Appeal in favour of the Respondent. Furthermore, I am of the view that this Court has no jurisdiction to consider the same issue which had been already decided by the Court of Appeal. Since the Appellant and the other Petitioners had not challenged the decision of the Court of Appeal I am of the view that they have conceded that the land in suit belongs to the State and the Respondent can resort

to the provisions of State Land (Recovery of Possession) Act and they can be evicted under the provisions of the said Act.

In view of the decision above, there is no necessity to consider the legal issue raised and mentioned at the beginning of this judgment.

The Appellant has preferred this Appeal seeking to set aside the Order dated 11.03.1996 made by the learned Magistrate and the Judgment dated 16.01.1998 pronounced by the learned High Court Judge. Having considered the judgment delivered by this Court in the Writ Application No.62/92 I see no reason to interfere with the decisions of the learned High Court Judge and the Magistrate.

For the reasons stated above, I dismiss this Appeal.

JUDGE OF THE COURT OF APPEAL

I agree

JUDGE OF THE COURT OF APPEAL

Appeal is dismissed.