

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

In the matter of an
Application for Revision in
terms of Article 154P (3) (b) of
the Constitution of the
Democratic Socialist Republic of
Sri Lanka read together with
the High Court of the
Provinces (Special Provisions)
Act No: 19 of 1990.

**Court of Appeal Case No:
CA/PHC/54/2007**

AND NOW BETWEEN

Napana Edirisinghe
Mudiyanseelage Bisomenike,
No: 445/2,
Maithripala Senanayaka
Mawata, Anuradhapura.

**Respondent – Petitioner –
Petitioner**

High Court Anuradhapura
Case No: 05/2006
Magistrate's Court of
Anuradhapura
Case No: 35256

Vs.

P.D. Keerthi Gamage,
Provincial Land Commissioner
(Acting),
Department of the Provincial

Land Commissioner,
Anuradhapura.

Competent – Authority –
Applicant – Respondent –
Respondent

Before : P.R. Walgama, J
: L.T.B. Dehideniya, J

Council : Petitioner is absent & unrepresented.

: M.D. Wikramanayake for the Respondent.
: instruction by SSA A. Shanmuganathan.

Argued on : 25.04.2016

Decided on: 25.07.2016

CASE NO- CA (PHC) 54-2007- JUDGMENT- 25/07/2016

P.R. Walgama, J

The instant application in revision lies against the order of the Learned High Court Judge dated 09.12.2005, and the order of the Learned Magistrate dated 22.05.2007.

A brief synopsis of the facts led to the said application are as follows;

The applicant being the competent authority instituted action against the Respondent -Petitioner and moved for an order of ejectment from the schedule property mentioned in the notice of ejectment marked as X5,

containing in extent 5 perches, and marked as lot 3 in plan No. 35/14 marked as X2.

The above action was filed in the Magistrate Court of Anuradhapura by the Respondent under the Provincial Land Statute No.2 of 2002.

The Learned Magistrate after considering the facts placed before him had issued an order for ejectment of the Respondent - Petitioner.

Being aggrieved by the said order the Respondent-Petitioner moved the High Court in revision to have the said order set aside.

In the said application the Learned High Court Judge has considered the issue raised by the Petitioner in the Magistrate Court and has dealt with the disputed issue accordingly.

The Learned High Court Judge has observed the fact that the Petitioner was in occupation of a State land, as per documents tendered by the petitioner viz X16, X17 and X19. and has held accordingly that the Petitioner has failed to tender any document to prove that she owns the land or she is under a permit issued by the State to possess the land. Therefore it is trite law in such situation the Respondent cannot question the notice of ejectment. Hence the Learned High Court Judge was of the

view that the petitioner is not entitled to question the legality of the said notice.

In addition the Learned High Court Judge has adverted to the fact that the interpretation given to the 'Competent Authority' in terms of Section 18(1) of the State Land Recovery of Possession Act No. 58 of 1981, and held that the contention of the Petitioner has no merits as the ejectment notice has been sent by an officer properly authorised to do so.

Further the Learned High Court Judge has held that the petitioner has another cause of action in the event of the land being acquired by the State. In that it is said that the Petitioner could file action to claim damages.

In the said backdrop the Learned High Court Judge has dismissed the application accordingly. Further it is commented by the High Court Judge, that although the Petitioner has averred that she had been in the disputed land for 30 years, but has failed to prove the same.

It is to be noted that the petitioner was absent and unrepresented on the date of the Argument and this Court had the opportunity to hear the argument of the counsel for the Respondent only.

In opposing the above application of the Petitioner, the Respondent moves for a dismissal of the said

application in limine on the on the grounds stated below;

That the Petitioner has failed to avail her self of the statutory right of appeal against the judgment of the High Court dated 22.05.07 under Section 11 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990

That the petitioner has failed to plead any exceptional grounds whatsoever, in the revision application.

It is contended by the Respondent that, the right of appeal is expressly recognised by the statute, the party affected by the judgment can move court in revision only on limited grounds, especially when an exceptional grounds are been averred in the petition.

The said rationale was recognised by their Lordship in the case of DHARMARATNE AND ANOTHER .VS. PALM PARADISE CABANAS LTD AND OTHERS 2003 SLR -24.

It is observed that from the petition tendered that the Petitioner has not adhered to the afore said requirement for this Court to exercise the revisionary jurisdiction which is a discretionary remedy recognised in the legal parlance.

Thus in the above context this court is of the view that the above circumstances do not warrant any

interference of the determinations of the Learned High Court Judge and the Learned Magistrate too.

For the foregoing reasons the application is dismissed without costs.

Accordingly application is dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya, J

I agree,

JUDGE OF THE COURT OF APPEAL