

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

In the matter of an Application for  
revision of a judgment of Provincial High  
Court delivered in exercising its  
revisionary jurisdiction.

C A (PHC) APN / 125 / 2016

High Court of Central Province (Kandy)

Case No. Rev 47 / 2015

Magistrate's Court Kandy

Case No. 75416

K A Podimahaththaya

No. 475/A,

Old Gampola Road,

Peradeniya.

**RESPONDENT - PETITIONER -**

**PETITIONER**

-Vs-

1. Divisional Secretary,  
Divisional Secretariat,  
Gangawata Korale,  
Kandy.

**COMPLAINANT - RESPONDENT -**

**RESPONDENT**

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

**RESPONDENT**

**Before: K K Wickremasinghe J**

**P. Padman Surasena J**

Counsel; Anura Meddegoda PC with Nadeesha Kannangara for the  
Respondent – Petitioner - Petitioner.

Supported on: 2017-06-13.

Decided on : 2017 - 07 - 25

ORDER

**P Padman Surasena J**

The Divisional Secretary, of Gangawata Korale, Kandy who has been named in this petition as the Complainant - Respondent - Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent) had issued a quit notice on the Respondent - Petitioner – Petitioner (hereinafter sometimes referred to as the Petitioner), in terms of section 3 of the State Lands

(Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the petitioner had failed to respond to the said quit notice the 1<sup>st</sup> Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Kandy seeking an order to evict the Petitioner from the relevant land.

Learned Magistrate thereafter had afforded the Petitioner an opportunity to submit any valid permit or any other written authority of the State; he may have had, regarding his possession of the said land. As no such document was produced, learned Magistrate by his order dated 2005-05-22, had made an order under section 10 (1) of the Act evicting the Petitioner forthwith from the said premises.

Being aggrieved by the said order made by the learned Magistrate of Kandy, the Petitioner had filed a revision application in the Provincial High Court in Kandy expecting a revision of the learned Magistrate's order.

The Provincial High Court after hearing parties, had by its judgment dated 2016-06-09 proceeded to dismiss the said revision application, as it had not found any illegality in the learned Magistrate's order.

It is against that judgment that the Petitioner has filed this revision application in this Court.

Learned counsel for the Petitioner in his submissions sought to impugn the order of the learned Magistrate as well as that of the learned High Court Judge on the basis that they were misdirected themselves on the contents of section 18 of the Act. Further it was the submission of the learned President's Counsel for the Petitioner that the proper competent authority to file this application should have been the General Manager of Railways and not the Divisional Secretary. He relied on section 18 of the Act.

Section 18, which defines certain terms in the Act, defines the term "Competent authority" as follows;

"Competent authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated. This section has gone on to include a long list of other authorities also as competent authority for the purposes of the Act. The General Manager of Railways, where such land is under the control of the Railway Department; is also amongst that list.

A closer look at the scheme of the section shows that in any case it is primarily the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated should be the competent authority. The other officials in the list are found as an addendum. Therefore the fact that they are also named as competent authority does not take away the power anyway granted to Government Agent, an Additional Government Agent or an Assistant Government Agent by section 18 of the Act since it has specifically been mentioned therein.

Submission by the learned President's Counsel that the 1<sup>st</sup> Respondent is barred from filing this application in view of section 188 and 314 of the Code of Criminal procedure Act cannot be accepted as this is not a case in which the Petitioner had been charged in the Magistrate's Court.

It is therefore the view of this Court that there is no basis for this Court to issue notices on the respondents in this application.

Thus, this Court decides to refuse issuing notices on the Respondents and proceed to dismiss this application. This Court makes no order with regard to costs.

Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**