

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

In the matter of an Appeal against
judgment of Provincial High Court
exercising its revisionary jurisdiction.

C A (PHC) / 67 / 2011

Provincial High Court of

Central Province (Nuwara Eliya)

Case No. HC NE 41 / 2010

Magistrate's Court NUwara Eliya

Case No. 5915/2010

Karuppaia Rengaraj,

Aldoriya Division,

Agarapatana.

RESPONDENT - PETITIONER -

APPELLENT

-Vs-

1. J M C Priyadharshani,
Ministry of Plantation Industries,
55/75,
Vauxaull Street,
Colombo 02.

COMPLAINANT -

RESPONDENT - RESPONDENT

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

RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Respondent - Petitioner - Appellant is absent and unrepresented.

Anurudhdha Dharmaratne for the Complainant Respondent
Respondent.

Argued on : 2017 – 07 – 31

Decided on : 2017 - 10 - 26

JUDGMENT

P Padman Surasena J

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Nuwara Eliya seeking an order to evict the Appellant from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2010-10-28 evicting the Appellant from the said land on the basis that he had failed to produce a permit or due authority to remain in the said land.

Being aggrieved by the said order of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Central Province holden in Nuwara Eliya seeking a revision of the order of the learned Magistrate.

The Provincial High Court after the conclusion of the argument, had pronounced its judgment dated 2011 -05-25, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court on that basis had proceeded to dismiss the said revision application.

It is that judgment that the Appellant is canvassing in this appeal before this Court.

Section 9 of the Act which has specified the scope of the inquiry states that 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 said premises 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.

This Court in the case of Muhandiram V Chairman, Janatha Estate Development Board¹ had held that in an inquiry under State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish the basis of his possession or occupation.

The only basis such person could be permitted to possess or occupy such land would be 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 invalid².

This Court had further held in that case³ that if the above burden is not discharged, the only option available for the Magistrate would be to make an order of eviction.

¹ 1992 , Sri L R Volume : 1 , Page No : 110

² Section 9 of the Act

³ Muhandiram V Chairman, Janatha Estate Development Board (Ibid).

In the instant case, it is clear upon consideration of the material adduced before this Court, that the Appellant has failed to establish that he is in possession or occupation of the said land upon any written authority of the state granted in accordance with any written law and that such authority is in force and not revoked or otherwise rendered invalid as required by section 9 of the Act.

This Court now proceeds to ascertain whether indeed there is a valid order of Court which has previously adjudicated the impugned issue before it.

Although there had been a similar application to the Magistrate's Court under the same provision of the Act, it is clear that the issue whether the Respondent is in possession or occupation of the said premises 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 invalid⁴ remains an issue which has not been adjudicated by any Court up until now. The said application had been refused for technical reason and not because the Appellant had produced valid documents to justify his possession. Further, one must not lose site of

⁴ The only scope of the inquiry of such proceedings under section 9 of the State Lands (Recovery of Possession) Act.

the fact that the Act requires the establishment of the continuity of the valid permit or other written authority referred to above. This is manifest by the phrase "... and that such permit or authority is in force and not revoked or otherwise rendered invalid⁵ ... ". Such a position may change with time and would not be static. Therefore, it stands to reason that the question whether one is authorized to occupy a state land must be assessed as at a given time.

Thus, the existence of a previous order by the Magistrate's Court refusing a similar application under the provisions of the Act, cannot operate as *res judicata* against the institution and proceedings of the instant case.

Therefore, there is no merit in the submission made on behalf of the Appellant regarding the application of the principle of *res judicata* to these proceedings.

The Respondent has failed to establish that he is in possession or occupation of the said premises upon any written authority of the State granted in accordance with any written law and that such authority is in

⁵ The only scope of the inquiry of such proceedings under section 9 of the State Lands (Recovery of Possession) Act.

force and not revoked or otherwise rendered invalid as required by section 9 of the Act.

Upon consideration of the material adduced in this case this Court is unable to see any basis to assail the orders of the lower Courts.

In these circumstances and for the foregoing reasons, this Court decides to dismiss this appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL