

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

In the matter of an application for  
Revision under Article 140 of the  
Provisions of the Constitution against  
judgment dated 5.1.2018 of the High  
Court of Colombo in Case No: HC RA  
209/2016.

CA PHC APN Rev No:03/2018

HCRA 209/2016 Revision

Fort Magistrates Court Case

No: 3888/15

1. R.W. Fernando

2. Ayomal J. Fernando

3. Romesh J. Fernando

All of 4/8, Prathibimbarama Road  
Kalubowila, Dehiwala.

RESPONDENTS PETITIONERS

APPELLANTS PETITIONERS.

Vs.

S.S.P. Ratnayake

Director General, Urban Development  
Authority, "Sethsiripaya"

Sri Jayawardenapura Kotte,

Battaramulla.

APPLICANT RESPONDENT  
RESPONDENT-RESPONDENT.

**C.A (PHC) APN 03/2018**

**H.C Colombo HCRA 209/2016**

**BEFORE:** P.PADMAN SURASENA, J (P/CA) &  
A.L. SHIRAN GOONERATNE, J

**COUNSEL :** Muditha Premachandra for the Petitioner.

**Supported &  
Decided on** : 29.01.2018.

**P. PADMAN SURASENA, J (P/CA)**

At the outset, this court observes that the Petitioner's application is an application for revision under Article 140 of the constitution. ( Vide the caption.) This court is of the view that no such power is assigned to this court by the said Article 140. Be that as it may the Petitioners seems to

have filed this application to revise the order dated 05.01.2018 pronounced by the learned Provincial High Court Judge of Colombo. By that order the learned Provincial High Court Judge had dismissed the revision application filed by the Petitioners seeking a revision of the order made by the Magistrate to evict the petitioners from a state land under the Provisions of the State Lands (Recovery of Possession ) Act.

The said order pronounced by the learned Magistrate has been produced marked X 1(2). Perusal of that order shows that the learned Magistrate was satisfied that the Petitioner has no permit or any other legal authority granted in terms of any law to occupy the said land.

Upon being inquired from this court from the learned counsel who appeared for the Petitioner in this court ( in the course of her submissions before this court) she conceded that the Petitioner does not have any authority or permit issued under any law to occupy this state land.

Section 9 of the said Act has specified the scope of the inquiry to be conducted in respect of applications made under section 5 of that Act. Such inquiries have very limited scope. Section 9 only empowers the court to ascertain whether the occupier to be evicted is in possession of the relevant land 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 as well as the supreme Court has in numerous applications has upheld this legal position. The burden of proof of that fact lies on that particular person. It is clear that the Petitioner has not discharged that burden. Learned counsel for the Petitioner also informed this court that the petitioner had lodged an appeal also to this court against the order made by the Provincial High Court. Learned counsel for the Petitioner submitted that the sole ground as to why it was necessary to file this revision application is to obtain an interim order staying the enforcement of the learned Magistrate's order.

In view of this circumstances, this court has no legal basis to entertain this application. Further, this court is of the view that the order dated 2016.11.04 made by the learned Magistrate is a legal order.

It is the view of this court that there is no merit in this application. Therefore, we refuse to issue notices on the Respondents. Application is dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL.**

**A.L. SHIRAN GOONERATNE, J**

I agree.

**JUDGE OF THE COURT OF APPEAL.**

Vkg/-