

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

In the matter of an appeal against a  
judgement of the Provincial High Court  
in the exercise of its revisionary  
jurisdiction.

C A (PHC) / 287 / 2005

Provincial High Court of

Eastern Province (Batticaloa)

Case No. HCEP (Rev) 434 / 03

Primary Court Batticaloa

Case No. 1182/PCA

1. The Municipal council,  
Batticaloa.

2. S Navaneethan,

Commissioner of Municipal Council,  
Batticaloa.

**RESPONDENT - PETITIONER -**

**APPELLANTS**

-Vs-

M K Ratnasingam,

No. 66/3,

Market Road,

Batticaloa.

**INFORMANT - RESPONDENT -**

**RESPONDANT**

**Before: P. Padman Surasena J (P/CA)**

**K K Wickremasinghe J**

Counsel; N R Sivendran with A Raman and T Vanandaraja for the  
Respondent - Petitioner - Appellants.

G Jayakumar for the Informant - Respondent - Respondent.

Argued on : 2017 - 11 - 20

Decided on : 2018 - 02 - 08

JUDGMENT

**P Padman Surasena J (P/CA)**

The Complainant - Respondent - Respondent (hereinafter sometimes referred to as the Respondent) had instituted this case against the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant) in the Primary Court of Batticaloa under section 66 (1) (b) of the Primary Courts Procedure Act No. 44 of 1979 (hereinafter referred to as the Act) as a private information. The Respondent had sought an order declaring that he be entitled to have the possession of the impugned premises.

Learned Primary Court Judge having inquired into this complaint, pronounced his order dated 2003-12-09, holding that the Respondent is entitled to have the possession of the shop, which is the subject matter of the dispute in this case.

Being aggrieved by the said order of the learned Primary Court Judge, the Appellant had filed an application for revision in the Provincial High Court of Eastern Province holden in Batticaloa seeking a revision of the order made by the learned Primary Court Judge.

The Provincial High Court after hearing parties, dismissed the said revision application and affirmed the order made by the learned Primary Court Judge on the basis that existence of a breach of peace had been established before the learned Primary Court Judge.

It is against that judgment that the Appellant has appealed to this Court.

A peculiar feature in this case which came to light before this Court in the course of the argument is that the Respondent has filed the said information about a breach of peace in the Primary Court under section 66 (1) (b) of the Act against a public entity which is the Municipal Council of Batticola.

Learned counsel for the Appellant invited this Court to make a determination as to whether such an action is possible.

Section 66(1) (b) states that it is open for any party to a dispute affecting land, a breach of peace is threatened or likely, to file an information by an affidavit in the Primary Court.

It is now settled law that a party invoking the jurisdiction vested in Primary Court under section 66 (1) (b) of the Act, shall first satisfy the Primary Court that a breach of peace is threatened or likely owing to the dispute he complains about.

It would be helpful, at the outset, to refer to the case of Kanagasabai V Mylvaganam.<sup>1</sup> It is a case under section 62 of the Administration of justice law, which had conferred special jurisdiction on the Magistrate to make orders to prevent a dispute affecting lands causing a breach of peace. It has been held in that case that the said section requires the Magistrate to be first satisfied before initiating the proceedings, that a dispute affecting lands exists and that such a dispute is likely to cause a breach of peace.

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<sup>1</sup> 78 NLR 280

In this regard the following passage from a judgment of this Court in the case of Punchi Nona V Padumasena and others<sup>2</sup> would also be relevant. It is as follows;

" ... The jurisdiction conferred on a primary Court under section 66 is a special jurisdiction. It is a quasi - criminal jurisdiction. The primary object of the jurisdiction so conferred is the prevention of a breach of the peace arising in respect of a dispute affecting land. The Court in exercising this jurisdiction is not involved in an investigation into title or the right to possession which is the function of a civil Court. He is required to take action of a preventive and provisional nature pending final adjudication of rights in a civil Court. It was therefore incumbent upon the Primary Court judge to have initially satisfied himself as to whether there was a threat or likelihood of a breach of peace and whether he was justified in assuming such a special jurisdiction under the circumstances. The failure of the judge to satisfy himself initially in regard to the threat or likelihood of the breach of peace deprived him of the jurisdiction to proceed with the inquiry and this vitiates the subsequent proceedings. ... "

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<sup>2</sup> 1994 (2) Sri. L R 117.

This Court at this juncture must turn to the facts of this case in order to ascertain the correctness of the decision by the learned Primary Court Judge to pass this threshold, and assume jurisdiction to inquire into this dispute.

The following facts are uncontroverted;

- i. The dispute is with regard to a shop.
- ii. This shop is a property of the Municipal Council.
- iii. The Municipal Council has given it on lease to the Respondent.
- iv. The Respondent has failed to pay the rent.
- v. The Appellant terminated the lease agreement on account of that.
- vi. The Respondent filed an appeal before the Provincial High Court praying for writs of certiorari to quash the said termination of the agreement.
- vii. The Provincial High Court refused to grant the writs prayed for by the respondent and dismissed the case.
- viii. It is thereafter that the Respondent had filed an information under section 66 (1) (b) of the Act before the Primary Court naming the Appellants as Respondents.

- ix. It is under section 66 of the Municipal Council Ordinance that Appellants had exercised their statutory power to recover this shop.
- x. The Appellant had to abandon the exercise of their statutory power because of the order of the learned Primary Court Judge.

The question to be decided by this Court in the instant case is whether a dispossession of an unlawful occupier of state property through an action by state institution in the exercise of its statutory power could amount to a breach of peace within the meaning of section 66 of the Act.

It is a fact that in this country the legislature by numerous Acts has authorized various public institution to recover the state property in expeditious manner without recouring to the regular procedure. Acts such as State Lands (Recovery of Possession) Act, Government Quarters (Recovery of Possession) Act and Municipals Councils Ordinance, Thoroughfares Ordinance as amended could be cited as common examples.

The Respondent admittedly had challenged the decision of the Appellant to recover the possession of the shop owned by it exercising its statutory powers. This was initially by way of writ application filed in the Provincial



High Court. The Provincial High Court after consideration of that application had refused to grant the relief. The said refusal was on the basis that the Appellants are entitled to exercise their statutory power to recover the possession of this particular shop.

It is clear that the Appellants were exercising their statutory powers vested in them under section 266 of the Municipal Councils Ordinance. The Appellants had given the Respondent a statutory notice of ejectment.

Therefore the Appellants are entitled by virtue of law namely under section 366 of the Municipal Councils Ordinance to eject the Respondent.

When one examines part VIII of the Primary Courts Procedure Act No. 44 of 1979 it can be observed that the said part commences with the heading 'INQUIRIES INTO DISPUTES AFFECTING LAND WHERE A BREACH OF THE PEACE IS THREATENED OR LIKELY'. Section 66 (1) of the said act starts as follows, "whenever owing to a dispute affecting land a breach of the peace is threatened or likely..."

It is the view of this Court that exercise of statutory power by a statutory authority to evict a person from a state land or a building cannot amount

to a dispute affecting land where a breach of peace is threatened or likely, within the meaning of section 66 (1) of the Act.

The simple reason is that it is a mere exercise of statutory power. Learned Primary Court Judge had failed to appreciate this position. It is the view of this Court that the learned Primary Court Judge had fell into a grave error when he had decided that a breach of peace in terms of section 66 (1) (b) of the Act exists in this instance. The learned Primary Court Judge could not have assumed jurisdiction under section 66 of the Act to inquire into the instant case because the requirement that there is a breach of peace or a likelihood of such breach has not been established by the Respondents.

We have perused the judgement of the learned Provincial High Court Judge who also had failed to appreciate this position.

It is the view of this Court that the Respondent had deliberately filed this information before the Primary Court to prevent the Appellant from exercising its statutory power. It is a matter for grave concern of this Court. The Respondent through the abuse of Court process, had managed to enjoy the possession of this public building without paying what is due to the said public institution for a long period of time.

In these circumstances, this Court decides to set aside the order dated 2003-12-09 pronounced by the Primary Court as well as the order dated 2005-09-23 pronounced by the Provincial High Court. This Court directs that the proceedings relating to this case before the Primary Court must stand terminated and the application filed before it by the Respondent must stand refused and dismissed.

The Respondent is directed to pay a cost of Rs. 250,000/= to the 1<sup>st</sup> Appellant.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**