

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

In the matter of the exercise of Revisionary Jurisdiction, under and in terms of Article 138 of the Constitution.

C.A. Case No.06/2015 (Rev)

M.C. Nuwara Eliya Case No.59822

Velu Velanantha Devi

Linerroom 6,
Rahanawatta Division,
Bambarakelle Estate,
Lindula-22090

RESPONDENT-PETITIONER

-Vs-

1. J.M. Chandrika Priyadarshani

Competent Authority,
Plantation Management Supervisory Division,
Ministry of Plantation Management,
No.55/75, Vauxhall, Lane,
Colombo - 22090.

2. Attorney General,

Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE

:

A.H.M.D. Nawaz, J.

COUNSEL : Bimal Rajapakshe with Amrith Rajapakshe and
Muditha Perera and for the Respondent-Petitioner
Chandimal Mendis and Sarasi Paranamanna
instructed by Nithi Murugesu and Associates for
the Applicant-Respondent
Indula Ratnayake, SC for the 2nd Respondent

Decided on : 05.08.2019

A.H.M.D. Nawaz, J.

This is a matter where the State Lands (Recovery of Possession) Act No.7 of 1979 as amended by Acts No.58 of 1981, 29 of 1983, 45 of 1992 and 29 of 1987 is engaged and filing an application in the Magistrate's Court of *Nuwara Eliya*, the Applicant-Respondent (hereinafter referred to as "the Applicant") invoked the provisions of the aforesaid Act seeking an order to evict the Respondent-Petitioner (hereinafter sometimes referred to as "the Petitioner") from the relevant parcel of a state land. On 03.08.2015, the Petitioner was ordered to show cause. After the Petitioner sought to show cause by filing written submissions, by order dated 05.10.2015, the learned Magistrate ordered the eviction of the Respondent-Petitioner.

This revision application has since been preferred against the said order of the learned Magistrate.

The Respondent-Petitioner had advanced the following main objections in the Magistrate's Court.

- a. The Applicant-Respondent is not the Competent Authority as per the provisions of the Act to file the application.
- b. The Affidavit filed by the Applicant-Respondent in the Magistrate's Court is defective.

However, the Petitioner advanced the following fresh objections before this Court.

- a. The quit notice and the application for ejectment do not describe the subject-matter with reference to a survey plan or a sketch.
- b. The Respondent has failed to state in regard to annexure 'C' that she is subjectively speaking that it is State Land.

The learned Counsel for the Respondent submitted that the Petitioner could not advance objections which had been submitted before the Magistrate's Court.

Be that as it may, in the course of the argument, the Counsel for the Petitioner informed this Court that the Petitioner would only pursue the objection that the Applicant-Respondent had failed to state in annexure 'C' that she was subjectively speaking that the subject-matter was a state land.

The pith and substance of the objection

The omission of the phrase '*is in my opinion*'

The Petitioner argued that the affidavit filed by the Applicant-Respondent in the Magistrate's Court is not in accordance with Form 'C' of the State Lands (Recovery of Possession) Act No.7 of 1979 as amended by Act No.29 of 1983 (hereinafter referred to as "the Act") since paragraph (II) of the said affidavit does not contain the phrase '*is in my opinion*'.

The Petitioner contended that accordingly the said affidavit is not in conformity with Form 'C' and therefore defective.

The Respondent submitted that the quit notice issued by the Applicant-Respondent is in accordance with Form 'A' of the Act.

The relevant provisions germane to this application go as follows:-

Section 5

1. Where any person fails to comply with Section 4(b) in respect of any quit notice issued or exhibited under this Act, any competent authority (whether he is or not the

competent authority who issued or exhibited such notice) may make an application in writing in the Form 'B' set out in the Schedule to this Act to the Magistrate's Court within whose local jurisdiction such land or any part thereof is situated-

a) setting forth the following matters-

- (i) that he is a competent authority for the purpose of this Act;
- (ii) that the land described in the schedule to the application is in his opinion State Land;
- (iii) that a quit notice was issued on the person in possession or occupation of such land or was exhibited in a conspicuous place in or upon such land;
- (iv) that such person named in the application is in his opinion in unauthorized possession or occupation of such land and has failed to comply with the provisions of the aforesaid paragraph (b) of Section 4 in respect of such notice relating to such land; and

b) Praying for the recovery of possession of such land and for an order of ejectment of such person in possession or occupation and his dependents, if any, from such land.

2. Every such application under subsection (1) shall be supported by an affidavit in the Form 'C' set out in the Schedule to this Act verifying the matters set forth in such application and shall be accompanied by a copy of the quit notice.
3. Every application supported by an affidavit and accompanied by a copy of the quit notice under the proceeding provisions of this section shall be referred to as an "application for ejectment".
4. No stamp duties shall be payable for any application for ejectment.

Every such application under Section 5 is required to be supported by an affidavit in Form 'C' to the schedule.

Thus Section 5 of the Act authorizes the competent authority to make an application in the Magistrate's Court in the event a person in unauthorized possession or occupation of a state land fails to comply with a quit notice. Section 5(1)(a) sets out the contents of the application whilst Section 5(2) provides that the said application should be supported by an affidavit in Form 'C' verifying the matters set forth in the application.

It has to be noted that the paragraph 2 of the affidavit *though* does not contain the phrase 'is in my opinion'. It is the Amending Act No.29 of 1983 that brought in the subjective requirement of an opinion. A careful reading of Section 6(b) of the Amendment Act No.29 of 1983 demonstrates that Form 'C' has to fulfill the following requirements-*a)* it has to mention that in the opinion of the competent authority, the land in question is state land-*b)* in the opinion of the competent authority, the individual sought to be evicted is in unauthorised possession. It has to be noted that the Form 'C' produced before the Nuwara Eilya Magistrate's Court by the competent authority has fulfilled the second limb of Section 6 (b)(ii).

The objection is that the requirement in Section 6 (b)(i) is lacking as the said Form 'C' has to contain the words "in my opinion" when referring to the state land in question. Does the absence of the words "in my opinion" vitiate the application before Court?

The Court of Appeal decision in *Kandiah v. Abeykoon* (1986) (3) CALR 41 was cited in order to drive home the argument that the defective affidavit must be rejected. This was a case where the body of the affidavit was in accordance with Form 'C' of the Act as amended, while the body of the application was in the Form 'B' as it was prior to the amendment in 1983. Justice Goonewardena (with Siva Selliah, J. agreeing) held that the papers constituting the application for ejectment should be in the statutorily prescribed form. The Court held that, "the operation of the Act and its provisions could well have a serious impact upon proprietary rights. Upon a construction of the statute as a whole, the form of notice, application and affidavit had therefore to be in strict compliance with those which the legislature has thought important enough to set out in the schedules

before the jurisdiction of the Magistrate to eject a person in possession could be exercised.”

If the Amending Act has brought in the requirement of the inclusion of the subjective opinion of the competent authority, it is my view that the legislative decree must be followed to the letter.

It is pertinent to note that the phrase ‘*is in my opinion*’ was introduced by the amendment Act No.29 of 1983 to the State Lands (Recovery of Possession) Act-the principal enactment.

Prior to the amendment in 1983, the application and the affidavit had to provide that the land had to be ‘state land’. However, by the amendment, it was imperative for the competent authority to submit his opinion that the land was ‘state land’.

The affidavit affords evidence before the Magistrate, and the evidence has to be in accordance with the legislative language. It is this evidence that affords the Magistrate material that the individual is sought to be ejected from the state land. If this requirement is missing from the affidavit, the Magistrate is not invested with jurisdiction to embark on an inquiry to deprive the individual of his proprietary right. It is strict compliance that has to be insisted upon when the legislature itself has prescribed the form of the affidavit and the question of substantial compliance would not arise in these circumstances.

So I uphold the objection taken to the validity of the affidavit and I hold that there was no proper application before the learned Magistrate as there was no proper affidavit. Accordingly I would proceed to set aside the order of the learned Magistrate dated 05.10.2015.

This order would not however prejudice the competent authority to initiate proceedings via a proper application made to Court.

JUDGE OF THE COURT OF APPEAL