

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

In the matter of an Appeal under Article
154 P (6) read with Article 138 of the
Constitution against judgment of
Provincial High Court exercising its writ
jurisdiction.

C A (PHC) / 85 / 2004

Provincial High Court of

Southern Province (Hambantota)

Case No. HCA 102 / 2002

Chamal Athukorala Kodithuwakku,
Chamal Niwasa,
Maheela,
Beliaththa.

PETITIONER - APPELLANT

-Vs-

Chairman,
National Housing Development
Authority,
Sir Chiththampalam Gardiner
Mawatha,
Colombo 02.

RESPONDENT – RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; Bandara Senarath for the Petitioner - Appellant.

Chaya Sri Nammuni SC for the Respondent - Respondent.

Decided on : 2017 - 09 – 27

JUDGMENT

P Padman Surasena J

Learned counsel for all the Parties when this case came up on 2017-07-19 before us, agreed to have this case disposed of by way of written submissions, dispensing with their necessity of making oral submissions. Therefore, this judgment is based on the material that has been adduced by parties in their pleadings and the written submissions.

The Petitioner- Appellant (hereinafter sometimes referred to as the Appellant) had filed an application in the Provincial High Court of Southern Province holden at Hambantota praying for a writ of certiorari to quash the application filed in the Magistrate's Court of Tissamaharama by the Respondent-Respondent (hereinafter sometimes referred to as the Respondent) under section 5 of the State Lands (Recovery of Possession)

Act. The said application had sought an order from the Magistrate's Court to evict the Appellant from the land described in the schedule thereto.

Learned Provincial High Court Judge for the reasons set out in his judgment dated 2003-12-10 has refused and dismissed the said application. The Appellant has filed the instant appeal against that judgment.

It is to be observed at the outset that the Supreme Court in the case of The Superintendent, Stafford Estate and two others Vs. Solaimuthu Rasu¹ had clearly held that the jurisdiction conferred on the Provincial High Courts under Article 154 P 4(b) does not extend to matters in respect of powers relating to recovery/dispossession encroachment or alienation of state lands since they are not found in the Provincial Council List (List 1) in the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

Thus, it is now settled law that the Provincial High Court does not possess jurisdiction to issue under Article 154 P 4(b), writs of this nature, in respect of matters relating to alienation of state lands since such a subject is not

¹ 2013 (1) Sri. L. R. 25.

found in the Provincial Council List (List 1) in the 9th Schedule to the 13th amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka.

In these circumstances, this Court takes the view that this appeal is not maintainable and hence, proceeds 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