

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) / 122 / 2006

Provincial High Court of

Sabaragamuwa Province (Rathnapura)

Case No. HCR RA 35 / 1999

Magistrate's Court Rathnapura

Case No. 0962

Pathana Kankanamlage Kumarasiri,

Nugepola,

Gallella.

RESPONDENT - PETITIONER -

APPELLENT

-Vs-

1. Malcolm Chandrasiri Bandara
Thalwaththa,
Additional Director,
Plantations Monitoring Division,
Ministry of Plantations
Colombo.

APPLICANT - RESPONDENT -

RESPONDENT

2. Henry Malin Gunathilake,
Additional Director,
Plantations Monitoring Division,
Ministry of Plantations
Colombo.

SUBSTITUTED - RESPONDENT

Before: P. Padman Surasena J (P C/A)

K K Wickremasinghe J

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

Decided on : 2018 - 02 - 12

JUDGMENT

P Padman Surasena J

The Applicant - Respondent - Respondent (hereinafter sometimes referred to as the 1st 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 1st Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Rathnapura 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 1998-08-13 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 made by the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Sabaragamuwa Province holden in Rathnapura 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 2006 -05-11, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court had therefore proceeded to dismiss the said revision application.

It is against that judgment that the Appellant has filed this appeal in this Court.

Although the Appellant had been represented before this Court on the initial stages when this case had come up in this Court, he had thereafter been absent and unrepresented in this Court on the subsequent stages. He has also failed to respond to the notices this Court had sent to him. Nevertheless, this Court has proceeded to consider the merits of his appeal.

It must also be noted that section 9 of the Act sets out the scope of the inquiry to be held before the Magistrate in following terms;

"... At such inquiry 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 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 in the case of Muhandiram vs. Chairman, No.111, Janatha Estate Development Board¹ has re-iterated this position in following terms;

" ... Unless the respondent-petitioner had established before the learned Magistrate that he was in occupation of the land stated in the schedule to the application on a valid permit or other written authority of the State, he cannot continue to occupy the said land and in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, the Magistrate has to make an order directing the respondent and his dependents to be ejected from the land. ..."

¹ 1992 (1) SLR 110

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.

Thus, the appellant has to be necessarily evicted from this land.

For the foregoing reasons, this Court decides to dismiss this appeal with costs.

Appeal is dismissed with costs.

PRESIDENT OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL