

**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) / 52 / 2008

Provincial High Court of

Uva Province (Badulla)

Case No. Rev 105 / 2005

Magistrate's Court Welimada

Case No. 60182

K M Srimathie Kanthi,

"Sri Kanthi",

Indigahadowa,

Lunuwatta.

**RESPONDENT - PETITIONER -**

**APPELLENT**

-Vs-

1. Divisional Secretary,  
Divisional Secretariat,  
Uva Paranagama.
  
2. Hon. Attorney General,  
Attorney General's Department,  
Colombo.
  
3. Manager,  
Bank of Ceylon,  
Lunuwatta.

**RESPONDENT - RESPONDENT**

**- RESPONDENTS**

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

## **K K Wickremasinghe J**

Counsel; Sanjeewa Siriwardena for the Respondent - Petitioner -  
Appellant.

Argued on : 2017 - 10 - 12

Decided on : 2018 - 02 - 26

### JUDGMENT

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

The 1<sup>st</sup> Respondent - Respondent - Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> 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 1<sup>st</sup> Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Welimada 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 2005-06-14 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 Uva Province holden in Badulla seeking a revision of the order of the learned Magistrate.

The application for revision filed by the Appellant bearing No. 105/2005 has been dismissed by the Provincial High Court by its order dated 2007-03-24. The Appellant had lodged an appeal to the Court of Appeal against the said order pronounced by the Provincial High Court. The said Court of Appeal case bears the No. CA (PHC) 52/2008. The appellant failed to inform this Court whether this Court has concluded the said appeal or it is still pending.

In the meantime, upon an application made by the 1<sup>st</sup> Respondent, learned Magistrate has executed the order of eviction. Therefore, the state has now taken the possession of the said land.

In the revision application filed before the Provincial High Court the prayer of the Appellant is to set aside, the said order of enforcement dated 2009-

10-15 pronounced by the Magistrate's Court. The Appellant has prayed that the possession of the said land be restored to her.

It is clear that an order pronounced by the Magistrate's Court in an application filed before it under section 5 of the State Lands (Recovery of Possession) Act is not an appealable order. Mere filing of a revision application in the Provincial High Court does not automatically stay the enforcement proceedings in the Magistrate's Court. That is why in most of the revision applications the Petitioners seek interim reliefs to stay the execution of proceedings in the Magistrate's Court by way of a stay order from the Provincial High Court.

Once the revisionary Court dismisses such application that is the end of that proceeding. Any appeal preferred to the Court of Appeal against the order of the Provincial High Court should only be viewed as an appeal against the refusal by the Provincial High Court to exercise its revisionary powers. Therefore, the fact that there is an appeal preferred to Court of Appeal against an order of the Provincial High Court (pronounced in the exercise of its revisionary jurisdiction) also does not automatically stay the execution proceedings in the Magistrate's Court.

Admittedly, there is no stay order granted by any Court halting the execution of the eviction order. In these circumstances, it is the view of this Court that the state authority is fully entitled to execute the eviction order granted by the learned Magistrate. This is irrespective of the fact whether any revisionary proceedings in the Provincial High Court or an appeal to the Court of Appeal against the order pronounced by the Provincial High Court in its exercise of revisionary jurisdiction is pending or not.

Indeed this Court in the case of R P Nadawathie and others Vs Kuruppuge Mahindasena C A (PHC) APN 242/2006 had decided this position.

Thereafter, a divisional bench of this Court in the case of Jayantha Gunasekara V Jayatissa Gunasekara and others<sup>1</sup> had also upheld the same position. This Court has held that mere lodging in the Court of Appeal, an appeal against a judgment of the High Court in the exercise of its revisionary power in terms of article 154 P (3) (b) of the Constitution, does not automatically stay the execution of the order of the High Court.

It would be appropriate to quote the following passage from that judgment.

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<sup>1</sup> 2011 (1) Sri L R 284.

"... Obviously, to put off the execution process until the appeal is heard would tantamount to prolong the agony and to let the breach of peace to continue for a considerable length of time. This in my opinion cannot be the remedy the Parliament has clearly decided upon. Hence I am confident that the construction we are mindful of placing by this judgment would definitely suppress the mischief and subtle inventions and evasions for continuance of the mischief. ..."

Although it is a case filed under part VII of the Primary Courts Procedure Act it is the same principle, which shall apply to the proceedings of the instant case also.

For the above reasons this Court sees no merits in this appeal. There is absolutely no basis for the Provincial High Court to have interfered with the order dated 2009-10-15 of the learned Magistrate (executing the order of eviction) in this case. It is a legal order.

Further, this Court had held in the case of Ihalapathirana Vs Bulankulame, Director General, UDA<sup>2</sup> that 'the clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious

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<sup>2</sup> 1988 (1) Sri L R 416.

machinery without recourse to an ordinary civil action'.<sup>3</sup> This Court must therefore mention here that if it were to take a view different from the above, the whole purpose of enacting the State Lands (Recovery of Possession) Act would be negated.

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**

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<sup>3</sup> Ibid at 420.