

Counsel: Anusha Fernando, D.S.G., for the Applicant-
Respondent-Petitioner.
Anura Meddegoda, P.C., with Jayani Jayasundara
for the Substituted Petitioner-Respondent.

Decided on: 10.10.2019

Mahinda Samayawardhena, J.

The Petitioner Divisional Secretary of Kundasale filed this application in the Magistrate's Court of Teldeniya under section 5 of the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended¹, to eject the Respondent from Lots 15 and 16 of the Preliminary Plan No. 2381 prepared by the Surveyor General².

The Respondent took up the position that his predecessor in title became the owner of the land depicted in Plan 879³ prepared by Surveyor H. Panabokke by virtue of the Decree entered in District Court Kandy Case No. 6007/L in 1964⁴, and thereafter the judgment-creditor in that case gifted the land to his children by Deed No. 5319 in 1965⁵, and they in turn transferred the land by Deed No. 12149 in 1970⁶ to the Respondent (Jenudeen Buhardeen); and therefore this is not a State Land, but a Private Land, from which he cannot be ejected under the said Act.⁷

¹ Hereinafter sometimes "the Act".

² Page 67 of the Brief.

³ Page 243 of the Brief.

⁴ Page 219 of the Brief.

⁵ Page 221 of the Brief.

⁶ Page 225 of the Brief.

⁷ During the pendency of the case before the High Court, the original Respondent has died, and his daughter has then been appointed as the Substituted Respondent.

As the Respondent, in terms of section 9 of the Act, did not produce a valid permit or other written authority of the State, which allows the Respondent to be in possession or occupation of the land, which, in the opinion of the Petitioner being the Competent Authority, a State Land⁸, the learned Magistrate made the order of ejectment under section 10 of the Act.

Being dissatisfied with that order, the Respondent has filed a revision application before the High Court of Kandy. The High Court has set aside the order of the learned Magistrate basically relying on the Judgment of the Supreme Court in *Senanayake v. Damunupola*⁹, which was a writ application originally filed before this Court challenging the Quit Notice issued under section 3 of the Act.

Being aggrieved by the said Judgment of the High Court, the Divisional Secretary has filed this revision application before this Court.

Let me begin with the following general observation. There is a difference between (a) challenging the decision of the Competent Authority under section 3 of the Act by way of a writ of certiorari and (b) challenging the order of ejectment made by a Magistrate under section 10 of the Act. As I will explain later, the scope of the inquiry before the Magistrate is circumscribed strictly to two

⁸ Vide Act No. 29 of 1983 whereby *inter alia* section 5(1)(a)(ii) and (iv) of the Principal Act was amended to substitute for the words “application is State land”, of the words “application is in his opinion State land”, and “application is in unauthorized possession or occupation” of the words “application is in his opinion in unauthorized possession or occupation”, and to make changes accordingly in the Application to be filed in Court in Form B set out in the Schedule to the Act.

⁹ [1982] 2 Sri LR 621

matters, and he has no jurisdiction to go beyond what has been mandated by the Act. The Act particularly states that the Magistrate shall not call for any evidence in support of the Application, which shall be made in the Form prescribed by the Act. Hence, in my view, it is unfair by the Magistrate, to set aside by the Appellate Court, the order of the Magistrate as an erroneous one on totally different grounds. Then the Act shall be amended to widen the scope of the inquiry before the Magistrate. In my view, if the Respondent wants to challenge the decision of the Petitioner (Competent Authority), that shall be done in a properly constituted writ application, and not by way of an appeal filed against the decision of the Magistrate.

Be that as it may, the central issue in this case revolves around the Judgment in *Senanayake v. Damunupola* (supra) wherein it was held that:

The State Lands (Recovery of Possession) Act was not meant to obtain possession of land which the State had lost possession of by encroachment or ouster for a considerable period of time by ejecting a person in such possession.

Section 3 should not be used by a competent authority to eject a person who has been found by him to be in possession of a land where there is doubt whether the State had title or where the possessor relies on a long period of possession.

Let me first emphasize that a case is only an authority for what it actually decides in the unique facts and circumstances of that case. Facts in each case differ and so do the decisions.

In *Gunaratne Menike v. Jayatilaka Banda*¹⁰, G. P. S. de Silva, C.J. remarked:

The principle laid down in a decision must be read and understood in the light of the nature of the action, and the facts and circumstances the Court was dealing with.

In *Mary Beatrice v. Seneviratne*¹¹ Senanayake J. quoted with approval the following pertinent observation of Lord Halsbury in the House of Lords case of *Quinn v. Leathem*.¹²

[T]hat every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found they are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

Coming back to the main matter under review, I will first deal with the first part of what was held in *Senanayake v. Damunupola*.

It was the firm view of the Supreme Court in that case that the State Lands (Recovery Possession) Act “*was not meant to obtain possession of land which the State had lost possession of by*

¹⁰ [1995] 1 Sri LR 152 at 157

¹¹ [1997] 1 Sri LR 197 at 203

¹² [1901] AC 495 at 506

encroachment or ouster for a considerable period of time by ejecting a person in such possession.”¹³

It was enacted to make provision for the recovery of possession of ‘State lands’ as defined in the Act from persons in unauthorised possession or occupation thereof and matters connected therewith or incidental thereto. It is clear that this Act was intended to obtain an order of ejectment from the Magistrate's Court where the occupation or possession was unauthorised. Where a person is authorised to occupy or possess State Land which includes buildings, and where the authorisation has come to an end or has ceased to be of any force or effect, his occupation or possession becomes unauthorised.¹⁴

A purposive examination and interpretation of this Law shows that it was enacted to get back possession of State land which had been given to a person on a contractual footing and where there was an obligation to vacate and give up possession or occupation on the happening of some event as a necessary consequence.¹⁵

Accordingly, the Supreme Court stated that, if a person has encroached upon a State Land without any permission or authorization and has continued such possession for a long time, the State shall resort to Crown Lands Encroachments Ordinance¹⁶ and not to the State Lands (Recovery of Possession) Act as the

¹³ At page 628

¹⁴ At page 627

¹⁵ At page 628

¹⁶ Chapter 465 of the Legislative Enactments of Ceylon (1956).

latter Act is meant to summarily get back possession of State Land from an overholding licensee. If I may quote the very words used by the Supreme Court “to get back possession of State land which had been given to a person on a contractual footing”¹⁷.

The Supreme Court explained that point in this manner:

The Crown Lands Encroachments Ordinance (Chap. 465) as amended by Act No. 7 of 1954 has clearly provided for situations of this nature. Section 2 provided that where there is an alleged encroachment of land where persons who having entered upon or taken possession of land which belong to the Crown or which prior to entry or taking possession, was in the possession of the Crown, information of such encroachment could be laid before the District Court. The District Court if satisfied that the persons against whom the information had been laid had entered upon or taken possession of the land without the permission of the Government, could make an order for delivery of possession. This Ordinance has provided a very summary or speedy procedure to eject such persons. However, section 7(c) of this Ordinance permitted the rebuttal of the presumption that the land belongs to the State on proof inter alia of uninterrupted possession for not less than 30 years. The State had not chosen to proceed under this Ordinance, to obtain a summary order from the District Court for delivery of possession of the land on the basis that the land belonged to the State and had been encroached upon. The Respondent had decided to proceed under the newly enacted State Lands (Recovery of Possession) Act No.7 of

¹⁷ At page 628

1979 without considering its applicability or otherwise to the facts established at the end of his inquiries.¹⁸

It is significant to note that, after this Judgment, the legislature amended the Principal Act to remove any lingering doubts and to make it clear that encroachment upon State Land is also covered by “*unauthorized possession or occupation*” stated in the Act, which the Supreme Court thought would not have been the intention of the legislature. By Act No. 29 of 1983, section 18 of the Principal Act, which is the interpretation section, was amended to include the following:

“unauthorized possession or occupation” except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon state land.

Then it is clear that the first part of what was held in *Senanayake v. Damunupola* that “*The State Lands (Recovery of Possession) Act was not meant to obtain possession of land which the State had lost possession of by encroachment or ouster for a considerable period of time by ejecting a person in such possession*” is no longer binding as the Law was amended subsequent to the Judgment.

Hence I hold that the learned High Court Judge erred in relying on *Senanayake v. Damunupola* to set aside the order of the learned Magistrate.

¹⁸ At pages 626-627

This leads me to consider the second part of what was held in *Senanayake v. Damunupola*, which is, “Section 3 should not be used by a competent authority to eject a person who has been found by him to be in possession of a land where there is a doubt whether the State had title or where the possessor relies on a long period of possession.”

In *Senanayake v. Damunupola*, there was “a serious doubt whether the said land belonged to the State or whether it had vested in the Municipal Council of Kandy”¹⁹, and the learned Deputy Solicitor General who appeared for the State had conceded that the Plan did not establish that the Lots “in dispute were road reservations or lands belonging to the State”²⁰. The Supreme Court therefore held that “This procedure [laid down in the Act] could not be availed of where it is not clear that the land in respect of which the right or title of the State was doubtful or in dispute.”²¹

However, in the present case, there is no doubt, as far as the State is concerned, that the land in dispute is a State Land.

The Divisional Secretary has tendered a true copy of the Surveyor General’s Plan No. 2381 and the Tenement List compendiously marked as P9²² to show that Lots 15 and 16 of that Plan, which is the land described in the Schedule to the application for ejectment, are State Lands. A true copy of the Surveyor General’s Plan No. 2714 mentioned in Plan No. 2381 with the Tenement List has been

¹⁹ At page 626

²⁰ At page 625

²¹ At page 628

²² Pages 67-68 of the Brief.

tendered as P10²³. The Petitioner Divisional Secretary has also tendered to the High Court with his Statement of Objections a letter sent to the Divisional Secretary by the Senior Superintendent of Survey to say that upon resurveying the land with the aid of the old fixations, it was confirmed that Lot 16 in Survey General's Plan No. 2381, which is in possession of the Respondent, is a State Land²⁴.

Section 21 of the Survey Act, No. 17 of 2012, enacts that:

Any cadastral map, plan or any other plan or map prepared in accordance with the provisions of this act or any written law purported to be signed by the surveyor general or officer acting on his behalf and offered in evidence in any suit shall be received in evidence and shall be taken to be prima facie proof of the facts stated there in and shall not be necessary to prove that it was in fact signed by the Surveyor General or an officer acting on his behalf, nor that it was made by his authority, nor that the same is accurate until the evidence to the contrary shall have first been given.

Section 83 of the Evidence Ordinance is to the same effect:

The Court shall presume that maps, plans, or surveys purporting to be signed by the Surveyor-General or officer acting on his behalf were duly made by his authority and are accurate; but maps, plans, or surveys not so signed must be proved to be accurate.

²³ Pages 69-71 of the Brief.

²⁴ Page 40 of the Brief. Lot 15 is described as "rock".

Conversely, the Respondent has not taken any steps to superimpose his Plan No. 879 on Lots 15 and 16 in the Surveyor General's Plan No. 2381 to convince, whatever it is worth, that the lands depicted in both Plans are the same.

Hence the direction of the learned High Court Judge that, if the Divisional Secretary wants to eject the Respondent from the subject land on the basis that it is a State Land, he shall get the Surveyor General to survey the land with notice to the Respondent in order to distinguish the State Land from the Respondent's Private Land, and then file a case in the Magistrate's Court under the State Lands (Recovery of Possession) Act to eject the Respondent from the State Land²⁵ is in my view indefensible.

The learned President's Counsel for the Respondent before this Court took up three new positions in challenging the order of the Magistrate's Court and defending the Judgment of the High Court.

- (a) The Decree entered by the District Court constitutes "written authority of the State"
- (b) Failure to hold an inquiry by the learned Magistrate vitiates entire proceedings
- (c) Divisional Secretary is not a "Competent Authority"

I will now deal with them in order.

Section 9 of the Act reads as follows:

²⁵ Vide page 6 of the High Court Judgment at page 122 of the Brief.

9(1) *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.*

(2) *It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5.*

According to section 9, the only defence the Respondent can take is that he has “*a valid permit or other written authority of the State granted in accordance with any written law*”. The learned President’s Counsel strenuously submits that the Decree entered by the District Court of Kandy in Case No. 6007/L in favour of the Respondent’s predecessor is a “*written authority of the State granted in accordance with any written law*” as “*the District Court being an institution established by law and thus an authority of the State exercising the judicial power of the people including adjudication of disputes*”.

I regret my inability to agree with that argument. Notwithstanding the District Courts have been established in accordance with Law, the Judgments handed down by such Courts cannot be encapsulated within the meaning of “*written authority of the State granted in accordance with any written law*”.²⁶

²⁶ Cf. *Urban Development Authority v. Wijayaluxmi* [2006] 3 Sri LR 62 where a List of Persons selected for allotment of lands by the Divisional Secretary was

In any event, there cannot be any dispute that the persons bound by a Judgment delivered by a District Court in a Land Case are the parties to the case and their privies. No third parties are bound by such a Judgment. According to the copy of the Decree tendered marked X relied upon by the Respondent to claim ownership to the land²⁷, the litigation had been between two individual private parties, and the State is not a party to that case. Hence the State is not bound by that Judgment. Therefore that Judgment cannot be used to say that the Respondent is the rightful owner of the land against the State.

The next argument of the learned President's Counsel is that, in terms of sections 8-10 of the Act, it is mandatory for the Magistrate to fix the matter for the inquiry, and as this has not happened in this case, the proceedings are a nullity.

In the first place, there was no such application made before the Magistrate's Court asking the matter to formally fix for inquiry in order to lead oral evidence.

Section 6 of the Act requires the Magistrate to issue summons on the person named in the application "*to appear and show cause*" why he shall not be ejected from the land in suit. If he fails to appear, according to section 7, the Court shall forthwith issue an order of ejectment. According to section 8, if he appears and states that he has cause to show, "*the Magistrate's Court may proceed forthwith to hear and determine the matter or may set the case for inquiry on a later date.*" At such inquiry, in terms of section 9, only

considered not to be a written authority of the State as contemplated in section 9 of the Act.

²⁷ Page 219 of the Brief.

what he can show is that he has a valid permit or other written authority of the State granted in accordance with any written law.²⁸ Section 10 explains when the Magistrate can make the order of ejection after such inquiry.

Merely because the word “inquiry” is used in those sections, it is clear by reading those sections contextually that conducting a full trial was never the intention of the legislature. If that was the intention, as stated in section 8, the Magistrate cannot proceed to hear and determine the matter forthwith. It is not mandatory that the Magistrate shall fix the matter for the inquiry for oral evidence to be led. What the Magistrate shall do is to give the person summoned a fair opportunity to satisfy the Court that he has a valid permit or other written authority of the State granted in accordance with any written law. The person so summoned cannot be allowed to convert it into a full-fledged trial, which will defeat the intention of the legislature.

As the Supreme Court stated in *Senanayake v. Damunupola*, “*The scope of the State Land (Recovery Possession) Act was to provide a speedy or summary mode of getting back possession or occupation of ‘State land’ as defined in the Act*”²⁹.

The Respondent in the present case, without any complaint, has shown cause against an order of ejection being made by way of an affidavit supported by documents marked X1-X8. No prejudice whatsoever has been caused to the Respondent by not fixing the matter for the inquiry. The inquiry has been disposed of by way of

²⁸ Aravindakumar v. Alwis [2007] 1 Sri LR 316 at 319

²⁹ At page 628. Vide also Muthuvelu v. Dias [2004] 2 Sri LR 335 at 339, Nirmal Paper Converters (Pvt) Ltd v. Sri Lanka Ports Authority [1993] 1 Sri LR 219 at 223, Gunaratne v. Abeysinghe [1988] 1 Sri LR 255 at 262.

affidavit evidence, which is entirely in consonance with the scheme and purpose of the Act. Accordingly, I reject that argument.

The last argument of the learned President's Counsel is, in terms of section 18, "competent authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the District in which the land is situated, and therefore the Divisional Secretary Kundasale has no *locus standi* to file this application. In terms of the Transfer of Powers (Divisional Secretaries) Act, No. 58 of 1992, in any Law the expression "*Government Agent*" occurs, it shall be substituted by "*Divisional Secretary*", and the functions of Government Agents are required to be exercised by Divisional Secretaries.³⁰ I see no merit in that argument.

For the aforesaid reasons, the Judgment of the High Court is set aside and the order of the Magistrate's Court is restored. In the circumstances of this case, no order is made as to costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal

³⁰ Banda v. President, M.P.C.S. Ltd, Medirigiriya [2003] 1 Sri LR 193