

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

1. Athurupalayagama
Prasanna Surinda Himi,
Sri Sambodhi Aranyaya
Senasanaya,
Sudukanda, Nikewewa,
Jayanthipura.
 2. Nikawewa Pragna Asitha Himi,
Sri Sambodhi Aranyaya
Senasanaya,
Sudukanda, Nikewewa,
Jayanthipura.
- 1st and 2nd Respondent-Petitioner-
Appellants

CA CASE NO: CA (PHC) 209/2014

HC POLONNARUWA CASE NO: REV/12/2013

MC HINGURAKGODA CASE NO: B/40/2013

Vs.

Officer in Charge,

Police Station,

Minneriya.

Plaintiff-Respondent-Respondent
and Several Others

Respondent-Respondent-
Respondents

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Widura Ranawake for the Appellants.
Nuwan Pieris, S.C., for the Respondents.

Decided on: 22.11.2019

Mahinda Samayawardhena, J.

This is an appeal filed by the original 1st and 2nd respondents seeking to set aside:

- a) The order of the Magistrate's Court dated 31.01.2013
- b) The order of the Magistrate's Court dated 16.09.2013
- c) The order of the High Court dated 25.09.2014

The police reported facts to the Magistrate's Court seeking an order under section 106 of the Code of Criminal Procedure Act to immediately prevent a tense situation arising from some alleged unbecoming conduct of the appellant Buddhist monks living in a religious place in a State land.

After giving a hearing to all the parties, the Magistrate's Court by order dated 31.01.2013, *inter alia*, directed the appellants to hand over possession of the place to the Divisional Secretary and vacate the place; and then the Divisional Secretary was directed to hand over possession of the place to a suitable party.

In compliance with that order, the appellants handed over possession of the place to the Divisional Secretary and vacated

the place; and the Divisional Secretary took steps to hand over the place to a suitable party.¹

The revision application filed in the High Court by the appellants against the said order of the Magistrate's Court was withdrawn unconditionally, and the High Court accordingly dismissed the said application on 25.06.2013 without reserving the right to file a fresh application.²

Thereafter the appellants made an application to the Magistrate's Court to restore them in possession by exercising inherent powers of the Court as the order of the Magistrate's Court dated 31.01.2013 is *ex facie* bad in law, in that, the Magistrate's Court has no jurisdiction (a) to make an order in terms of section 106 of the Code of Criminal Procedure Act to be operative for a period more than 14 days and (b) to direct the Divisional Secretary to hand over the place to a suitable party.³

This application of the appellants to restore them in possession was rejected by the Magistrate's Court by order dated 16.09.2013 *inter alia* on the premise that the Divisional Secretary had already taken steps in accordance with the earlier order of the Magistrate's Court, and the Court cannot put the appellants back in possession in violation of the said order, which would again cause breach of the peace.

The revision application filed against this second order of the Magistrate's Court was dismissed by the High Court by order dated 25.09.2014.

¹ Vide documents (April and May 2013) at pages 475-481 of the brief for the latter.

² Vide page 466 of the brief.

³ Vide, in particular, pages 13-14 of the written submissions of the appellant dated 30.07.2019.

I think I do not need to give so many reasons to dismiss this appeal.

Once the appellants withdrew the revision application filed against the first order of the Magistrate's Court dated 31.01.2013, they cannot canvass the same order in a subsequent application. That is exactly what the appellants did when they made the application to restore them in possession on the basis that the first order was *ex facie* wrong. If the first order was *ex facie* wrong, they should not have withdrawn the revision application filed against it.

In my view, having withdrawn the revision application filed against the first order of the Magistrate's Court, the second application made by the appellants to restore them in possession on the basis that the first order is *ex facie* erroneous, is misconceived in law.

The order of refusal of the Magistrate's Court to restore the appellants in possession, and the order of the High Court which affirmed it are correct.

I dismiss the appeal with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal