

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

In the matter of an Appeal from the Order dated 11.03.2015 of the High Court of Nuwara Eliya under Article 154P (6) of the Constitution read with provisions of High Court Provinces (Special Provisions) Act No. 19 of 1990.

Chairman,
Land Reform Commission,
No. C82, Hector Kobbekaduwa Mawatha,
Colombo 07.

Competent Authority Petitioner

Court of Appeal Case No.
CA (PHC) 26/2015

P.H.C Nuwara Eliya Case No.
CP/NE/R/02/2015

M.C Hatton Case No.
73823

Vs.

Watawala Plantation Ltd.,
No. 60, Dharmapala Mawatha,
Colombo 03.

Respondent

AND BETWEEN

Chairman,
Land Reform Commission,
No. C82, Hector Kobbekaduwa Mawatha,
Colombo 07.

**Competent Authority Petitioner-
Petitioner**

Vs.

Watawala Plantation Ltd.,
No. 60, Dharmapala Mawatha,
Colombo 03.

Respondent-Respondent

AND NOW BETWEEN

Chairman,
Land Reform Commission,
No. C82, Hector Kobbekaduwa Mawatha,
Colombo 07.

**Competent Authority Petitioner-
Petitioner-Appellant**

Vs.

Watawala Plantation Ltd.,
No. 60, Dharmapala Mawatha,
Colombo 03.

**Respondent-Respondent-
Respondent**

**Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.**

Counsel: Rohan Sahabandu P.C with Natasha Fernando for the Petitioner-Petitioner-Appellants.
K.V.S. Ganesharajan, S.Ragul, K. Nasikethan with Sutheshana Sothilingam appears for the Respondent-Respondent-Respondent.

Written Submissions 11.03.2022 by the Respondent-Respondent-Respondent.
tendered on: 14.03.2022 by the Petitioner-Petitioner-Appellants.

Argued on: Parties agreed to dispose this matter by way of written submissions.

Delivered on: 15.03.2022

Prasantha De Silva, J.

Order

This appeal emanates from the Order of the Provincial High Court of Nuwara Eliya in revision application bearing No. HC/NE/02/2015 made against the Order of the learned Magistrate of Hatton in case bearing No. 73823.

The Court draws the attention to the Judgment of *Bandulasena and Others Vs. Galla Kankanamge Chaminda Kushantha and others* [CA PHC No. 147/2005 - CA Minutes 27.09.2017] delivered by this Court, which emphasized that;

“It would be relevant to bear in mind that the appeal before this Court is an appeal against a Judgment pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before Court is not to consider an appeal against the Primary Court Order, but to consider an appeal in which an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought to be impugned”.

Being aggrieved by the Order of the learned Magistrate of Hatton dated 14.03.2014 dismissing the application of the Competent Authority Petitioner-Appellant made in terms of Section 10 of the State Lands (Recovery of Possession) (Amendment) Act No. 29 of 1983, the said revision application was made.

It appears that when the said revision application was supported on 30.04.2014, the learned High Court Judge had made observations that revisionary jurisdiction of the Provincial High Court could not be invoked in light of the Judgment of the Supreme Court in the case of *The Superintendent, Stafford Estate and Others Vs. Solaimuthu Rasu* [(2013) 1 S.L.R 25].

In accordance with the said circumstances, the Attorney-at-Law for the Complainant-Petitioner had moved for a withdrawal of the said revision application bearing No. HC/NE/20/2014 subject to reservation of the Petitioner’s right to file an application for revision in the proper forum. Subsequent to the above, the Appellant filed another revision application bearing No. HC/NE/02/2015 to the same court and stated that previous Order was made *per incuriam* and the Appellant further stated to set aside the previous Order and make Order as prayed for.

The said application was supported on 11.03.2015, and the Counsel for the Competent Authority-Petitioner made oral submissions in support of the application and reiterated that the Provincial High Courts possess jurisdiction to hear and determine by way of revision, the Orders made by the Magistrate under Article 154P (3) and such power has not been taken away by the aforesaid decision of *The Superintendent, Stafford Estate and Others Vs. Solaimuthu Rasu* [supra].

Further it appears that the *ratio decidendi* of this case is over Article 154P (4) of the Constitution exercising writ jurisdiction.

These submissions were rejected by the learned High Court Judge and the application of the Petitioner was dismissed *in limine*. Being aggrieved by the said Order, the Appellant had preferred this appeal and had sought to set aside the Order dated 11.03.2015 by the learned High Court Judge and the Order dated 14.03.2014 by the learned Magistrate.

When this matter was taken up for hearing, Counsel for the Appellant stated that this is an appeal logged by the Appellant against an Order of the Provincial High Court of Nuwara Eliya in revision application bearing No. 13/2013, where the learned High Court Judge held that High Court has no jurisdiction to hear and determine the revision application filed by the Respondent-Petitioner on the basis of a case decided by the Supreme Court in the case of ***The Superintendent, Stafford Estate and Others Vs. Solaimuthu Rasu [supra]***. This Court, in similar matters such as case No. 20/2020 and 24/2016 had held that the learned High Court Judge has jurisdiction to hear and determine cases pertaining to state lands acting in revision.

In those circumstances, the Respondent-Respondent had informed Court that he has no objection in transferring this matter to the High Court of Nuwara Eliya to hear and determine the merits of the application.

In the case ***CA PHC 20/16 – Ella Addara Gedara Dissanayake Vs. J.M.C. Priyadharshini***, Court held that the Court of Appeal has concurrent jurisdiction to here and determine revision applications of this nature. It was also held that refusal by the High Court to issue notices in a revision application is liable to be set aside and sent back to the High Court to try the case on its merits without hearing the matter in the Court of Appeal.

Although, ***Solamuththu Rasu's*** case held that Provincial High Court has no jurisdiction to issue Writs under Article 154P (4) of the Constitution in matters pertaining to state lands, High Courts are empowered under Article 138 of the Constitution to exercise jurisdiction and hear revision applications relating to state lands. However, in Article 154 P (3) (b) of the Constitution, the power to exercise the appellate or revisionary Jurisdiction regarding state lands is not excluded.

In the case of *Jayawardhane Vs. Deen [(2015) 1 SLR 181]*, it was held that the High Court has jurisdiction to hear and determine cases relating to state lands, acting in revision. Therefore, it is apparent that the learned High Court Judge dismissing the application bearing No. CP/NE/R/02/2015 of the Petitioner based on the Judgment in *Solaimuthu Rasu's* case was made *per incuriam*.

Hence, we set aside the Order of the learned High Court Judge dated 11.03.2015 and direct the learned High Court Judge to hear and determine the said revision application on its merits. Registrar is directed to send the original case record to the Provincial High Court of Nuwara Eliya forthwith.

JUDGE OF THE COURT OF APPEAL

K.K.A.V.Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL