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

In the matter of an application for Appeal under and in terms of Article 138 read with Article 154(P)6 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No: CA/PHC/0160/2019

High Court Revision Application No: HCR 12/2018

Kurunegala MC Case No of: 96057

E. M. S. P. Ekanayake,
Divisional Secretary,
Weerambugedra.

Plaintiff

Vs.

Dewathaapedigedara Nishanthi Ranasinghe,
Nimal Stores,
Wehera,
Wadakada.

Respondent

Dewathaapedigedara Nishanthi Ranasinghe,
Nimal Stores,
Wehera,
Wadakada.

Respondent-Petitioner-Appellant

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

E. M. S. P. Ekanayake,
Divisional Secretary,
Weerambugedra.

Plaintiff-Respondents

AND NOW BETWEEN

Dewathaapedigedara Nishanthi Ranasinghe,
Nimal Stores,
Wehera,
Wadakada.

Respondent-Petitioner-Appellant

Vs.

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

E. M. S. P. Ekanayake,
Divisional Secretary,
Weerambugedra.

Plaintiff-Respondent-Respondents

Before: **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel: Nuwan Bopage with Hansaka Chandrasinghe for the Respondent-Petitioner-Appellant.
D. Sampath, S.C. for the Plaintiff-Respondent-Respondent.

Argued on	:	28.05.2025
Written Submissions of the Respondent-Petitioner -Appellant tendered on	:	17.02.2023 and 21.08.2025
Written Submissions of the Plaintiff-Respondent -Respondents tendered on	:	08.11.2023
Decided on	:	19.09.2025

K. M. S. DISSANAYAKE, J.

This is an appeal filed before this Court by the Respondent-Petitioner-Appellant (hereinafter called and referred to as 'the Appellant') against the order of the learned High Court Judge of the North Western Province holden in Kurunegala dated 04.10.2019 made in revision application bearing No. HCR 12/18.

The facts relevant to the instant appeal as can be gathered from the petition of appeal, may be briefly, set out as follows;

The 2nd Plaintiff-Respondent-Respondent (hereinafter called and referred to as 'the 2nd Respondent') had made an application to the Magistrate Court of Kurunegala in case bearing No. 96057 under and in terms of the provisions of Section 5 of the State Lands (Recovery of Possession) Act No. 07 of 1979 (as amended) (hereinafter called and referred to as 'the Act') for the eviction of the Appellant from a State Land called 'Thambilikotuwewatta' as morefully described in the schedule to the application (hereinafter called and referred to as the 'State Land'). The Appellant who appeared before the Magistrate Court of Kurunegala in pursuant to the summons issued on her by Court to appear and show cause against the application made to Court by the 2nd Respondent under Section 5 of the Act for her eviction from the State Land, had shown cause on the premise that the original owner of the land from which her

eviction was sought in the said application was one Mr. E. A. S. Munasinghe who had by virtue of deed bearing No. 12286, dated 23.09.1935, donated 1½ acres therefrom to Sawandena Government School; that the middle portion of the remainder of the land had by 2 deeds bearing Nos. 1236 and 6775 dated 03.10.2014 and 08.02.2015 respectively, been sold by the said Mr. E. A. S. Munasinghe to the daughter of the caretaker of the land (**X6** & **X7**) and prior to the execution of the said deeds, Mr. E. A. S. Munasinghe had obtained an opinion from the Ayurvedic Department wherein, the Ayurvedic Commissioner had clearly, given his consent to the said transaction; that it had been properly, informed to the Divisional Secretary by letter marked **X2**; that the land which had been so donated to the Government School had subsequently, been gifted by the said Mr. E. A. S. Munasinghe to Ayurvedic Department by virtue of the deed of gift bearing No.7449, dated 28.01.2009 (**X3**); that in terms of the said deeds, the land which had been so purchased by the Appellant had been identified as "Divulgahakumbura", however, the land from which her eviction was sought had been identified as "Thambilikotuwewatta" and not "Divulgahakumbura", and hence, the Divisional Secretary had failed to identify the subject matter; that furthermore, Mr. A. H. S. Wijesinghe, then, Divisional Secretary of Weerambugedra had issued a letter (**X1**) stating that the land from which her eviction was sought, had not been acquired by the State and hence, problematic issue had arisen as to the present ownership thereof, but, however, the Divisional Secretary of Weerambugedra had made the said application to the learned Magistrate of Kurunegala for her eviction therefrom without considering the matters stated in the said letter (**X1**) by the then, Divisional Secretary of Weerambugedra-Mr. A. H. S. Wijesinghe; that in the premise, the Appellant had duly, become the owner of the land occupied by her; that, in the circumstances, the Land from which her eviction had been sought by the 2nd Respondent, had not been correctly, identified by him in his application made to Court under Section 5 of the Act and hence, the Appellant

is not liable to be ejected from the land belonging to her. and therefore, it should be dismissed.

However, the learned Additional Magistrate of Kurunegala in his order dated 11.05.2018 had having rejected the showing cause of the Appellant, proceeded to grant the application directing eviction of the Appellant from the State Land by *inter-alia*, holding that the Appellant too, who had maintained that the 2nd Respondent had not properly, identified the State Land, had not properly, identified the land claimed by her, namely; 'Divulgahakumbura presently, highland' by way of a plan prepared by a Surveyor.

Being aggrieved by the said order of the learned Additional Magistrate of Kurunegala dated 11.05.2018, the Appellant had invoked the extra-ordinary revisionary jurisdiction of the High Court of the North Central Province holden in Kurunegala seeking to revise and set aside it. Learned High Court Judge of the North Central Province holden in Kurunegala had by the order dated 04.10.2019, dismissed the application in revision by holding that the order sought to be revised is not contrary to law. Hence, the instant appeal arises therefrom.

The principal position so adverted to by the Appellant before the Magistrate Court of Kurunegala is that the land in question is not a state land as referred to in the said application made to it by the 2nd Respondent under Section 5 of the Act, namely; "Thambilikotuwewatta" but, a private land called "Divulgahakumbura now, high land" as referred to in the title deeds marked (**X6** and **X7**) and relied on by the Appellant which according to her, belongs to her in terms of the pedigree pleaded in her showing cause in the Magistrate Court of Kurunegala, and in the circumstances, the 2nd Respondent had not identified the land in question correctly, and as such the Appellant is not liable to be ejected therefrom and therefore, the said application ought to be dismissed.

It is in this context, I would think it expedient at this juncture to examine the structure and/or the scheme embodied in the Act and the provisions contained therein with regard to an application that may be made to a Magistrate Court by a competent authority under section 5 thereof for the eviction of a person who is in unauthorized possession or occupation of a state land and for the recovery of the same.

Section 3 of the Act enacts thus;

> "3. (1) Where a competent authority is of the opinion
>
> (a) that any land is State land; and
>
> (b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.
>
> (1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1).
>
> (2) Every notice under subsection (1) issued in respect of any State land is in this Act referred to as a "quit notice ".
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> (3) A quit notice in respect of any State land shall be deemed to have been served on the person in possession or occupation thereof if such notice is sent by registered post.
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> (4) Every quit notice shall be in Form A set out in the Schedule to this Act."

Section 4 of the Act deals with the obligation to comply with a quit notice and it enacts thus;

"4. Where a quit notice has been served or exhibited under section 3 (a) the person in possession or occupation of the land to whom such notice relates or any dependants of such person shall not be entitled to possess or occupy such land after the date specified in such notice or to object to such notice on any ground whatsoever except as provided for in section 9, (b) the person in possession or occupation shall together with his dependants, if any, duly vacate such land and deliver vacant possession thereof to the competent authority or person to whom he is required to do so by such notice."

Section 5 of the Act deals with the effect of non-compliance with a quit notice and it enacts thus;

5. (1) Where any person fails to comply with the notice provisions of section 4 (b) in respect of any quit notice issued or exhibited or purporting to have been issued or exhibited under this Act, any competent authority (whether he is or not the competent authority who issued or exhibited such notice) may make an application in writing in the Form B set out in the Schedule to this Act to the Magistrate's Court within whose local jurisdiction such land or any part thereof is situated (a) setting forth the following matters (i) that he is a competent authority for the purposes of this Act. (ii) that the land described in the schedule to the application is in his opinion State land, (iii) that a quit notice was issued on the person in possession or occupation of such land or was exhibited in a conspicuous place in or upon such land, (iv) that such person named in the application is in his opinion in unauthorized possession or occupation of such land and has failed to comply with the provisions of the aforesaid paragraph (b) of section 4 in respect of such notice relating to such land, and

(b) praying for the recovery of possession of such land and for an order of ejectment of such person in possession or occupation and his

dependants, if any, from such land. (2) Every such application under subsection (1) shall be supported by an affidavit in the Form C set out in the Schedule to this Act verifying to the matters set forth in such application and shall be accompanied by a copy of the quit notice. (3) Every application supported by an affidavit and accompanied by a copy of the quit notice under the preceding provisions of this section shall be referred to as an " application for ejectment ". (4) No stamp duties shall be payable for any application for ejectment.

Section 6 of the Act deals with the role of a Magistrate upon receipt of an application made under section 5 thereof and it enacts thus;

> "6. (1) Upon receipt of the application made under section 5, the Magistrate shall forthwith issue summons on the person named in the application to appear and show cause on the date specified in such summons (being a date not later than two weeks from the date of issue of such summons) why such person and his dependants, if any, should not be ejected from the land as prayed for in the application for ejectment.
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> (2) The provisions contained in the Code of Criminal Procedure Act shall, mutatis mutandis, apply to the issue of summons referred to in subsection (1) and the service thereof and other steps necessary for securing the attendance of the person summoned."

Section 7 of the Act, makes provisions for an order for ejectment where no cause is shown and it reads thus;

> "7. If on the date specified in the summons issued under section 6 the person on whom such summons was issued fails to appear or informs the Court that he has no cause to show against the order for ejectment, the Court shall forthwith issue an order directing such person and his dependants, if any, to be ejected forthwith from the land."

Section 8 of the Act, makes provisions as to the inquiry if cause is shown and it enacts thus;

> "8. (1) If a person on whom summons has been served under section 6 appears on the date specified in such summons and states that he has cause to show against the issue of an order for ejectment the Magistrate's Court may proceed forthwith to hear and determine the matter or may set the case for inquiry on a later date.
>
> (2) Where any application for ejectment has been made to a Magistrate's Court, the Magistrate shall give priority over all other business of that Court, to the hearing and disposal of such application, except when circumstances render it necessary for such other business to be disposed of earlier."

Section 9 of the Act deals with the scope of inquiry and it reads thus;

> "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**." [Emphasis is mine]

Section 10 of the Act makes provisions for order of ejectment and it reads as follows;

> "10. (1) If after inquiry the Magistrate is not satisfied that the person showing cause is entitled to the possession or occupation of the land he shall make order directing such person and his dependants, if any, in

occupation of such land to be ejected forthwith from such land. (2) No appeal shall lie against any order of ejectment made by a Magistrate under subsection (1).

(2) No appeal shall lie against any order of ejectment made by a Magistrate under subsection (1)."

Upon an analysis of section 3 of the Act in conjunction with sections 9(1) which enacts that "**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**" and 9(2) thereof, which enacts "**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.**" it would become manifest that where the competent authority **is of the opinion** that; **a) any land is state land**, and **b) that any person is in unauthorized possession or occupation of such land**, the competent authority may serve a notice by any of the modes set out therein on such person in possession or occupation thereof, requiring such person to vacate such land with his dependents if any, and to deliver vacant possession of such land to competent authority or any other authorized person as may be specified in the notice on or before a specified date to be specified therein; and that **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; and that **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.**

It was *inter-alia*, held by this Court in ***Farook vs. Gunewardene-Government Agent, Amparai* 1980 (2) SLR 243**, at pages 245 and 246 that, "Section 9(2) is to the effect that the Magistrate cannot call for any evidence from the competent authority in support of the application under section 5, which means that the Magistrate cannot call upon the competent authority to prove that the land described in the schedule to the application is a State Land (Section 5(1)(a)(ii))……The structure of the Act would also make it appear that where the competent authority had formed the opinion that any land is state land, even, the Magistrate is not competent to question his opinion. Alternative relief is given by section 12 which empowers any person claiming to be the owner of a land to institute action against state for the vindication of his title within 6 months from the date of the order of ejectment and section 13 is to the effect that where action is instituted by a person, if a decision is made in favour of that person, he will be entitled to recover reasonable compensation for the damage sustained by the reason of his having been compelled to deliver possession of such land…".

It was *inter-alia*, held by this Court in **CA/PHC/41/2010 decided on 31.01.2017** that, "The party noticed is not entitled to challenge the opinion of the competent authority on any of the matters stated in the application….By this amendment, the opinion of the competent authority in relation to the state land was made unquestionable….".

It was *inter-alia*, held by this Court in **CA (PHC) APN 29/2016**-decided on **09.07.2018** that, "….He cannot contest any of the matters stated in the application made under section 5 of the Act. One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority state land. This fact

cannot be contested by the person summoned....Hence, a dispute on the identity of the land cannot arise for consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the party summoned is in relation to the state land described in the application. Where it is not the Magistrate must issue an order of eviction in terms of the Act..."

It was *inter-alia*, held by this Court in **CA(PHC)48/2016-decided on 02.09.2025** that, "Under section 9 of the State Lands (Recovery of Possession) Act, as amended in 1983, the competent authority's opinion that land is a 'state land' is conclusive and not open to judicial challenge at the ejectment stage and the only permissible defence available to an occupier is to prove possession or occupation under a valid permit or written authority issued by the state with the burden of proof resting on the occupier, whose failure to establish such authority would necessitate an order of ejectment."

Upon a plain reading of section 3(1) of the Act together with section 9(2) thereof and the judicial precedents referred to above, it becomes abundantly, clear that, where the competent authority had formed the opinion that any land is state land, even, the Magistrate is not competent to question his opinion and therefore, not open to judicial challenge at the ejectment stage in an application made to Court by a competent authority under section 5 of the Act.

In the light of the law set out in section 3(1) of the Act to be read with sections 9(1) and 9(2) thereof and in the light of the law established by the judicial precedents as referred to above, it is my considered view that a dispute as to the identity of the land-the subject matter of the application under section 5 of the Act, is wholly, foreign and utterly alien to a proceedings that may be initiated before a Magistrate Court by a competent authority for eviction of a person who in his opinion, is in unauthorized possession or occupation of a land which in his opinion, is state land and therefore, such a defence to an

application made to Court by a competent authority under section 5 of the Act is wholly, untenable in law, and therefore, not in any manner available to such a person who in his opinion of the competent authority, is in unauthorized possession or occupation of a state land for; the Legislature in enacting section 9 of the Act had never intended a defence as such to be made available to a person as such except only, for the defence expressly, and explicitly, made available therein.

There is a further point which would in my opinion, fortify and strengthen my view taken as aforesaid and let me now, examine it.

Upon a careful analysis of the Act, it becomes abundantly, clear that "Urgency" appears to be the hallmark of this Act as observed by this Court in ***Farook vs. Gunewardene-Government Agent, Amparai (Supra)***. Under section 3, 30 days notice shall be given. Under section 4, the person in possession is not entitled to object to notice on any ground whatsoever except as provided for in section 9 and the person who is in possession is required to vacate the land within the month specified by the notice. Under section 6, the Magistrate is required to issue summons forthwith to appear and show cause on a date not later than two weeks from the date of issue of such summons. Under section 8(2) the Magistrate is required to give priority over all other business of that court. Under section 9, the party noticed can raise objections only on the basis of a valid permit issued by the State. Under section 10, if the Magistrate is not satisfied, "he shall make order directing ejectment forthwith and no appeal shall lie against the order of ejectment. Under section 17, the provisions of this Act have effect notwithstanding anything contained in any written law.

Besides, it was *inter-alia*, held by the Supreme Court in ***Senanayake Vs. Damunupola*-1982 (2) SLR 621** that, "The scope of the State Land (Recovery of Possession) Act was to provide a speedy or summary mode of getting back possession or occupation of 'State Land' as defined in the Act", which was cited

with approval by this Court in case bearing No. **CA (PHC) 140/2013-decided on 10.10.2019**.

Hence, it becomes abundantly, clear upon a careful analysis of sections 9(1) and 9(2) of the Act in particular that the Legislature in enacting this special piece of legislation, had never intended for a protracted trial to be held by a Magistrate in an application made to it by a competent authority under section 5 of the Act when it had enacted section 9 thereto expressly, and explicitly, setting out in unambiguous terms the scope of such an inquiry.

In the light of the above, the scope of the State Land (Recovery of Possession) Act is to provide a speedy or summary mode of getting back possession or occupation of 'State Land' as defined in the Act as explicitly, observed by the Supreme Court in the decision in ***Senanayake Vs. Damunupola (Supra)***.

The learned Counsel for the Appellant sought to contend by relying on the decision of this Court in **CA/WRT/293/2017-decided on 18.11.2019** that the 2nd Respondent being the competent authority had failed to comply with the fundamental requirement under the Act in that he had failed to form an opinion that the land in question constitutes State Land and that without such a determination the very foundation for issuing a quit notice is absent for; the competent authority must be satisfied prior to initiating proceedings that the State is lawfully, entitled to the land and in the present instance, there is no material to demonstrate that the 2nd Respondent had discharged this obligation and in the result, the procedure adopted by the 2nd Respondent is vitiated by non-compliance with the mandatory precondition and therefore, the absence of a lawful finding that the land belongs to the State renders the purported quit notice invalid and of no effect (Vide-paragraphs 22 to 25 of the written submissions of the Appellant dated 21.08.2025.)

In my view, the contention so advanced by the learned Counsel for the Appellant is not entitled to succeed in law at least for two reasons; one being that the decision relied on by the learned Counsel for the Appellant was a

decision made by this Court in a Writ application and the key considerations in Writ jurisdiction are totally, different from the key considerations in an application under section 5 of the Act and therefore, the facts of the case relied on by the learned Counsel can be clearly, distinguishable from the facts of the instant case and therefore, the decision relied on by the learned Counsel for the Appellant has if I may say so respectfully, no bearing on the facts of the instant application made to Court by the 2nd Respondent being the competent authority under section 5 of the Act; and the other reason being that the opinion of the competent authority that the land in dispute is State Land, cannot be questioned by a person summoned to show cause under section 6 of the Act, in view of the provisions in section 3, sections, 9(1) and 9(2) of the Act.

I would therefore, find myself unable to agree with the contention so advanced by the learned Counsel for the Appellant for; it cannot sustain in law and as such it ought to be rejected *in-limine.*

In view of the law set out above, the Appellant in the instant appeal cannot in any manner, contest any of the matters stated in the application made under section 5 of the Act by the 2nd Respondent to the Magistrate Court of Kurunegala. One of the matters so required to be stated in the application under section 5 of the Act is that the land described in the schedule to the application, namely; "Thambilikotuwewatta" is in the opinion of the 2nd Respondent being the competent authority, State Land. This fact, namely; that "Thambilikotuwewatta" is in the opinion of the 2nd Respondent being the competent authority, State Land, cannot in any manner, be contested by the Appellant who was summoned under section 6 of the Act in view of sections, 9(1) and 9(2) of the Act and hence, dispute on the identity of the land morefully described in the schedule to the instant application made to Court by the 2nd Respondent, being the competent authority under section 5 of the Act, namely; whether the land stated in the instant application namely; Thambilikotuwewatta, is not state land but a private land called

"Divulgahakumbura now, high land" as raised by the Appellant in his showing cause before the Magistrate Court of Kurunegala, cannot in law, raised by him for consideration of the learned Magistrate of Kurunegala for; she has expressly, been prevented and precluded by sections 9(1) and 9(2) of the Act by raising a contest as such inasmuch as this is an issue to be adjudicated upon in appropriate proceedings by a Court of competent jurisdiction for; such a dispute as to the identity of the land in question, is utterly, foreign and alien to proceedings as such initiated by the competent authority under section 5 of the Act.

Hence, I would hold that, the dispute raised by the Appellant in the Magistrate Court as to the identity of the land in question ought to fail in law as rightly, held by the learned Additional Magistrate of Kurunegala.

The question that would next, arise for our consideration is as to the scope of the inquiry in proceedings that may be initiated by a competent authority under section 5 of the Act in a Magistrate Court and section 9 of the Act sets out the scope of the inquiry and it may be reproduced *verbatim* the same as follows;

> "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**." [Emphasis is mine]

It was *inter-alia*, held by this Court in ***Farook vs. Gunewardene-Government Agent, Amparai (Supra)*** that, "At the inquiry before the Magistrate, the only plea by way of defence that the Petitioner can put forward is 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."

It was *inter-alia*, held in ***Muhandiram v. Chairman, No. 111, Janatha EstateDevelopment Board*** **1992 (1) SLR 110** at page 112 that, "Under section 9(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979, the person on whom summons has been served (in this instance, the Respondent-Petitioner) 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 written authority is in force and not revoked or otherwise rendered invalid..... The said section clearly reveals that at an inquiry of this nature, the person on whom the summons has been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law. The burden of proof of that fact lies on that particular person on whom the summons has been served and appears before the relevant Court.".

It was *inter-alia*, held by this Court in **CA/PHC/41/2010(Supra)** that, "Under section 9 of the State Land (Recovery of Possession) Act, the scope of the inquiry is limited to the person noticed to establish he is not in unauthorized occupation or possession by establishing that;

1. Occupying the land on a permit or a written authority.
2. It must be a valid permit or a written authority.
3. It must be in force at the time of presenting it to Court.

4. It must have been issued in accordance with any written law."

It was *inter-alia*, held by this Court in **CA (PHC) APN 29/2016(Supra)** that, "A person who has been summoned in terms of section 6 of the Act can only 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. He cannot contest any of the matters stated in the application under section 5 of the Act."

It was *inter-alia*, held by this Court in **CA(PHC)48/2016 (Supra)** that, ".... the only defence available is to prove possession is upon a valid permit or written authority, issued in accordance with law, and which should be in force....".

In the light of the law set out in section 9 of the Act and the judicial precedent referred to above, at an inquiry of this nature, the person on whom the summons has been served (in this instance the Appellant) has to establish that her possession or occupation is upon a valid permit or other written authority of the State granted according to the written law and that such permit or written authority is in force and not revoked or otherwise rendered invalid.

It is significant to observe that, it had never been the position of the Appellant taken up in the Magistrate Court that her possession or occupation of the land in dispute which in the opinion of the 2nd Respondent being the competent authority is State Land, namely; "**Thambilikotuwewatta**", is upon a valid permit or other written authority of the State granted according to the written law and that such permit or written authority is in force and not revoked or otherwise rendered invalid, but, a private land called "**Divulgahakumbura now, highland**" which belongs to her in terms of the pedigree recited in her showing cause (**X6** and **X7**).

The 2nd Respondent being the competent authority had identified the State Land as being lot 'A' of the land called "Thambilikotuwewatta" in extent of

0.1887 Hectares (1 Rood, 34.60 Perches) as morefully, shown and depicted in the Extract bearing No. 2016/42 made and prepared by A. H. K. Wijayathilake, Surveyor attached to Land Commissioner's Department as being a part of lot 1 of the plan bearing No. PPA1756 made and prepared by Surveyor-General.

Hence, the Appellant's argument that the land had not been properly identified by the 2nd Respondent being the competent authority cannot sustain at least, for two reasons; one being that, she is precluded by sections 9(1) and 9(2) of the Act from raising such a contest as to the identity of the land-the subject matter of the application made to Court by the 2nd Respondent being the competent authority; the other being that although the 2nd Respondent-being the competent authority does not have any burden in an inquiry before the Magistrate so to do, nevertheless, the land in dispute had been properly identified by the 2nd Respondent being the competent authority with reference to a plan previously, made and prepared by the Surveyor-General and then, by the extract made and prepared by the Surveyor attached to the Land Commissioner's Department.

Conversely, the Appellant had not even made any attempt at least, to superimpose the land claimed by her as a private land belonging to her as aforesaid on the State Land as morefully shown and depicted in those two plan and the extract as enumerated above to establish her assertion that it was not a State Land called "Thambilikotuwewatta" but, the land called "Divulgahakumbura now, highland".

On the other hand, the 2nd Respondent being the competent authority had already formed the opinion that the land-the subject matter of the application, is a State Land and that the Appellant is in unauthorized possession or occupation therein. However, it is significant to observe that, not an iota of evidence had been adduced by the Appellant to establish that she is in possession or occupation of the State 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 as required by section 9 of the Act. Hence, the Appellant did not have semblance of such a permit or authority as envisaged by section 9 of the Act.

In view of the above, it clearly, appears to me that the Appellant had adduced not even an iota of evidence to satisfy the learned Additional Magistrate of Kurunegala that she was entitled to the possession or occupation of the State Land as rightly, held by the learned Additional Magistrate of Kurunegala.

Hence, I would hold that the learned Additional Magistrate of Kurunegala was entirely, justified both in fact and law in making an order directing the Appellant and her dependents, if any, in occupation of the State Land as morefully, described in the schedule to the application made to Court by the 2nd Respondent being the competent authority namely; "**Thambilikotuwewatta**" to be ejected forthwith therefrom.

In the circumstances, I would see no error both in fact and law in the order of the learned Additional Magistrate of Kurunegala and therefore, it can sustain both in fact and law as rightly, held by the learned High Court Judge of the North Western Province holden in Kurunegala.

Hence, I would see no error both in fact and law in the order of the learned High Court Judge of the North Western Province holden in Kurunegala too, when she had proceeded to dismiss the application in revision filed by the Appellant before the High Court inviting it to invoke its extra-ordinary revisionary jurisdiction to revise and set aside the order of the learned Additional Magistrate of Kurunegala by holding that, the order sought to be revised is not contrary to law.

In view of the foregoing, I would hold that, the instant appeal is not entitled to succeed both in fact and law.

Hence, I would proceed to dismiss the instant appeal with costs of this court and the courts below.

In the result, I would affirm the orders of both the learned High Court Judge of the North Western Province holden in Kurunegala and the learned Additional Magistrate of Kurunegala.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL