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

The Petition of Appeal against the order dated 24.08.2018 in case Nos. HCRA 15/2015 and HCRA 16/2015 made by the Western Provincial High Court Holden in Colombo.

Court of Appeal Case No:
CA/PHC/0190/2018

High Court Colombo
Case Nos: 15/2015/Re
16/2015/Re

MC Colombo
Case Nos: D/8715/5/2014
D/8717/5/2014

Badureliya Arachchige Palitha Ariyarne,
General Manager of Railways,
Office of the General Manager of Railways,
P. O. Box No. 355, Colombo 10.

APPLICANT

Vs.

1. **Thiruwam Cooray Muhandiramge Nihal**,

2. **Thiruwam Cooray Muhandiramge Udeni**,
both of
No, 220/1, Baseline Road, Colombo 09.

RESPONDENTS

AND

1. **Thiruwam Cooray Muhandiramge Nihal**,

2. **Thiruwam Cooray Muhandiramge Udeni**,
both of
No, 220/1, Baseline Road, Colombo 09.

RESPONDENTS-PETITIONERS

Vs.

Badureliya Arachchige Palitha Ariyarne,
General Manager of Railways,
Office of the General Manager of
Railways,
P. O. Box No. 355, Colombo 10.

APPLICANT-RESPONDENT

AND NOW BETWEEN

1. **Thiruwam Cooray Muhandiramge Nihal**,

2. **Thiruwam Cooray Muhandiramge Udeni**,
   both of
   No, 220/1, Baseline Road, Colombo
   09.

RESPONDENTS-PETITIONERS-APPELLANTS

Badureliya Arachchige Palitha Ariyarne,
General Manager of Railways,
Office of the General Manager of
Railways,
P. O. Box No. 355, Colombo 10.

APPLICANT-RESPONDENT-RESPONDENT

Viyaja Amaratunga,
Present General Manager of
Railways,
Office of the General Manager of
Railways,
P.O. Box No. 355, Colombo 10.

01 (A) ADDED RESPONDENT

Before	:	**D. THOTAWATTA, J.** **K. M. S. DISSANAYAKE, J.**
Counsel	:	Pradeep Perera with P.D.P. Pathirage for the 1st and 2nd Respondents-Petitioners-Appellants. Sehan Zoysa, SSC for the 1(A) Added Respondent.
Argued on	:	27.08.2025
Written Submissions of the Respondents-Petitioners -Appellants tendered on	:	28.11.2024
Written Submissions of the Added Respondent tendered on	:	11.10.2024
Decided on	:	02.12.2025

K. M. S. DISSANAYAKE, J.

This is a joint appeal preferred to this Court by the 1st and 2nd Respondents-Petitioners-Appellants respectively, being father and daughter (hereinafter called and referred to as the 1st and 2nd Appellants) challenging two different orders bearing the same date as 24.08.2018 made by the learned High Court Judge of the Western Province holden at Colombo (hereinafter called and referred to as the High Court of the Province) in two different applications in revision bearing Nos. HCRA 15/2015 and HCRA 16/2015 preferred thereto, respectively, by the 1st and 2nd Appellants seeking to revise and set aside two different orders bearing the same date as 27.01.2015 made by the learned Additional Magistrate of Colombo in two different applications bearing Nos. No.

D/8715/5/14 and D/8717/5/14 against the 1st and 2nd Appellants in pursuant to an application made thereto by the original Applicant-Respondent-Respondent (hereinafter called and referred to as the Respondent) by virtue of the powers vested in him under and in terms of section 5(1) of the State Land (Recovery of Possession) Act as amended (hereinafter called and referred to as the Act) praying for an order for eviction of the 1st and 2nd Appellants and their dependents if any, from a state land referred to in the application.

The facts material and relevant to the instant appeal may be briefly, set out as follows;

The Respondent had made the said two applications to the Magistrate Court of Colombo in the said two cases under and in terms of the provisions of Section 5(1) of the Act praying for an order for the eviction of the 1st and 2nd Appellants and their dependents if any, from a State Land as morefully described in the schedule to the respective applications (hereinafter called and referred to as the 'State Land'); and that, the 1st and 2nd Appellants in the said two cases who appeared before the Magistrate Court of Colombo in pursuant to the summons issued on each of them by the Court, had raised a preliminary objection as to the maintainability of the application on the premise that the land from which eviction had been sought by the Respondent, is not a state land within the meaning of the Act, but, a land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause for; a) the application for ejectment and the affidavit of the Respondent are not in strict compliance with section 5 (1) (a) (ii), form B and form C of Act No. 7 of 1979; that b) although, section 5 (1) (a) (i) and form B of the Act expressly enacts that the Respondent shall aver that the land in question is state land, in this case there is no such averment; that c) although, Form C of the Act enacts that the Respondent shall in his Affidavit to Court shall affirm that the land is state land, in the case there is no such Affidavit before Court; that d) since the

application to eject is not in compliance with the strict statutory requirements, the land in question is not state land in terms of Act No. 7 of 1979, and as such the relief prayed for cannot be granted in law; that e) since the land in question is not state land, the appellants have not violated section 4 (a) of Act No. 7 of 1979; that f) appellant's grandfather and father were in possession and occupation of the land in question since about 1984 and the Appellants and their father (Respondent in Case No. D 8717/2014) are continuing possession and occupation of the same; that g) The appellants are continuing the business of a motor vehicle repairing garage carried on by their grandfather and father in the said land and all his official documents including the National Identity Card (NIC), electricity bills, and 1st Appellant's name in the electoral register are under the address of the land in question; and hence, the Appellants are not liable to be ejected from the land in question and therefore, it should be dismissed *in-limine*.

However, the learned Additional Magistrate of Colombo in his order dated 27.01.2015 had having held that the Respondent had clearly, stated in the quit notice (Form A in the schedule to the Act), in the application made to it by him under section 5(1) of the Act (Form B in the schedule to the Act) and the affidavit filed therewith by the Respondent (Form C in the schedule to the Act) that the land morefully, described therein-the subject matter of the application, is in his opinion, a state land, and therefore, such a preliminary objection had been raised by the 1st and 2nd Appellants in total misconception and/or misapprehension of the matters stated thereon by the Respondent, proceeded to reject the preliminary objection so raised by the 1st and 2nd Appellants as to the maintainability of the application together with the entirety of the 1st and 2nd Appellants' showing cause, thereby granting the application thus, directing eviction of the 1st and 2nd Appellants from the State Land by *inter-alia*, holding that the 1st and 2nd Appellants had shown no valid cause as required by section 9(1) of the Act, to the application for ejectment made to it by the Respondent under section 5(1) of the Act.

Being aggrieved by the said order of the learned Additional Magistrate of Colombo dated 27.01.2015, the 1st and 2nd Appellants had invoked the extra-ordinary revisionary jurisdiction of the High Court of the Province seeking to revise and set aside it. The learned High Court Judge had by the order dated 24.08.2018, dismissed the respective applications in revision preferred thereto by the 1st and 2nd Appellants by *inter-alia*, holding that the respective applications preferred to the Magistrate Court of Colombo by the Respondent under the provisions of the Act, were in conformity with the Act for; the 1st and 2nd Appellants had shown no valid defence as required by section 9(1) of the Act to the application for ejectment made to it by the Respondent under section 5(1) of the Act and hence, the Appellants had disclosed no exceptional circumstances to invoke the extra-ordinary revisionary jurisdiction vested in it to revise and set aside the orders of the learned Additional Magistrate of Colombo. Hence, the instant appeal to this Court.

Hence, the principal defence raised by the respective Appellants to the application made to the Magistrate Court of Colombo by the Respondent under section 5(1) of the Act, is that Land in question is not a State Land within the meaning of the Act but a land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause for the reasons enumerated by them in paragraphs 2, 3 and 4 of the statement of showing cause as well as in paragraph 2(a) to (g) of the joint petition of appeal and as quoted above.

It may now, be examined.

Land is not a State Land within the meaning of the Act but, a land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause for the reasons enumerated by them in paragraphs 2, 3 and 4 of the statement of showing

cause as well as in paragraph 2(a) to (g) of the joint petition of appeal and as quoted above.

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 in his opinion, 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 ".

(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.

(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.

(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)."

Upon a careful analysis of sections 3(1), 4, 5(1) and 6 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 manifestly, clear 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 or any part thereof**, the competent authority may serve a quit 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 where any person fails to comply with the quit notice as required by section 4 of the Act, any competent authority may under section 5(1) of the Act, make an application in writing in the Form B set out in the schedule to the Act to the Magistrate Court within whose local jurisdiction such land or any part thereof is situated setting forth the matters stated in 5(1)(a) and (b) of the Act; 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.** [Emphasis is mine]

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 sections 3(1), 4, 5(1) and 6 of the Act in conjunction with sections 9(1) and 9(2) thereof and the judicial precedents referred to above, it becomes abundantly, clear that, where the competent authority had formed an 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 sections 3(1), 4, 5(1) and 6 of the Act in conjunction 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, on the premise that the land is not a state land, **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 by section 9(1) of the Act.[Emphasis is mine]

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 and the defences available to an application made under section 5(1) of the Act.

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)***.

In view of the law set out above, the 1st and 2nd Appellants 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 Respondent to the Magistrate Court of Colombo. 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, is in the opinion of the Respondent being the competent authority, State Land. Opinion so formed by the Respondent being the competent authority, that it is in his opinion, 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.

Hence, dispute on the identity of the land morefully described in the schedule to the instant application made to Court by the Respondent, being the competent authority under section 5 of the Act, namely; the land stated in the instant application is not state land as raised by the 1st and 2nd Appellants in the showing cause before the Magistrate Court of Colombo, cannot in law, be raised by them for consideration of the learned Magistrate of Colombo for; they have expressly, been prevented and precluded by section 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**. [Emphasis is mine]

Hence, I would hold that the contention advanced by the 1st and 2nd Appellants in the Magistrate Court that the land in question is not State Land but, a land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause for the reasons enumerated by them in paragraphs 2, 3 and 4 of the statement of showing cause as well as in paragraph 2(a) to (g) of the joint petition of appeal and as quoted above, is not in any manner, entitled to succeed both in fact and law.

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 Appellants) has to establish that their 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 1st and 2nd Appellants adverted to in the Magistrate Court that their possession or occupation of the land in dispute which in the opinion of the Respondent being the competent authority is State Land, 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 land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause.

However, the Appellants' argument that the land is not a state land but, a land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause filed before the Magistrate Court of Colombo, cannot sustain for the reason that, they are precluded by section 9(1) and 9(2) of the Act from raising such a contest on the land-the subject matter

of the application made to Court by the Respondent being the competent authority.

On the other hand, the Respondent being the competent authority had already, formed an opinion that the land-the subject matter of the application, is a State Land and that the 1st and 2nd Appellants are in unauthorized possession or occupation therein. However, as observed by me elsewhere in this judgment, it is significant to note that, not an iota of evidence had been adduced by the 1st and 2nd Appellants to establish that they are 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 1st and 2nd Appellants did not have semblance of such a permit or authority as envisaged by section 9(1) of the Act.

In view of the above, it clearly, appears to me that the 1st and 2nd Appellants had adduced not even an iota of evidence to satisfy the learned Additional Magistrate of Colombo that they are 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(1) of the Act as rightly, held by the learned Additional Magistrate of Colombo.

Hence, I would hold that, the contention so advanced by the 1st and 2nd Appellants that, the land in dispute is not a state land but, a land possessed by the grandfather and the father of the 1st Appellant and thereafter, by the 1st Appellant and his daughter-the 2nd Appellant in the manner as recited in the statement of showing cause filed before the Magistrate Court of Colombo, is not entitled to succeed, both in fact and law and as such, it should be rejected *in-limine*.

Besides, upon a careful scrutiny of the quit notice (Form A set out in the schedule to the Act), the application itself made to the Magistrate Court of

Colombo by the Respondent under section 5(1) of the Act (Form B set out in the schedule to the Act), and the affidavit furnished to Court by the Respondent along with his application (Form C set out in the schedule to the Act), it becomes abundantly, clear that the Respondent had therein, clearly, and unequivocally, stated that the land in his opinion, is a state land and that the Appellants in his opinion are in unauthorized possession or occupation thereof and as such the Appellants had raised such a contention as raised in paragraphs 2, 3 and 4 of the statement of showing cause in total misapprehension or misconception of the facts stated therein, as rightly, held by the learned Magistrate of Colombo and as such the contention so raised by the Appellants are not entitled to succeed both in fact and law and as such it should be rejected *in-limine* as correctly, done by the learned Magistrate of Colombo.

Hence, I would hold that the learned Additional Magistrate of Colombo was entirely, justified both in fact and law in making an order directing the 1st and 2nd Appellants and their dependents, if any, in occupation of the State Land as morefully, described in the schedule to the application made to Court by the Respondent being the competent authority, 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 Colombo and therefore, it can sustain both in fact and law as rightly, held by the learned High Court Judge of the Province.

Hence, I would see no error both in fact and law in the order of the learned High Court Judge of the Province too, when she had proceeded to dismiss the application in revision filed by the 1st and 2nd Appellants 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 Colombo by *inter-alia*, holding that, the 1st and 2nd Appellants had not established any plausible defence to the application made by the Respondent under section 5(1) of the

Act as required by section 9(1) thereof, and therefore, it is not contrary to law and as such, they had disclosed no such exceptional circumstances to interfere with the order of the learned Additional Magistrate of Colombo sought to be revised and set aside.

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 Province and the learned Additional Magistrate of Colombo.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL