

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

Court of Appeal Case No:
PHC/0110/23

HC Galle Case No:
674/2022/RE

MC Baddegama Case No:
12734/22

J.M.C. Priyadarshani,
“Competent Authority”,
Ministry of Plantation Industry,
11th Floor, Sethsiripaya,
Battaramulla.

PLAINTIFF

Vs.

Ganewattage Don Jayalath Wasantha,
Gulugahakanda Watta,
Nagoda.

RESPONDENT

AND

Ganewattage Don Jayalath Wasantha,
Gulugahakanda Watta,
Nagoda.

RESPONDENT-PETITIONER

Vs.

1. J.M.C. Priyadarshani,
"Competent Authority",
Ministry of Plantation Industry,
11th Floor, Sethsiripaya,
Battaramulla.

PLAINTIFF-1ST RESPONDENT

2. Honourable Attorney General

Attorney General's Department,
Colombo 12.

2ND RESPONDENT

AND NOW BETWEEN

Wickrama Arachchilage Leelanath

Wickrama Arachchi,

"Competent Authority",

Ministry of Plantation Industry,

11th Floor, Sethsiripaya,

Battaramulla.

A. Weerappulige Chandana Saman

Kumara Rathnayaka,

"Competent Authority",

Ministry of Plantation Industry,

11th Floor, Sethsiripaya,

Battaramulla.

SUBSTITUTED PLAINTIFF-1ST

RESPONDENT-APPELLANT

Vs.

Ganewattage Don Jayalath Wasantha

Gulugahakanda Watta, Nagoda.

RESPONDENT-PETITIONER-RESPONDENT

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

Counsel : Kushan D. Alwis PC., with Hiran
Jayasuriya and Ashen De Silva for the
Substituted Plaintiff-1st Respondent-
Appellant.

Shantha Jayawardana with Ms. Azra
Basheer for the Respondent-Petitioner-
Respondent.

Argued on : 03.03.2026

Written Submissions
of the Substituted
Plaintiff-1st Respondent
-Appellant tendered on : 12.01.2026

Written Submissions
of the Respondent-Petitioner
-Respondent tendered on : 25.02.2026

Decided on : 17.07.2026

K. M. S. DISSANAYAKE, J.

The Competent Authority of the Ministry of Plantation Industry, namely; Ms. J.M.S. Priyadarshani being the Applicant (hereinafter called and referred to as ‘the Applicant’) had made an application to the Magistrate Court of Baddegama under and in terms of the provisions of section 5 of the State Land (Recovery of Possession) Act No. 07 of 1979 as amended (hereinafter called and referred to as ‘the Act’) seeking an order for the eviction of the Respondent named therein,

namely; Ganewattage Don Jayalath Wasantha (hereinafter called and referred to as 'the Respondent') from the State Land as morefully, described in the schedule to the application furnished thereto, by the Applicant (hereinafter called and referred to as 'the State Land).

Acting under the powers vested in him under and in terms of section 10(1) of the Act, the learned Magistrate of Baddegama had in the order dated 20.09.2022 (hereinafter called and referred to as 'the MC order'), made order for the eviction of the Respondent from the State Land.

Being aggrieved by the MC order, the Respondent, had by way of revision, moved the High Court of the Southern Province holden at Galle (hereinafter called and referred to as 'the High Court of the Province') seeking revision of the MC order.

The High Court of the Province had in its order dated 08.05.2023 (hereinafter called and referred to as 'the HC order') revised and set aside the MC order.

Being aggrieved by the HC order, the Applicant has now preferred the instant appeal to this Court therefrom on the grounds of appeal set out in paragraph 21(i) to (xi) of the petition of appeal, amongst any other grounds of appeal that may be, urged by Counsel at the hearing of the instant appeal seeking to set aside the HC order.

As is discernible from the petition of appeal, the facts and the circumstances relevant and material to the instant appeal may be briefly, set out as follows;

The Applicant had made an application dated 25.02.2022 in the form B set out in the schedule to the Act to the Magistrate Court of Baddegama in case bearing No. 12734/22 along with a copy of the notice of ejectment in the form A set out in the schedule to the Act and an affidavit verifying the facts contained in the application in the form C set out in the schedule to the Act under and in terms of the provisions of Section 5 of the Act for the eviction of the Respondent from the State Land. The Respondent who appeared before the Magistrate Court of

Baddegama in pursuant to the summons issued on him by Court had filed a statement of showing cause praying for a dismissal of the application in view of the objections of kind raised and the matters pleaded therein. The principal defence so raised therein, by the Respondent to the application, related to the identity of the State Land-the subject-matter of the application in that it was contended by the Respondent that the land occupied by him is not a State Land as is morefully, described in the schedule to the application filed by the Applicant in the Magistrate Court of Baddegama but a land that had been granted to him by the Land Reform Commission (hereinafter called and referred to as 'the LRC') as evident from the document annexed to his statement of showing cause marked as 'ඉ4' and as depicted in the plan annexed thereto, marked as 'ඉ5'. Hence, the Respondent had thereby, mainly, sought to raise a contest with regard to the identity of the State Land as morefully, described in the schedule to the application filed by the Applicant in the Magistrate Court of Baddegama.

However, relying on the decisions in **SC Appeal 246,247,249 & 250/14-Decided on 04.08.2017, CA(PHC)188/2006-Decided on 07.06.2016** and **CA(PHC)No. 04/2012-Decided on 10.10.2018**, the learned Magistrate of Baddegama had rejected the principal preliminary objection so raised by the Respondent with regard to the identity of the State Land together with the other objections so raised by him in his statement of showing cause as to the maintainability of the application and granted the application for eviction of the Respondent by *inter-alia*, holding that it is not necessary for the Competent Authority to show title to the State Land in respect of which an application is made under the Act for the eviction of a Respondent; and that whether the land is a State Land or not is a matter to be decided by the Competent Authority. It was these findings of the learned Magistrate of Baddegama that the Respondent had sought to canvas before the High Court of the Province by way of the application in revision.

However, the learned High Court Judge of the Province had revised and set aside the MC order mainly, on the premise that a) ‘**24**’ read in conjunction with ‘**17**’ would constitute a valid permit or other written authority of the State granted in accordance with any written law; b) that the land is a State Land has to be proved by way of evidence of a precise nature; and that the mere statement that it is a State Land is not sufficient for the exercise of the powers and/or authority vested in the Competent Authority under the provisions of the Act.

The findings of the learned High Court Judge of the Province as enumerated above, which led her to have revised and set aside the MC order, would now, be examined separately.

The land is a State Land has to be proved by way of evidence of a precise nature; and that the mere statement that it is a State Land is not sufficient for the exercise of the powers and/or authority vested in the Competent Authority under the provisions of the Act.

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 5(1) and 6(1) 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.** [Emphasis is mine]

Having so examined 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, let me now, examine the binding judicial precedents in this regard.

It was *inter-alia*, held by the Supreme Court in **SC Appeal 246,247,249 & 250/14 (Supra) at pages 7 and 8** that,

“As referred to earlier the main question that needs to be considered is whether there is a requirement to establish the title of the State to the land, by the Competent Authority, in an application made to have an order for ejectment issued under the provisions of the Act. When one considers the structure of the Act, all what is required is for the Competent Authority to form the opinion that the person is in unauthorised possession or occupation of any State land and the Competent authority can serve “notice to quit” under the Act.

In considering the provisions of the Act, his lordship Justice Abdul Cader stated 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. Farook v. Goonewardena Government Agent Amparai 1980 2 S.L.R 243. In the said case his lordship went on to state that: “the magistrate cannot call for any evidence from the Competent authority in support of the application under section 5, which means the Magistrate cannot call for any evidence from the competent authority to prove that the land described in the schedule to the application is State land. Therefore, the petitioner did not have an opportunity of raising the question whether the land is a state land or private land before the magistrates” (page 245).

Thus, it appears the Court of Appeal had fallen into error when it held that the Appellant had failed to prove that the land in question was either vested in the State or acquired by the State. Needless to state that there can be State land which would not fall into any of the categories referred, to by the Court of Appeal.”

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.”

See also; **CA(PHC)188/2006 (Supra)** and **CA(PHC)No. 04/2012 (Supra)**.

Upon a plain reading of section 5(1) and 6(1) of the Act together with sections 9(1) and 9(2) thereof and the binding judicial precedents referred to above, it becomes abundantly, clear that, where the competent authority forms 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 section 5(1) and 6(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 binding judicial precedents as referred to above, it is my considered view that a defence to an application made by a Competent Authority to a Magistrate Court under section 5 of the Act, that land which is the subject matter of the application, is not a State Land, **is wholly, foreign and utterly alien to a proceedings that may be initiated by a Competent Authority under section**

5 of the Act before a Magistrate Court 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.[Emphasis is mine]

A further reason for the above conclusion is manifest on a careful examination of the said provisions of the Act and the judicial precedents referred to above.

It may now, be examined.

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 6A every application made under section 5 shall be finally disposed of within a period of two calendar months from the date of such application and where a Court makes, in pursuance of any such application, an order under section 7 or section 10, directing that any person be ejected from the land referred to in that order, the court shall make all such orders as are necessary to ensure that such persons are ejected from that land within a period of three months from the date of the application for ejectment. 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 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(1) thereto in such a manner as to expressly, and explicitly, set out in unambiguous terms the scope of such an inquiry.

In the light of the above, the principal objective intended to be achieved by the legislature in enacting the Act is to provide for 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 Respondent 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 Applicant to the Magistrate Court of Baddegama. 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 Applicant being the Competent Authority, State Land. Opinion so formed by the Applicant being the Competent Authority, that it is in her opinion, State

Land, cannot in any manner, be contested by the Respondent who was summoned under section 6 of the Act in view of sections 9(1) and 9(2) of the Act.

Hence, such a challenge that the land stated in the instant application is not a State Land within the meaning of the Act but, a land granted to the Respondent by the LRC, cannot in law, be raised by him for consideration of the learned Magistrate of Baddegama for; he has 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 an appropriate proceedings by a Court of competent jurisdiction for; such a challenge as to 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]

This brings me 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 Estate Development 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 Respondent) 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 and that such permit or written authority is in force and not revoked or otherwise rendered invalid.

Hence, the Respondent’s argument that, the Land referred to in the application is not a State Land within the meaning of the Act but, a land granted to the Respondent by the LRC by ‘**፩4**’, cannot sustain both in fact and law, for; he is 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 Applicant being the Competent Authority.

On the other hand, the Applicant 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 Respondent is in unauthorized possession or occupation therein.

However, as observed by me elsewhere in this judgment, it is significant to note that, not a semblance of evidence had been adduced by the Respondent to establish that he 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 Respondent 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 Respondent had adduced not even an iota of evidence to satisfy the learned Magistrate of Baddegama that he was entitled to the possession or occupation of the State Land as rightly, held by the learned Magistrate of Baddegama.

Hence, I would hold that, the contention so advanced by the learned Counsel for the Respondent that, the Land referred to in the application is not a State Land within the meaning of the Act but, a land granted to the Respondent by the LRC by 'D4', is not entitled to succeed, both in fact and law and as such, it should be rejected *in-limine*, as rightly, done by both the learned Magistrate of Baddegama.

I would therefore, hold that the contention advanced by the Respondent in the Magistrate Court that that the Land referred to in the application is not a State Land within the meaning of the Act but, a land granted to the Respondent by the LRC by 'D4', cannot in any manner, sustain in law and therefore, it ought to fail in law as rightly, held by the learned Magistrate of Baddegama.

In the light of the law set out above, I would hold that the findings of the learned High Court Judge of the Province that the land is a State Land has to be proved by way of evidence of a precise nature; and that the mere statement that it is a State Land is not sufficient for the exercise of the powers and/or authority vested in the Competent Authority under the provisions of the Act; are based on a total misconception and/or on a total misapprehension of the law laid down by the Act as enumerated above and as endorsed by the binding judicial precedent as cited above, and therefore, cannot in any manner, sustain in law and as such it ought not to be permitted to stand and thus, it ought to be set aside as rightly, contended by the learned President's Counsel for the Applicant.

Let me now, examine the other principal finding of the learned High Court Judge of the Province which led her to have dismissed the MC order.

‘D4’ read in conjunction with ‘D17’ would constitute a valid permit or other written authority of the State granted in accordance with any written law.

All what the person on whom summons under section 6 of the Act has been served, is permitted to establish under section 9(1) of the Act 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. [Emphasis is mine]

Hence, it becomes manifestly, clear that section 9(1) of the Act does not in any manner, permit a person to show that he is in possession or occupation **of any 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 but **of only a land** in respect of which an application has been made under section 5 of the Act by the Competent Authority, 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. [Emphasis is mine]

In view of the findings of the learned High Court Judge of the Province, the pivotal question that would then, arise for our consideration is whether the land claimed by the Respondent by virtue of ‘D4’ is one and the same land as the State Land-the subject matter in respect of which an application had been made by the Competent Authority-the Applicant to the Magistrate Court of Baddegama under section 5 of the Act for; the learned High Court Judge of the Province had proceeded to arrive at the findings as such on the assumption that it was so.

It is in this context, let me now, closely, and carefully, examine the State Land and the land claimed by the Respondent by its metes and bounds and the extent in order to ascertain whether the land claimed by the Respondent by virtue of ‘D4’ is one and the same land as the State Land-the subject matter in respect of

which an application had been made by the Competent Authority-the Applicant to the Magistrate Court of Baddegama under section 5 of the Act.

A careful comparison of metes and bounds as well as the extent of the State Land-the subject matter of the application together with metes and bounds as well as the extent of the land claimed by the Respondent under ‘ට4’ read in conjunction with ‘ට17’, it becomes abundantly, clear that the land so claimed by the Respondent is not one and the same land as the State Land as morefully, described in the schedule to the application made to the Magistrate Court of Baddegama by the Applicant and therefore, the land so claimed by the Respondent is a totally, different land to that of the State Land-subject matter of the application.

This undoubtedly, shows that the further findings of the learned High Court Judge of the Province which led her to have dismissed the MC order that ‘ට4’ **read in conjunction with ‘ට17’ would constitute a valid permit or other written authority of the State granted in accordance with any written law;** cannot in any manner, sustain in fact and therefore, it too, should not be permitted to stand and as such it too, should be set aside. [Emphasis is mine]

Hence, it becomes manifest that, the defence so raised by the Respondent to the application made by the Applicant under section 5(1) of the Act to the Magistrate Court of Baddegama, cannot in any manner, sustain under section 9(1) thereof in this respect too, as rightly, held by the learned Magistrate of Baddegama.

In view of the facts and the law enumerated above, I would hold that the learned High Court Judge of the Province was in grave error when she had proceeded to revise and set aside the MC order acting in revision filed thereat by the Respondent based on the totally, erroneous, findings arrived at by her as enumerated above.

I would thus, hold that the HC order cannot sustain both in fact and law and therefore, it ought not to be permitted to stand and as such it should be set aside.

I would therefore, hold that the learned Magistrate of Baddegama was entirely, justified both in fact and law in making an order directing the Respondent and his dependents, if any, in occupation of the State Land as morefully, described in the schedule to the application made to Court by the Applicant being the Competent Authority, to be ejected forthwith therefrom.

In the circumstances, I would see no error both in fact and law in the MC order and therefore, it can sustain both in fact and law.

In view of my findings as aforesaid, I would think it not necessary to deal with the other grounds of appeal urged by the Applicant in the petition of appeal any further.

Hence, I would proceed to allow the instant appeal with costs fixed at Rs. 50,000/- payable by the Respondent, namely; Ganewattage Don Jayalath Wasantha to the Applicant.

In the result, I would affirm the MC order.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL