

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

In the matter of an application under
Section 9 of the Provincial High Courts
(Special Provisions) Act No. 19 of 1990 read
together with Article 154 P (6) of the
Constitution.

W. M. Ruwan Wijesinghe
Divisional Secretary,
“Negenahira Nuwaragam Palatha”,
Anuradhapura

Applicant

Court of Appeal Case No:
CA/PHC/40/2018

NCP/HC RV No: 08/2018

MC Case No: 91215

Vs.

Munasingha Arachchi Lekamlage Sumith
Munasinghe
No. 350, Maithripala Senanayake Mw,
11th Step, Anuradhapura.

Respondent

And between

Munasingha Arachchi Lekamlage Sumith
Munasinghe
No. 350, Maithripala Senanayake Mw,
11th Step, Anuradhapura.

Respondent – Petitioner

Vs.

01. W. M. Ruwan Wijesinghe
Divisional Secretary,
“Negenahira Nuwaragam Palatha”,
Anuradhapura

Applicant - Respondent

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

Respondent

And now Between

Munasingha Arachchi Lekamlage Sumith
Munasinghe
No. 350, Maithripala Senanayake Mw,
11th Step, Anuradhapura.

Respondent – Petitioner - Apellant

Vs.

01. W. M. Ruwan Wijesinghe
Divisional Secretary,
“Negenahira Nuwaragam Palatha”,
Anuradhapura

Applicant – Respondent- Respondent

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

Respondent - Respondent

Before: **Damith Thotawatte, J.**

K.M.S. Dissanayake, J.

Counsels: Aruna Pathirana Arachchi with Rangika Hemachandra for the
Respondent – Petitioner – Appellant.

Shemanthi Dunuwille, SC for the Respondents.

Argued: 07.07.2026

Written submissions 13.06.2025 by Respondent – Petitioner – Appellant.
tendered on:

Judgment Delivered: 29.09.2026

Thotawatte, J.

Introduction

The Respondent-Petitioner-Appellant (hereinafter referred to as the “Appellant”) appeals from the judgment dated 22.03.2018, of the High Court of the North Central Province holden in Anuradhapura, dismissing his application to revise the order of the Magistrate’s Court of Anuradhapura dated 23.02.2018 in Case No. 91215, by which order Appellants ejectment had been directed under the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended (hereinafter referred to as the “Act”) by the learned Magistrate.

Factual Matrix

The Applicant–Respondent-Respondent (hereinafter sometimes referred to as the “Respondent”) the Divisional Secretary had instituted the ejectment proceedings in respect of the land described in the application filed in the Magistrate’s Court under section 5 of the Act (at page 26 of the brief). The Appellant had maintained that he and his predecessor had occupied the land since 1980 and that his predecessor had been issued a document which the Appellant described as a “*license*”. The Appellant further state that officers responsible for State lands had directed or recommended the issue of a license to him and that he had obtained water and electricity connections and made improvement to the land.

In accordance with the procedure under the Act, the learned Magistrate had afforded the Appellant an opportunity to show cause against ejectment. The Respondent had been permitted to file counter-objections, and both parties had been given an opportunity to tender written submissions. The Appellant had based his claim on two documents

submitted by him, marked ①1 and ①2. The learned Magistrate rejected document ①1, being an expired permit issued to a lady named Alice Nona, and document ①2, being an agreement, as not amounting to a valid permit or other written authority of the State as envisaged by section 9 of the Act. Having considered the material placed before Court, the learned Magistrate had made order ejecting the Appellant from the relevant land.

Being aggrieved by the order of the learned Magistrate, the Appellant invoked the revisionary jurisdiction of the High Court. The learned High Court Judge dismissed the revision application at the stage of support, without issuing notice to the Respondents by the order dated 22.03.2018. The Appellant being dissatisfied with the order of the High Court has filed the instant appeal to this Court.

Grounds of Appeal

The instant appeal challenges the High Court's treatment of the documents, the identification of the land, the conclusion that the Appellant's occupation was unauthorized, and its failure to give effect to what the Appellant describes as a legitimate expectation arising from the conduct and correspondence of land officials. The written submissions add objections to the Divisional Secretary's authority to institute the proceedings and to the form of the application and supporting affidavit. The central question is whether these matters disclose an error in the High Court's refusal to revise the ejectment order.

Statutory framework

The Act provides a summary procedure for the recovery of possession of State land. Upon forming the opinion contemplated by section 3, a competent authority may issue a quit notice. If it is not complied with, an application for ejectment may be made under section 5. At the inquiry, section 9(1) permits the person summoned to establish that he occupies the land upon a valid permit or other written authority of the State, granted in accordance with written law, which remains in force and has not been revoked or otherwise rendered invalid. Section 9(2) prohibits the Magistrate from calling for

evidence from the competent authority in support of the section 5 application. The burden of establishing the statutory defence rests on the occupier¹.

The limited nature of that inquiry must be kept distinct from a claim to title, a request for an allotment, or a complaint about the wisdom of an administrative decision concerning land. In *Urban Development Authority v. Wejayaluxmi*², this Court held that a list of persons selected for a proposed allotment, which had not been finalized, was not a valid permit within section 9(1). Section 10(2) excludes an appeal against an order of ejectment made under section 10(1). Revisionary jurisdiction remains available in exceptional circumstances, including to correct a manifest error of law or a miscarriage of justice; it does not provide an occasion to determine the merits of a proposed allotment.

Analysis

The Appellant's reliance on the license said to have been issued to his predecessor in 1980 does not, without more, establish his own entitlement under section 09. It was necessary to show that the instrument covered the land described in the ejectment application, authorized his occupation, and remained in force at the relevant time. The petition identifies no transfer, succession, renewal or other instrument by which that license became a subsisting authority for the Appellant himself. The directions and recommendations upon which he relies contemplate the future issue of a license; they are not themselves shown to be a license or a present grant of occupation under written law.

Long occupation, expenditure on improvements and the supply of utilities may explain the Appellant's circumstances. They do not, either separately or together, supply the written State authority required by section 09. Nor can an expectation that a license will be issued be treated as if the license had already been issued. Any complaint that the responsible officials departed from an assurance or failed to decide his request lawfully is a different question. It cannot enlarge the defence available in the Magistrate's inquiry.

The contention concerning the identity of the land likewise does not establish an error warranting revision. Section 09 does not permit a general contest of the competent authority's assertions in the section 5 application, including the assertion that the

¹Muhandiram v. Chairman, No. 111, Janatha Estate Development Board [1992] 1 Sri L.R. 110.

²[2006] 3 Sri L.R. 62

scheduled land is State land. Identification may matter where an occupier produces a subsisting permit and must show that it applies to the very land sought to be recovered. No such permit covering the Appellant's occupation has been established on the case advanced in the petition and written submissions. An assertion that the land should have been more fully identified cannot in these circumstances defeat the ejectment order.

Although the petition of appeal does not identify the Divisional Secretary's authority as a separate ground, the Appellant expressly challenges it in the written submissions. The Appellant contends that, if the premises belonged to the Provincial Engineering Department, the Divisional Secretary lacked authority to institute and maintain the application. That contention cannot be sustained on the grounds advanced. In *Banda v. President, M.P.C.S. Ltd., Medirigiriya and Another*³, this Court recognized that a Divisional Secretary may exercise the powers of a competent authority under the State Lands (Recovery of Possession) Act. The asserted connection between the premises and the Provincial Engineering Department does not, by itself, establish that the Divisional Secretary was legally precluded from exercising those powers. "*Banda*" concerned an application made by the president of a co-operative society under an invalid authorization from the Divisional Secretary. No comparable issue of authorization arises here, as the application was made by the Divisional Secretary himself.

Counsel for the Appellant in his written Submissions further submits that the application failed to identify the Act by its number and year, and that the supporting affidavit was unstamped as such the affidavit was defective. Section 5 prescribes an application supported by affidavit and accompanied by the quit notice. A proved failure to comply with a material statutory requirement could warrant intervention. The submissions, however, do not identify how the asserted omission of an enactment number misled the Appellant, who appeared, filed objections and addressed the application under the Act. Nor does the assertion about a stamp or the form of the affidavit, as presented in this appeal, establish a defect that deprived the Magistrate of jurisdiction or caused a miscarriage of justice. The Court cannot set aside concurrent orders upon an unsubstantiated allegation of a formal defect.

The petition of appeal does not expressly identify any exceptional circumstance warranting the exercise of revisionary jurisdiction. It alleges errors in the Magistrate's

³[2003] 1 Sri L.R. 193

assessment of the evidence, the identification of the land and the application of the Act. The written submissions develop those objections but do not explain why they called for revisionary interference. The assertion of grave and irreparable loss appears in support of the application for an interim stay.

The complaint that the High Court dismissed the revision application without issuing notice does not, of itself, establish an error. The High Court was entitled to decline notice if the material placed before it disclosed no exceptional circumstance warranting interference. The matters urged here do not establish that the learned Magistrate applied an impermissible test or that the High Court overlooked a subsisting written authority within section 9 of the Act. I therefore find no basis to disturb the judgment of the High Court.

Conclusion

For the foregoing reasons, the appeal is dismissed with a cost fixed at Rs. 25,000/- payable to the state by the Appellant, and the judgment of the High Court dated 22.03.2018 is affirmed. The order of the Magistrate's Court dated 23.02.2018 accordingly stands.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal