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

In the matter of an appeal in terms of Section 11 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 read with Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA No. CA/PHC/0086/2016
Rathnapura PHC Case No. HCR/RA/63/2013
Rathnapura MC Case No. 47282/13

Competent Authority,
Plantation Industries Monitoring Division,
Ministry of Plantation Industries,
57/75, Vauxhall Street,
Colombo 02.

COMPLAINANT

v.

Pandiyan Punyarajah,
No.67, Heramitigala,
Rassagala.

DEFENDANT

AND BETWEEN

Pandiyan Punyarajah,
No.67, Heramitigala,
Rassagala.

DEFENDANT - PETITIONER

v.

Competent Authority,
Plantation Industries Monitoring Division
Ministry of Plantation Industries,
57/75, Vauxhall Street,
Colombo 02.

COMPLAINANT – RESPONDENTS

AND NOW BETWEEN

Pandiyan Punyarajah,
No.67, Heramitigala,
Rassagala.

DEFENDANT – PETITIONER – APPELLANT

v.

Competent Authority,
Plantation Industries Monitoring Division
Ministry of Plantation Industries,
57/75, Vauxhall Street,
Colombo 02.

BEFORE : M. Sampath K. B. Wijeratne J. &
M. Ahsan. R. Marikar J.

COUNSEL : Thishya Weragoda with Stephnia Perera
and Sanjaya Marambe for the Appellant.

Maithri Wickramasighe, P.C. with Rakitha Jayatunga for the Applicant- Respondent-Respondent.

ARGUED ON : 20.06.2024

WRITTEN SUBMISSIONS : 19.06.2022 (By the Appellant)
26.04.2022 (By the Respondent)

DECIDED ON : 16.10.2024

M. Sampath K. B. Wijeratne J.

Introduction

This Appeal arises from the judgment of the learned High Court Judge of Ratnapura, who dismissed the revision application submitted by the Defendant-Petitioner-Appellant (hereinafter referred to as the 'Appellant'). The revision application was filed against the order of the learned Magistrate of Balangoda, delivered under Section 10(1) of the State Land (Recovery of Possession) Act No. 7 of 1979, as amended (hereinafter referred to as the 'Act'). The learned Magistrate's order directed the eviction of the Appellant, along with any dependents, from the land in question.

The learned High Court Judge dismissed the application filed by the Petitioner on the ground that, in light of the judgment delivered by the Supreme Court in *The Superintendent, Stafford Estate and Two Others v. Solaimuthu Rasu*[1] (hereinafter referred to as the *'Solaimuthu Rasu case'*), the Provincial High Court lacks revisionary jurisdiction over an order issued by the Magistrate's Court under the State Land (Recovery of Possession) Act.

Aggrieved by this decision, the Appellant has appealed to this Court.

[1] [2013]1 Sri L.R. 25

When this matter was taken up for argument on the 20th June 2024, both parties agreed to resolve the case by filing written submissions instead of presenting oral arguments. Consequently, the Court fixed dates for the parties to file their respective submissions. However, on the 28th August 2024, both parties requested the Court to deliver judgment based on the written submissions that had already been filed.

In response, the Court fixed the matter for judgment.

Factual background

The Complainant-Respondent-Respondent (hereinafter referred to as the 'Respondent') is the designated competent authority of the Plantation Industries Monitoring Division under the Ministry of Plantation Industries. The Respondent issued a quit notice in accordance with Section 3 of the State Land (Recovery of Possession) Act, requiring the Appellant to vacate the land he was occupying. When the Appellant failed to comply, the Respondent filed an application with the Magistrate's Court of Balangoda under Section 5 of the Act. The learned Magistrate, acting under Section 6 of the Act, issued notice to the Appellant, giving him the opportunity to show cause for why he should not be evicted. The Appellant did respond, but the learned Magistrate, being dissatisfied with the reasons provided, issued an order for ejectment under Section 7 of the Act.

Aggrieved by this decision, the Appellant has sought to have the order of the learned Magistrate revised by the High Court of Ratnapura. As previously stated, the learned High Court Judge dismissed the Appellant's application.

This appeal arises from the said order of dismissal by the learned High Court Judge.

Analysis

It is well-established law that the right to appeal must be expressly granted by statute[2] and in the absence of such statutory provision, no right of appeal exists against an order made by a lower Court. In this case, the State Land (Recovery of Possession) Act specifically excludes the right to appeal as provided in Section 10(2) of the Act. Therefore, the available remedies for the Appellant are either to challenge the quit notice through an application for a prerogative writ or to seek to revise the order of the learned Magistrate through a revision application.

In the *Solaimuthu Rasu* case, the Supreme Court specifically held that, pursuant to Article 154P(4)(b) of the Constitution, the writ jurisdiction of the Provincial High Court cannot be invoked in matters concerning state lands that are not included in the Provincial Council List.

At page 44 the Supreme Court observed;

'When one transposes this interpretation on the phrase ***"any matter set out in the Provincial Council List"*** *that* ***is determinative*** *on the ingredient necessary to issue a writ in the Provincial High Court in relation to State Land****, the vital precondition which is found in Article 154P (4)(b)*** *of the Constitution is sadly lacking in the instant case.'* (Emphasis added)

At page 55 it was observed;

'There is much significance in the use of the ***words "any matter set out in the Provincial Council List."*** *The fundamental principle of constitutional construction is* ***to give effect to the intent of the framers and of the people adopting it.*** *Therefore, it is the paramount duty of this Court to apply the words*

[2] Thameena v. Koch 72 NLR 192, Malegoda v. Joachim (1997) 1 Sri LR 88,Abeygunasekera V.Setunga And Others (1997)1 SLR62

as used in the Constitution and construe them within its four corners.' (Emphasis added)

In the present case, the Appellant has invoked the revisionary jurisdiction conferred upon the Provincial High Court by Article 154P (3) of the Constitution, and not the writ jurisdiction provided under Article 154P (4). It is important to note that these two Articles are distinct to one another.

For clarity, I will reproduce the two Articles, which read as follows:

154P. (1)-(2) *(...)*

(3) Every such High Court shall-

(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province;

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the Province;

(c) exercise such other jurisdiction and powers as Parliament may, by law, provide.

(4) Every such High Court shall have jurisdiction to issue, according to law –

(a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and

(b) order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under –

(i) any law; or

(ii) any statutes made by the Provincial Council established for that Province.

(5)-(6) *(...)*

Appellant's Contention

The learned Counsel for the Appellant argued in the written submissions that the *Solaimuthu Rasu* case was predicated on Article 154P(4)(b), while the present case is based on Article 154P(3)(b) of the Constitution. He emphasized the distinction between the two Articles and contended that the judgment of the Supreme Court in the *Solaimuthu Rasu* case does not serve as a binding precedent for this appeal.

Furthermore, he referred to the case of *Divisional Secretary, Kalutara and Others v. Kalupahana Mestrige*[3] *Jayatissa* and argued that the learned High Court Judge's finding that the High Court lacks jurisdiction to hear the Appellant's revision application is clearly erroneous. However, it is important to note that in the aforementioned case, the Supreme Court did draw a distinction between Article 154P (4) and Article 154P (3) in its judgment, but it refrained from making any definitive findings regarding the jurisdictional implications of this distinction. For clarity, I will reproduce the relevant paragraph of the judgment, which reads as follows:

'At the stage of the hearing of this appeal it was argued on behalf of the Applicant, that the order made by the High Court was made without jurisdiction and for that reason is bad in law. Relying on the decision of this court in the case of, The Superintendent, Stafford Estate Vs. Solaimuthu Rasu in S.C Appeal 21/2013 - SC minutes 17th July 2013, it was contended on behalf of the Applicant that the Supreme Court had held, that there is no basis to invoke the writ jurisdiction of the Provincial High Court on the subject of State Lands, as the subject does not fall within the Provincial Council list.

I do not wish to consider this issue in the present judgement for two reasons. Firstly, in the case referred to, the Supreme Court dealt with the powers of the

[3] SC Appeal 246,247,249 & 250/14, Supreme Court Minutes dated 4th August 2017.

Provincial High Court under Article 154P (4) of the Constitution (writ jurisdiction), whereas in the instant case the Provincial High Court derives jurisdiction under Article 154(P)(3) (powers to act in revision). Secondly, this was not an issue on which leave was granted by this Court.'

Nonetheless, the Appellant contends that since the Appellant's application to the High Court was a revision application under Article 154P (3) and not a writ application under Article 154P(4)(b), the Provincial High Court has the jurisdiction to hear and determine this matter.

The learned Counsel referenced an extract from the judgment in *Nirmal Paper Converters (Pvt) Ltd v. Sri Lanka Port Authority*[4], which appears to be irrelevant to the current issue at hand. Furthermore, I could not locate such a statement in the judgment of the cited case[5].

The learned Counsel for the Appellant also cited Section 183[6] of the State Land (Recovery of Possession) Act in his written submissions; however, it is important to note that the Act contains only Sections up to 16.

Respondent's case

The learned President's Counsel for the Respondent, addressing the current issue in his written submissions, has asserted that Articles 154P(3)(b) and 138 of the Constitution clearly indicate that the revisionary jurisdiction regarding an order under Section 10 of the State Land (Recovery of Possession) Act is not held by the Provincial High Court, but rather by the Court of Appeal.

Solaimuthu Rasu is the judgment in which the Supreme Court interpreted Article 154P (4) of the Constitution. Under Article 154P(4)(b), the High Court is empowered to grant orders in the nature of Writs of *certiorari, prohibition, procedendo, mandamus,* and *quo warranto* only against *any person exercising*

[4] [1993]1 Sri L.R. 219.
[5] At paragraph 16 of the written submission filed by the Appellant.
[6] At paragraph 22 of the written submission filed by the Appellant.

power within the province under:
(i) any law; or

(ii)*any statute made by the provincial Council* established for that Province,

in respect of *any matter set out in the Provincial Council List.*

Consequently, the Supreme Court, having examined Article 154P(4)(b) along with other relevant Constitutional provisions, held that the action of the Competent Authority in issuing a quit notice for ejectment does not fall within the scope of the matters specified in the Provincial Council List. As a result, the Provincial High Court does not possess jurisdiction to exercise ***writ jurisdiction*** concerning quit notices issued under the State Land (Recovery of Possession) Act, as amended.

Notably, Article 154P (3) does not contain any restrictions, such as *'any matter set out in the Provincial Council List'* in Article 154P (4).

The learned President's Counsel for the Respondent submitted that the position established by the Supreme Court in the *Solaimuthu Rasu* case was reaffirmed in the case of *Walallawita Kankanamlage Mahinda v. Herath Mudiyanselage Nandasena, Divisional Secretary*[7]. In that latter case, Their Lordships of the Supreme Court held: '*in view of the judgement of this Court in Supreme Court appeal 21/2013 the High Court of Badulla has no jurisdiction to hear and determine this matter.*

These proceedings are misplaced in law. The application is dismissed.'

The Supreme Court Appeal No. 21/2013 referred to in the judgment above is the *Solaimuthu Rasu* case. The judgment of the High Court of Badulla, which was appealed to the Court of Appeal and subsequently to the Supreme Court, originated from High Court (Badulla) Case No. 56/2012. According to the certified copy filed in the record, this was a revision application submitted to the

[7] S.C. Spl/L.A. No.211/2013, Supreme Court Minutes dated 20th January 2014.

High Court. Therefore, the applicable constitutional provision should have been Article 154P (3), whereas the Supreme Court scrutinized Article 154P (4) in the *Solaimuthu Rasu* case.

Nonetheless, as correctly submitted by the learned President's Counsel for the Respondent, the Supreme Court, in its brief order, has held that the High Court of Badulla lacked jurisdiction to hear and determine the matter based on the judgment delivered in the *Solaimuthu Rasu* case. However, it is important to note that neither the Supreme Court in the *Solaimuthu Rasu* case nor in *Walallawita Kankanamlage Mahinda v. Herath Mudiyanselage Nandasena, Divisional Secretary* considered Article 154P (3) of the Constitution.

There is no doubt that this Court, being inferior to the Supreme Court, is bound by the decisions of the latter. However, the key question arises as to whether the decision in *Walallawita Kankanamlage Mahinda v. Herath Mudiyanselage Nandasena, Divisional Secretary*[8], made without considering the relevant Constitutional provisions, is binding on this Court in an appeal from an application filed in the High Court under Article 154P(3) of the Constitution. In my view, with all respect to Their Lordships, the answer is no.

Substantive argument of the Appellant

The learned President's Counsel for the Appellant contended that,through the enactment of the phrase '**convictions sentences and orders *entered* or *imposed'*** in Article 154P(3)(b), the Legislature clearly demonstrated its intention to grant the Provincial High Court only appellate and revisionary powers over the criminal jurisdiction of the Magistrate's Court or Primary Court within that province. It was argued that the Legislature did not intend to grant general revisionary powers over all orders, particularly those of a civil nature, but rather limited them to orders of a punitive or criminal nature.

The learned President's Counsel argued that the term '*orders'* in Article 154P(3)(b) is preceded by the words '*convictions*' and '*sentences*' and followed

[8] SC Spl/LA No.211/2013, Supreme Court Minutes dated 20th January 2014.

by the words '*entered'* or '*imposed*'. Applying the *ejusdem generis* rule, where general words follow specific ones, he submitted that the Legislature's intent was to confine the meaning of '*orders*' to those associated with '*convictions'* and '*sentences,'* which are of a criminal nature. He further argued that the Legislature's deliberate use of the specific terms '*convictions'* and '*sentences'* before the general term *'orders'* reflects this intent. Consequently, '*orders'* must be interpreted *ejusdem generis* with '*convictions'* and '*sentences*.' Additionally, he pointed out that only '*convictions'* are '*entered'* and '*sentences'* are '*imposed'*, leading to the conclusion that the '*orders'* referred in Article 154P(3)(b) are inherently punitive in nature.

Consequently, it was argued that an order made under Section 10 of the State Land (Recovery of Possession) Act does not fall within the same category (genus) as *convictions* and *sentences.*

However, I note that there is a significant difference between the Sinhala version and the English version of Article 154P (3) (b). The Sinhala text states as follows:

154ඟ. (1)-(2) *(…)*

(3) (අ) *(...)*

(ආ) 138 වන ව්‍යවස්ථාව කුමක් සඳහන්ව තිබුණ ද, යම් නීතියකට යටත්ව, එම පළාත ඇතුළත මහෙස්ත්‍රාත් අධිකරණ සහ ප්‍රාථමික අධිකරණ විසින් කරන ලද වරදකරු කිරීම්, දණ්ඩන නියමනයන් සහ **ආඥාවන්** සම්බන්ධයෙන් **අභියාචන** සහ **ප්‍රතිශෝධන** අධිකරණ බලය ක්‍රියාත්මක කිරීම;

(ඇ) *(...)*

ඒ සෑම මහාධිකරණයක් විසින් ම කළ යුත්තේ ය.

(4)-(6) *(...).*' (Emphasis added)

According to Article 23 of the Constitution, all laws and subordinate legislation must be enacted, made, and published in Sinhala and Tamil, along with their English translations. Therefore, the Sinhala version of Article 154P(3)(b) takes precedence over the English translation. In the Sinhala text, the Provincial High Court is granted revisionary jurisdiction over 'වරදකරු කිරීම්, දණ්ඩන නියමයන්

සහ ආඥාවන්' (convictions, sentences, and orders), meaning that no limitations or qualifications can be added to the word '*orders'* as per the Sinhala text.

I am mindful that the interpretation of the Constitution does not fall within the jurisdiction of this Court, as it is the prerogative of the Supreme Court. However, in this instance, it is not a matter of interpretation but rather a case of adhering to the official text of the Constitution.

Therefore, the argument put forward by the Respondent cannot be sustained.

This appeal arises from an *order* (ආඥාව) issued by the Magistrate under Section 10 of the State Land (Recovery of Possession) Act, in response to an application made under Section 5 of the Act.

The learned President's Counsel for the Appellant argued that the revisionary jurisdiction concerning orders made under Section 10 of the State Lands (Recovery of Possession) Act is granted to the Court of Appeal under Article 138(1) of the Constitution.

Article 138(1) of the Constitution. reads as follows;

'The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any Court of First Instance, tribunal or other institution and sole and exclusive cognizance, by way of appeal, revision and restitutio in integrum, ***of all causes, suits, actions, prosecutions, matters and things*** *of which such High Court, Court of First Instance tribunal or other institution may have taken cognization.' (Emphasis added)*

In his written submissions, the learned President's Counsel for the Appellant argued that, according to Article 138(1) of the Constitution, the Court of Appeal possesses revisionary jurisdiction over **'all causes, suits, actions, prosecutions, matters, and things.'** While the Constitution restricts the jurisdiction of the Provincial High Court to "convictions, sentences, and orders entered or imposed," the jurisdiction of the Court of Appeal is not so confined; it is broad

and encompasses **'all causes, suits, actions, proceedings, matters, and things.'** When Article 154P(3)(b) was enacted, it was specifically limited to *convictions, sentences,* and *orders* entered or imposed, reflecting the intention to confine it to criminal matters. Thus, the revisionary jurisdiction over any orders that do not fall within the same category as convictions and sentences remains exclusively with the Court of Appeal.

The jurisdiction of the Court of Appeal under Article 138 of the Constitution encompasses appellate jurisdiction for correcting all errors of fact or law made by the High Court in its appellate or original jurisdiction, or by any court of first instance, tribunal, or other institution. This includes sole and exclusive cognizance, through appeal, revision, and *restitutio in integrum*, of all causes, suits, actions, prosecutions, matters, and things that such High Court, court of first instance, tribunal, or other institution may have taken cognizance. Before the Thirteenth Amendment to the Constitution, this jurisdiction was exclusively exercised by the Court of Appeal.

The Thirteenth Amendment granted appellate and revisionary jurisdiction over convictions, sentences, and orders entered or imposed by the *Magistrate's Courts and Primary Courts* within the Province to the Provincial High Court.

Significantly, appellate and revisionary jurisdiction over orders made by *'tribunals or other institutions'* was not granted to the Provincial High Courts. Consequently, the authority for the High Court to hear and determine appeals from orders of the Labour Tribunals and from orders made under Sections 5 and 9 of the Agrarian Services Act had to be specifically provided for under the High Court of Provinces (Special Provincial) Act No. 19 of 1990, as amended. The *restitutio in integrum* jurisdiction was retained by the Court of Appeal, which continues to exercise this power exclusively. As a result, the High Courts concurrently exercise appellate and revisionary jurisdiction over the matters that were *pro tanto* transferred to them.

I acknowledge that when jurisdiction was conferred to the High Courts, the Legislature did not use the terms '*all causes suits actions, prosecution, matters and things'* (සියලු නඩු නිමිති, සිවිල් නඩු, නඩු, අපරාධ නඩු, කරණා සහ දේවල්)

found in Article 138. Instead, Article 154P(3)(b), which established the jurisdiction of the High Courts, specifically limited it to appellate and revisionary jurisdiction concerning '*conviction, sentences and orders entered or imposed*' by Magistrate's Courts and Primary Courts within the Province.

Under the State Land (Recovery of Possession) Act, as amended, an application for ejectment under Section 5 must be filed in the Magistrate's Court that has local jurisdiction over the land in question. According to Article 154P(3)(b), the High Court of the Province has appellate and revisionary jurisdiction concerning '*convictions, sentences, and orders'* (වරදකරු කිරීම්, දණ්ඩන නියමයන් සහ ආඥාවන්) issued by the Magistrate's Courts and Primary Courts within the province.

The orders issued by the Magistrate's Court are not confined to convictions and/or sentences or related matters. There are many other types of orders made by Magistrates in the exercise of their judicial powers that are unrelated to convictions or sentences. A few examples include:

- Under Section 61, the Magistrate can order the attachment of property belonging to a person proclaimed under Section 60 of the Criminal Procedure Code.
- Under Section 81, the Magistrate can order security for maintaining the peace.
- Orders can be made under Chapter IX for the removal or abatement of nuisances.

These examples illustrate just a few of the many orders a Magistrate can issue that are not associated with convictions and sentences.

There is no doubt about the Legislature's clear intention to grant expanded jurisdiction to the High Court in each Province to make justice more accessible to the public, thereby reducing litigation costs and delays. Therefore, it is reasonable to conclude that the Legislature did not intend to grant the High Court appellate and revisionary jurisdiction over convictions and sentences, which are more serious in nature, while reserving the jurisdiction to address minor orders

made by a Magistrate for the Court of Appeal, a court that is higher than the High Court in the judicial hierarchy.

Another issue raised by the Respondent is that the Appellant failed to outline any exceptional circumstances in the Petition to the High Court that would justify the exercise of the High Court's revisionary jurisdiction. However, the learned High Court Judge did not assess the merits of the application; instead, he rejected the Appellant's application solely on the basis that the High Court lacked jurisdiction over the order made by the learned Magistrate under the State Land (Recovery of Possession) Act.

Therefore, this Court need not engage with the aforementioned matter.

Conclusion

In light of the above analysis, I am of the view that the order (ඇණවුම) of ejectment issued by the learned Magistrate under Section 10 of the State Land (Recovery of Possession) Act clearly falls within the scope of Article 154P(3)(b) of the Constitution.

Therefore, I hold that the learned High Court Judge erred in dismissing the Revision Application filed by the Appellant on the grounds that the High Court lacks jurisdiction. I set aside the order of the High Court Judge of Ratnapura dated 3rd August 2016 and direct the sitting judge of the High Court of Ratnapura to hear and determine this application on its merits expeditiously. No costs.

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL