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

Court of Appeal Case No:
CA(PHC)/0084/2020

High Court Kegalle Case No:
පුනි /5653/2020

In the matter of an appeal under and in terms of the provisions of the Judicature Act No. 02 of 1978 and of Articles 138(1) and 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 11 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 as amended.

Director General of Irrigation,
Department of Irrigation,
Bauddhaloka Mawatha,
Colombo 07.

Petitioner

Vs.

Ranasinghe Arachchillage Sudharma Rathnaweera,
No: 329, Kandy Road,
Dewaragampala,
Mawanella.

Respondent

AND BETWEEN

Ranasinghe Arachchillage Sudharma Rathnaweera,
No. 329, Kandy Road,
Dewaragampala,
Mawanella.

Respondent-Petitioner

Vs.

1. Director General of Irrigation,
   Department of Irrigation,
   Bauddhaloka Mawatha,
   Colombo 07.

1st Petitioner-Respondent

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

2nd Respondent

AND NOW BETWEEN

Ranasinghe Arachchillage Sudharma Rathnaweera,
No. 329, Kandy Road,
Dewaragampala,
Mawanella.

Respondent-Petitioner-Appellant

Vs.

1. Director General of Irrigation,
   Department of Irrigation,
   Bauddhaloka Mawatha,
   Colombo 07.

Petitioner-1st Respondent-Respondent

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

2nd Respondent-Respondent

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

Counsel : Pubudu de Silva instructed by D. K. S. de Silva for the Respondent-Petitioner-Appellant.

The 1st and 2nd Respondents-Respondents are absent and unrepresented.

Written Submissions of the Respondent-Petitioner-Appellant tendered on : 04.10.2024 and 30.03.2026

Written Submissions
of the 1st and 2nd Respondents
tendered on : 29.07.2025

Judgement on : 19.06.2026

K. M. S. DISSANAYAKE, J.

The instant appeal arises from an order dated 29.04.2020 (hereinafter called and referred to respectively, as "the HC order"), made by the learned High Court Judge of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as "the High Court Judge of the Province") dismissing an application in revision preferred to it by the Respondent-Petitioner-Appellant (hereinafter called and referred to as "the Appellant") against the Director General of Irrigation-the Petitioner-1st Respondent-Respondent and the Honourable Attorney General-the 2nd Respondent-Respondent to the instant appeal (hereinafter called and referred to respectively, as "the 1st and 2nd Respondents") seeking to revise and set aside the order of the learned Magistrate of Kegalle dated 26.02.2020, directing the Appellant and his dependents if any, in occupation of such land as morefully, described in the schedule thereto (hereinafter called and referred to respectively, as "the State Land"), to be ejected forthwith therefrom, made in an application bearing No. 69472 preferred to it by the Director General of Irrigation-1st Respondent under and in terms of section 5 of the State Lands (Recovery of Possession) Act No. 07. 1979 as amended (hereinafter called and referred to as "the Act") against the Appellant praying for the recovery of possession of such land as described in the schedule to the application and for an order of ejectment of the Appellant in possession or occupation and his dependents, if any, from the State Land.

It is to be observed at the very outset that even though, appearance for the 1st and 2nd Respondents had not been entered in the proceedings of Court dated

30.01.2026, on which day the instant appeal had been fixed for judgement, however, it appears from a careful scrutiny of the proceedings of Court pertaining thereto, that a Counsel had indeed, entered appearance for the 1st and 2nd Respondents too; and that the Counsel on both side had thus, agreed that the matter may be disposed of, by way of written submissions and hence, the judgement on the strength of the written submissions as urged.

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

The 1st Respondent had made an application dated 18.12.2018 in the form B set out in the schedule to the Act to the Magistrate Court of Mawanalla in the case referred to above, 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 Appellant from the State Land. The Appellant who appeared before the Magistrate Court of Mawanalla in pursuant to the summons issued on her by Court had filed a statement showing cause against the application wherein, she had raised a number of preliminary objections as to the maintainability of the application and they are mainly, two-fold;

a) that, the 1st Respondent cannot be considered as a competent authority within the meaning of the Act for; it was the Divisional Secretary of Mawanalla who should be the competent authority for the purpose of section 18 of the Act, and not the Director General of Irrigation-the 1st Respondent and therefore, 1st Respondent has no *locus standi* to make an application under section 5 of the Act and therefore, action should be dismissed *in-limine*;
b) that, the Land referred to in the application is not a State Land within the meaning of the Act but, a private land possessed by the Appellant over 150 years;

However, the learned Magistrate of Mawanalla in the order had having rejected the preliminary objections so raised by the Appellant as to the maintainability of the application together with the entirety of the Appellant's showing cause, proceeded to grant the application directing the Appellant and her dependents if any, in occupation of the State Land to be ejected forthwith therefrom, by *inter-alia*, holding that the Appellant had not in any manner, established that she had been 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.

Being aggrieved by the said order of the learned Magistrate of Mawanalla, the Appellant had invoked the extra-ordinary revisionary jurisdiction of the High Court of the Sabaragamuwa Province holden at Kegalle (hereinafter called and referred to as the "High Court of the Province") seeking to revise and set aside it.

The learned High Court Judge of the Province had by the HC order, dismissed the application in revision by *inter-alia*, holding that the only defence that may be available under section 9(1) of the Act to a Respondent in an application under section 5 thereof, is that the Respondent had been 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, and hence, Court sees no reason to interfere with the order of the learned Magistrate of Mawanalla.

It would be pertinent at this juncture to examine the preliminary legal objections so raised by the Appellant in the Magistrate Court of Mawanalla, and the decision thereof, and the HC order as enumerated above for the proper determination of the instant appeal.

1) **that, the Land referred to in the application is not a State Land within the meaning of the Act but, a private land possessed by the Appellant over 150 years;**

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]

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

compensation for the damage sustained by the reason of his having been compelled to deliver possession of such land…".

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

It was *inter-alia*, held by this Court in **CA (PHC) APN 29/2016**-decided on **09.07.2018** that, "….He cannot contest any of the matters stated in the application made under section 5 of the Act. One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority state land. This fact cannot be contested by the person summoned….Hence, a dispute on the identity of the land cannot arise for consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the party summoned is in relation to the state land described in the application. Where it is not, the Magistrate must issue an order of eviction in terms of the Act…"

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

Upon a plain reading of section 5(1) and 6(1) of the Act together with sections 9(1) and 9(2) thereof and the 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 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 Appellant in the instant appeal, cannot in any manner, contest any of the matters stated in the application made under section 5 of the Act by the Respondent to the Magistrate Court of Mawanalla. 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 Petitioner 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 private land possessed by the Appellant over 150 years as raised by the Appellant in her showing cause before the Magistrate Court of Mawanalla, cannot in law, be raised by her for consideration of the learned Magistrate of Mawanalla for; she 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]

Hence, I would hold that the contention advanced by the Appellant 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 private land possessed by the

Appellant over 150 years, ought to fail in law as rightly, held by the learned Magistrate of Mawanalla.

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 Petitioner) 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.

It is significant to observe that, it had never been the position of the Appellant taken up in the Magistrate Court that her possession or occupation of the land in dispute which in the opinion of the 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, instead her position had been that, the Land referred to in the application is not a State Land within the meaning of the Act but, a private land possessed by the Appellant over 150 years.

Hence, the Appellant's argument that, the Land referred to in the application is not a State Land within the meaning of the Act but, a private land possessed by the Appellant over 150 years, cannot sustain both in fact and law, for; she 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 Respondent being the Competent Authority.

On the other hand, the 1st 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 Appellant is 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 Appellant to establish that she is in possession or occupation of the State Land upon a valid permit or other written authority of the State, granted in accordance with any written law and that such permit or authority is in force

and not revoked or otherwise rendered invalid as required by section 9 of the Act. Hence, the Appellant did not have semblance of such a permit or authority as envisaged by section 9 of the Act.

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

Hence, I would hold that, the contention so advanced by the learned Counsel for the Appellant that, the Land referred to in the application is not a State Land within the meaning of the Act but, a private land possessed by the Appellant over 150 years, 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 and the learned High Court Judge of the Province.

b) that, the 1st Respondent cannot be considered as a competent authority within the meaning of the Act for; it was the Divisional Secretary of Mawanalla who should be the competent authority for the purpose of section 18 of the Act, and not the Director General of Irrigation-the 1st Respondent and therefore, 1st Respondent has no *locus standi* to make an application under section 5 of the Act and therefore, action should be dismissed *in-limine*;

It may now, be examined.

As observed by me elsewhere in this judgement, in view of sections 9 (1) and 9(2) of the Act, the person who has been summoned, is not entitled to contest any of the matters stated in the application under section 5 of the Act and one of such matters to be stated in the application made under Section 5 of the Act is that the person making the application is a Competent Authority for the purposes of the Act.

Besides, the 1st Respondent had in his affidavit filed along with his application under section 5 of the Act before the Magistrate Court of Mawanalla clearly,

and unequivocally, affirmed to the fact he is the competent authority within the meaning of the Act which fact cannot in any manner, be contested by the Appellant in view of sections 9(1) and 9(2) of the Act.

Furthermore, it was *inter-alia*, held by this Court in **CA(PHC)APN 29/2016**(supra) that "The Petitioner submitted that the Respondent was not the competent authority in respect of the lands vested with the SLSPC. Such an objection is not a matter that can be taken up before the learned Magistrate or in these proceedings. One of the factors to be stated in the application made under section 5 of the Act is that the person making the application is a competent authority for the purposes of the Act. In view of section 6 of the Act, a person who has been summoned cannot contest that the claimant is not a competent authority. That is an issue to be tested in appropriate proceedings."

Hence, I would hold that, the further preliminary objection so raised by the Appellant in the proceedings initiated before the learned Magistrate of Mawanalla under section 5(1) of the Act by the Respondent, namely; the 1st Respondent is not a Competent Authority within the meaning of the "Act", cannot in any manner, sustain both in fact and law and therefore, it too, should be rejected *in-limine*.

Hence, I would hold that the learned Magistrate of Mawanalla was entirely, justified both in fact and law in making an order directing the Appellant and her dependents, if any, in occupation of the State Land as morefully, described in the schedule to the application made to Court by the 1st 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 Magistrate of Mawanalla 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 he had proceeded to dismiss the

application in revision filed by the Appellant before the High Court Province inviting it to invoke its extra-ordinary revisionary jurisdiction to revise and set aside the order of the learned Magistrate of Mawanalla by so holding as enumerated above.

With regard to the further defence raised by the Appellant on the premise that the affidavit filed along with the application made to Court by the Respondent under section 5(1) of the Act, is not valid in law for; the affidavit does not state the religion of the affirmant, namely; the 1st Respondent, even though, the Appellant is not in any manner, permitted by section 9(1) and (2) of the Act to raise such a challenge on the validity of the affidavit filed along with the application made to Court by the Respondent under section 5(1) of the Act, as a matter of law, it should be emphasized that the fact that an affidavit does not state the religion of the affirmant, does not make the affidavit invalid as held by the Supreme Court in the decision in **SC/HC/LA02/2014-Decided on 04.09.2014** and therefore, the further defence raised by the Appellant on the premise that the affidavit filed along with the application made to Court by the Respondent under section 5(1) of the Act, is not valid in law for; the affidavit does not state the religion of the affirmant, too, is not entitled to succeed both in fact and law and as such it too, should be rejected as rightly, done by both the learned Magistrate as well as the learned High Court Judge of the Province.

In regard to the further defence raised by the Appellant on the premise that the affidavit filed along with the application made to Court by the Respondent under section 5(1) of the Act, is not valid in law for; the alteration of the date in the affidavit filed by the 1st Respondent along with his application, has not been certified and/or subscribed by the Justice of Peace, even though, the Appellant is not in any manner, permitted by section 9(1) and (2) of the Act to raise such a challenge on the validity of the affidavit filed along with the application made to Court by the Respondent under section 5(1) of the Act on that basis too, as a matter of fact, it should be observed that the so, called alteration of the date in the affidavit filed by the 1st Respondent along with his

application, had not only, been certified and/or subscribed by the Justice of Peace but also the rubber stamp too, had also been affixed thereto, in proof thereof, and hence, it too, is not entitled to succeed both in fact and law and as such it too, should be rejected as rightly, done by both the learned Magistrate as well as the learned High Court Judge of the Province.

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 fixed at Rs. 50,000/-.

In the result, I would affirm the orders of both the learned High Court Judge of the Province and the learned Magistrate of Mawanalla.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL