

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

Court of Appeal Case No:
CA/PHC/01/2024

High Court Kandy Case No:
REV/08/2020

Magistrate Court of Kandy Case
No: 17064/2018

In the matter of the Appeal filed before the Court of Appeal against the decision of the Kandy Provincial High Court in Case No. REV/08/20 established in accordance with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka and Article 154 (3) of the Constitution.

Dr. Asela Gunawardana,
Director General of Health Services,
Ministry of Health Nutrition and Indigenous
Medicine,
“Suwasiripaya”,
No.385, Rev. Baddegama Wimalawansa
Mawatha,
Colombo 10.

Plaintiff

Vs.

W. G. S. L. Wickramanayake,
No.44, Keppetipola Mawatha,
Kandy.

Respondent

Now between

W. G. S. L. Wickramanayake,
No.44, Keppetipola Mawatha,
Kandy.

Respondent- Petitioner

Vs.

1. Dr. Asela Gunawardana,
Director General of Health Services,
Ministry of Health Nutrition and Indigenous
Medicine,
“Suwasiripaya”,

No.385, Rev. Baddegama Wimalawansa
Mawatha,
Colombo 10.

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

Plaintiff-Respondents

And now between

W. G. S. L. Wickramanayake,
No.44, Keppetipola Mawatha,
Kandy.

Respondent- Petitioner- Appellant

Vs.

1. Dr. Asela Gunawardana,
Director General of Health Services,
Ministry of Health Nutrition and Indigenous
Medicine,
"Suwasiripaya",
No.385, Rev. Baddegama Wimalawansa
Mawatha,
Colombo 10.

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

Plaintiff-Respondent- Respondents

Before:

Damith Thotawatte, J.

K.M.S. Dissanayake, J.

Counsels:	Shantha Jayawardena with Niroshika for the Respondent-Petitioner- Appellant. Sellomy Gunaratne, SC for the Respondent- Respondents
Written submissions tendered on:	25.06.2026 by 1 st and 2 nd Plaintiff – Respondent- Respondents. 30.06.2026 by Respondent- Petitioner- Appellant.
Judgement Delivered:	07.09.2026

Thotawatte, J.

Introduction

This appeal arises from proceedings instituted under the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended (hereinafter sometimes referred to as the “Act”), for the recovery of premises bearing Assessment No. 44, Keppetipola Mawatha, Kandy. The Respondent–Petitioner–Appellant (hereinafter sometimes referred to as the “Appellant”) seeks to set aside the judgment dated 14.11.2023 of the learned High Court Judge of Kandy in Revision Application No. REV 08/2020, by which the High Court declined to interfere with the order dated 19.12.2019 of the learned Additional Magistrate of Kandy in Case No. 17064/2018 directing his ejectment.

The principal contentions advanced in appeal are that the land described in the quit notice was not sufficiently identified; that it belongs to the Natha Devalaya and was not lawfully acquired by the State; and that the Appellant’s possession was lawful under a lease sanctioned by the Commissioner-General of Buddhist Affairs and continued thereafter with the acquiescence of the Natha Devalaya.

Factual Background and Litigatory Path

On 13.08.2018 the Director-General of Health Services, acting as the competent authority, issued a quit notice under section 3 of the Act requiring the Appellant to vacate, on or before 18.09.2018, the land described as Lot 1 in Plan No. 3405 dated 19.02.1988 prepared

by the Surveyor-General. The premises were also identified by Assessment No. 44, Keppetipola Mawatha, Kandy. The Appellant did not deliver vacant possession within the period specified.

Consequently, the competent authority applied to the Magistrate's Court of Kandy under section 5 of the Act for recovery of possession and ejectment. The application was accompanied by the affidavit prescribed by the Act. The Appellant appeared and, on 13.06.2019, showed cause. He asserted that the corpus had not been properly identified and that the premises formed part of "Udathalangawatta", belonging to the Natha Devalaya. He relied principally upon Lease Agreement No. 20196 dated 12.01.1996, granted to his aunt, Roslin Nona, for twenty years commencing on 01.09.1993; a letter of the Basnayake Nilame; private survey plans; and the alleged continued acceptance of occupational rent described as "Rajakari Badu".

The lease relied upon by the Appellant expired in 2013. No renewed lease, State permit or other written authority of the State, subsisting when the quit notice was issued, was produced. The learned Magistrate held that the land had been adequately identified and that the Appellant had failed to establish the defence permitted by section 9. An order of ejectment was accordingly made on 19.12.2019.

The Appellant invoked the revisionary jurisdiction of the Provincial High Court by application dated 07.02.2020. An interim order staying ejectment was issued on 26.02.2020. Upon hearing the parties, the learned High Court Judge, by judgment dated 14.11.2023, dismissed the revision application and affirmed the order of the learned Magistrate. The present appeal was preferred by petition dated 30.11.2023.

The Statutory Scheme

The Act establishes a special and summary procedure for the recovery of possession of State land from persons in unauthorized possession or occupation. Under section 3, where a competent authority forms the opinion that the land is State land and that a person is in unauthorized possession or occupation thereof, the competent authority may serve a quit notice requiring that person to vacate the land and deliver vacant possession. Upon failure to comply with the notice, section 5 empowers a competent authority to apply to the Magistrate's Court for an order of ejectment, whereupon summons is issued under section 6. Section 7 provides for an order of ejectment where the person summoned fails to appear and show cause, while sections 8 to 10 govern the inquiry and the order to be made where cause is shown.

Of central importance is section 9(1). A person summoned is not entitled to contest the matters stated in the application under section 5, save by establishing that the possession or occupation is 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) further provides that it is not competent for the Magistrate's Court to call for evidence from the competent authority in support of the application.

This restricted inquiry gives effect to the legislative choice that disputed proprietary claims should not defeat the summary remedy. That choice does not extinguish a genuine proprietary claim. Section 12 expressly preserves an action in vindication against the State. The statutory balance is therefore clear, possession may be recovered summarily unless the occupier establishes the particular statutory defence, while title may be litigated in the appropriate civil proceedings.

Scope of the Magistrate's Inquiry

In *Muhandiram v. Chairman, Janatha Estate Development Board*¹, it was held that the burden lies upon the person summoned to establish possession under a valid permit or other written authority of the State and, if that burden is not discharged, the Magistrate must order ejectment. *Farook v. Gunawardene, Government Agent, Amparai*² similarly explains that the formation of the competent authority's opinion is administrative and that the Magistrate is not empowered require the competent authority to prove that the scheduled land is State land.

The same construction was affirmed by the Supreme Court in *L.H.M.B.B. Herath v. Morgan Engineering (Pvt) Ltd*³. The Magistrate's inquiry is confined to determining whether the occupier holds the valid permit or written State authority contemplated by section 9. Informal arrangements, the payment or acceptance of rent, and documents that do not amount to such statutory authority cannot enlarge the defence.

In *Divisional Secretary, Kalutara v. Kalupahana Mestrige Jayatissa*⁴, the Supreme Court rejected the view that the competent authority was required, in the ejectment proceedings, to prove acquisition or vesting of the land in the State. The definition of State

¹ (1992) 1 Sri L.R. 110

² (1980) 2 Sri L.R. 243

³ SC Appeal No. 214/2012, Decided on 27.07.2013, [2013] 1 Sri L.R. 222.

⁴ SC Appeal Nos. 246, 247, 249 and 250/2014, Decided on 04.08.2017

land is not confined to acquired land, and the summary inquiry cannot be converted into a trial of title.

Applied to the present matter, the alleged lease dated 12.01.1996 was granted for twenty years from 01.09.1993 and had expired in 2013. The proposition that the Natha Devalaya thereafter accepted occupational rent does not transform the expired lease into a valid permit or written authority of the State granted according to written law. Nor does the letter of the Basnayake Nilame constitute such authority. The Appellant therefore failed to establish the only defence available to him under section 9.

Identification of the Corpus

The Appellant states that the quit notice describes the land sought to be recovered as premises bearing Assessment No. 44, Keppetipola Mawatha, depicted as Lot No. 1 in Plan No. 3405. He does not dispute that this is the description appearing in the quit notice. His contention is that the land actually occupied by him is depicted in private Plan No. 4202 and differs in extent from the land described in the quit notice. The Appellant maintains that the land occupied by him, depicted in private Plan No. 4202, is not the land described as Lot No. 1 in Plan No. 3405 and that, consequently, the Respondents have failed properly to identify the land from which his ejectment is sought.

However, somewhat confusingly the Appellant does not claim that the quit notice relates to a land that is entirely different from the land occupied by him. Nor does he contend that the notice was served on him in respect of a land with which he had no connection. Rather, in his statement of objections and the documents tendered in support of it, he asserts a right to remain in possession of the premises from which his ejectment is sought.

The mere existence of differences between the description or extent shown in the State survey plan and those appearing in the private plans relied upon by the Appellant does not, by itself, establish that the land specified in the quit notice was incapable of identification. The material question is whether, upon considering the quit notice and the relevant surrounding material, the corpus sought to be recovered was identified with sufficient certainty and without prejudice to the person served.

The learned Magistrate therefore committed no error in holding that the corpus was sufficiently identified for the purposes of the Act. The broader contest whether the State's survey or the Devalaya instruments correctly disclose title is not a matter which section 9 authorized the Magistrate to decide.

Effect of the Judgment in CA/Writ/65/2019

The Appellant relies on the judgement of CA/Writ/065/2019 to advance and develop an alternative argument.

Appellant submits that this earlier case CA/Writ/065/2019 concerned the premises bearing Assessment No. 42, Keppetipola Mawatha, which adjoins premises bearing Assessment No. 44 occupied by him and situated in the impugned land. Appellant further state that, In this previous case, the quit notice has also described the relevant land as Lot No. 1 in Plan No. 3405. The Respondents in that proceeding had asserted that Lot No. 1 in Preliminary Plan A 1168 is the same land depicted as Lot No. 1 in Plan No. 3405. Upon this acceptance by the Respondents, the Court in CA/Writ/065/2019 has held that Lot No. 1 in Preliminary Plan A 1168 mentioned in an acquisition proceeding, had not been shown to have been lawfully acquired by or vested in the State. Consequently, the Court quashed the relevant quit notice.

On that basis, the Appellant argues that, if the land described in the present quit notice is indeed Lot No. 1 in Plan No. 3405, the judgment in CA/Writ/065/2019 supports his position that Lot No. 1 in Plan No. 3405, was never lawfully acquired by the State and as such could not properly be recovered under the State Lands (Recovery of Possession) Act.

The Appellant's arguments may therefore be understood as follows:

1. Primarily, the Appellant contends that the land he is occupying is depicted in private Plan No. 4202 and the description given in the quit notice as Lot No. 1 in Plan No. 3405 is erroneous. Therefore, the land sought to be recovered is not properly identified.
2. Alternatively, he contends that, even if the land occupied by him is Lot No. 1 in Plan No. 3405, the judgment in CA/Writ/065/2019 establishes that the lot identified in that proceeding as the corresponding Lot No. 1 in Preliminary Plan A 1168 had not been shown to have been lawfully acquired by or vested in the State.

As to the second contention, the Appellant has not established that the land presently in dispute is the same land considered in CA/Writ/65/2019. That judgment neither determined the identity or legal status of the present corpus nor considered the validity of the quit notice issued in respect of Assessment No. 44. Nor does it constitute a valid State permit or other written authority within the meaning of section 9 of the Act. It therefore

does not establish that the Appellant was lawfully entitled to possess or occupy the land or provide a sufficient basis for holding that the learned Magistrate's order was unlawful.

Revisionary Jurisdiction

The order of the learned Magistrate was challenged in revision. Revision is an extraordinary and discretionary remedy. In *Rustom v. Hapangama & Co.*⁵, *Hotel Galaxy Ltd. v. Mercantile Hotel Management Ltd.*⁶, *Caderamanpulle v. Ceylon Paper Sacks Ltd.*⁷, *Dharmaratne and another v. Palm Paradise Cabanas Ltd. and others*⁸ and *Kulatilake v. Attorney-General*⁹, the courts have consistently required exceptional circumstances before revisionary powers are exercised.

*Bank of Ceylon v. Kaleel and others*¹⁰ further emphasizes that the impugned order must occasion a failure of justice and be manifestly erroneous, going beyond an ordinary error or irregularity. The requirement of exceptional circumstances is the means by which the court confines this extraordinary remedy to cases demanding immediate corrective intervention.

The Appellant's complaint, properly analyzed, is that the Magistrate did not conduct a complete inquiry into title, acquisition and the competing plans. That was not an omission; it followed from the express limitation imposed by section 9. The Magistrate had considered the statutory scheme and found that the Appellant had no valid and subsisting State permit or written authority. No jurisdictional defect, denial of a hearing, material procedural illegality or conclusion plainly unsupported by the record has been shown. The High Court was therefore correct to find no exceptional circumstance warranting revision.

Conclusion

The Appellant remains free, if so advised, to pursue any claim to title by instituting an action under section 12 of the Act or other appropriate civil proceedings. However, questions of title or compensation cannot constitute a defence to the present ejectment proceedings unless the Appellant establishes the valid permit or other written authority required under section 09.

⁵ (1978–79–80) 1 Sri L.R. 352

⁶ (1987) 1 Sri L.R. 5

⁷ (2001) 3 Sri L.R. 112

⁸ (2003) 3 Sri L.R. 24

⁹ (2010) 1 Sri L.R. 212

¹⁰ (2004) 1 Sri L.R. 284

For the foregoing reasons, I find no error in the judgment dated 14.11.2023 of the learned High Court Judge of Kandy or in the order dated 19.12.2019 of the learned Additional Magistrate of Kandy which would warrant the intervention of this Court. The said judgment and order are affirmed and the appeal is accordingly dismissed Subject to a cost fixed at Rs. 50,000/-.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal