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

In an application under Article 154(p) (6) of the Constitution read with section 9 of the Hogh Court of the Provinces (Special Provisions) Act No. 19 of 1990.

CA-PHC-152-17

High Court of Colombo Revision
Application No : HCRA/34/2014

General Manager
Sri Lanka Railway Department
No. 355, Colombo 10.

Applicant

Vs.

Vithanage Chandani

No. 36/1, Old Road

Opposite Railway Station

Nawinna, Maharagama.

Respondent

AND BETWEEN

Vithanage Chandani

No. 36/1, Old Road

Opposite Railway Station

Nawinna, Maharagama.

Respondent-Petitioner

Vs.

General Manager
Sri Lanka Railway Department
No. 355, Colombo 10.

Applicant-Respondent

AND NOW BETWEEN

Vithanage Chandani

No. 36/1, Old Road, Opposite Railway Station

Nawinna, Maharagama.

Respondent-Petitioner-Appellant

Vs.

General Manager
Sri Lanka Railway Department
No. 355, Colombo 10.

Applicant-Respondent-Respondent

Before : **N. Bandula Karunarathna, P/CA, J.**
B. Sasi Mahendran, J.

Counsel: Nishadi Wickramasinghe for the Petitioner
Avanthi Weerakoon, SC for the Respondent

Argument On: 11.11.2024

Written Submissions: 19.11.2024 (by the Applicant-Respondent-Respondent)
29.11.2024 (by the Respondent-Petitioner-Appellant)

On Judgment On: 13.12.2024

B. Sasi Mahendran, J.

JUDGMENT

This is an appeal emanating from an order of the Learned High Court Judge of the Western Province holden in Colombo.

The Applicant-Respondent-Respondent (hereinafter referred to as 'the Respondent') filed an application in terms of the State Land (Recovery of Possession) Act No. 7 of 1979 as amended (hereinafter referred to as the Act) before the Magistrate's Court of Gangodawila for the purported non-compliance of the Respondent-Petitioner-Appellant (hereinafter referred to as 'the Appellant') with the purported quit notice in respect of 4.82 perches of Railway Reservation land situated in Maharagama, issued against her and her dependents.

The Appellant raising a preliminary objection on the maintainability of the application before the Magistrate's Court, filed objections dated 22.10.2013 against the said application which are as follows:

i. Proper notice was not served on the Appellant
ii. The Respondent has failed to file the papers in the proper procedure
iii. Particular summons were not in terms of Section 8(1) of the Act
iv. The opinion formed by the competent authority is illegal
v. Failure to prove that the land is a State land.

Thereafter, the Learned Magistrate having inquired into the matter, made the Order dated 12.02.2014 ejecting the Appellant and her dependents from the impugned land on the basis that the Appellant has failed to establish that she is in possession or occupation by way of a valid permit or written authority.

Being aggrieved by the said Order made by the Learned Magistrate, the Appellant had made a revision application to the High Court of Colombo to revise the order made by the Learned Magistrate.

Subsequent to the written submissions filed by the parties, the Learned Judge of the High Court delivered the judgment dated 08.09.2017, holding that there were no exceptional circumstances to overrule the findings of the Learned Magistrate and dismissed the application of the Appellant.

The Appellant has preferred the present application in this Court by Petition dated 22.09.2017 being aggrieved by the said judgment of the High Court.

We are mindful that this appeal before this Court is an appeal against the judgment pronounced by the Provincial High Court exercising revisionary jurisdiction.

I am guided by the following judgments as to how the Court of Appeal is empowered to evaluate the correctness of the exercise of revisionary jurisdiction by the Provincial High Court. In other words, this Court is to only examine the correctness, legality, or propriety of the order made by the Provincial High Court in the exercise of its revisionary jurisdiction.

In Nandawathie and another v. Mhindasena, 2009 (2) SLR 218 at page 238, His Lordship Ranjith Silva, J. held that;

> "When an order of a Primary Court Judge made under this chapter is challenged by way of revision in the High Court the High Court Judge can examine only the legality of that order and not the correctness of that order. The High Court may be able to prevent a breach of the peace by issuing interim stay orders or by allowing an interim order made by the Primary Court Judge

to remain in force. But what is the position when a person aggrieved by such an order made in revision by the High Court is also appealed against to the Court of Appeal. Is the Court of Appeal vested with the power to re-hear or allow the parties to re-agitate the main case by reading and evaluating the evidence led in the case in the Primary Court or is it that the Court of Appeal is restricted in its scope and really have the power only to examine the propriety or the legality of the order made by the learned High Court judge in the exercise of its revisionary jurisdiction. I hold that it is the only sensible interpretation or the logical interpretation that could be given otherwise the Court of Appeal in the exercise of its appellate jurisdiction may be performing a function the legislature, primarily and strictly intended to avoid. **For the reasons I have adumbrated I am of the opinion that this particular right of appeal in the circumstances should not be taken as an appeal in the true sense but in fact an application to examine the correctness, legality or the propriety of the order made by the learned High Court Judge in the exercise of its revisionary powers.** The Court of Appeal should not, under the guise of an appeal attempt to re-hear or re-evaluate the evidence led in the main case and decide on the facts which are entirely and exclusively matters falling within the domain of the jurisdiction of the Primary Court Judge."

In Jayasekarage Bandulasena and Others v. Galla Kankanamge Chaminda Kushantha and Another, CA(PHC)/147/2009, Decided on 2017.09.27, His Lordship P. Padman Surasena, J held that;

"The Provincial High Courts need to be mindful of this fact when they are called upon to exercise revisionary jurisdiction in respect of Primary Court orders of this kind. Such applications must be treated as only revision applications and not appeals. The Judges of the Provincial High Courts need to bear in mind that they would only defeat the purpose of section 74 (2) of the Primary Courts Procedure Act which has specifically been enacted by the legislature to take the right of appeal away from the Parties, if they indirectly assume appellate jurisdiction over this type of applications.

Although there is a right of appeal provided to this Court from an order of the Provincial High Court, this Court should not forget that it is within the above parameters that the Provincial High Court has pronounced the impugned order. Therefore the right of appeal provided by law to this Court would only empower this Court to evaluate the correctness of the exercise of the revisionary jurisdiction by the Provincial High Court. It cannot be converted to an appeal against a Primary Court Order.

In these circumstances, in the process of the adjudication of the instant appeal this Court would need to act within the above parameters. This Court would remind itself that it is not open for it to treat this case as a true appeal from an order made by the Primary Court. This is the view expressed by this Court in the case cited above as well."

The above said judgments were considered by His Lordship Prasantha De Silva, J in Migallage Gamlath Ralalage Wijesinghe v. A.M. Jayasundara and Others, CA (PHC) 162/2015, Decided on 07.02.2023:

> "In view of the aforecited Judgment, we are not supposed to consider this as an appeal preferred against the Order of the Magistrate's Court. We are of the view that the task before this Court is to ascertain whether this appeal emanates from an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction. Thus, the Court of Appeal is empowered to evaluate the correctness of the exercise of revisionary jurisdiction by the Provincial High Court. Similarly, the Provincial High Courts too should be mindful when exercising revisionary jurisdiction in respect of applications made against the Orders of the Magistrate's Court and should consider these as revision applications and not as appeals."

In the instant case, the Learned High Court Judge has correctly analyzed the order of the Magistrate's Court that the Appellant has failed to show exceptional circumstances before coming to the conclusion.

Be that as may, this Court is mindful that the Act does not provide for appeal. Section 10 (2) of the Act reads thus:

> "No appeal shall lie against any order of ejectment made by a Magistrate under subsection (1)"

In this context, I am mindful of the dictum of His Lordship Dr. Ranaraja J with regard to the revision which was pronounced in Colombo Apothecaries Ltd. and Others v. Commissioner of Labour (1998) 3 SLR 320 at 323:

> "Revision like an appeal, is directed towards the correction or errors, but it is supervisory in nature and its object is due administration of justice and not primarily or solely, the relieving of grievances of a party. An appeal is a remedy, which a party who is entitled to it, may claim to have as of right and its object is the grant of relief

to a party aggrieved, by an order of court, which is tainted by error. Revision is so much regarded as designed for cases in which an appeal does not lie." – See: *Attorney General v. Gunawardena* at 156. *In Re the insolvency of Hayman Thornhill*. The power of revision vested in this court is discretionary. The power will be exercised when there is no other remedy available to a party. It is only in very rare instances where exceptional circumstances are present that court would exercise powers of revision in cases where an alternative remedy has not been availed of by an applicant. – See: *Rustom v. Hapanagama & Co. at 356, Gunawardena v. Orr, Ameer v. Rasheed, Perera v. Silva, Alima Natchiya v. Marikar, Fernando v. Fernando.*

Thus the general principle is that revision would not lie where an appeal or other statutory remedy is available. Where the law provides an effective remedy to any person aggrieved by an order of a Magistrate's Court, this Court will not exercise its revisionary jurisdiction. It is only if the aggrieved party can show exceptional circumstances for seeking relief by way of revision, rather than by way of appeal, when such an appeal is available to him as of right, that court will exercise its revisionary jurisdiction in the interests of due administration of justice."

Where there is a right of appeal available which the party fails to exhaust, and comes for revision, the Courts generally need to be satisfied that there are exceptional circumstances. When there are no exceptional circumstances established, in general, the Court dismisses the application. Nevertheless, when there is no right of appeal available like in the instant case, I am mindful of the duty cast on the Court to treat the case as a true appeal against an order made by the Magistrate whether the Learned Magistrate has correctly come to the conclusion with the evidence placed before him. That is to say, whether the order is correct.

The reason is to ensure the due administration of justice and also Courts should be careful that there is no miscarriage of justice.

In the instant application, the scope of the inquiry before the Learned Magistrate under Section 9 of the Act is to find out whether the Appellant has a valid permit or written authority. The Learned High Court Judge has considered this fact. The scope of the inquiry is discussed in the following judgments:

In Muhandiram V. Chairman, No.111, Janatha Estate Development Board (1992) 1 SLR 110 at 112, His Lordship Grero J held 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 in 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 that fact lies on that particular person on whom the summons has been served and appears before the relevant Court. In this case the burden was on the respondent-petitioner to establish the fact that he had a valid permit or other written authority of the State to occupy the land which is stated in the schedule to the application of the Competent Authority."

In Farook V. Gunewardene, Government Agent, Amparai (1980) 2 SLR 243 at 245, His Lordship Abdul Cader J held 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." 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). Therefore, the Petitioner will not have an opportunity of raising the question whether the land is a State or private land before the Magistrate."

In Nirmal Paper Converters (Pvt) Ltd V. Sri Lanka Ports Authority and Another (1993) 1 SLR 219 at 223. His Lordship Wijeyaratne J held that:

> "The only ground on which the petitioner is entitled to remain on this land is upon a valid permit or other written authority of the State as laid down in Section 9 (1) of the State Lands (Recovery of Possession) Act. He cannot contest any of the other matters. The petitioner has not been able to produce any valid permit or other written authority. Moreover, irreparable loss and harm is caused to the national economy. Therefore, I am removing the stay order forthwith."

In the instant case, the Learned Magistrate and the Learned High Court Judge have correctly considered the scope of the inquiry when coming to the conclusion that the Appellant has not established that she has a valid permit or other written authority.

Furthermore, one of the objections taken by the Appellant before the Magistrate was that, the notice had not been properly served.

In Keenigama v. N.D. Dixon Director General, CA 116/95 Decided on 22.02.2001, His Lordship Raja Fernando J held that:

> "Section 3(3) of the State Lands (Recovery of Possession) Act provides that a quit notice is deemed to have been served on the person in possession or occupation if it is sent by registered post."

In the instant case, there is no dispute that the Appellant did not receive the notice.

Considering the reasons above mentioned in the entirety, we hold there is no reason to revise the judgment made by the Learned Judge of the High Court on 08.09.2017 and the order made by the Learned Magistrate on 12.02.2014.

The appeal is dismissed with costs of Rs. 50,000/-

JUDGE OF THE COURT OF APPEAL

N. BandulaKarunarathna (P/CA), J.
I AGREE

PRESIDENT OF THE COURT OF APPEAL