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

In the matter of revision under in the Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka

Court of Appeal Case No:
CA/MCR/22/2014
MC Thambuththegama
Case No: **20748**

Juliyange Nohoth Korale Kankanamlage
Sarath Kumara Niroshan
Mahabellankadawala,
Malwanegama.

Respondent-Petitioner

-Vs-

H.M. Kumara Herath,
Resident Project Manager,
Sri Lanka Mahaweli Authority,
Thambuththegama.

Applicant-Respondents

Before : A.L. Shiran Gooneratne J.

&

Dr. Ruwan Fernando J.

Counsel : Dr. Sooriyarachchi and Manoja Jayanetthi for the Petitioner.

S. Wimalasena, SSC for the Respondent.

Written Submissions: By the Respondent-Petitioner on 29/01/2020

By the Applicant-Respondent on 15/11/2019

Argued on : 26/06/2020

Judgment on : **30/07/2020**

A.L. Shiran Gooneratne J.

The instant case and Case No. MCR-0023-14 was listed for argument as connected cases. Both matters originated on determinations in respect of quit notices issued in terms of Section 5 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended, (referred to as the Act) in the Magistrates Court of Thambuththegama. The averments and the relief sought for in both applications before Court are identical. The potions of land envisaged by the said quit notices are within the same boundary of a larger land. Both matters were taken up for argument together and there was agreement by Counsel to consolidate both matters and one Judgment to be delivered. Accordingly, submissions made by the respective Counsel would apply to both applications.

At the stage of argument, the learned Counsel for the Respondent-Appellant (hereinafter referred to as the Appellant) raised the following grounds of appeal.

a) The Application filed by the Applicant-Respondent (hereinafter referred to as the Respondent) in terms of the State Lands (Recovery of Possession) Act does not conform to the statutory requirements of the Oaths and affirmation Ordinance.
b) The Applicant is not a competent authority to institute this application in terms of the Act.
c) The Applicant has failed to identify the corpus of the land in terms of the Act.
d) The applicant is entitled to the potion of land in question by virtue of Section 23(2) of the Land Development Ordinance.

Having relied on the above grounds of appeal, the learned Counsel for the Appellant contended that, this is a fit case to be sent back to the Magistrates Court for trial de novo.

The facts of the case briefly are as follows:

The Respondent instituted action against the Appellant in terms of Section 5 of the Act, on the failure to comply with a quit notice served on the Appellant marked "P4", "P5". When this matter came up before the learned Magistrate, the Appellant did not object to the said application. However, in the objections filed in

that Court (vide page 19 of the brief) the Appellant claimed that his rights to remain in the land in question should be considered in terms of Section 23 of the Land Development Ordinance No. 19 of 1935, (as amended) and also on sympathetic grounds considering long term cultivation and possession.

The Appellant in the application filed in this Court dated 06/12/2014, reiterated his position taken in the Magistrates Court and besides that, moved that the impugned order dated 03/10/2014, be set aside on the basis that the competent authority has no power to institute the said action in terms of Section 18 of the Act. Counsel for the Appellant also contends that the document marked "R1" tendered with the objections of the Respondent does not satisfy the requirements contemplated by the said Section.

The journal entries relating to the orders made by Court are marked "P6" and "P7", as reflected in the certified copy of the proceedings marked "P5" and "P6". "P6" and "P7" are journal entries dated 03/10/2014, and 02/10/2014, respectively, which refer to the said orders. It is observed that the Appellant has failed to annex to the petition the said impugned orders. The position of the Appellant is that all proceedings made available to him in respect of the said applications have been annexed as "P5" and "P6". However, considering the journal entries in both cases and in the absence of any material to the contrary, the Court is of the view that pursuant to the said proceedings in the Magistrates Court, the learned Magistrate has delivered an order. The learned DSG for the

Respondent resists the reliefs sought for by the Appellant mainly on the basis that the impugned orders are not annexed to the application.

In the remote possibility, if an order does exist, would then the Petitioner be guilty of want of due diligence for the failure to produce the said order before this Court?

Both revision applications under consideration were filed in this Court on 08/12/2014, and were mentioned on 20/01/2015. Since then on several occasions, as borne out by the journal entries, the Petitioner was absent and/ or unrepresented. Taking note of the said circumstances, by order dated 22/03/2018, this Court dismissed the applications for want of diligent prosecution of the applications. Taking into consideration a subsequent Petition filed by the Appellant, of consent, the applications were relisted. However, to date the Petitioner has failed to purge default or to make an application to this Court with sufficient cause, that an order does not exist in the proceedings before the Magistrates Court.

Therefore, we find that the Petitioner has failed to produce before this Court the impugned orders which he seeks to set aside. Taking into consideration the time line of the two cases, there is no doubt in our mind that the Appellant has failed to diligently prosecute his application. It is also observed that, having admitted that he has not been allotted the land in question or any part of it, the Appellant did not resist the applications filed by the Respondent before the

Magistrates Court or contended any of the above stated grounds of appeal before the learned Magistrate. For the reasons set out above, we do not find any exceptional circumstances to exercise the supervisory jurisdiction vested in this Court to grant the reliefs prayed for.

In the circumstances, both applications for revision stands dismissed.

The judgment delivered in this case would also apply to Case No. MCR-0023-14.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL