

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

In an application made under Article 154 (p) (6) of the Constitution read together with Section 2 (1) (b) of the High Court of the Provinces (special provisions) Act No. 19 of 1990.

CA Case No: PHC/10/2018
High Court of Gampaha
Case No. HC/REV 19/2016
Magistrate Court of Wattala
Case No. 11279/2015

Francis Don Turin Perera,
No. 50/2, Ward Place,
Colombo 07.

Applicant

Vs.

1. John Balasundaram Pulle,
No. 913, Sri Jayanthi Mawatha,
Hunupitiya,
Wattala.

1st Respondent

2. Randheer Rodrigo,
Nimala Maria Mawatha, Wattala.

2nd Respondent

AND

Francis Don Turin Perera,
No. 50/2, Ward Place,
Colombo 07.

Applicant- Petitioner

Vs.

1. John Balasundaram Pulle,
No. 913, Sri Jayanthi Mawatha,

Hunupitiya,
Wattala.

1st Respondent- Respondent

2. Randheer Rodrigo,
Nimala Maria Mawatha,
Wattala.

2nd Respondent- Respondent

AND NOW

Francis Don Turin Perera,
No. 50/2, Ward Place,
Colombo 07.

Applicant- Petitioner- Appellant

Vs.

1. John Balasundaram Pulle,
No. 913,
Sri Jayanthi Mawatha,
Hunupitiya,
Wattala.

**1st Respondent- Respondent-
Respondent**

2. Randheer Rodrigo,
Nimala Maria Mawatha, Wattala.

**2nd Respondent- Respondent-
Respondent**

3. The Attorney General,
Attorney General's Department,
Colombo 12.

Before: **R. Gurusinghe J.**
&
M.C.B.S. Morais J.

Counsel: Dr. Romesh De Silva, PC with Shanaka Cooray and Kandula Udawatta for the Applicant - Petitioner- Appellant.
R. Wimalarathna instructed by G. Gunarathna for the 1st Respondent- Respondent- Respondent.
Rifana Mukthar, SC for the 3rd Respondent.

Written Submissions: By the Applicant - Petitioner- Appellant – on 18.04.2022
By the 1st Respondent – Respondent- Respondent on 23.05.2022, 27.07. 2023

Argued on: 08.11.2024

Decided On: **30.01.2025**

JUDGMENT

M.C.B.S. Morais J.

This is an application made under Article 154 (p) (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 2 (1)(b) of the High Court of the Provinces (special provisions) Act No. 19 of 1990.

The Applicant-Petitioner-Appellant, Francis Don Turin Perera (hereinafter sometimes will be referred to as the Appellant) has appealed the order dated 16th of January 2018 of the Civil Appellate High Court of Gampaha, in the case No. HC/Rev 19/16 against the 1st and 2nd Respondents (hereinafter sometimes will be referred to as the “Respondent”), seeking restoration of possession to the land in dispute, under the provisions of section 66 of the Primary courts’ Procedure Act No. 44 of 1979, on the basis that the Appellant was forcibly dispossessed by the 1st and 2nd Respondents, within a period of two months immediately

before the filing of the application. Accordingly, the Appellant has prayed for the following reliefs.

- I. To set aside the order of the High Court dated 16/01/2018.
- II. Order the possession of the corpus be granted to the Appellant.

The Appellant had made an application to the Magistrate Court of Wattala, under and in terms of section 66 (1) (b) of the Primary Courts' Act no 44 of 1979 on 22nd of November 2015. The Appellant contends that he has been in possession of the corpus until he was forcibly dispossessed from the land.

The Appellant contends that from 2013 onwards the 1st Respondent along with the 2nd Respondent had tried to enter the said corpus forcefully. Accordingly, the Appellant had made a series of complaints to the Wattala police regarding the matter from 2013 to 2015. However, no actions were taken by the Police regarding the matter. On 28th of May 2015, the 1st and 2nd Respondents forcefully entered the land ejecting the Appellant and his agents by locking the gate. The Appellant has restrained from regaining the possession of the land considering the likelihood of breach of peace. Since the police authority has failed to act upon the complaint given by the Appellant under section 66(1)(a) of the primary court's Procedure Act No. 44 of 1979, the Appellant had filed an application under section 66(1)(b) of the primary court's Procedure Act No. 44 of 1979, in the Magistrate Court of Wattala.

The learned Magistrate of Wattala in her order dated 9th of March 2016 has found that the Appellant has failed to establish the threshold of jurisdiction as to 'breach of the peace is threatened or likely' under section 66 (1)(b) of the Primary Courts Procedure Act.

It should be noted that , the learned Magistrate of Wattala in the previous proceedings dated 30th of November 2015, has considered this issue and come to a finding that there is a likelihood of breach of peace and accordingly had decided to issue notice to the Respondents. However, in the order dated 9th of March 2016, the learned Magistrate of Wattala has decided to the contrary that there is no likelihood of breach of peace, and the application has been dismissed. Therefore, the Appellant contends that the learned Magistrate of Wattala has erred

in law by considering the threshold for the jurisdiction under section 66(1)(b) of the Act has not been met.

Aggrieved by the order dated 9th of March 2019, the Appellant has made a revision application in the High Court of Gampaha. The learned High Court Judge of Gampaha has upheld the order of the learned Magistrate of Wattala and thereby has dismissed the revision application by the order dated 16th of January 2018. In the said order, the learned High Court Judge of Gampaha has relied on the reasoning of the learned Magistrate of Wattala in the order dated 9th of March 2016. In addition, the learned High Court Judge have relied on the inaction of the Wattala police in support of the learned Magistrate's finding, that there is no breach of peace or any likelihood of such to invoke section 66(1)(a) of the Act.

Section 66(1) of the primary court's Procedure Act No. 44 of 1979, reads as follows,

“

66.

(1) Whenever owing to a dispute affecting land a breach of the peace is threatened or likely-

(a) the police officer inquiring into the dispute- (i) shall with the least possible delay file information regarding the dispute in the Primary Court within whose jurisdiction the land is situated and require each of the parties to the dispute to enter into a bond for his appearance before the Primary Court on the day immediately succeeding the date of filing the information on which sittings of such court are held; or (ii) shall, if necessary in the interests of preserving the peace, arrest the parties to the dispute and produce them forthwith before the Primary Court within whose jurisdiction the land is situated to be dealt with according to law and shall also at the same time file in that court the information regarding the dispute; or

(b) any party to such dispute may file an information by affidavit in such Primary Court setting out the facts and the relief sought and specifying as respondents the names and addresses of the other parties to the dispute and then such court shall by its usual process or by registered post notice the parties named to appear in court on

the day specified in the notice-such day being not later than two weeks from the day on which the information was filed.”

According to section 66(1) of the Primary Courts’ Procedure Act, the first information regarding the breach of peace or likelihood of breach of peace can be filed either by the police officer inquiring into the dispute under section 66(1)(a) or by any party to such dispute under section 66(1)(b). Therefore, the Appellant was on an equal footing with the police officer in law to file an application under section 66.

Further, in the case of ***Gamaralalage Jayasinghe and Others V. Mahara Mudiyansele Loku Bandara***, [2019] 2 Sri LR 202, Samayawardhena J. held that;

“Then, under section 66(2), it has been enacted that when the first information is filed under section 66(1), irrespective of whether it is filed by the police or a party to the dispute, the Magistrate is automatically vested with jurisdiction to inquire into and determine the matter, without further ado.....

Under section 66(1), the formation of opinion as to whether a breach of the peace is threatened or likely is left to the police officer inquiring into the dispute or to any party to the dispute. Both are on equal footing. Who files the information is beside the point.”

Therefore, it is clear that the learned Magistrate has the authority to inquire into the matter when an application is made under section 66 of the Primary Courts Procedure Act, irrespective of whether it is filed by a police officer or a private party. Furthermore, the above judgment overrules the judgment by his **Lordship Ismail J.** in ***Velupillai V. Sivanathan*** [1993]1 SLR 123, and holds that it does not correctly represent the law in this regard. The question of ‘breach of the peace is threatened or likely’ is dependent on the police officer who inquires about the matter or the party to the dispute who files the application. Therefore, the learned High Court Judge and the learned Magistrate of Wattala has come to the decision on an incorrect basis, by deciding that the court has no jurisdiction to delve into the matter as the Appellant has failed to establish jurisdiction.

For the aforesaid reasons, I reverse the order of the learned High Court judge dated 16th of January 2018, allowing the appeal and setting aside the order of the learned Magistrate dated 9th of March 2016. Accordingly I direct the learned Magistrate of Wattala to look into the merits of this matter and adjudicate upon it.

This appeal is allowed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal