

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

An application under Section 5 of the State
Lands (Recovery of possession) Act No. 7 of
1979 as amended

Court of Appeal Case No:
CA (PHC) 141/2015
H.C.T.R.A. Trincomalee
Application No: **326/2014**
MC Trincomalee (Kuchchaveli)
Case No: **914/2013**

Bhashwara Senanka Gunarathne,
Chairman,
Sri Lanka Tourism Development Authority,
No. 80, Galle Road,
Colombo 03.

Competent Authority-Applicant-
Petitioner-Appellant

-Vs-

Ganeshapillei Kalipillai,
3rd Division,
Near Barbick Hotel,
Nilaweli,
Trincomalee.

Respondent-Respondent-
Respondent

Before : A.L. Shiran Gooneratne J.

&

Dr. Ruwan Fernando J.

Counsel : K.V.S. Ganesharajan with S. Ragul, Hashintha
Vidanapathirana, D. Nishanthini and K. Nasikethan for
the Competent Authority-Applicant-Petitioner.

M. Sathiyenthiran for the Respondent-Respondent-
Respondent.

Written Submissions: By the Competent Authority-Applicant-Petitioner-
Appellant on 10/09/2019

By the Respondent-Respondent-Respondent on
17/10/2019

Argued on : 27/01/2020

Judgment on : 26/02/2020

A.L. Shiran Gooneratne J.

The Appellant, Chairman of Sri Lanka Tourism Development Authority (SLTDA) filed this application in the Magistrates Court of Kuchchaveli in terms of Section 5 (1) of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended), (hereinafter referred to as the Act), to eject Ganeshapillei Kalipillai (the Respondent in the instant Case) and Ganeshapillei Sameswaran (the Respondent in Case No. PHC-0142-15), from lots 1A, 1B and 1C in Plan No. 2946 dated 31/05/2005, made by A.M.S. Attanayake, licensed surveyor described more fully

in the schedule to the application. The schedules in both applications filed in the Magistrates Court by the Appellant to eject the respective Respondents are identical. Therefore, of consent, written and oral submissions of Counsel were made to cover both applications.

The Respondent took up the position that, she is the owner of the land in issue by virtue of Deed of Declaration No. 155 dated 24/06/2005. Taking into consideration the said Deed of Declaration, the learned Magistrate made order dismissing the Appellant's application stating that the said land is not a state land but a private land and therefore, the Respondent is not liable to be ejected from the land as she is in possession of the land by a legally executed Deed. Being aggrieved by the said order the Appellant filed a revision application in High Court of the Eastern Province, holden in Trincomalee, where the learned High Court Judge dismissed the said application on the basis that, the Appellant had no authority to institute action, since the Board of Directors had not delegated such powers to the Chairman of the SLTDA, (as competent Authority) to file this application. The Appellant is before this Court to have the said judgment set aside.

The following grounds of appeal have been raised by the Appellant: -

- 1) Did the learned Magistrate erroneously hold that the land in dispute is a private land and therefore, the Respondent was entitled to possess the land?
- 2) Has the learned Magistrate erred in law by deciding that the person to whom summons was served could establish possession or occupation in any other manner than producing a valid permit issued by the State.

- 3) Has the learned High Court Judge erred in law in coming to the conclusion that the Chairman of Sri Lanka Tourism Development Authority had no power to file an application for eviction as 'competent authority' under the Act?

Section 6 of the Act requires the Magistrate to issue summons on the person named in the application 'to appear and show cause' why such person and his dependants, if any, should not be ejected from the land as prayed for in the application.

"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." (Nirmal Paper Converters (Pvt) Ltd. Vs. Sri Lanka Ports Authority (1993) 1 S.L.R. 219)

Section 9 of the Act reads thus;

- (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.

Within the meaning of Section 9(1) of the Act, the burden is on the Respondent to establish that she is in possession upon a valid permit or the written authority of the State (*Urban Development Authority Vs. Wejayaluxmi* (2006) 3 SLR 62)

The Respondent claims title to the land in question by Deed of Declaration No. 155, dated 24/06/2005, and states that the provisions of the Act would not apply against a privately owned land and therefore, the competent authority could eject only such person in possession or occupation of such land belonging to the State. The Respondent further claims that she acquired title to the said land by Deed of Transfer No. 6296 dated 26/04/1978, (Vide page 101 of the brief). However, it is observed that the said Deed has no relevance to the claim put forward by the Respondent. In any event if the Respondent is claiming title by virtue of the said Deed, in terms of Section 12 of the Act, the Respondent could file a civil action against the State to vindicate her title.

In SC Appeal 214/12, decided on 27/06/2013, Sri Pavan J. (as he then was) cited with approval the case of *Ihalapathirana Vs. Bulankulame*, (1988) 1 SLR 416, where S.N. Silva J. (as he then was) observed;

"The mere fact that such a civil action is possible does not have the effect of placing the land described in the notice marked 'P3', outside the purview of the State Lands (Recovery of Possession) Act. Indeed, in all instances where a person

is in unauthorized occupation or possession of State Land such person could be ejected from the land in an appropriate civil action. The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action."

The position taken up by the Appellant is that by Deed of Transfer No. 6296, dated 26/04/1978, the land in question which belonged to one Leslie Edward Barwick was acquired by the State in terms of the Land Acquisition Act No. 28 of 1964 (as amended), on 05/01/1980 as reflected in Gazette Notification bearing No. 91/7 dated 05/06/1980, and the supporting documents filed of record. (Vide page 84 to 92 of the brief). The Grama Niladari, of Nilaweli in his statement to the police (Vide Page 114 of the brief in PHC-0142-15) states;

"මෙම ඉඩම සංචාරක මණ්ඩලයට අයිති ඉඩමක් බවත්, මෙම ඉඩමේ කාලිපුල්ලේයි යන අය පදිංචිව සිට නිවස සුනාමියට කැඩී පස්සේ ජෙයිකාවලින් නැවත නිවසක් සදා දුන් බවත්, එම නිවසේ පදිංචිව සිට නැවත සංචාරක මණ්ඩලයට අයත් ඉඩමේ තාවකාලික නිවසක් සදාගෙන පදිංචිව සිටින බවත්, ඉඩම සංචාරක මණ්ඩලයට අයිති ඉඩමක් බවත් මෙහි අනවසරෙන් තමයි මේ අය පදිංචිව සිටින බව පවසා....."

This clearly shows that the Respondent did not possess a valid permit or any authority to be in possession or occupation of the said land. The Respondent has relied heavily on the Deed of Declaration which she contends has given her a legitimate reason to be in possession of the land. It is trite law that such consideration is not within the scope of the Act.

In *SC Appeal 214/12, decided on 27/06/2013, (Supra) Sri Pavan J.* (as he then was) observed;

"The State Lands (Recovery of Possession) Act was initially enacted on 25/01/1979 in order to make provision for the recovery of possession of "State Lands" from persons in unauthorized possession or occupation of the said lands. Thus, it is obvious that the intention of the legislature was to obtain an order of ejectment from the Magistrate's Court when the occupation or possession was unauthorized.....

Thus, one could see that a limitation has been placed on the scope and ambit of the inquiry before the Magistrate. The Magistrate can only satisfy him whether a valid permit or any other written authority of the State has been granted to the person on whom summons has been served. If the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. An interpretation of Section 9 which defeats the intent and purpose for which it was enacted should be avoided."

In *Muhandiram Vs. Chairman, Janatha Estate Development Board* (1992) 1 SLR 110, it was held that;

"In an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the State granted according to any written law. If this burden is not discharged, the only option open to the Magistrate is to order ejectment".

In the circumstances, it is very clear that, in the instant case the Respondent has failed to discharge her burden in terms of the Act to establish possession or occupation. To the contrary, it is well founded that the land in issue is a State land and also that the Respondent has no legally valid permit or any other written authority to contest any matter stated in the application filed in terms of Section 5 of the Act. The Respondent has not produced any valid permit or any written authority of the state granted in accordance with any written law in force to possess or occupy the said land. Therefore, the Respondent has clearly failed to comply with the notice to quit and vacate the land in issue and therefore, is liable to be ejected.

The next argument placed before Court by the learned Counsel for the Respondent is that the person making the application to Court is not a competent authority in terms of the Act. This objection is based on the fact that the Board of Directors of SLTDA did not delegate such powers to the Chairman to file this application. At the outset, it is observed that according to the Tourism Act No. 38

of 2005, which established the SLTDA, does not compose of a Board of Directors. The land in question was vested with the State by Gazette Notification bearing No. 91/7, dated 05/06/1980. The 'Quit notice' was issued by the Chairmen of SLTDA as competent authority in terms of Section 3 of the Act.

Section 18 of the Act states thus;

"Competent authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes,

Sec.18 (h) of the Act states thus: -

"The head of any other Government Department or Institution being a department or institution created by law, where such land is under the control of such department or institution"

Therefore, delegation of power from the members of the authority to the Chairman to act as competent authority would not arise since the Chairman as the head of the authority has every right to make this application to Court in terms of Section 18(h) of the Act.

The Appellant as the head of the said statutory authority has filed this application. Therefore, the argument that the Appellant as competent authority has no power to file this application is totally misplaced in law.

It is also observed that the scope of the inquiry in terms of Section 9 of the Act specifically states that the learned Magistrate is not competent to call for any evidence from the competent authority in support of an application in writing set out in the schedule to the Act. It is well settled law that an objection of this nature cannot be taken up before the learned Magistrate or in these proceedings. However, an aggrieved party could challenge the decision of the competent authority under Section 3 of the Act by way of a writ of *certiorari*. (*Dayananda vs. Thalwatte (2001) 2 SLR 73*). Therefore, I see no merit in this argument.

For the aforesaid reasons, the judgment of the learned High Court Judge and the order of the learned Magistrate are set aside.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL