IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal against the Order made on 17.05.2017 by the Provincial High Court holden in Monaragala in the Revision Case No.16/2016.

Competent Authority, Manager, Controller People Estate Development Board, Colombo 02.

CA (PHC) 64-2017

HC Monaragala 16-2016 Rev

MC – Monaragala 78060

Petitioner

Vs.

Rathnayake Mudiyanselage Kingsly Charles Kumarawatta Estate, Parawila Estate, Kumbukkana

Respondent

AND BETWEEN

Rathnayake Mudiyanselage Kingsly Charles, Kumarawatta Estate, Parawila Estate, Kumbukkana.

<u>Respondent – Petitioner-</u> <u>Appellant</u>

Vs.

Competent Authority
 Manager, Controller,
 Peoples Estate Development
 Board,
 Colombo 02.

Petitioner - Respondent

2. Hon. Attorney General,

Attorney General's Department, Colombo 12.

Respondent - Respondents

Before : Hon. M Sampath K. B Wijeratne, J. (CA)

Hon. M. Ahsan R. Marikar, J.(CA)

<u>Counsel</u>: Jagath Nanayakkara for the Appellant.

Rasika Dissanayake with Shabdeen

Huzzein and Charitha Minipuraarachchi

for the 1st Respondent

Written Submissions on: 30.03.2022 by Appellant

05.09.2024 by 1st Respondent

13.09.2024 by Respondent- Petitioner-

Appellant

<u>Argued on</u> : 28.08.2024

Decided on : 04.10.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Appellant had lodged this appeal against the Respondent to seek the reliefs prayed for in the petition of appeal dated 25th May 2017.
- 2) The said reliefs sought in the Appellant's petition of appeal are set forth as follows;

වූ වේලක යුතු මෙම වග උත්තරකාර පෙත්සම්කාර අභියාවක ගරු අභියාවනාධකරණයෙන් අයැද අවුන්නේ .

- අ) ගරු උගත් මනාධිකරණ 2017-05-17 වන දිනැතිව ගරු උගත් මහේස්තුාත් අධිකරණ විනිසුරුතුමන් විසින් 2016-05-23 වන දින ලබාදුන් නියෝගය නිතපානුකූල නියෝගයක් ඔවට ෆිරණය කරමින් වකි නියෝගය ස්වීර කරමින් ලබාදුන් නියෝගය ඉවත දමනා ලෙසත්
- ආ) 2016-05-23 වන දීන ගරු උගත් මහේස්තුත් අධිකරණ විනිසුරුතුමන් ලබාදුන් නෙරපිමේ නියෝගය නිතපානුකුල නියෝගයක් නොවන බවට තිරණය කරනා ලෙසත්
- අැ) මෙම ගරු අභියාචනාධිකරණයට උචිත හා සුදුසු යැයි හැගෙන වෙනත් සහ වැඩිමනත් සහනයන් ලබාදෙන ලෙසත් ද වේ.

Facts of this case

- 3) The Appellant had sought in the prayer of the petition of appeal to set aside the Order of the Learned High Court Judge dated 17th May 2017 and to declare that the Order delivered by the Learned Magistrate dated 23rd May 2016 as invalid.
- 4) This is an action based on a recovery of possession of a state land filed by the Competent Authority at the Magistrate's Court.
- 5) The Magistrate had considered the facts and the documents and allowed the Respondent Competent Authority of the Plantation Management Monitoring Division to eject the Appellant from the

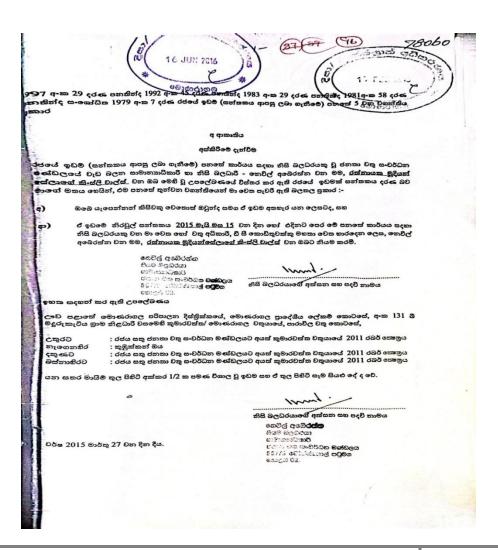
- land described in the plaint filed by the Respondent Competent Authority.
- 6) Aggrieved by the said Order, the Appellant had filed a revision application in the Provincial High Court of Monaragala. Learned High Court Judge after considering the facts pertinent to this action had dismissed the Appellant's revision application. On that, the Appellant had filed this appeal against the said Order made by the Learned High Court Judge.
- 7) Further, the Learned High Court Judge failed to consider the deeds executed in favour of the Appellant which were produced and neglected to adhere to the provisions outlined in the State Lands (Recovery of Possession) Act No.7 of 1979.
- 8) Furthermore, the Appellant had contended that the schedule produced by the Competent Authority to eject the Appellant was vague.
- 9) The said grounds had not been considered by the Learned High Court Judge during the revision application submitted by the Appellant in the High Court of Monaragala.
- 10) Consequently, the Appellant had sought the reliefs prayed for in the petition of appeal.
- 11) However, the Learned High Court Judge had dismissed the petition and refused the Writ of Certiorari application made by the Appellant.

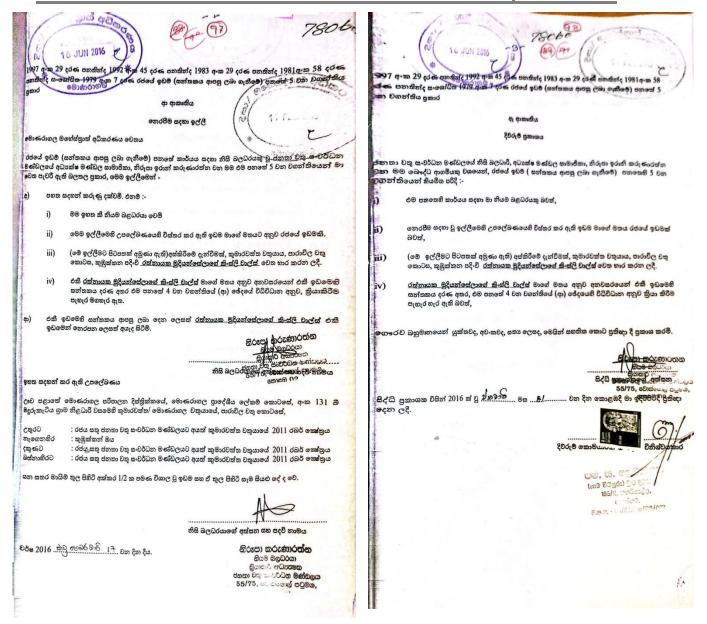
Disputed facts

12) When this appeal was taken up for argument on 28th June 2024, the parties agreed to conclude the case by way of filing written submissions.

- 13) Upon considering the written submissions, documents and the Orders made by the Learned High Court Judge and Magistrate, to arrive at the conclusion, I am of the view the following disputed points should be looked into.
 - i) Was the Learned Magistrate's Order dated 23rd May 2016 evaluated by the Learned High Court Judge considering the disputes raised by the Respondent-Petitioner Appellant at the High Court?
 - If so, can the application made by the Respondentii) Petitioner Appellant be maintained?
 - If not, can the Appellant seek the relief prayed for in his iii) petition of appeal dated 25th May 2017?
 - I. Was the Learned Magistrate's order dated 23rd May 2016 evaluated by the Learned High Court Judge considering the disputes raised by the Respondent-Petitioner Appellant at the High Court?
- 14) On perusal of the Learned High Court Judge's Order dated 17th May 2017, it is evident that the Learned High Court Judge had meticulously considered the facts pertinent to the Magistrate's Order.
- 15) The Appellant had filed the revision application against the Order of the Magistrate by way of a petition dated 21st June 2016. In the said petition, the Appellant had pleaded to revise the Order delivered by the Learned Magistrate on 23rd May 2016 requesting that the Respondents be restrained from harvesting and that the Appellant be permitted to enter the disputed land and harvest.
- 16) When referring to the petition filed by the Appellant in the High Court, the primary contention was that the Petitioner's long-term

- possession of the said land during which he cultivated a variety of plants and erected a house.
- Further he has challenged the Competent Authority who had 17) signed the eviction notice. When perusing the Learned Magistrate's Order, the Learned Magistrate had very well considered under section 5 (a), (b) and (c) as prescribed and determined that the eviction notice had been duly issued. Additionally, the Learned High Court Judge in her Order reiterated that the Competent Authority's position is well established.
- 18) I draw my attention to the notice of quit filed at the Magistrate's Court Monaragala in the case No. 78060. I reproduce the said notice hereafter;





19) On perusal of the said notice and in considering the Magistrate's Order dated 23rd May 2016, it is evident that the Learned Magistrate had explicitly stated that the said notice had been tendered to court in the correct prescribed form in compliance with the Provisions of Section 5 of the State Lands (Recovery of Possession) Act. Therefore, on the face of it the Learned Magistrate and the High Court Judge had correctly decided that the Notice of quit tendered by the Respondent is in the correct prescribed form.

- 20) The object of the legislation under section 18 of the State Lands (Recovery of Possession) Act defines the term "Competent Authority". I hereby reproduce the relevent section as follows;
 - **Sec 18**; In this Act, unless the context otherwise requires "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:
 - (a) the General Manager of Railways, where such land is under the control of the Railway Department;
 - (b) the Commissioner for National Housing, where such land is under the control of the Department of National Housing;
 - (c) the Commissioner of Local Government, where such land is under the control of a local authority; and:
 - (d) any other public officer authorized by the Government Agent in respect of any matter or provision of this Act;
- 22) The case of **Wedamulla V Abeyasinghe** ¹ specifies the definition of a "Competent Authority";

"Competent Authority includes "an officer generally or specially authorized by a corporate body. Where such land is vested in or owned by or under the control of, such corporate body".

- 23) When considering the Learned High Court Judge's Order I am of the veiw that the Learned High Court Judge had considered that the Respondent-Respondents Competent Authority was appointed legally. Therefore, the Appellant's position challenging that there is no Competent Authority cannot be accepted in the instant action. Thus I do not have to explain the said position in detail as the said fact is correctly decided.
- 24) On the said grounds, it is my considered view that the Learned High Court Judge had thoroughly considered the facts pertinent to

¹ [1999] 3 SLR Pg 26

the Order made by the Magistrate's Court and decided that there are no exceptional circumstances warranting the exercise of revisionary jurisdiction to entertain the revision application filed by the Appellant before the High Court.

II. If so, can the application made by the Respondent-Petitioner Appellant be maintained?

- 25) In the instant action and/or in the revision application before the High Court and/or before the Magistrate's Court the Appellant had never claimed the disputed land as his private property.
- 26) Therefore, the Appellant had by implication, ackowledged that he is in the possession of a State Land.
- 27) In the said circumstances, I draw my attention to the following decisions; *Muhandiram V Chairman Janatha Estate Development Board* and *Namunukula Plantation PLC V Nimal Punchihewa*.

In the case of Muhandiram v Chairman, Janatha Estate

Development Board 2 it was stated;

"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."

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² [1992] 1 SLR 110

And in the case of Namunukula Plantations PLC V Nimal Punchihewa Chairman, land Reform Commission³;

"One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority State land. This fact cannot be contested by the person summoned and the submission of the learned President's Counsel for the Petitioner that whether the two lots of land which forms the subject matter of the Magistrate's Court action are situated within Akuresso Estate or outside is a matter to he decided by a District Court in a land action must fail. Hence, a dispute on the identity of the land cannot arise for the consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the partu summoned is in relation to the state land described in the application. Where it is not, the Magistrate must issue an order of eviction in terms of the Act."

- 28) In the aforesaid decisions, it is emphasized that there should be a valid permit or any other written document establishing the right of a party to possess the disputed land.
- 29) It is abundantly clear that the Appellant had failed to produce any permit and/or document that support his occupation of the subject matter in question.
- 30) Therefore, I find no merit in the Respondent-Petitioner-Appellant's application, and it cannot be maintained.

³ CA(PHC) 29/16 Page 7-8

III. If not, can the Appellant seek the relief prayed for in his petition of appeal dated 25th May 2017?

- 31) Considering the aforesaid facts and documents, I do not see any relevant facts raised by the Appellant to set aside the Order made by the Learned High Court Judge as a revision application is a discretionary remedy. And the Learned High Court Judge has thoroughly considered the disputes raised by the Appellant before the High Court.
- 32) Further I draw my attention to the decision of **Divisional**Secretary Kalutara v Kalupahana Mestrige Jayatissa⁴;

"It must be noted that the Respondents had invoked revisionary jurisdiction of this court, which is discretionary remedy. Thus, if relief to be granted, the party seeking the relief has to establish that, not only the impugned order is illegal, but also the nature of the illegality is such, that it shocks the conscience of the court"

- 33) In the said decision, it had been decided that an impugned Order made in a revision application must not only be illegal but should also shock the conscience of the court.
- 34) In the instant appeal, I do not see whether the Appellant had argued any point to the effect of the aforesaid grounds referred to in the case of *Divisional Secretary Kalutara v Kalupahana Mestrige Jayatissa*.
- 35) For the reasons spelt out, it is abundantly clear that the Appellant had failed to produce any document or any fact indicating that the disputed portion of the land is included in the Magistrate's Court Proceedings.

⁴ SC Appeals 246,247,249,250/14

- 36) It is apparent, in a revisionary action this nature of facts cannot be considered as the Learned High Court Judge has not violated any legal provision.
- 37) Therefore, I do not consider that the Appellant can seek any reliefs prayed for in the petition of appeal dated 25th May 2017.

CONCLUSION

38) For the reasons set out above, I dismiss the petition of appeal dated 25th May 2017 subject to payment of Rs. 50 000/- cost to the Respondent-Respondent.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal