

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

In the matter of an Application for *restitutio in integrum* and/or revision under Article 138 of the Constitution against the judgment dated 27/02/2024 in the High Court of the Western Province (holden in Negombo) Revision Application No: HC Rev 54/22.

CA Case No: RII/49/2024
PHC Negombo Revision
Application No: 54/22
MC- Welisara
Case No: 57021/21

Officer in Charge,
Police Station,
Pamunugama.

Complainant

Vs.

1. Jayamaha Mudalige Don Anthony
Apollinaris of
No. 142, "Mark Villa", Elen Egoda,
Pamunugama.
2. Jayamaha Mudalige Don Mark Lucien
Prasad of
142/14, Palluhena, Pamunugama.

Party of the 1st Part

Jayamaha Mudalige Don Disal Sugath
Priyankara of No. 90, "Kusumsiri", Elen
Egoda, Pamunugama.

Party of the 2nd Part

AND BETWEEN

Jayamaha Mudalige Don Disal Sugath
Priyankara of No. 90, "Kusumsiri", Elen
Egoda, Pamunugama.

Party of the 2nd Part Petitioner

Vs.

1. Jayamaha Mudalige Don Anthony
Apollinaris of
No. 142, “Mark Villa”, Elen Egoda,
Pamunugama.
2. Jayamaha Mudalige Don Mark Lucien
Prasad of
142/14, Palluhena, Pamunugama.

Party of the 1st Part Respondents

Officer in Charge,
Police Station,
Pamunugama.

Complainant-Respondent

Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

Respondent

**AND NOW IN THE COURT OF
APPEAL BETWEEN**

Jayamaha Mudalige Don Disal Sugath
Priyankara of No. 90, “Kusumsiri”, Elen
Egoda, Pamunugama.

**Party of the 2nd Part Petitioner-
Petitioner**

Vs.

1. Jayamaha Mudalige Don Anthony
Apollinaris of
No. 142, “Mark Villa”, Elen Egoda,
Pamunugama.
2. Jayamaha Mudalige Don Mark Lucien
Prasad of
142/14, Palluhena, Pamunugama.

**Party of the 1st Part Respondent-
Respondents**

Officer in Charge,
Police Station,
Pamunugama.

**Complainant -
Respondent- Respondent**

Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondent -Respondent

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Chandana Wijesooriya with Uththara Wijesooriya and Chawindya Weerasinghe instructed by Wathsala Dulanjani for the Party of the 2nd Part Petitioner- Petitioner.

Supported on: 03.07.2024

Decided On: **01.08.2024**

M.C.B.S. Morais J.

In this instant case, the Party of the 2nd Part Petitioner-Petitioner (hereinafter sometimes referred to as the petitioner) Mr. Jayamaha Mudalige Don Disal Sugath Priyankara is challenging both the orders of the learned High Court Judge of Negombo dated 27th February 2024 in Revision Application No. HCR Rev 54/22 and the order of the learned Magistrate of Welisara dated 28th September 2022 in Case No. 57021/21.

On the 30th of June 2021, the Complainant-Respondent-Respondent (subsequently referred to as the Complainant herein) initiated legal proceedings by filing an information report pursuant to section 66(1) of the Primary Courts' Procedure Act No. 44 of 1979 in the

Magistrate's Court of Welisara. The report highlighted an ongoing dispute over land involving the petitioner and the Party of the 1st Part Respondent-Respondents (herein after referred to as the Respondents), alleging an imminent breach of peace.

The Honorable Judge of the Magistrate Court, Welisara has determined that, as of the date when the initial information report was filed, possession of the subject land was held by the Respondents, Jayamaha Mudalige Don Anthony Apollinaris and Jayamaha Mudalige Don Mark Lucien Prasad and the petitioner has not been dispossessed of the said property within two months prior to filing of the case, as for the provision of 68 of the Primary Courts' Procedure Act No. 44 of 1979. Consequently, the court has adjudicated that the Respondents shall retain possession of the said land and the Respondents are entitled to maintain possession of the land, or a designated portion thereof, until such time that they are lawfully evicted through an order or decree issued by a court of competent jurisdiction.

Being aggrieved by the said order issued by the learned Magistrate of Welisara, sought recourse through a revision application in the High Court of Negombo. However, upon consideration of the petitioner's application, the learned High Court Judge of Negombo, in an order dated 27th February 2024 dismissed the application.

This petitioner has invoked our jurisdiction under Article 138 of the constitution, seeking the relief of *Restitutio in Integrum*.

In the matter at hand, it is imperative to acknowledge the provisions of the Primary Courts' Procedure Act No. 44 of 1979, which furnish temporary reliefs designed to preserve peace within the community. While these measures serve an essential role, it is within the realm of civil litigation that permanent resolutions are sought and established.

It must be emphasized that the invocation of the extraordinary jurisdiction of '*Restitutio in Integrum*' is reserved for exceptional circumstances. This jurisdiction should not be engaged unless the order in question is ex-facie contrary to accepted legal principles, leaves the petitioner without any other remedy, is manifestly erroneous on its face, or is of such a nature that it shocks the conscience of this court.

In the article, **“Two unusual appellate remedies: revision and restitutio in integrum in the law of Sri Lanka”** - Jerold Taitz - Senior Lecturer Faculty of Law, University of Cape Town and Attorney of the Supreme Court of South Africa states that,

“Restitutio in Integrum originated in Roman law through the *imperium* (supreme judicial powers) delegated to the praetors after the expulsion of the kings. It has been described as the judicial termination of the inequitable situation (created by the law *per se*) and the restoration of the *status quo*. There were two essential requirements for the grant of this discretionary equitable remedy, namely:

- (i) That the aggrieved party suffered loss or injury resulting from the effect of a valid and binding legal principle, for which there was no ordinary remedy; and
- (ii) That the presence of an equitable ground for the grant of restitution existed, more particularly, fraud, duress, error, minority and absence.”

Therefore, in the absence of these stringent conditions, we must refrain from utilizing this extraordinary measure, adhering instead to the ordinary legal processes and remedies available within the framework of civil litigation.

The Learned Magistrate of Welisara had considered the materials adequately and made a decision according to the law. To resolve issues concerning land, there are alternative and comprehensive legal remedies available within the legal system.

One of the grounds that the petitioner relies on is the delay in initiating the proceedings by the complainant under the Primary Courts’ Procedure Act in the Magistrate’s Court after the expiration of two months. It is contended that, it is beyond the control of the complainant and they should not be penalized for such. If the delay was attributable to inefficiencies on the part of the Police, the petitioner would have sought relief through a private application under Section 66(b) of the Primary Courts' Procedure Act. The petitioner’s failure to pursue this alternative remedy indicates a lack of diligence in enforcing their rights. Thus, the absence of reasonable efforts on the part of the petitioner to address and rectify the delay undermines the merit of their objection based on procedural timelines.

In light of these considerations, the petitioner's argument concerning the delay does not warrant favorable consideration, as they have not demonstrated a reasonable effort to pursue available remedies.

Therefore, the Learned Magistrate has acted according to the law. I do not find any injustice or irremediable loss or illegality with the order of the Learned Magistrate of Welisara.

In light of the above, as this case does not fall within the scope of *Restitutio in Integrum*, I refuse to issue notice on the Respondents.

Therefore, this application is refused and dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal