

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

*In the matter of an application for mandates
under Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka*

**Court of Appeal :
No. CA/MC/REV/28/2016**

**Magistrate's Court :
No.63095/05/10**

**General Manager,
Department of Railway,
P.B. 355, Colombo 10.**

Applicants

**Kalimuththu Karuppaiah Padmanadon,
No. 55/1, Paramananda Vihara Mawatha,
Colombo13.**

Respondent

And now between

**Kalimuththu Karuppaiah Padmanadon,
No. 55/1, Paramananda Vihara Mawatha,
Colombo13.**

Respondent – 1st Petitioner

**General Manager,
Department of Railway,
P.B. 355, Colombo 10.**

Applicant- Respondent

**Co-operative Wholesale Establishment
No.27, Vauxhall Street, Colombo. 02.**

Respondent

Before : A.H.M.D. Nawaz, J. (P/C.A.)
Sobhitha Rajakaruna, J.

Counsel : K.G. Jinasena for Respondent -1st Petitioner
Vikum De Abrew, S.D.S.G. for Applicant – Respondent

Argued on : 02.07.2020

Decided on : 20.11.2020

Sobhitha Rajakaruna J.

This is an application in Revision against the order dated 28.04.2016 of the learned Magistrate of Colombo in case No. 63095/5/10. The Applicant-Respondent, the General Manager- Department of Railways ("**Respondent**") instituted proceedings under the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979, as amended, [**"State Lands (Recovery of Possession) Act"**] to evict the Respondent-1st Petitioner ("**Petitioner**") from the land morefully described in the schedule of the quit notice. The subject land is a State land and is a Railway reserve and that fact had not been challenged by the Petitioner.

The Petitioner claims that he is a businessman who along with his wife, has entered into a Lease Agreement with the CWE (Co-Operative Wholesale Establishment) to occupy the premises in question. He has annexed two such agreements marked as P2 and P4. The Petitioner states that he has paid rents to CWE under the respective agreements and accordingly is not an unauthorized occupant of the subject land. Upon perusal of the documents annexed to the Petition of the Petitioner, it appears that the CWE was also occupying the subject land on rent basis.

At the inquiry in the Magistrate's Court, the above named Petitioner has submitted that he had cause to show against the issue of an order for ejectment. The reasons tendered to the Magistrate's Court are at pages 19 and 20 of the set of documents marked as P6, annexed to the Petition. The only defence taken up therein by the Petitioner is that;

- a) he had entered into an agreement (marked X1) with the CWE upon the subject premises/ land, and
- b) had there been an issue with regard to the subject State land which belongs to the Railway Department, the above named Respondent should have referred such an issue to CWE and then resolve the matter, as both entities are Government institutions.

The learned Magistrate, having heard both Parties at the inquiry has delivered his order on 28th April 2016, ejecting the Petitioner and his dependents from the premises in question, under Section 10 of the said Act on the basis that the respective lease agreement could not be considered as a valid permit or a written authority issued by the State.

Being aggrieved by the said order of the learned Magistrate the Petitioner has filed a Revision application in the Provincial High Court and however he has withdrawn the said application on 05.12.2016 and he on 07.12.2016 has submitted the present Petition to this Court along with an Affidavit seeking for an order to set aside the said Order of the learned Magistrate dated 28.04.2016.

The 'written law' upon which a valid permit or the 'written authority' could be granted

Section 9 of the State Lands (Recovery of Possession) Act, as amended, stipulates the scope of the inquiry in the Magistrate's Court, when an application for ejectment has been made. There are only two requirements that may be established by the person on whom summons under Section 6 has been served and he shall not be entitled to contest any of the matters stated in the relevant application under Section 5 at the inquiry. Those two requirements are to establish that;

- (i) He/she 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
- (ii) Such permit or authority is in force and not revoked or otherwise rendered invalid.

Therefore, in terms of the said Section 9 (1) such person may be permitted to submit at such inquiry:

- (a) A valid permit of the State; or
- (b) Other written authority of the State

Most importantly, the said section 9 clearly provides that, such permit or written authority should be granted in accordance with any "*written law*".

In terms of Section 2 of the Interpretation Ordinance (as amended), a "written law" shall mean and include all ordinances, laws, and Acts of the legislature of Ceylon or Sri Lanka and all orders, proclamations, rules, by-laws, regulations, warrants, and process of every kind made or issued by anybody or person having authority under any statutory or other enactment to make or issue the same in and for Ceylon or Sri Lanka or any part thereof, the minutes on Pensions, and the Ceylon (Parliamentary Elections) order-in-council 1946.

Moreover, Article 170 of the Constitution defines "written law" as any law or subordinate legislation and includes statutes made by a Provincial Council, Orders, Proclamations, Rules, By-laws and Regulations made or issued by anybody or person having power or authority under any law to make or issue the same.

Therefore, it is essential to ascertain under which 'written law' that any valid permit or written authority mentioned in the said Section 9 of the State Land (Recovery of Possession) Act, could be granted. It appears that there are several laws in-existence that governs and regulates the disposition of State lands. The Land Development Ordinance and State Lands Ordinance are among them.

It is observed that the Land Development Ordinance in its' long title stipulates that it is an ordinance to provide for the systematic development and alienation of State land in Sri Lanka. As such, Section 19 subsections (2) and (3) of the said Ordinance specify the law with regard to the issue of permits authorizing the occupancy of State lands. In terms of

Section 4 of the said Ordinance, such permit holder shall be issued a Grant in respect of the land of which he is in occupation, subject to the conditions mentioned therein. In terms of Section 22(A) of the Ordinance, any alienation of State lands made in contravention of those provisions of the said section is considered null and void.

Section 2 of the State Lands Ordinance also stipulates that 'subject to the provisions of the said Ordinance and of the regulations made thereunder the President may in the name and on behalf of the Republic of Sri Lanka, inter alia, sell, lease, or otherwise dispose of State land and enter into agreements for the sale, lease or other disposition of State land. In terms of the said section, the President may further issue permits for the occupation of State land.

It is significant that the 'permit' or the 'written authority' mentioned in the said Section 9, can be used only to grant permission for a person only to be in possession of a block of State land and such permission should be granted by an official who is authorized by 'law' to execute such power.

His Lordship Justice Sisira De Abrew in *S.M. Ratnawathi Manike vs. Mohiden Kasim Bibi and several others* (SC Appeal 154/2015 – decided on 10.11.2017) has observed that when a grant under Section 19(4) of the Land Development Ordinance is issued by His Excellency the President the grantee has been declared as the owner of the property. But when a permit in terms of Section 19(2) of the Land Development Ordinance is issued by the Land Commissioner, the person who is given the possession of the land is declared as the permit holder.

His Lordship Justice Abrew in this case further interprets the difference between a grantee of a State land and a permit holder to whom a State land has been alienated. There, His Lordship Justice Abrew citing Justice Gratiaen's judgment in *Palisena v Perera*, (56 NLR 407), observes that a 'permit holder' under the Land Development Ordinance has only permission to possess the land and he gets sufficient title to enable him to maintain a vindicatory action only against a trespasser.

The term "permit-holder" is defined in Section 2 of the Land Development Ordinance as any person to whom a permit has been issued and includes a person who is in occupation of any land alienated to him on a permit although no permit has actually been issued to him. In *Leelawathie vs. Perera* [(2012) 1 SLR 246] Dr. Shirani Bandaranayake CJ (as then) has observed that according to the said definition the permit-holders could be categorized into two groups. The first type would be the permit-holders who are possessed with the permits issued to them under the Land Development Ordinance. The other category would consist of persons who had not received a permit, but occupies the land alienated to him on a permit.

Furthermore, Section 25 of the Land Development Ordinance requires the permit issued under said Ordinance to be in a prescribed form. In addition to such rules governing the issuance of permits, the authority or power to issue such permits is also very much material in this process. In other words, when dispossessing State lands, it is essential that the

respective official should possess necessary power or authority to alienate the respective State land. Soersz A.C.J has observed in Attorney General v Wijesuriya (47 NLR 385) on the question of whether the transaction be regarded as a lease or something less than a lease, that the Land Commissioner did not have the power, under the Regulations relating to dispositions of Crown lands, to render the Crown liable by entering in to that contract.

Accordingly, I find that, many written laws in the country well provide authority and the proper mechanism to dispossess State land by way of a valid permit or by other written authority, etc. In L.H.M.B.B. Herath vs. Morgan Engineering Pvt Ltd. (SC Appeal 214/12- decided on 27.06.2017) Sripavan J. held that;

"...in accordance with any "written law" means that the alienation per se, i.e. the manner and mode of the alienation itself must be one that is prescribed by law".

Therefore, in my view any "written law" upon which a valid permit or other written authority that could be granted, as mentioned in Section 9 should be any "written law" that deals with the authority and mechanism on disposition of State land, and not otherwise.

Can the subject lease agreements between the Petitioner and CWE be considered as a 'valid permit' or 'written authority' issued by the State?

The Petitioner has presented to this Court two lease agreements entered in to between the Petitioner and CWE which is a corporate body established under a statute. One is for the period commencing from 24th November 2009 to 23rd November 2012 (marked as P2) and the other is for the period from 1st June 2015 to 31st May 2018 (marked as P4). Both these Agreements contain termination clauses obliging the Lessee (the Petitioner) to handover the vacant possession of the demised premises back to the Lessor.

Although the Petitioner submits that one of the subject lease agreements was in operation during the pendency of the relevant Magistrate's Court case, this Court has taken careful consideration on the aspect as to whether the said lease agreement constitutes a valid permit or a written authority within the purview of Section 9 of the State Lands (Recovery of Possession) Act.

In this regard it is also important to consider the authority or the power vested in CWE to lease the said premises to the Petitioner. The Competent Authority - General Manager of Railways has never entered in to any agreement with the Petitioner.

It is observed that by way of the document marked as P3, the CWE has made an earnest request to the Petitioner or his company to participate at the Magistrate's Court proceedings instituted by the Respondent against the said Petitioner. The CWE, in the same letter marked P3 further regrets the inconvenience caused to the Petitioner due to the said Magistrate's Court proceedings. This undoubtedly begs the question as to whether the CWE themselves have admitted Sri Lanka Railways as the rightful Competent Authority in this

instance. As observed earlier, there was no dispute among any of these parties that the subject land is a State land and it is a Railway Reserve.

In this context, I have carefully considered the following judgments also;

In Mohandiram v 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 his burden is not discharged the only option open to the Magistrate is to order ejectment."

In the case of Muttuvelu v Dias and Another (2004) 2 SLR 335 it was held by Wijeratne J,

"A lease though considered a Pro tanto transfer, is a contract between the Lessor and the Lessee, governed by the terms of the indenture of Lease. Lessee during the tenure of the lease may exercise all the rights of the owner with regard to the possession and enjoyment of the property leased as against third parties. A Lessor by reason of the lease does not lose his right of ownership and may exercise his rights of ownership especially towards more fully assuring the control and possession of the devised property to the lessee."

Provisions of the State Lands (Recovery of Possession) Act reveal that it is a special enactment providing for the speedy recovery of State Lands from unlawful occupiers. The State continued to be the owner of the estates leased"

In Ihalapathirana v Bulankulama Director General U.D.A [(1988) 1 SLR 416] S.N. Silva J. has held that:

"..the phrase "unauthorized possession or occupation" is defined in Section 18 of the Act, as amended by Act No. 29 of 1983 to mean the following;

Every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon State Land"

This definition is couched in wide terms so that in every situation where a person is in possession or occupation of State land, the possession or occupation is considered as unauthorized unless such possession or occupation is warranted by a permit, or other written authority granted in accordance with any written law. Therefore, I am unable to accept the contention of the Counsel for the Petitioner that a land which is a subject matter of an agreement in the nature of the document marked P1 comes outside the perspective of the State Land (recovery of Possession) Act."

The rights and liabilities under the agreement could be the subject matter of a civil action instituted by either the U.D.A or the petitioner. 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 dicta of the Supreme Court in the case of Weerakoon vs. Ranhamy and the passage of the Canadian judgement quoted by Professor Wade, therefore do not have a bearing on this case. Accordingly, the application of the Petitioner is dismissed with costs."

Also, in **Muttiah Shanmugam (Sivapakim Shanmugam) v J.M.C. Priyadarshani**, [CA(PHC) APN 113/2011 with CA(PHC) 68/11 decided on 06.04.2017] **Madawala J.** held that:

"the land in question remains the property of State despite the fact that the land concerned been leased to the Agarapatana Plantations Ltd. and the said leasing of the land has not deprived the State of its ut dominus upon the land."

Further, the substantial point of law as to whether the State Land (Recovery of Possession) Act would be applicable in regard to over holding tenants or leases has been extensively discussed in **Walker Sons & Co., Ltd. Vs. Sri Lanka Ports Authority & another** (CA 305/90, MC Colombo Port 58/H, decided on 15.06.1995) where Ranaraja J held that:

"..... there is no significant difference between the lease of the land granted to the petitioner which was subsequently terminated on default or conditions by the petitioner and a licence or permit to occupy state land issued by an authorized officer which is subsequently cancelled for breach of the conditions therein, since both situations could found causes of action in a civil court."

Accordingly, I hold that the lease agreements marked as P2 and P4 in this case could not be considered as a valid permit or a written authority of the State on the basis that:

- a. The said agreements have not been entered in to by virtue of any written law that deals with authority and mechanism of dispossessing State land which falls within the purview of the provisions of Section 9 of the State Land (Recovery of Possession) Act. It is observed, examining the documents annexed to the Petition of the Petitioner, that the CWE had not been authorized by the Sri Lanka Railways or any other authority to lease out the subject State land.
- b. The said agreements have not been entered into between the General Manager of Railways (Competent Authority) and the Petitioner of this case; but only between the Petitioner and the CWE who is not the absolute owner of the subject State land.

However had the lease agreement been entered in to by the General Manager Railways, being the Competent Authority, with the Petitioner in the instant case, then the situation would have been different, as, in my view, it is unfair for a Competent Authority to proceed with the process prescribed in the State Lands (Recovery of Possession) Act without first giving due consideration to the validity of such lease agreement.

In **Mohamed vs. Land Reform Commission and another**, [(1996) 2SLR 124] the Petitioner Mohamed formally handed over possession of the land to the Land Reform Commission (LRC), and LRC on that day itself handed back possession to the petitioner on the basis of a

lease. That lease transaction has been acquiesced in and adopted by the LRC, as it has accepted and received rents from the petitioner. Upon a payment issue, the LRC took steps to recover possession of land under the State Lands (Recovery of Possession) Act.

In the above case F.N.D. Jayasuriya J. held that,

“due to the representations made by him to persons holding high political office, the Land Reform officials have changed their proposed cause of action and are seeking to raise issues with regard to the legality of the monthly lease which the Land Reform Commission has executed in favor of the Petitioner and in respect of which lease the Land Reform Commission had collected rents from the Petitioner...I hold that the Petitioner was in lawful and authorized occupation and possession of the said land as a monthly lease of the said land under the Land Reform Commission, and in the circumstances the notice (marked X) issued by the 2nd Respondent is ultra vires the powers of the 2nd Respondent vested in him by the aforesaid provision of said Act No. 7 of 1979 as amended”

Further Jayasuriya J. observed that;

“a court of law is the only bastion and forum to which a humble and innocent litigant could resort to obtain redress against tyrannical officialdom of this nature which is actuated by improper motives generated by persons having at their disposal political influence.”

On that footing, I am of the view that when a person occupies a State land upon a lease agreement, it is essential to primarily ascertain with whom he has entered into such agreement.

Also, the wide discretion bestowed upon a Competent Authority under Section 3 of the Act cannot be exercised by the said Competent Authority unreasonably by serving a quit notice under the provisions of the Act to a person with whom the same Competent Authority has entered into a lease agreement upon the subject State land, without first duly terminating such lease agreement. In such an event, the onus will be on the lessee of the lease agreement to establish that such lease agreement is valid and in force during the inquiry in the Magistrate's Court, as per Section 9. Nevertheless, it is emphasized in this instance, that such lease agreement should also be duly executed by such Competent Authority in accordance with the authority vested upon him by any written law that deals with disposition of State land.

By virtue of Section 6 (2) of the Act, the provisions contained in the Code of Criminal Procedure Act, shall *mutatis mutandis*, apply only to the issue of summons and service thereof and other steps necessary for securing the attendance of the person summoned. Therefore I am of the view that the Magistrate's powers of holding an inquiry is restricted even if the occupant/ respondent submits a lease agreement that entered into between him and the Competent Authority as a cause against the issue of an order for ejectment. It is improper for a Magistrate to expand the jurisdiction bestowed upon him in terms of Section 9 by adopting a prolonged procedure to inquire as to whether such lease agreement is a valid and/or in force. It was held in Farook v Gunawardena, Government Agent, Ampara [(1980) 2

SLR 243] that the underlying purpose of the entire Act is to preclude investigation and inquiries, and that when the competent authority has formed an opinion not even the Magistrate is competent to question that opinion.

The contention of the Petitioner in the instant case is that the land in question was under his occupation in view of the lease agreement entered into between him and the CWE; and therefore, the General Manager of Railways is prevented and restrained in law from taking any steps under State Lands (Recovery of Possession) Act. As observed before, it is not a disputed fact among the parties that the subject land is a State land and is a Railway reserve. 'Nemo dat quod non habet' principle is apt here and accordingly no one can give what he does not have or no one can transfer better title than he himself had. Also the maxim '*caveat emptor, qui ignorare non debuit quod jus aliumun emit*' (let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another – vide *Pawittar Singh Walia vs Union Territory on 21.11.2012 Civil Writ Petition No. 22898 of 2012- Punjab- Haryana High Court*) is attracted in the present case as well as in the matters under the State Land (Recovery of Possession) Act. I believe these should be read in line with the premise under which the said Act was enacted. Therefore, in my view the persons who deals with State Land are ought to be mindful of the stringent recovery process embedded in the said Act.

Hence, the General Manager of the Railways as the Competent Authority who had never entered into any lease agreement with this Petitioner will not be deprived of taking steps to recover the subject Railway reserve/ State land which include the premises subject to the lease agreement that entered into between the Petitioner and the CWE. In *Goonathilake & others vs. Thollappan [(2007) 2 SLR 394]*, the Supreme Court held that Section 18 of the State Lands (Recovery of Possession) Act makes it abundantly clear that land is taken to include buildings, standing thereon.

Nevertheless, in an event where the parties have entered in to a lease agreement upon a State land, the alleged unauthorized occupant may at anytime recourse to a civil action to obtain a declaration on the status of such an agreement. Also, a writ proceeding does lie to the Court of Appeal if the alleged unauthorized occupant could show that the Competent Authority's action is ultra vires. However, it is observed that the instant case is not a matter coming under judicial review but only a revision application.

Accordingly, I hold that the learned Magistrate in his order dated 28.04.2016 has correctly decided that the Lease Agreement marked as X1 (marking in the Magistrate's Court) cannot be considered as a valid permit or a written authority issued by the Sri Lanka Railways who has the proper title of the subject land. The learned Magistrate is correct by arriving at a conclusion to say that only the Lease Agreement marked as X1 would not suffice the Petitioner to seek any relief under Section 9 (1) of the Act.

Furthermore, for the reasons stated above I hold that the additional documents submitted with permission of this Court by the Petitioner, together with the purported 'additional petition' dated 08.11.2019, cannot be considered at all as a 'valid permit' or a 'written authority' issued to the Petitioner by the State. It is obvious that the document identified as

X1, dated 07.07.2015, has been issued well before the competent authority files the application for ejectment in the Magistrate's Court under the State Land (Recovery of Possession) Act. Similarly it is noted in view of the Magistrate's Court order marked as P8 that the General Manager Railways has filed an application even against the Chairman of CWE under State Land (Recovery of Possession) Act in the said Court, along with the application against the above named Petitioner.

In the above circumstances, I see no reason to interfere with the order dated 28.04.2016 of the learned Magistrate of the Chief Magistrate's Court of Colombo. Further I hold that for the reasons set out above, the basis upon which the orders of the Magistrate's Court marked as P8, P9, P10, P11, P12 and P13, made by another learned Magistrate, exercising parallel jurisdiction, in distinct cases, have no bearing in this case although the respective blocks of land also within the same subject premises.

The Revision application is dismissed without costs.

The learned Magistrate of Colombo is directed to take necessary steps to execute his order of ejectment dated 28.04.2016.

Judge of the Court of Appeal

A.H.M.D Nawaz, J. (P/C.A.)

I agree.

President of the Court of Appeal