

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

*In the matter of an appeal under Article
154P (6) of the Constitution read with
provisions of the High Court of the Provinces
(Special Provisions) Act No.19 of 1990.*

Court of Appeal No:

CA/PHC/0066/2012

Wanninayaka Mudiyanseelage Chandana

Kumara Wanninayaka,

Divisional Secretary (Acting),

PHC Kurunegala

Nikawaratiya.

Case No. HCRA 48/2008

APPLICANT

Vs.

Magistrate's Court Nikawaratiya

Case No. 50734

Herath Mudiyanseelage Karunaratna,

Karunathilaka Stores,

Meewellawa,

Meewellawa.

RESPONDENT

AND

Herath Mudiyanseelage Karunaratna,
Karunathilaka Stores,
Meewellawa,
Meewellawa.

RESPONDENT-PETITIONER

Vs.

Wanninayaka Mudiyanseelage Chandana
Kumara Wanninayaka,
Divisional Secretary (Acting),
Nikawaratiya.

APPLICANT-RESPONDENT

AND NOW BETWEEN

Herath Mudiyanseelage Karunaratna,
Karunathilaka Stores,
Meewellawa,
Meewellawa.

RESPONDENT-PETITIONER-APPELLANT

Vs.

Wanninayaka Mudiyanseelage Chandana
Kumara Wanninayaka,
Divisional Secretary (Acting),
Nikawaratiya.

APPLICANT-RESPONDENT-
RESPONDENT

Before : Sampath B. Abayakoon, J.

: P. Kumararatnam, J.

: Wickum A. Kaluarachchi, J.

Counsel : W. Dayaratne, P.C. with Ms. R. Jayawardena
instructed by Ms. C. Dayaratne for the Respondent-
Petitioner-Appellant

: Chaya Sri Nammuni, D.S.G. for the Respondent

Argued on : 10-10-2023

Decided on : 30-01-2024

Sampath B. Abayakoon, J.

This is an appeal preferred by the respondent-petitioner-appellant (hereinafter referred to as the appellant) on the basis of being aggrieved of the judgement dated 29-03-2012, pronounced by the learned Provincial High Court Judge of the North Western Province Holden in Kurunegala.

This was a judgement pronounced after having considered an application by the appellant invoking the revisionary jurisdiction granted to that Court in terms of Article 154P of The Constitution.

The learned High Court Judge pronouncing the judgement applicable to the application of the petitioner, and several other petitioners, who filed similar applications before the High Court, had dismissed the revision application filed by the petitioner. It appears that the parties before the High Court had agreed to argue the applications of several applicants together and for a single judgment in relation to all the applications.

When this matter was taken up for argument, the parties agreed to consider this appeal along with the appeal filed in CA-PHC-0065-12, as both these appeals are emanating from the same judgement pronounced on 29-03-2012 by the learned High Court Judge.

The facts relating to the appeal can be summarized as follows.

The Acting Divisional Secretary of Nikawaratiya has issued a quit notice in terms of section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended (hereinafter referred to as the Act), requiring the appellant to quit the land he was in occupation, as mentioned in the quit notice on the basis that it was a state land, and the appellant is in unauthorized possession.

He has issued this quit notice as a competent authority recognized under the Act to issue such a quit notice. Since the appellant has failed to abide by the said quit notice, the Divisional Secretary as a competent authority, has initiated an action before the Magistrate's Court of Nikawaratiya following the provisions of section 5 of the Act. The number of the case before the Magistrate's Court is 50734.

The learned Magistrate of Nikawaratiya has issued notice as required in terms of section 6 of the Act, and the appellant has been allowed to show cause as to why an order of ejectment should not be made against the appellant.

The learned Magistrate of Nikawaratiya has pronounced the relevant order subsequent to the inquiry held in that regard on 02-10-2008.

The learned Magistrate, after having considered the scope of an inquiry of this nature, has determined that the appellant has failed to establish that he has a valid permit or other written authority of the State, granted in accordance with any written law for him to be in occupation of the land. Accordingly, the learned Magistrate has issued the relevant order of ejectment of the appellant.

It appears that a several other orders have been pronounced by the learned Magistrate on the same day, after having considered similar causes shown by several other respondents under similar circumstances, and the appellant in Case No. CA-PHC-0065-12 was the respondent named in the Magistrate's Court of Nikawaratiya Case No. 50727.

The learned Magistrate has well considered the scope of an inquiry of this nature in terms of section 9 of the Act, which reads as follows.

9. (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.

When this order was challenged before the learned High Court Judge of the Provincial High Court of the North Western Province Holden in Kurunegala, the learned High Court Judge has considered the judgment by the Court of Appeal in CA Writ Application No. 2034/2005, where both the Counsel has agreed that the order made in the CA Writ Application No. 2033/2005 would apply to CA Writ Application No. 2034/2005 as well, since the issues involved in both these applications are identical.

It has been determined by the learned High Court Judge that the judgment in the said case does not relate to the application filed by the competent authority in the case under consideration.

Accordingly, the revision application has been dismissed, as there was no reason for the learned High Court Judge to interfere with the determination of the learned Magistrate of Nikawaratiya.

In his arguments before this Court, the learned President's Counsel heavily relied on the judgement of the earlier mentioned CA Writ Application No. 2033/2005 to argue that based on the said determination, the competent authority has no basis to file this action against the appellant. He was also vivid in arguing that in any case, the said judgement should stand as a valid permit granted to the appellant to be in occupation of the land in question.

I find it therefore necessary to examine the judgement in CA Writ Application No. 2033/2005, to determine whether there is any relevance of that judgment to the quit notice issued by the competent authority in the case under appeal.

In the said Writ Application, the petitioner has sought to quash two quit notices issued by the same competent authority in terms of section 3 of the provisions of State Lands (Recovery of Possession) Act. It has been determined that the competent authority has required the appellant to deliver vacant possession of lot no. 431 of the land called 'Galgodahenyaaya' which was also depicted as lot No-2 on a plan prepared by Mr. Jayasekara, Licensed Surveyor of the Kachcheri, dated 01-02-2005.

It has been found that in the final report on village settlement prepared by the Land Settlement Department, which had been marked as 1R1 in that case, the land named 'Galgodahenyaaya' has been referred to as a private land. Having considered the plan upon which the competent authority relied on to issue the quit notice and the document marked 1R1, it has been determined that the competent authority has no right to issue a quit notice with regard to a private

land clearly indicated in the document marked 1R1, and accordingly, a writ of Certiorari has been issued quashing the relevant quit notices.

It is clear from the submissions made before this Court by the learned Deputy Solicitor General (DSG) who represented the competent authority, that subsequent to this writ of Certiorari, the final report marked 1R1 before the Court of Appeal in the said Writ application has been amended and corrected in accordance with the relevant Final Village Plan. The perusal of the said 1R1 document which is part of this brief indicates that there are two separate lands mentioned as 'Galgodahena' which was a state land and 'Galgodahenyaaya' which has been depicted as a private land. Since it was clear that the mentioned 'Galgodahenyaaya' in the previous quit notice, which was admittedly a private land, the said quit notice has been quashed.

The quit notice issued in relation to the order pronounced by the learned Magistrate of Nikawaratiya had been in relation to the land called 'Galgodahena'. Although the boundaries mentioned in the Schedule of the land may be the same, as in the previous action, it is clear that the competent authority has issued this quit notice after correcting the wrongly mentioned name of the land.

I am of the view that a competent authority is not precluded from issuing another quit notice after having corrected whatever the mistakes that there were in relation to a previously issued quit notice that led to the quashing of the same by the Court of Appeal

I am of the view that the appellant has no basis whatsoever to argue this matter on the basis of a previously issued quit notice and a writ issued against the said quit notice, as this case has not been determined by the learned Magistrate of Nikawaratiya and the learned High Court Judge of Kurunegala based on the said quit notice issued previously.

Therefore, it is the view of this Court that the competent authority has correctly identified the land upon which the appellant is in unauthorized occupation in

his opinion, and had correctly issued the quit notice required in terms of section 3 of the Act.

As I have considered before, once a quit notice under the Act is received, a person who receives the quit notice is entitled to be heard and show cause as to why an order of ejectment shall not be issued against him or her. However, the scope of such an inquiry is limited to the provisions of section 9 of the Act, as I have previously stated in this judgement.

As considered correctly by the learned Magistrate in his order, and affirmed by the learned High Court Judge, in the case of **Farook Vs. Gunawardena, Government Agent Ampara (1980) 2 SLR 343 at 345**, it was held,

“At the inquiry before the Magistrate, the only plea by way of defence that the petitioner can put forward is 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. Section 9 (2) is to the effect that the Magistrate cannot call for any evidence from the competent authority in support of the application under section 5 which means that the Magistrate cannot call upon the competent authority to prove that the land described in the Schedule to the application is a State land [section 5(1)(a)(ii)]. Therefore, the petitioner will not have an opportunity of raising the question whether the land is a State or private land before the Magistrate.”

Held further:

“The structure of the Act would also make it appear that where the competent authority had formed the opinion that any land is State land, even the Magistrate is not competent to question his opinion. Alternate relief is given by section 12 which empowers any person claiming to be the owner of a land to institute action against the State for the vindication of his title within 6 months of the order of ejectment and section 13 is to the effect

where action is instituted by a person, if a decision is made in favour of that person, he will be entitled to recover reasonable compensation for the damage sustained by reason of his having being compelled to deliver possession of such land.”

In the case of **Muhandiram Vs. Chairman, No. 111, Janatha Estate Development Board (1992) 1 SLR 110**, it was held;

“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 opened to the Magistrate is to order ejectment.”

It is amply clear that the competent authority, when filing this application before the Magistrate’s Court in terms of section 5 of the Act, has not only fulfilled the requirement set out in the Act, but has taken an additional measure to provide the copy of the plan and the report as to the portions of the State land possessed by the appellant upon which the competent authority is seeking the ejectment.

The stand taken up by the appellant before the learned Magistrate as well as the learned High Court Judge, and the submissions before this Court by the learned President’s Counsel had been on the basis of the findings of the Court of Appeal in CA Writ Application No. 2033/2005.

I am of the view that the basis considered by the Court of Appeal in order to issue a writ of Certiorari quashing the quit notices issued previously has no relevance now, as the competent authority has not relied on the quit notices issued previously. The competent authority, after having corrected the irregularity as to the name of the land relevant to this application, has issued the correct quit notice and has taken necessary steps in that regard to file an action in the Magistrate’s Court, for which I find no reason to find fault with the competent authority.

I am of the view that the learned Magistrate of Nikawaratiya has pronounced his order after giving due consideration to the relevant law. I am also of the view that the learned High Court Judge of Kurunegala has dismissed the revision application filed by the petitioner after considering the relevant legal positions in this regard, which require no interference from this Court.

I find the argument that the Court of Appeal judgement pronounced in the above-considered CA Writ Application No. 2033/2005 should stand as a valid permit for the appellant to remain in possession of the land, has no merit whatsoever for the reasons considered as above.

Accordingly, the appeal is dismissed for want of any merit.

The Registrar of the Court is directed to communicate this judgement to the Provincial High Court of the North Western Province Holden in Kurunegala for information, and to the Magistrate's Court of Nikawaratiya for purposes of the necessary implementation of the order of the learned Magistrate of Nikawaratiya along with the original case record.

Judge of the Court of Appeal

P. Kumararatnam, J.

I agree.

Judge of the Court of Appeal

Wickum A. Kaluarachchi, J.

I agree.

Judge of the Court of Appeal