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

In the matter of an appeal in terms of Section 11 of the High Court of the Provinces (Special Provinces) Act No. 19 of 1990 read with Article 154P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA No. CA/PHC/0046/2019
PHC of RATHNAPURA
RA No. HCR/RA 33/2017
MC of Balangoda Case No. 62360

Land Reform Commission,
No. C 182, Hector Kobbekaduwa Mawatha,
Colombo 07.
PETITIONER

v.

Volter Stephen Gunarathne,
No. 330, Haputale Rd,
Kirindigala, Balangoda.
RESPONDENT

AND

Volter Stephen Gunarathne,
No. 330, Haputale Rd,
Kirindigala, Balangoda.
RESPONDENT-PETITIONER

v.

Land Reform Commission,

No. C 182, Hector Kobbekaduwa Mawatha,

Colombo 07.

PETITIONER-RESPONDENT

AND NOW BETWEEN

Volter Stephen Gunarathne,

No. 330, Haputale Rd,

Kirindigala, Balangoda.

RESPONDENT-PETITIONER-APPELLANT

v.

Land Reform Commission,

No. C 182, Hector Kobbekaduwa Mawatha,

Colombo 07.

PETITIONER– RESPONDENT – RESPONDENT

BEFORE	:	M. Sampath K. B. Wijeratne J. & M. Ahsan. R. Marikar J.
COUNSEL	:	Saliya Pieris, P.C. with Thanuka Nandasiri for the Respondent – Petitioner - Appellant. A.D.H. Gunawardhena for the Petitioner– Respondent - Respondent.
ARGUED ON	:	Concluded through written submissions.

WRITTEN SUBMISSIONS : 17.07.2024 (By the Appellant)
23.09.2023 (By the Respondent)

DECIDED ON : 27.09.2024

M. Sampath K. B. Wijeratne J.

Introduction

This is an appeal against the judgment of the learned High Court Judge of Rathnapura, affirming the eviction order issued by the learned Magistrate of Balangoda against the Respondent-Respondent-Appellant (hereinafter referred to as the 'Appellant') under the provisions of the State Land (Recovery of Possession) Act No. 07 of 1999, as amended (hereinafter referred to as the 'Act').

Factual background

The Chairman of the Land Reform Commission (hereinafter referred to as the 'LRC'), the Petitioner-Respondent-Respondent (hereinafter referred to as the 'Respondent'), acting as the competent authority, submitted an application to the Magistrate's Court of Balangoda under Section 5 of the Act, seeking eviction of the Appellant from the land described in the schedule attached to the application. Along with the application, a supporting affidavit sworn by the Chairman of the LRC and a copy of the quit notice were filed, in accordance with Section 5(3) of the Act.

Upon receiving the application, the learned Magistrate issued summons to the Appellant, requiring him to appear and show cause. In response, the Appellant filed objections, seeking the dismissal of the application on the following grounds.

i. The Respondent is not a natural person who could form an opinion in terms of the Act and therefore, the application is bad in law.
ii. The application does not contain the date on which it was made and therefore, not in conformity with the Act.

iii. A Partition action is pending in the District Court of Balangoda and therefore, the application cannot be maintained.

In his order, the learned Magistrate dismissed the Appellant's contentions and issued the order for the Appellant's ejectment[1].

The aggrieved Appellant sought revision of the Magistrate's Order by filing an application in the High Court of Rathnapura, raising the same grounds as presented before the Magistrate[2]

The learned High Court Judge, by an Order delivered on 14th March 2019, dismissed the Appellant's application. The Appellant has now appealed to this Court, raising identical grounds of appeal[3].

Analysis

I will now analyze the grounds for appeal raised by the Appellant.

The Petitioner is not a natural person.

The Appellant contended that in terms of Section 3(1) of the Act before issuing a quit notice, the initial step for ejectment, the competent authority must form the opinion that the land is a state land and that the person is in unauthorized possession or occupation of such land. Consequently, it was contended that the competent authority must be a natural person capable of forming such an opinion.

The term 'competent authority' is defined in Section 18, the interpretation Section of the Act. Section 18(h) of the Act reads as follows;

Section 18(h) '*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.'*

Accordingly, along with the Heads of Department and the officials specified as competent authority under Section 18 of the Act, the Heads of Department or

[1] Order dated 2nd June 2017, at page 144 of the appeal brief.
[2] Paragraph 5 of the Petition filed at the High Court, at page 6 of the appeal brief.
[3] *Vide* paragraph 01.05 of the Petition of Appeal, at page 1 of the appeal brief.

Institution created by law where such land is under the control are also considered competent authorities. The LRC, being an entity established under the Land Reform Law No. 1 of 1972, as amended, has its chairman as the head of the Commission.

Therefore, I am of the view that the Chairman of the LRC is a competent authority in accordance with the provisions of the Act cited above. The person holding the position of Chairman is a natural person who could form an opinion.

Furthermore, **Section 18(*l*)** provides that; *'an officer generally or specially authorized by a corporate body'* is also a competent authority.

However, the present application was not made by an officer of the LRC appointed under Section 51 of the LRC Act. Therefore, the issue of obtaining authorization from the Commission does not arise.

Even it is assumed that this application falls under Section 18(*l*) of the LRC Act, which requires the Chairman to obtain authorization from the Commission of which he is the Chairman, Section 114(d) of the Evidence Ordinance presumes that judicial and official acts have been regularly performed.

Subection 14(1) of the Act states that in the exercise, performance, and discharge of his powers, duties, and functions under the Act, a competent authority is subject to the direction and control of the Minister in charge of the subject of State land .Furthermore, Subsection 14(2) stipulates that a competent authority may not exercise any power under Section 3 of the Act concerning any land vested in, owned by, or under the control of the Sri Lanka Army, Navy, or Air Force; the Urban Development Authority; or the Sri Lanka Ports Authority without prior approval from the Minister in charge of the relevant subject. Aside from the general provision that the competent authority is under the direction and control of the Minister in charge of State land, there is no specific requirement preventing the LRC from exercising powers under Section 3 without the Minister's prior approval. Therefore, in my view the Chairman of the LRC, as the head of the institution, is entitled to exercise such powers.

The Appellant cited the judgment of *Wedamulla v. Abeysingha*[4] in support of their contention that competent authority should be an officer generally or specially authorized by a corporate body[5]. However, this was a case where the Additional Director General of the Urban Development Authority acted as the competent authority. As I have already stated, the Act itself provides that for an officer to act, prior approval of the Minister in charge is required. Although it is not required under the Act, the Minister's authority was nonetheless submitted to the Court in the above case. Thus, the facts of that case are significantly different from case at hand and do not serve as judicial precedent for the current matter. Nonetheless, the Supreme Court in that case applied the maxim *Ominia praesumuntur rite et solemniter esse acta*, which is defined in L.B. Curzon's *A Dictionary of Law*[6] as *'All things are presumed to be done correctly and solemnly until the contrary is proven.'* Therefore, as I have stated above, even if it is assumed that the Chairman of the LRC requires authority to act under Section 3 of the Act, it can be presumed that such authority was duly obtained.

The learned Magistrate observed that the Chairman of the LRC, acting as the competent authority, issued the quit notice pursuant to Section 3 of the Act and subsequently filed an application with the Magistrate's Court seeking recovery of possession of the state land. He observed that in terms of Section 9 of the Act, other than establishing that the Appellant is in possession of the land upon a valid permit or other written authority issued by the state, granted in accordance with any written law, the Appellant is not entitled to contest any matters stated in the application under Section 5. Consequently, the learned Magistrate issued the order for ejectment.

The learned High Court Judge affirmed the decision of the learned Magistrate and cited the case of *W.H.M. Gunarathne and four others v. Land Reform*

[4] [1999] 3 Sri. L.R. 26.
[5] Paragraph 22 (1) of the Respondent's written submission.
[6] Second edition.

Commission and another[7] in support of the contention that the LRC is a competent authority under the Act. In the above case this Court observed that '*in all the above facts and circumstances it is clear that the Land Reform Commission had power and authority to invoke the provisions of the State Land Recovery of Possession Act, to achieve the objectives of the Land Reform Law, and recover possession of land vested by operation of law in the Land Reform Commission.*' However, the issue raised by the Appellant in this case is not about the LRC's authority to operate under the Act, but rather whether the Chairman of the LRC has the authority to serve as the competent authority. Therefore, the judgment does not serve as a judicial precedent for the matter at hand.

Based on the analysis above, I conclude that the Chairman of the LRC qualifies as a competent authority under the Act.

Application does not contain a date and is therefore not in the prescribed format

Admittedly, the application for ejectment in Form 'B', made under Section 5 of the Act does not specify the date[8]. However, the accompanying affidavit does include the date on which it was attested[9]. According to the journal entry of Balangoda Magistrate's Court Case No. 32360 the application had been presented to court on the 10th March 2017. The learned Magistrate correctly observed the above fact in his Order.

As correctly pointed out by the Appellant, there was a considerable delay in presenting the application to the Magistrate's Court after the quit notice was issued, with the delay being nearly a year. However, the Act does not specify a time limit for submitting an application to the Court following the issuance of a quit notice. Form 'B' is the prescribed format for the application submitted to the Court for ejectment, and the date on the application is relevant solely for establishing when it was filed. In contrast, the date on the quit notice in Form 'A'

[7] C.A. 427/2005 (Writ), Court of Appeal Minutes dated 27.06.2013.
[8] At page 47 of the certified copy of M.C. Balangoda case No. 62360/ Ejectment filed of the appeal brief.
[9] *Ibid* at page 44.

is significant because the occupier must be granted a minimum of thirty days from the date of issuance or exhibiting the quit notice.

N.S. Bindra in his treatise *Interpretation of Statutes*[10] state as follows regarding the Forms in schedules. '*Forms appended to a schedule to a statute may be referred to for the purpose of throwing light on the construction of the statute. If such forms are merely given as models, and by way of example, or for departmental purposes, their bearing on the construction of enacting sections is less than if they form an essential element in the operation of a statute. If a Form included in a schedule to a statute is made imperative by the statute, or is in terms which indicate that it is intended to be imperative, it must be strictly followed'*

The legislature in Section 3(4) of the Act has unequivocally enacted that the quit notice shall be in Form 'A' set out in the schedule to the Act which reads thus; *'Every quit notice shall be in Form A set out in the Schedule to this Act.'*

However, there is no such language used in respect of the application to Court and the supporting affidavit. In Section 5(1) it is enacted that '*Competent authority (...) may make an application in writing in the Form B set out in the schedule to this Act (...)'.* Further, in Section 5(2) it is enacted that '*(...) application under sub section (1) shall be supported by an affidavit in the Form C set out in the schedule to this Act (...)'.*

In the two instances mentioned above, while the legislature made it mandatory to use Form 'A', it did not impose the same requirement for Forms 'B' and 'C'. The law simply states that a competent authority may submit an application in writing using Form 'B'. In my opinion, the word '*may*' pertain to the first part of the sentence concerning the authority's discretion to make the application, and it is not relevant to the second part regarding Form 'B' specified in the Schedule. Likewise, in Section 5(2), the word *'shall'* apply to the first part of the sentence, which requires that the application under subsection (1) be supported by an

[10] N.S. Bindra, *Interpretation of Statutes,* Twelfth Edition, at page 312.

affidavit, but it does not extend to the second part concerning Form 'C' set out in the Schedule.

Thus, it is evident that the legislature, having made Form 'A' mandatory in clear terms, intentionally chose not to impose the same requirement for Forms 'B' and 'C.

Furthermore, Section 3 of the Act does not specify the details that must be included in a quit notice. The matters that must be included in a quit notice are specified only in Form 'A'. Section 3 merely outlines the issues on which the competent authority must form an opinion and the subsequent steps to be taken.

In contrast, Section 5(1) (a) of the Act specifies the matters that must be included in the application to the Court. Even concerning the affidavit, Section 5(2) only requires that the application be supported by an affidavit verifying the matters stated in the application. Nevertheless, it is apparent that the details in the affidavit should correspond with those in the application.

As previously stated, the legislature, in its wisdom, has made the use of Form 'A' mandatory, but not Forms 'B' and 'C.' This further supports this Court's observation that adherence to Form 'A' is compulsory, whereas Forms 'B' and 'C' are provided merely as models.

However, it is always prudent to follow model Forms 'B' and 'C' to ensure accuracy, although it is not mandatory.

In the case of *Kandiah v. Abeykoon*[11], cited by the Appellant, this Court noted that the Magistrate must ensure that the documents constituting the application for ejectment, as referenced in Section 5(3) of the Act, are in the statutorily prescribed Form.

However, based on the analysis of the relevant provisions of the Act, it is my considered view that only the quit notice must be in the statutorily prescribed

[11] Sriskantha's Law Reports, Vol. IV, Part 10, p. 96.

Form ‘A’, whereas the application to the Court (Form ‘B’) and the supporting affidavit (Form ‘C’) do not need to adhere to the same level of formality.

The Appellant’s sole argument is that the application to the Court lacks a date, and thus it is not in the prescribed Form. As I have stated above, it is not mandatory for the application to adhere strictly to the prescribed form, and the absence of the date does not constitute a valid reason for rejecting the application.

Effect of the partition action pending in the District Court of Ratnapura.

The Appellant argued that the LRC intervened in the partition action numbered 4686/P, in which the Appellant is also a Defendant, claiming title to the subject land. Consequently, the Appellant contended that the title to the land is in dispute and has yet to be resolved by the District Court, which is the competent Court to determine the title. He asserted that after intervening into the partition action, the LRC subsequently filed the application under the Act to bypass the results of that partition action.

Section 12 of the Act provides that *‘nothing in this Act contained shall preclude any person who has been ejected from a land under the provisions of the Act or any person claiming to be the owner thereof from instituting an action against the State for the vindication of his title thereto within six months from the date of the order of ejectment.*’ Hence, it is clear that even if an ejectment order is issued under the Act, the Appellant is still entitled to vindicate his title in the partition action. As it was held by this Court in plethora of cases the mechanism under the Act is provided for the State to recover possession of State land unlawfully occupied by any person expeditiously.

Additionally, Section 13 of the Act states that any person who has been ejected under its provisions and later has the title vindicated in his favor is entitled to recover compensation for the damages incurred due to being compelled to deliver up possession of his land

Hence, it is my considered view that the pending partition action is not an impediment to maintain the application for ejectment under the Act.

Therefore, I am of the view that the pending partition action does not an impediment to maintain the application for ejectment under the Act.

The Appellant presented an additional argument that there is insufficient proof of serving the quit notice.

The quit notice had been sent on the 6th April 2016[12]. The Respondent produced the registered postal article in proof of the fact that the quit notice was dispatched to the Appellant by registered post[13].

The Appellant contended that in the registered postal article the date and the name and title of the sender are unclear. While it is true that these details are not clearly stated in the registered postal article which was voluntarily produced by the Appellant, even though there was no statutory requirement to do so, it is important to note that the Appellant has not explicitly denied receiving the notice in the affidavit, filed in the Magistrate's Court along with his objections. Furthermore, in the application for ejectment and in the affidavit the Respondent states that the quit notice was exhibited in the land as well. As per Section 9(2) of the Act it is not competent for the Magistrate to call for any evidence from the competent authority in support of the application. Moreover, as I have already stated, the Appellant is not entitled to contest any of the matters stated in the application other than that he is in possession on a valid permit or other written authority.

Conclusion

In light of the above analysis, I am of the view that the learned Magistrate correctly dismissed the objections raised by the Appellant and proceeded to issue the order for ejectment.

[12] *Ibid* at page 45.
[13] *Ibid* at page 51.

The learned High Court Judge effectively analysed the relevant law, upheld the decision of the learned Magistrate, and dismissed the application for revision on the grounds that the Appellant failed to establish any illegality that would shock the conscience of the Court. It was, therefore, concluded that there were no exceptional circumstances warranting interference with the impugned order of the learned Magistrate.

In light of the foregoing analysis, I dismiss this appeal, with costs of Rs. 50,000/-

JUDGE OF THE COURT OF APPEAL

M. Ahsan. R. Marikar J.

I Agree.

JUDGE OF THE COURT OF APPEAL