

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

IN THE MATTER OF AN APPLICATION FOR
APPEAL UNDER ARTICLE 138, READ WITH
ARTICLE 154 P (6) OF THE CONSTITUTION

Nihal Nilaweera,
Director, Plantation Management
Monitoring Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street,
Colombo 2.

Applicant

CA(PHC) 48/2016

Vs

HCR/RA/46/2008
Magistrate Court of Ratnapura Case
No: 19283/Ejectment

N.D. Nimal,
Gurubewilagama,
Balangoda.

Respondent

AND BETWEEN

N.D. Vimal,
Gurubewilagama,
Balangoda.

Respondent-Petitioner

Vs

Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street,
Colombo 2.

Applicant-Respondent

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

Respondent

AND NOW BETWEEN

N.D. Vimal,
Gurubewilagama,
Balangoda.

Respondent-Petitioner-Appellant

Vs

Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street,
Colombo 2.

Applicant-Respondent-Respondent

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

Respondent-Respondent

Before: Damith Thotawatte, J.
K.M.S. Dissanayake, J.

Counsel: W.P.I.P. Wickramasuriya instructed by Manjula Bandara for the
Petitioner.
Maithri Wickremesinghe P.C. with Rakitha Jayatunge instructed
by K. Upendra Gunasekara for the Applicant-Respondent-
Respondent.
Panchali Witharana, S.C. for the 2nd Respondent.

Argued: 07-07-2025

Written submissions
tendered on: 09-06-2023 By the Respondent-Petitioner-Appellant
09-10-2020 By the Applicant-Respondent-Respondent

Judgment Delivered
on: 02-09-2025

D. Thotawatte, J.

The Respondent-Petitioner-Appellant (hereinafter sometimes referred to as the "Appellant") invokes the appellate jurisdiction of this Court, seeking to set aside an order dated 30-03-2016 by the Provincial High Court holden in Rathnapura in H.C.R/R.A. 46/2008 and an order of ejectment issued by the Rathnapura Magistrate's Court on 24.03.2008 in case No. 19283/ Ejectment.

The Applicant-Respondent-Respondent (hereinafter sometimes referred to as the "Respondent") had issued a quit notice on the Appellant, in terms of section 3 of the State Lands (Recovery of Possession) Act No. 07 of 1979, as amended, (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the Respondent had thereafter made an application (application for ejectment) under section 5 of the Act to the Magistrate's Court of Rathnapura seeking an order to evict the Appellant from the land described in the schedule to the said application.

Appellant had shown cause against the said application by submitting that the Appellant received the ownership by transfer deed No. 5912 (Marked in the Magistrate Court as "X") dated 02-04-1996 from the Land Reform Commission, and he and his family have been in occupation of this land for a long period of time.

The learned Magistrate, by his order dated 24th March 2008 directing eviction, observed that the Deed held by the Appellant (marked "X") pertains to a land distinct from that described in the schedule to the application for ejectment, and accordingly held that the Court is unable to determine that the said transfer deed "X" refers to the impugned land set out in the application for ejectment.

Being dissatisfied with the order dated 24th March 2008 of the learned Magistrate, the Appellant has filed a Revision Application before the Provincial High Court holden in Rathnapura, contending, inter alia, that:

1. The application and affidavit before the Magistrate's Court were not in conformity with the procedural provisions of the State Lands (Recovery of Possession) Act.
2. The Respondent had not established his authority as "Competent Authority".
3. The notice to quit was invalid as it contained an error in the Appellant's name and was not duly served.
4. The land in question was not properly identified and described.

The learned High Court Judge, after hearing submissions, dismissed the revision application, holding that no exceptional circumstances were disclosed to warrant revisionary interference, and that the order of the Magistrate was consistent with the Act.

Being aggrieved by the order of the learned Judge of the High Court, the Appellant has preferred this present appeal to this Court.

Grounds Urged by the Appellant

The Appellant's written submissions before this Court essentially reiterate the same contentions urged in the High Court, contending, inter alia, that:

1. The application filed before the Magistrate's Court is not in conformity with the mandatory procedural provisions of the State Lands (Recovery of Possession) Act.
 - a) Notice had not been given to the Appellant
 - b) date of the Notice prepared and the date the Appellant was supposed to vacate the premises are the same
 - c) 30 days' notice has not been given
2. That the land was not properly identified and therefore ejectment was unlawful.
3. The Deed produced by the Appellant (marked "X") pertained to the land was disregarded by both the learned Magistrate and the High Court, who failed to properly ascertain whether the Appellant's possession fell within the ambit of protection afforded.
4. That natural justice was violated as the Appellant was not afforded an adequate opportunity to object.

Submissions of the Respondent

The Respondent, relying on the provisions of the Act, has submitted:

1. That Section 5(1) requires only that the Competent Authority state his capacity in the application, supported by an affidavit under Section 5(2); no further proof is mandated.
2. That the Appellant, having participated in the Magistrate's inquiry without protest, cannot now deny service of notice or claim prejudice by a minor typographical error in his name;

3. That under Section 9 of the Act, the Appellant could not contest matters in the application, but only establish possession on a valid permit or written authority of the State, which he failed to do;
4. That no exceptional circumstances were demonstrated to warrant revision; hence, the High Court rightly refused to interfere.

(i) Competent Authority

Section 5(1) requires only that the Competent Authority aver his status in the application, supported by an affidavit. In the present case, the Respondent has done so. The Act does not require the production of any additional instrument of appointment.

In *J.M. Chandrika Priyadharshani [The competent authority] Vs. Loku Hettiarachchige Seneviratne*¹ His Lordship Justice Wengappuli has stated that:

“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 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.”

His Lordship Prasantha De Silva, J, citing the above paragraph with approval in *Sooriya Gamage Ekanayake v. Nihal Nilaweera*² has stated:

“Section 5(1)(a)(i) of the Act reads that he is a competent authority for the purpose of this Act.

In respect of Sections 5(1)(a)(i) and Section 9(1), it is observable that the intention of the Legislature is to impose a restriction on the Respondent in an application for ejectment, thus, the Respondent is precluded by contesting before the Magistrate’s Court against the claim by the competent authority, in terms of the Application made under Section 5 of the Act.”

¹CA (PHC) 52/2012 Decided on 13.07.2018

²CA (PHC) 113-2017 Decided on 15.12.2022

Section 9 of the act reads as follows:

Scope of 9.
inquiry.

- (1) At such inquiry the person on whom summons under section 5 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.

As the applicant is required to declare in the application under section 5 that he is a competent authority for the purposes of the Act, the person summoned under section 5 (the person mentioned in the “quit notice” or “application for ejectment”) is precluded from challenging that declaration.

Notwithstanding the fact that the Appellant has not expressly urged this contention as a ground of instant appeal, he has taken up this position both before the Magistrate’s Court and the High Court.

Section 9(2) of the Act makes it clear that the Competent Authority is under no obligation to establish that the land described in the quit notice is State land, or that it is the same land from which the Appellant is sought to be ejected. It is, however, the obligation of the Appellant to establish that his possession of the relevant land is under a valid permit or written authority issued by the State.

(ii) The Quit Notice has not been served

The Respondent has submitted an affidavit to the magistrate's court stating that the quit notice was duly served on the Appellant. Although in the case of *Vithanage Chandani v. General Manager, Sri Lanka Railway Department*³ it was accepted that the notices had

³CAPHC 152-17 Decided on 13.12.2024

not been received, the Court of Appeal did not consider it as a sufficient ground to vitiate the order of the learned Magistrate.

Appellant has raised a further objection that his name is incorrectly mentioned in the quit notice. However, the Appellant was present and participated in the inquiry. Therefore, the alleged error in the spelling of his name has caused him no prejudice.

In ***Vellupillai v. The Chairman, Urban District Council***,⁴ His Lordship Abrahams C.J. stated:

“There is no doubt in my mind that the plaintiff intended to sue the Urban District Council ... It would appear as if the shortcomings of his legal adviser, the peculiarities of law and procedure, and the congestion in the Courts have all combined to deprive him of his cause of action and I for one refuse to be a party to such an outrage upon justice. This is a Court of Justice; it is not an Academy of Law.”

This demonstrates that, in the aforesaid case of ***“Vellupillai”***, the Court regarded the misdescription of the defendant as a mere technical defect which ought not to prejudice the plaintiff, as the identity of the party intended to be sued was manifest from the pleadings. Accordingly, in the present matter, the very participation of the Appellant in the proceedings constitutes sufficient proof of valid service.

(iii) Scope of Inquiry under Section 9

The scope of the inquiry is circumscribed by Section 9 of the Act. The person noticed may not contest the opinion of the Competent Authority, nor challenge the sufficiency of land description; the only defence available is to prove possession is upon a valid permit or written authority, issued in accordance with law, and which should be in force. This has been consistently upheld in a series of precedents such as ***Muhandiram v Chairman, JEDB***⁵, ***Karuppaia Rengaraj v J.M.C. Priyadarshani***⁶, ***Margrate Perera v Divisional Secretary, Naula***⁷, ***Chandrika Priyadarshani v Loku Hettiarachchige Seneviratne***⁸.

Under Section 9 of the State Lands (Recovery of Possession) Act, as amended in 1983, the Competent Authority’s opinion that land is a “State land” is conclusive and not open to

⁴ (1936) 39 NLR 464

⁵ [1992] 1 SLR 110

⁶ CA (PHC) 67/2011, Decided on 26.10.2017

⁷ CA(PHC) 41/2010, Decided on 31.01.2017

⁸ CA (PHC) 52/2012] Decided on 13.07.2018

judicial challenge at the ejectment stage, and the only permissible defence available to an occupier is to prove possession or occupation under a valid permit or written authority issued by the State, with the burden of proof resting on the occupier, whose failure to establish such authority would necessitates an order of ejectment.

The Appellant in the present case has not produced any valid permit or authority. His reliance on alleged “technical defects” such as typographical errors and inadvertent omissions cannot override the strict limitations imposed by Section 9 of the Act.

Even if the quit notice is challenged before or outside the proceedings under Section 09 of the *State Lands (Recovery of Possession) Act* by way of a writ application, courts have accepted the substantial compliance doctrine⁹ as the notice is a jurisdictional precondition to the Competent Authority’s application.

In terms of Section 9(2) of the State Lands (Recovery of Possession) Act, a respondent to ejectment proceedings is precluded from raising objections based on alleged defects or irregularities in the quit notice. The sole permissible defence being to establish lawful possession or occupation under a valid permit or other written authority issued by the State.

(iv) Natural Justice

The Appellant alleged a violation of natural justice. This contention must fail. As held in *Farook v Gunawardene, Government Agent, Amparai*,¹⁰ the Act is designed to secure the speedy recovery of State lands, and as such, the opinion of the Competent Authority is not subject to challenge before the Magistrate. The statutory safeguards lie in Sections 12 and 13, permitting separate proceedings to vindicate ownership or claim compensation.

The Appellant has had an opportunity to present his case at the inquiry held before the Magistrate, but has failed to establish the only statutory defence. The learned Magistrate has considered the title deed submitted by the Appellant (marked “X”) and has arrived at a determination that the deed submitted by the Appellant does not refer to the land described in the schedule of the quit notice.

⁹*Gunaratne (Alexis Auction Rooms) v. Abeysinghe (Urban Development Authority)* [1988] 1 Sri L.R. 255, *Daluwatta Patabendige Gunasena v. Manoj Jayanetti and others* CA (Writ) Application No. 433/2009 Decided on: 11.06.2013

¹⁰ [1980] 2 SLR 243

Accordingly, the Appellant's contention that the learned Magistrate failed to ascertain whether his possession was entitled to statutory protection, or that he was not afforded an adequate opportunity to raise objections, cannot be sustained.

Conclusion

The learned Magistrate's order of ejectment was in strict compliance with the Act. The learned High Court Judge rightly declined to exercise revisionary jurisdiction in the absence of exceptional circumstances. The objections urged by the Appellant are devoid of merit.

For the reasons set out above, I proceed to dismiss this appeal subject to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal