

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

In the matter of an Appeal made in terms of
Article 138 read with Article 154P(6) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal Case No.

CA/PHC/0131/2017

High Court Ratnapura No:

RA 53/2011

Rathnapura MC Case No:

24587

Plantation Monitoring Officer,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street,
Colombo 02

Applicant

Vs

P.K. Dayananda,
Erabadda, Dela.

Respondent

AND

1. **P.K. Dayananda,** (Deceased)
Erabadda, Dela.

1A. **Pangukarage Anuradha Jayanath
Dayananda
Erabadda, Dela**

Substituted-Respondent-Petitioner

Vs.

Plantation Monitoring Officer,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street
Colombo 02.

Applicant-Respondent

AND

1A. Pangukarage Anuradha Jayanath
Dayananda
Erabadda, Dela.

**Substituted-Respondent-Petitioner-
Appellant**

Vs

Plantation Monitoring Officer,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries.
55/75, Vauxhall Street,
Colombo 02

Applicant-Respondent-Respondent

AND NOW

1A. Pangukarage Anuradha Jayanath
Dayananda
Erabadda, Dela.

Substituted-Respondent-Petitioner-Appellant.

Vs

**Wickrama Arachchilage Leelanath
Wickrama Arachchi,**
Plantation Monitoring Officer,

Presently of-

Plantation Management Monitoring
Division,
Ministry of Plantation Industries
11th Floor,
Sethsiripaya,
Battaramulla

Substituted-Applicant-Respondent-Respondent

(Current Competent Authority)

Before: **M. T. MOHAMMED LAFFAR, J.
K. K. A. V. SWARNADHIPATHI, J.**

Counsel: Pathum Wickramaratne for the Respondent-Petitioner-Appellant.
Thilan Liyanage for the Applicant-Respondent-Respondent.

Argued on: by way of written submissions on 10-11-2023.

Decided on: 26.03.2024

MOHAMMED LAFFAR, J.

This is an Appeal preferred by the Respondent-Petitioner-Appellant (hereinafter referred to as the Appellant) from the Order of the learned High Court Judge of Ratnapura dated 25-05-2017.

The Applicant-Respondent-Respondent (hereinafter referred to as the Respondent), the Competent Authority, in terms of the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended), instituted proceedings in the Magistrate's Court of Ratnapura against the Appellant praying, *inter-alia*, for an Order of ejectment of the Appellant from the land in dispute. After inquiry, the learned Magistrate on 27-05-2011 made an Order for ejectment. Being aggrieved by the said Order, the Appellant invoked the revisionary jurisdiction of the Provincial High Court of Ratnapura and whereas the learned High Court Judge of Ratnapura on 25-05-2017 dismissed the said revision application. It is against that Order, the instant Appeal is preferred by the Appellant.

The grounds of Appeal advanced by the learned Counsel for the Appellant reads thus;

1. Since the land in dispute is owned by the Land Reform Commission, the Respondent has no right to issue a notice under Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended).
2. The Appellant is in possession of the subject matter with leave and license of the Land Reform Commission.
3. The subject matter is not properly identified.

In terms of Section 3 of the said Act, the Competent Authority is empowered to issue notices on the unauthorized occupants for the recovery of possession of any State lands, which reads thus;

"Where a competent authority is of the opinion that any person is in unauthorized possession or occupation of any State land the competent authority may serve a notice on such person in possession or occupation

thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.”

Accordingly, in the instant case, the Respondent issued the notice dated 14-10-2009 to the Appellant. Since the Appellant failed to comply with the said quit notice, under Section 5 of the said Act, the Respondent instituted proceedings in the Magistrate’s Court of Ratnapura. At the inquiry, the Appellant, under Section 9 of the said Act failed to produce any written authority issued by the State authorizing him to be in possession of the State land in dispute, and therefore, the learned Magistrate made an Order for ejectment. Section 9 reads thus;

“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.”

It is pertinent to note that the Appellant failed to establish his contention that the land in dispute is owned by the Land Reform Commission. The learned High Court Judge rightly observed that there were no materials before Court to prove the purported fact that the Land Reform Commission was the owner of the subject matter.

Furthermore, the Appellant had not produced any documents before the learned Magistrate within the purview of Section 9 of the said Act, to justify his possession of the subject matter.

Moreover, as per the quit notice issued under Section 3 of the said Act, the land in suit is described as follows;

North : land encroach by R. Ariyawansa.

South : Paddy field owned by Robert.

East :Village called Dommagamma.

West : Paddy field owned by Robert.

(extent of 80 Perches.)

It is manifestly clear that the subject matter has been properly identified by metes and bounds. As such, the observation made by the learned High Court Judge that the subject matter is properly identified is not erroneous.

In **Muhandiram Vs. JEDB**¹ the Court of Appeal enunciated 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 this burden is not discharged, the only option open to the Magistrate is to order ejectment.”

The Court of Appeal in the case of **UDA Vs. Wijayaluximi**² held that,

“the document P1 is a list of persons scheduled for allotment of land; it is clear from the document that the persons scheduled for allotment of land had not been finalized. P1 is not a valid permit within the meaning of Section 9(1) of the State Lands (Recovery of Possession) Act. The burden is on the respondent to establish that she is in possession upon a valid permit or the written authority of the State.”

In **Aravindakumar Vs. Alwis**³ it was observed that,

“the Circular which is claimed to have been issued by the 1st respondent Competent Authority has not been signed. The Circular does not prescribe any duty having statutory potential. The Circular has not been issued in accordance with any of the provisions of the State Lands (Recovery of Possession) Act. As such, there is no legal duty on the part of the 1st respondent to follow the guidelines laid down in the Circular before issuing the quit notice. Any person served with a quit notice under section 3 can continue to be in possession/occupation of the land only upon a valid permit or other written authority of the State described in Section 9.”

¹ 1992 (1) SLR-p110.

² 2006 (3) SLR-p62.

³ 2007 (1) SLR-316.

For the foregoing reasons, I hold that there is no basis to interfere with the findings of the learned Magistrate of Ratnapura and the learned Provincial High Court Judge of Ratnapura. Thus, the Appeal is dismissed with costs fixed at Rs. 10,000/-. The Registrar is directed to dispatch the original case record along with a copy of this Judgment to the Magistrate's Court of Ratnapura forthwith.

Appeal dismissed with costs.

JUDGE OF THE COURT OF APPEAL

K. K. A. V. SWARNADHIPATHI, J.

I agree

JUDGE OF THE COURT OF APPEAL