

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

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

Wildlife Conservation Officer,
Wildlife Conservation Office,
Teldeniya.

**CA Appeal No. –CA(PHC)
154/19
PHC Kandy Rev. Application
No. 99/2019
MC Teldeniya Case No. 49487**

Plaintiff

Vs.

Yapa Mudiyanseelage Chandrika Jayatissa
No. 1/35, Oyatenna,
Poppitiya.

Respondent

AND

Yapa Mudiyanseelage Chandrika Jayatissa
No. 1/35, Oyatenna,
Poppitiya.

Respondent - Petitioner

Vs.

Wildlife Conservation Officer,
Wildlife Conservation Office,
Teldeniya.

Plaintiff – Respondent

AND NOW

Yapa Mudiyanseelage Chandrika Jayatissa,
No. 1/35, Oyatenna,
Poppitiya

Respondent – Petitioner – Petitioner

Vs.

1. Wildlife Conservation Officer,
Wildlife Conservation Office,
Teldeniya.

Plaintiff – Respondent – Respondent

2. Director General,
Department of Wildlife Conservation,
811A, Jayanthipura,
Battaramulla.

Added Respondent

Before : **Hon. M Sampath K. B Wijeratne, J.(CA)**
: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsels : Jayamuditha Jayasooriya with Hasini Handamulla,
Mimeda Kulathunga for the Respondent – Petitioner
–Petitioner.

Prabashine Jayasekara S. C. for the Plaintiff-
Respondent –Respondent.

Written Submissions : Plaintiff-Respondent-Respondent filed on 22.10.2024
Respondent-Petitioner-Petitioner filed on 31.05.2024

Argued on : 03.09.2024

Decided on : 13.12.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Respondent-Petitioner-Petitioner (hereinafter referred to as the Petitioner) had made this revision application against the Plaintiff-Respondent-Respondent (hereinafter referred to as the Respondent) to seek the reliefs prayed for in the petition dated 4th October 2019.
- 2) The said reliefs sought in the Petitioner’s petition are reproduced as follows;

- a) Set aside the Order of the Learned High Court Judge of the Central Province Holden in *Kandy* in Revision Application No. 99/2019 dated 26th September 2019,
- b) To set aside the Order of the Learned Magistrate Court Judge of *Teldeniya* dated 06.09.2019 in case No. 49487,
- c) To dismiss and or/ reject the said Action No. 49486 in the District Court of *Teldeniya*,
- d) To grant costs, and
- e) Such other and further reliefs.

Facts of this case

- 3) The Petitioner had sought in the prayer of the petition to set aside the Learned Magistrate's Order dated 6th September 2019 and to set aside the Learned High Court Judge's Order dated 26th September 2019.
- 4) This action pertains to the recovery of possession of state land, filed by the Competent Authority in the Magistrate's Court of *Teldeniya*.
- 5) The Magistrate had reviewed the facts, documents and granted the Respondent-Competent Authority permission to evict the Petitioner, her occupants and dependents who were in possession of the state land referred to in the notice to quit filed by the Respondent.
- 6) Aggrieved by the aforesaid Order, the Petitioner had filed a revision application in the Provincial High Court of *Kandy*. The Learned High Court Judge, having considered the relevant facts, had dismissed the Petitioner's revision application without issuing notice and had affirmed the Order of the Learned Magistrate.
- 7) Aggrieved by the aforementioned High Court Order, the Petitioner had filed this revision application to invoke the revisionary jurisdiction of this Court, on the grounds that the Respondent was not the Competent Authority and the Learned High Court Judge had not considered whether the Respondent had any right to initiate proceedings at the Magistrate's Court.
- 8) As per the Petitioner, the Learned Magistrate as well as the Learned

High Court Judge had failed to consider that there was no proper and valid affidavit filed by the Respondent before the Magistrate's Court.

- 9) Further, the Learned High Court Judge had failed to consider that there was proper proof that the land claimed by the state is a part of the state land.
- 10) In light of this, the Petitioner had sought the reliefs prayed for in the petition and to invoke the revisionary jurisdiction to grant the Petitioner's reliefs.

Disputed facts

- 11) When this matter was taken up for argument on the 3rd of September 2024, both parties agreed to conclude the matter by way of filing written submissions.
- 12) Considering the facts pertinent to this case, the written submissions and in considering the documents, I am of the view that the following disputed points should be examined to determine whether the revisionary jurisdiction of this Court can be invoked;
 - I. Had the Learned Magistrate's Order considered the facts pertinent to the dispute related to the instant application?
 - II. Has the Learned High Court Judge correctly evaluated the Learned Magistrate's Order considering the facts and documents put forward by both parties?
 - III. If so, can the application filed by the Petitioner to invoke the revisionary jurisdiction be sustained?

I. Had the Learned Magistrate's Order considered the facts pertinent to the dispute related to the instant application?

- 13) On perusal of the Learned Magistrate's Order dated 6th September 2019, it was acknowledged that the Learned Magistrate had accepted that the notice had been properly served to the Petitioner in the Magistrate's Court case, pursuant to Sections 4 and 5 of the State Lands (Recovery of Possession) Act (No. 7 of 1979).

- 14) Furthermore, the Learned Magistrate had correctly identified the specific parcel of land from which the Petitioner had been required to be evicted. Moreover, the Petitioner had failed to establish any lawful right or permit, to have possessed the said State Land.
- 15) The next issue raised by the Petitioner is that the Plaintiff in the Magistrate's Court Case is not the Competent Authority. However, this contention could not be raised before the Magistrate, as the Magistrate did not possess the jurisdiction to ascertain the identity of the competent authority in relation to an application of this nature.
- 16) In addition to these facts, the Petitioner in the Magistrate's Court case had claimed a prescriptive right. However, the Learned Magistrate correctly determined that the provisions of the Prescription Ordinance do not apply to state-owned properties.
- 17) Therefore, the Petitioner's application challenging the Learned Magistrate's Order is entirely devoid of merit.

II. Has the Learned High Court Judge correctly evaluated the Learned Magistrate's Order considering the facts and documents put forward by both parties?

- 18) Upon reviewing the Learned High Court Judge's Order dated 26th September 2019, it was noted that on page 03 of the Order, the Learned High Court Judge had articulated five disputed questions raised by the Petitioner. With respect to the first, second, and third questions, the Learned High Court Judge had evaluated the facts based on the documents that had been submitted before the court.
- 19) When addressing the first disputed question, the Learned High Court Judge had emphasized citing the authority of ***Farook vs Goonawardena, Government Agent Amparai, 1980 2 SLR 243***, that the Magistrate has no jurisdiction under Section 3 (1) to decide on the service of a quit notice, as claimed by the Petitioner, which was not submitted by the Competent Authority.
- 20) Furthermore, the Learned High Court Judge contended in his Order

that the position taken by the Petitioner regarding the affidavit, specifically that it had not been properly produced by the Respondent in the Magistrate's Court, constituted a technical objection. The Learned High Court Judge concluded that there was no valid reason to reject the said affidavit under the provisions of the State Lands Recovery of Possession Act.

- 21) Furthermore, the dispute raised by the Petitioner in this case, asserting that the land described in the eviction notice forms part of a larger parcel and that they have acquired prescriptive rights over the said land, is unfounded. The Petitioner, however, failed to produce any document to demonstrate that they possess a valid permit for the said land, and there is no basis upon which the Petitioner can claim a prescriptive right to state land.
- 22) On the said circumstances, the Learned High Court Judge had decided that there is no reason to interfere with the Learned Magistrate's Order on the revision application filed by the Petitioner in this case.
- 23) When referring to the decided case of **Divisional Secretary Manikhinna v Jenudeen Buhurdeen**¹

“The scope of the inquiry before the Magistrate is circumscribed strictly to two matters, and he has no jurisdiction to a beyond what has been mandated by the Act. The Act particularly states that the Magistrate shall not call for any evidence in support of the Application, which shall be made in the Form prescribed by the Act. Hence, in my view, it is unfair by the Magistrate, to set aside by the Appellate Court the order of the Magistrate as an erroneous one on totally different grounds. Then the Act shall be amended to widen the scope of the inquiry before the Magistrate. In my view, if the Respondent wants to challenge the decision of the Petitioner (Competent Authority), that shall be done in a properly constituted writ application, and not by way of an appeal filed against the

¹ CA (PHC) 140/2013

decision of the Magistrate. Merely because the word "inquiry" is used in those sections, it is clear by reading those sections contextually that conducting a full trial was never the intention of the legislature. If that was the intention, as stated in section 8, the Magistrate cannot proceed to hear and determine the matter forthwith. it is not mandatory that the Magistrate shall fix the matter for the inquiry for oral evidence to be led. What the Magistrate shall do is to give the person summoned a fair opportunity to satisfy the Court that he has a valid permit or other written authority of the State granted in accordance with any written law. The person so summoned cannot be allowed to convert it into a full-fledged trial, which will defeat the intention of the legislature."

It was determined that any party challenging the competent authority must file a Writ application. Consequently, the position taken by the Learned High Court Judge is correct, insofar as the Magistrate lacks the jurisdiction to adjudicate on the merits of the rights of the Competent Authority.

- 24) In the decided cases of ***Muhandiram v Chairman, No 111 Janatha Estate Development Board***² and ***M.C Magrate Perera v Divisional Sectretary, Naula and another***³ it is decided that a party claiming rights for a state land should possess a valid permit or a valid document.
- 25) As per the aforementioned decided cases, it was determined that, under Section 9 of the State Lands (Recovery of Possession) Act No. 7 of 1979, the scope of the inquiry before the Magistrate is circumscribed by determining whether the person notified can establish that they are not in unauthorized occupation. To establish lawful possession, the individual must produce a valid permit or any other written authorization granted by the State in accordance with

² [1992] 1 SLR 110

³ CA/PHC/41/2010

applicable law, provided that such permit or authorization is valid, active, and has not been revoked or rendered void.

- 26) In these circumstances, the Learned High Court Judge correctly concluded that there is no requirement for the Competent Authority to establish its status as the legitimate authority before the Magistrate.
- 27) In considering the said Order, this being a state land, the Petitioner had failed to show that she has a valid permit and/or right to possess the land from which the Respondent had filed action to evict her.

III. If so, can the application made by the Petitioner to invoke the revisionary jurisdiction be sustained?

- 28) In light of the foregoing facts and documents, I find no substantive grounds put forward by the Petitioner to warrant the setting aside of the Order made by the Learned High Court Judge, as a revision application is a discretionary remedy. Furthermore, the Learned High Court Judge has thoroughly addressed and examined the issues raised by the Petitioner before the High Court.
- 29) At this juncture, I draw my attention to the decision of ***Divisional Secretary Kalutara v Kalupahana Mestrige Jayatissa***⁴;

“It must be noted that the Respondents had invoked revisionary jurisdiction of this court, which is discretionary remedy. Thus, if relief to be granted, the party seeking the relief has to establish that, not only the impugned order is illegal, but also the nature of the illegality is such, that it shocks the conscience of the court”

- 30) In the aforementioned decision, it was held that an impugned Order in a revision application must not only be illegal but must also shock the conscience of the court. In the present appeal, I do not find any argument from the Petitioner addressing the grounds referenced in the case of ***Divisional Secretary Kalutara v Kalupahana***

⁴ SC Appeals 246,247,249,250/14

Mestrige Jayatissa.

- 31) Upon careful review, it is evident that the Learned High Court Judge did not contravene any legal provisions in rendering the decision. The Judge had thoroughly considered all pertinent facts, including the determination that the proper service of the quit notice by the Competent Authority, the absence of prescriptive rights over state lands, and the lack of necessity to reject the affidavit submitted by the Respondent on account of a technical issue. In this regard, the Judge's decision appears sound and in full compliance with the law.
- 32) Given these findings, and after considering all relevant arguments and legal precedents, I am of the view that the Petitioner's appeal is devoid of merit. The Petitioner had failed to provide any valid grounds to warrant interference with the decision of the Learned High Court Judge.
- 33) Therefore, I do not consider that the Petitioner can seek any reliefs prayed for in the petition of appeal dated 04th October 2024.

CONCLUSION

- 34) In view of the aforesaid reasons, I dismiss the revision application dated 4th October 2019 subject to payment of Rs. 25 000/- cost to the Respondent.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree.

Judge of the Court of Appeal

