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

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

Court of Appeal Case No.
CA (PHC) 129/2016

H.C Ratnapura Revision Application No.
HCR/RA/48/2011

M.C Ratnapura Case No.
24661

J.M.C. Priyadarshani,
Competent Authority,
Plantation Management Monitoring Division,
Ministry of Plantation Industries
55/75, Vauxhall Street,
Colombo 02.

Applicant

Vs.

Rajapaksa Mohottige Sirisena,
Niriallawatta,
Factory Division,
Diganakanda.

Respondent

AND

J.M.C. Priyadarshani,
Competent Authority,
Plantation Management Monitoring Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street,
Colombo 02.

Applicant-Petitioner

Vs.

01. Rajapaksa Mohottige Sirisena,
Niriallawatta,
Factory Division,
Diganakanda.

Respondent-Respondent

01. (A) Ranawaka Arachchige Ariyawathi,
Niriallawatta,

Factory Division,
Diganakanda (From Ratnapura).

Substituted Respondent

AND BETWEEN

J.M.C. Priyadarshani,
Competent Authority,
Plantation Management Monitoring Division,
Ministry of Plantation Industries,
55/75, Vauxhall Street,
Colombo 02.

Applicant-Petitioner-Appellant

Vs.

Ranawaka Arachchige Ariyawathi,
Niriallawatta,
Factory Division,
Diganakanda (From Ratnapura).

Substituted Respondent-Respondent

Before:	**Prasantha De Silva, J.** **K.K.A.V. Swarnadhipathi, J.**
Counsel:	R. Gopallawa for the Applicant-Petitioner-Appellant. Vidura Ranawaka with Menaka Warnapura for the Substituted Respondent-Respondent.
Written Submissions tendered on:	11.02.2020 by the Applicant-Petitioner-Appellant. 26.02.2020 by the Substituted Respondent-Respondent.
Argued on:	03.11.2021
Decided on:	30.03.2022

Prasantha De Silva, J.

Judgment

The Applicant being the competent authority of the Plantation Management Monitoring Division-Ministry of Plantation industries, filed an application in the Magistrate's Court of Ratnapura in

terms of Section 5 (1) of the State Lands (Recovery of Possession) Act No.07 of 1979 in order to evict the Respondent from the state land, described in the schedule to the said application. Despite the notice issued in terms of Section 04 of the said Act, the Respondent had failed to deliver the vacant possession of the land in issue to the Applicant.

However, the Respondent was allowed to file an affidavit together with documents marked X_1-X_{10} (පැ) to show cause and after the conclusion of the inquiry the learned Magistrate dismissed the application of the Applicant by Order dated 18.01.2008, on the ground that the application was misconceived in law. It was held that the Applicant was not the competent authority who had power to institute proceedings under the provisions of State Lands (Recovery of Possession) Act.

Being aggrieved by the said Order, the Applicant-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Sabaragamuwa Province, holden in Ratnapura. The matter was taken up for inquiry before the Provincial High Court and parties were allowed to file written submissions.

Thereafter, the Provincial High Court delivered the Order on 08.09.2016 dismissing the application of the Applicant-Petitioner for want of jurisdiction on the basis that the Provincial High Court has no jurisdiction to review matters relating to state lands. The Applicant-Petitioner-Appellant [hereinafter sometimes referred to as the Appellant] preferred this appeal against the said Order of the Provincial High Court of Ratnapura.

In the case of ***Bandulasena and Others Vs. Galla Kankanamge Chaminda Kushantha and Others [CA PHC No. 147/2005 - CA Minutes 27.09.2017]*** which emphasized that;

> "It would be relevant to bear in mind that the appeal before this Court is an appeal against a Judgement pronounced by the Provincial High Court in exercising its revisionary jurisdiction. Thus, the task before Court is not to consider an appeal against the original Court Order, but to consider an appeal in which an Order pronounced by the Provincial High Court in the exercise of its revisionary jurisdiction is sought to be impugned".

It was the contention of the Respondent-Respondent-Respondent [hereinafter referred to as the Respondent], that the Appellant instituted proceedings in the Magistrate's Court under the State

Lands (Recovery of Possession) Act to evict the original Respondent, seeking to recover possession from a state land. The Appellant had sought to revise the Order made by the Magistrate in respect of a state land as claimed by the Appellant herself.

It appears that the Respondent relied upon the Supreme Court Judgment in the Case of ***The Superintendent, Stafford Estate and Others Vs. Solaimuthu Rasu [(2013) 1 S.L.R 25]***, which held that the Provincial High Court has no jurisdiction over the matters related to state lands, as powers relating to state lands have not been devolved to the Provincial Councils by the 13th Amendment to the Constitution. It is seen that the aforesaid case was a matter related to the writ jurisdiction of the Provincial High Court over a decision on a state land.

In this respect, it was submitted on behalf of the Appellant that the learned High Court Judge had not gone into the merits of the application based on the above contention which is erroneous, stating that the Provincial High Court has no jurisdiction to hear cases where recovery, dispossession, encroachment or alienation of state lands is/are in issue in terms of the 13th Amendment to the Constitution.

It was further submitted that even though the learned High Court Judge had adverted to the decision of the Supreme Court which interpreted the 13th Amendment to the Constitution in the case of ***The Superintendent, Stafford Estate Vs. Solaimuthu Rasu [(2013) 1 S.L.R 25],*** the learned High Court Judge had failed to take into consideration that the said case had only decided that the Provincial High Court could not exercise its original writ jurisdiction under Article 154P (4) of the Constitution with regard to matters relating to State Lands (Recovery of Possession) Act.

This aspect of Law in respect of the jurisdiction of Provincial High Court pertaining to State Lands had been dealt with in the Judgment of ***S.S.B.D.G. Jayawardena, Chairman Tea Research Institute Thalawakelle Vs. K.N.D. Chairman, Texland Fashions Lanka (Pvt) Ltd (Case No. PHC 149/2014 Judgment dated 17.06.2015).*** Although the attention of Court was drawn to the said case, the learned High Court Judge of Ratnapura had not considered the legality when dismissing the revision application made by the Appellant.

It is worthy to note that the Counsel for the Substituted Respondent-Respondent had relied upon the *ratio decidendi* of the Judgment, ***The Superitendent, Stafford Estate & Two others Vs. Solaimuthu Rasu [supra]*** which decided that the Provincial High Court had no jurisdiction to issue writs under Article 154P (4) of the Constitution in relation to matters pertaining to state lands.

It was held in ***Solaimuthu Rasu's*** case that in order for the Provincial High Court to exercise writ jurisdiction, the issue should be one that falls within the purview of the Provincial Council list. However, the subject of state lands does not fall within the said list. As such, the Provincial High Court cannot issue writs under Article 154P (4) of the Constitution in respect of matters connected to state lands.

In this backdrop, the attention of Court was drawn to Article 154P (3) (b) of the Constitution of the Democratic Socialist Republic which states;

> "Every such High Court shall-notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and Orders entered or imposed by Magistrate's Courts and Primary Courts within the Province".

It appears that, the learned Judge of the High Court of Sabaragamuwa Province (holden in Ratnapura) had obviously followed the Judgment of ***The Superitendent, Stafford Estate & Two others Vs. Solaimuthu Rasu [supra]***, which is a writ application. However, as many Judgments and authorities have held, the High Court acting under Article 138 of the Constitution, has jurisdiction to try and hear revision applications relating to state lands.

In this instance, it is observable that revisionary jurisdiction in terms of Article 154P (3) (b) of the Constitution, has not excluded the power to exercise the appellate or revisionary jurisdiction regarding state lands. It was held in the case of ***Jayawardhane Vs. Deen [(2015) 1 SLR 181]***, the High Court has jurisdiction to hear and determine cases relating to State Lands, acting in revision.

In view of the decision of ***Divisional Secretary Kalutara Vs. Kalupahana Mestrige Jayatissa (unreported) SC Appeal 246,247,249 & 250/14 (Judgment delivered on 04.08.2017)***; the

Supreme Court did not consider the objection to jurisdiction of the High Court which was taken up on behalf of the Applicant in such case. *Upaly Abeyrathne J.* stated that;

> "*I do not wish to consider this issue in the present Judgment for two reasons. Firstly, in the case referred to, the Supreme Court dealt with the powers of the Provincial High Court under Article 154P (4) of the Constitution (writ jurisdiction), whereas in the instant case, the Provincial High Court derives jurisdiction under Article 154P (3) (power to act in revision). Secondly, this was not an issue on which leave was granted by this Court".*

On this premise, Court draws the attention to Section 12 of High Court of the Provinces (*Special Provisions*) Act No. 9 of 1990 which is as follows;

> 12. (a) Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application;
>
> Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be transferred to such High Court, and such High Court shall hear and determine such appeal or application.
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> (b) Where the Court of Appeal decides to hear and determine any such appeal or application, as provided for in paragraph (a), the proceedings pending in the High Court shall stand removed to the Court or Appeal for its determination.
>
> (c) No appeal shall lie from the decision of the Court of Appeal under this Section to hear and determine such appeal or application or to transfer it to a High Court.
>
> (d) Nothing in the preceding provisions of this Section shall be read and construed as empowering the Court of Appeal to direct a High Court established by Article 154P of the Constitution to hear and determine any appeal preferred to the Court of Appeal from

an Order made by such High Court in the exercise of the jurisdiction conferred on it by paragraph (4) of Article 154P of the Constitution.

Accordingly, it appears that the High Court of Ratnapura is the proper forum to decide this application for revision. It is relevant to note that the Respondent-Petitioner had invoked the revisionary jurisdiction of the Provincial High Court of Ratnapura in terms of Article 154P (3) (b), and not under Article 154P (4) of the Constitution. Therefore, the High Court of the Province has jurisdiction to hear a revision application made in term of Article 154P (3) (b) of the Constitution even when it relates to state lands.

Hence, it is apparent that the learned High Court Judge has misconstrued the Articles of the Constitution and also relied in the Judgment of '***Solaimuthu Rasu***' expressing his view that the revision application bearing No. HCR/RA/48/2011 by the Applicant-Petitioner-Appellant could not be reviewed by the Provincial High Court.

Moreover, the intention of the Legislature was that Provincial High Court of the Province should try local matters, including matters coming up from Magistrate's Court Orders pertaining to State Lands (Recovery of Possession) Act. If the litigants flock to file revision applications in the Court of Appeal when the relevant Provincial High Court has power and jurisdiction to hear and determine such matters, the intention of the Legislature is made futile under Act No. 19 of 1990.

On the said assumption, it is relevant to note the Court of Appeal Judgment delivered on 19.06.2020 in ***CA PHC 200/16 Ella Addara Gedara Dasanayake Vs. J.M.C. Priyadharshani***, where *Dr. Ruwan Fernando J.* emphasized that the Court of Appeal has concurrent jurisdiction to hear and determine revision applications of this nature and decided that the Order by High Court refusing to grant notices is liable to be set aside and sent back to the High Court to try the case on its merits; without hearing the matter in the Court of Appeal on its merits.

It appears that in the said case ***Ella Addara Gedara Dasanayake Vs. J.M.C. Priyadharshani [supra]***, despite the fact that the Court of Appeal had jurisdiction to hear and determine the appeal on its merits, the case was sent back to High Court for a re-hearing on its merits.

In terms of Section 5D (1) of the High Court of the Provinces (*Special Provisions*) Act No. 54 of 2006 as amended,

> "Where any appeal or application in respect of which the jurisdiction is granted to a High Court established by Article 154P of the Constitution and by Section 5A of this Act is filed in the Court of Appeal, such appeal or application, as the case may be, may be transferred for a hearing and determination to an appropriate High Court……."

The said High Court shall hear and determine such appeal or application as the case may be, as if such appeal or application was directly made to such High Court.

Therefore, in view of the aforesaid reasons, it is apparent that the learned High Court Judge has erroneously dismissed the said revision application of the Applicant-Petitioner-Appellant by Order dated 08.09.2016 which was made *per incuriam*. Hence, we set aside the Order made by the learned High Court Judge dated 08.09.2016 and I hold that the impugned revision application bearing No. HCR/RA/48/2011 should be taken up before the present High Court Judge of the Provincial High Court of Ratnapura to re-hear and determine the matter on its merit.

Hence, the appeal is allowed and the Registrar is directed to send the case record back to the Provincial High Court of Ratnapura forthwith.

JUDGE OF THE COURT OF APPEAL

K.K.A.V.Swarnadhipathi, J.

I agree.

JUDGE OF THE COURT OF APPEAL