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

In the matter of an appeal in terms of Article 138 and Article 154P of the Constitution of the Democratic Socialist Republic of Sri Lanka read with the High Court of the Provinces (Special Provisions) Act No 19 of 1990.

H.M.M.U.B. Herath,
Assistant Commissioner,
Agrarian Development,
Agrarian Development Department,
Kappetipola Road,
Badulla.

Applicant

Vs.

W.M.Piyasena,
Waralwatta, Kurundugolla,
Makulella, Bandarawela.

Respondent

AND BETWEEN

W.M.Piyasena,
Waralwatta, Kurundugolla,

C.A. Case No: **CA (PHC) 54/2010**

H.C. Badulla Case No:
REV. 68/2009

M.C. Bandarawela Case No: **99791**

Makulella, Bandarawela.

Respondent-Petitioner

Vs.

H.M.M.U.B. Herath,
Assistant Commissioner,
Agrarian Development,
Agrarian Development Department,
Kappetipola Road,
Badulla.

Applicant-Respondent

R.M. Samarasekara,
'Saman Niwasa', Kirimadugoda,
Kinigama, Bandarawela.

Added-Respondent

AND NOW BETWEEN

W.M.Piyasena,
Waralwatta, Kurundugolla,
Makulella, Bandarawela.

Respondent-Petitioner-Appellant

Vs.

H.M.M.U.B. Samarakoon,
Assistant Commissioner,

Agrarian Development,
Agrarian Development Department,
Kappetipola Road,
Badulla.

Applicant-Respondent-Respondent

R.M. Samarasekara,
'Saman Niwasa', Kirimadugoda,
Kinigama, Bandarawela.

Added-Respondent-Respondent

1. Manatunga Devayalage Misinona
2. Kumarihamy
3. Liliyannona
4. Wijesundara Mudiyanselage Ariyamala
5. Wijesundara Mudiyanselage Siriyalatha
6. Wijesundara Mudiyanselage Samaraweera
7. Wijesundara Mudiyanselage Manel Swarnapali
8. Wijesundara Mudiyanselage jayanthi Manel

9. Wijesundara Mudiyanselage Nanda Manel

All of Waralwatta, Kurundugolla, Makulella, Bandarawela.

Substituted Respondent-Petitioner-Appellants

BEFORE	:	K. K. Wickremasinghe, J. Janak De Silva, J.
ARGUED ON	:	16.05.2018
COUNSEL	:	AAL Kuma Dunusinghe for the Substituted Respondent-Petitioner-Appellants Avanthi Weerakoon, SC for the Applicant-Respondent-Respondent W. Dayaratne, PC with AAL Nadeeshan Kekulawala for the Added Respondent-Respondent
WRITTEN SUBMISSIONS	:	Substituted Respondent-Petitioner-Appellants – On 25.06.2018 The Applicant-Respondent-Respondent – On 21.08.2018 & 13.12.2018 The 2nd Added Respondent-Respondent – On 16.09.2013 & 28.09.2018
DECIDED ON	:	06.02.2019

K.K. WICKREMASINGHE, J.

The Respondent-Petitioner-Appellant has preferred this appeal seeking to set aside the order of the Learned High Court Judge of the Provincial High Court of Uva Province holden in Badulla dated 24.02.2010 in the Revision application No. Rev/68/2009 and to set aside the order of execution made by the Learned Magistrate of Bandarawela dated 22.07.2009 in Case No. 99791.

Facts of the Case:

The Learned Magistrate of Bandarawela had made an order dated 22.07.2009 under case No. 99791 to evict the father of the substituted respondent-petitioner-appellants (hereinafter referred to as the 'appellant'), according to an application made by the applicant-respondent-respondent (hereinafter referred to as the 'applicant-respondent') in terms of section 08 of the Agrarian Development Act No.46 of 2000 (hereinafter referred to as 'the Act'). On 30.03.2009, the District Office of the Agrarian Development at Badulla had sent the appellant a notice of termination of tenant rights in terms of section 2(4) of the Agrarian Development Act. The Learned Counsel for the appellant submitted that the appellant was unaware of the contents of the said notice such as the sale of the paddy field and the decision taken at the inquiry since the appellant was never informed of or never asked to participate in such an inquiry. Upon receiving the said notice, the appellant had filed a writ application in the Provincial High Court of Uva Province holden in Badulla under case No. HC Writ 36/2009, against the decision taken by the respondent. On the date of supporting the writ application, the appellant was directed by Court to withdraw the said application subject to filing a fresh application if the order was executed by the respondent. After the said withdrawal, the appellant was in continuous possession of the paddy land which was named as "Weralwatta".

Thereafter, on 27.07.2009, the Fiscal of the Bandarawela Magistrate's Court along with police officers and army officers had entered the said paddy land and had attempted to evict the appellant. The Learned Counsel for the appellant further submitted that the appellant had no knowledge of change of ownership to the added respondent-respondent (hereinafter referred to as the 'added-respondent') and was unaware of any court proceedings related to the said Fiscal order. Thereafter, the appellant filed a revision application under case No. Rev/68/2009 in the Provincial High Court of Uva Province holden in Badulla to revise and set aside the order of execution made by the Learned Magistrate of Bandarawela. On 24.02.2010, the Learned High Court Judge dismissed the revision application. Being aggrieved by the said dismissal, the appellant has preferred an appeal to this Court.

The Learned President's Counsel for the added respondent has objected to the maintainability of this application on following grounds;

1. There is no judicial order made by the Learned Magistrate for the appellant to challenge
2. The appellant does not have the right of appeal to come before this Court.

Accordingly the Learned President's Counsel contended that the Learned Magistrate has no jurisdiction to hold an inquiry with regard to a written report filed in terms of section 8(2) of the Act since the Learned Magistrate's function is only a ministerial act. It was further submitted that in terms of Article 154 P (3) (b) of the Constitution the Provincial High Court has power to invoke the revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Courts or Primary Courts within the province. Accordingly it was

contended that the aforesaid order made in terms of the Act does not fall within the purview of Article 154P (3).

It is mandatory to refer to section 08 of the Act, which stipulates the procedure of eviction of a tenant cultivator by the Commissioner General, that reads;

***Section 8(1)**: where any person who has been ordered under this Act, by the Commissioner-General to vacate any extent of agricultural land, fails to comply with such order, the Commissioner-General or any other person authorized in that behalf by the Commissioner-General may present to the Magistrate's Court within whose local jurisdiction such extent wholly or mainly lies, a written report-*

> *(a) setting out the nature of such order and the person to whom it was issued, describing the extent of land to which such order relates;*
>
> *(h) stating that the person who has been ordered to vacate has failed to so vacate such extent of land; and*
>
> *(c) praying for an order to evict such person and all other persons in occupation of such extent of land from such extent, and stating the name of the person to whom delivery of possession of such extent should be made.*

Accordingly, the Commissioner General is required to make an order of vacation from an extent of a land and in the event of failure of such tenant cultivator to vacate from such land, the Commissioner General needs to present a 'written report' to Court in order to obtain an order of eviction.

Section 8(2) of the said Act states that *"Where a written report is presented to a Magistrate's Court under subsection (1), such court shall direct the Fiscal or peace officer to forthwith evict the person specified in such report and all other persons in occupation of the extent of agricultural land specified in the order and*

to deliver possession of such extent to the person mentioned in such report as the person to whom delivery of possession of such extent should be made."

The Learned Counsel for the appellant contended that what was sent dated 30.03.2009 was not an order but a notice and the said notice was sent by Assistant Commissioner who had not substantiated any authorization or delegation of powers made by the Commissioner General. The Counsel further submitted that there was a vital error with regard to the extent of paddy land mentioned in the notice which was different from the extent of paddy land occupied by the appellant and therefore the order made by the Learned Magistrate cannot be executed with a non-existing extent of land within the land which the appellant was in possession.

In the case of **Farook V. Gunawardena, Ampara Government Agent [1980] 2 SLR 243,** it was held that,

> *"When the Legislature has made express provision for any person who is aggrieved that he has been wrongfully ejected from any land to obtain relief by a process described in the Act itself, it is not for this Court to grant relief on the ground that the petitioner has not been heard. Where the structure of the entire Act is to preclude investigations and inquiries and where it is expressly provided (a) the only defence that can be put forward at any stage of the proceedings under this Act can be based only upon a valid permit or written authority of the State and (b) special provisions have been made for aggrieved parties to obtain relief, I am of the opinion that the Act expressly precludes the need for an inquiry by the competent authority before he forms the opinion that any land is State land."*

We observe that section 08(2) of the Act does not empower the Magistrate to conduct an inquiry when a written report is filed in terms of section 8(1) of the Act.

Therefore the Magistrate only functions as an authoritative body who directs the Fiscal or a peace officer to act in accordance with the report filled in terms of section 8(1). We observe that the Learned Magistrate has made the order in accordance with the provisions of the Act. Therefore the Learned High Court Judge was correct in refusing to revise the order of the Learned Magistrate due to lack of exceptional circumstances.

In the case of **A.A. Mohamed Thaaj V. The Assistant Commissioner of Agrarian Development, Badulla and another [CA (PHC) APN 53/2013],** it was held that,

> *The trend of authority clearly indicates that the revisionary powers of the Court of Appeal will be exercised if the exceptional circumstances exist only...*
>
> *The object of the power of revision as stated by Sansoni Chief Justice in **Mariam Beebee vs. Seyed Mohamed 68 N.L.R 36** is the due administration of justice "The Court will not hesitate to use its revisionary powers to give relief where a miscarriage of justice has occurred". (In the words of Soza J. in Somawathie vs. Madawala and Others 1983 (2) SLR 15)...*
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> *Furthermore, in **Dharmarathne and Another vs. Palm Paradise Cabanas Ltd; (2003) 3 SLR 24**, Gamini Amaratunga J. stated, that the practice of Court to insist on the existence of exceptional circumstances for the exercise of revisionary powers has taken deep root in our law and has got hardened into a rule which should not be lightly disturbed.*
>
> *On a consideration of the above authorities, it is abundantly clear, the revisionary powers of the Court of Appeal will be exercised if the exceptional circumstances exist only. Thus, the existence of exceptional*

circumstances is a process by which the method of rectification should be adopted."(Emphasis added)

In the case of **Bank of Ceylon V. Kaleel and others [2004] 1 Sri L.R. 284,** it was held that;

"In any event to exercise revisionary jurisdiction the order challenged must have occasioned a failure of justice and be manifestly erroneous which go beyond an error or defect or irregularity that an ordinary person would instantly react to it - the order complained of is of such a nature which would have shocked the conscience of court."

Considering above, we see no reason to interfere with the order of the Learned High Court Judge of Badulla. Therefore we affirm the same.

Both parties agreed to abide by the same decision in case No. CA (PHC) 42/2010.

Accordingly this appeal is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

Janak De Silva, J.

I agree,

JUDGE OF THE COURT OF APPEAL