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

In the matter of the Appeal in terms of the Court of Appeal (Procedure of Appeals from High Courts established by Article 154P of the Constitution) Rules 1988 from the High Court of the North Western Province holden at Chilaw in the exercise of its jurisdiction under article 154P(3)(b) of the Constitution.

Court of Appeal Case No: CA/PHC/0155/2019

High Court Revision Application No: HCR 39/2019

MC Chilaw Case No of: 6416/18

Asoka Saman Kumara Jayalath,
Competent Authority
Provincial Department of Education North Western Province being the officer authorized in terms of State Land (Recovery of Possession) Act No 07 of 1979.
As amended by Act Nos. 58 of 1998, 29 of 1983, 45 of 1992, 29 of 1997.

Petitioner

Vs.

Polpitige Mary Nelka Perera,
Pambala.
Kakkpalliya.

Respondent

AND BETWEEN

Polpitige Mary Nelka Perera,
Pambala.
Kakkpalliya.

Respondent-Petitioner

Vs.

Asoka Saman Kumara Jayalath,
Competent Authority
Provincial Department of Education North
Western Province being the officer authorized
in terms of State Land (Recovery of
Possession) Act No 07 of 1979.
As amended by Act Nos. 58 of 1998,
29 of 1983, 45 of 1992, 29 of 1997.

Petitioner -Respondent

AND NOW BETWEEN

Polpitige Mary Nelka Perera,
Pambala.
Kakkpalliya.

Respondent-Petitioner-Appellant

Vs.

Asoka Saman Kumara Jayalath,
Competent Authority
Provincial Department of Education North
Western Province being the officer authorized
in terms of State Land (Recovery of
Possession) Act No 07 of 1979.
As amended by Act Nos. 58 of 1998,
29 of 1983, 45 of 1992, 29 of 1997.

Petitioner -Respondent-Respondent

Before: **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel: Srihan Samaranayake with Eresha for the Respondent-Petitioner-Appellant.
T. Gajanayake, S.C. for the Respondent.

Argued on	:	02.07.2025
Written Submissions of the Respondent-Petitioner -Appellant tendered on	:	06.08.2025
Written Submissions of the Petitioner-Respondent -Respondent tendered on	:	Not tendered.
Decided on	:	24.10.2025

K. M. S. DISSANAYAKE, J.

The instant appeal arises from an order of the learned High Court Judge of the North Western Province holden in Chilaw dated 06.08.2019 (hereinafter called and referred to as 'the order') dismissing an application in revision filed before it by the Respondent-Petitioner-Appellant (hereinafter called and referred to as 'the Appellant') seeking to revise and set aside the order of the learned Magistrate of Chilaw dated 30.04.2019 wherein the learned Magistrate had made order under and in terms of the provisions of section 10 of the State Land (Recovery of Possession) Act No. 7 of 1979 (as amended) (hereinafter called and referred to as 'the Act') directing the Appellant to be ejected forthwith from the State land referred to in the application made to it by the Petitioner-Respondent-Respondent (hereinafter called and referred to as 'the Respondent') being the Competent Authority under section 5 thereof. The sole reason adduced in her order by the learned High Court Judge of Chilaw for the dismissal of the application in revision is that the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 in section 5 makes provisions only for preferring an appeal to the High Court from an order made by a Magistrate under section 10 of the Act, and thus, it makes no provisions for preferring an application in revision from an order as such and therefore, there was no proper application before Court and hence, it should be dismissed. It is this

order that the Appellant now seeks to impugn before this Court in the instant Appeal.

In the light of the reasoning adduced by the learned High Court Judge of Chilaw as enumerated above, the pivotal question that would now, arise for our consideration in this appeal is that the order of learned High Court Judge can sustain in law in terms of the provisions of section 10(1) and (2) of the Act which reads thus;

> "(1) If after inquiry the Magistrate is not satisfied that the person showing cause is entitled to the possession or occupation of the land, he shall make order directing such person and his dependants, if any, in occupation of such land to be ejected forthwith from such land.
>
> (2) No appeal shall lie against any order of ejectment made by a Magistrate Court under subsection (1)"

Upon a careful reading of section 10 (2) of the Act in conjunction with section 10 (1) thereof, it becomes abundantly, clear without an iota of doubt that no appeal shall lie against any order of ejectment made by a Magistrate Court under subsection (1). Hence, right of appeal is not available from an order under subsection (1) of the Act.

Hence, the learned High Court Judge of Chilaw had grossly, erred in law when she had proceeded to dismiss the application in revision on the sole premise that the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 in section 5 makes provisions only for preferring an appeal to the High Court from an order made by a Magistrate under section 10(1) of the Act, and thus, it makes no provisions for preferring an application in revision from an order as such and therefore, there was no proper application before Court and hence, it should be dismissed.

I would therefore, hold that the order of the learned High Court Judge cannot in any manner, sustain in law and as such it should be rejected *in-limine*.

Let me now, examine the provisions contained in section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 which reads thus;

> "5- The Provisions of written law applicable to appeals to the Court of Appeal, from convictions, sentences or orders entered or imposed by a Magistrate's Court, and to applications made to the Court of Appeal for revision of any such conviction, sentence or order shall, mutatis mutandis, apply to appeals to the High Court established by Article 154P of the Constitution for a Province, from convictions, sentences or orders entered or imposed by Magistrate's Courts, Primary Courts and Labour Tribunals within that Province and from orders made under section 5 or section 9 of the Agrarian Services Act, No. 58 of 1979, in respect of land situated within that Province and to applications made to such High Court, for revision of any such conviction, sentence or order."

A careful reading of section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990, clearly, shows that it only, provides for the procedure for appealing to the High Court and nothing more.

Hence, it becomes manifestly, clear that the said section 5 the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 does not expressly, or impliedly, provides for a right of appeal against any order of ejectment made by a Magistrate Court under subsection (1) as erroneously, found by the learned High Court Judge of Chilaw.

Hence, I would hold that, the learned High Court Judge of Chilaw had gravely, misconstrued and/or grossly, misinterpreted the section 5 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 when she had proceeded to dismiss the application in revision upon a total misconception and/or

misapprehension that the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 in section 5 makes provisions only for preferring an appeal to the High Court from an order made by a Magistrate under section 10(1) of the Act, and thus, it makes no provisions for preferring an application in revision from an order as such and therefore, there was no proper application before Court and hence, it should be dismissed.

I would thus, hold that the order of the learned High Court Judge of Chilaw cannot sustain in law and as such it should be dismissed *in-limine* on this basis too.

Let me now, consider the pivotal question raised by the learned Counsel for the Appellant, namely; whether revision will lie from an order made by a Magistrate under section 10 (1) of the Act for; right of appeal shall not lie therefrom in terms of section 10(2) thereof.

In **Mariam Beebee v. Seyed Mohamed 68 NLR 36** at page 38, it was held that, "The power of revision is an extraordinary power which is quite independent of and distinct from the appellate jurisdiction of this Court. Its object is the due administration of justice and the correction of errors, sometimes committed by this Court itself, in order to avoid miscarriages of justice. It is exercised in some cases by a Judge of his own motion, when an aggrieved person who may not be a party to the action brings to his notice the fact that, unless the power is exercised, injustice will result." This was later approved by a Divisional Bench in **Somawathie v. Madawela 1983 [2] SLR 15** and in **Gunarathna v. Thambinayagam 1993 [2] SLR 355.** (Vide-**SC Appeal/111/2015-Decided on 27.05.2020**.)

Furthermore, time to time, Courts in Sri Lanka have observed that an appellant could invoke the revisionary jurisdiction even when there is a right of appeal available (Vide-**Attorney General v. Podisingho 51 NLR 385**) and when there is no right of appeal available (Vide-**Sunil Chandra Kumar v.**

Veloo 2001 [3] SLR 91) or when the said right of appeal has been exercised (Vide-**K. A. Potman v. Inspector of Police, Dodangoda 74 NLR 115**). (Vide-**SC Appeal/111/2015-Decided on 27.05.2020**.)

In the light of the law laid down by Court in the aforesaid decisions, I would hold that Revision will lie to the Provisional High Court of North Western Province holden in Chilaw against the order made by the learned Magistrate of Chilaw under section 10 (1) of the Act for; right of appeal shall not lie therefrom in terms of section 10(2) thereof (Vide- **Sunil Chandra Kumar v. Veloo 2001 [3] SLR 91**).

I would therefore, hold that the Appellant had rightly, invoked the revisionary jurisdiction of the Provisional High Court of North Western Province holden in Chilaw against the order made by the learned Magistrate of Chilaw under section 10 (1) of the Act for; right of appeal shall not lie therefrom in terms of section 10(2) thereof.

Hence, I would set aside the order of the learned High Court Judge of the North Western Province holden in Chilaw.

I would thus, direct the learned High Court Judge of the North Western Province holden in Chilaw to hear and determine the threshold issue as to the issuance of notice on the Respondents named therein as prayed for in prayer "ඒ" of the petition of the Appellant dated 15.05.2019 forwarded to High Court of the North Western Province holden in Chilaw.

And I would further direct the learned High Court Judge of the North Western Province holden in Chilaw to hear and determine the instant application in revision on its merit strictly, in accordance with the law and procedure in case the learned High Court Judge of the North Western Province holden in Chilaw is satisfied that there is a *prima facie* case made out by the Appellant in his petition for the issuance of notices on the Respondent.

Hence, I would allow the instant appeal however, without costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL