

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

In the matter of an Application for revision  
and restitution in integrum under and in  
terms of Article 138 of the Constitution.

Kottalbadde Widanelage Dharmasiri

Director General of the Urban

Development Authority, No.27 D.R.

Wijewardena Mawatha Colombo 10,

Presently at "Sethsiripaya", Sri

Jayawardenapura Kotte, Battaramulla.

**CA Revision Application**

**No: 395/06**

**MC Tissamaharamaya**

**No: 72920**

**Applicant**

**Vs.**

Ratnayake Mudiyanseelage Baby Nona

Raja Mawatha, Kataragama.

**Respondent**

**AND BETWEEN**

Ratnayake Mudiyanseleage Baby Nona  
Raja Mawatha, Kataragama.

**Dissatisfied Party applicant**

**Vs.**

1. Kottalbadde Widanelage Dharmasiri  
Director General of the Urban  
Development Authority, No.27 D.R.  
Wijewardena Mawatha Colombo 10,  
Presently at "Sethsiripaya", Sri  
Jayawardenapura Kotte, Battaramulla.

2. Director General of the Urban  
Development Authority, No.27 D.R.  
Wijewardena Mawatha Colombo 10,  
Presently at "Sethsiripaya", Sri  
Jayawardenapura Kotte, Battaramulla.

**Respondents**

**And Now Between**

1. Kottalbadde Widanelage Dharmasiri

Director General of the Urban  
Development Authority, No.27 D.R.  
Wijewardena Mawatha Colombo 10,  
Presently at "Sethsiripaya", Sri  
Jayawardenapura Kotte, Battaramulla.

2. Director General of the Urban  
Development Authority, No.27 D.R.  
Wijewardena Mawatha Colombo 10,  
Presently at "Sethsiripaya", Sri  
Jayawardenapura Kotte, Battaramulla.

3. The Urban Development Authority,  
No.27 D.R. Wijewardena Mawatha  
Colombo 10,  
Presently at "Sethsiripaya", Sri  
Jayawardenapura Kotte, Battaramulla.

**Respondents – Respondents**

4. Gunasinghe Arachchige Saman  
No: 39, In front of School,

Raja Mawatha,  
Sellakataragama.

**Respondent**

**BEFORE** : **P.W.D.C. JAYATHILAKE, J**

**COUNSEL** : Manohara De Silva P.C. with A.  
Wijesundara for the Petitioner.  
W. Dayaratne P.C. with S.De Soysa  
for the 4<sup>th</sup> Respondent.

**ARGUEDON** : 22.07.2014

**DECIDEDON** : 27.11.2014

**P.W.D.C. Jayathilake, J**

Ratnayaka Mudalige Bebinona of Kirigedara, Mailagama, Kataragama, the  
Applicant Petitioner of this case seeks to revise and/or set aside orders of the

learned Magistrate dated 27.01.2006 and 07.10.2005 made in the case bearing No: 72920 of Magistrate Court, Tissamaharama. She has further asked for making an order restoring her to possession of the premises in suit, namely, the shop premises bearing No: 91 SellaKataragama. The Petitioner has stated the above mentioned premises that had been given on rent by the 3<sup>rd</sup> Respondent to her late son, Nandasena in the year 1987. She claims that after the death of Nandasena, she succeeded to the tenancy and continuously paid rent till 1994. As the 4<sup>th</sup> Respondent, Gunasinghe Arachchige Saman disputed her tenancy right and action was instituted in the District Court of Hambantota and the petitioner was placed in possession by evicting the 4<sup>th</sup> Respondent in the year 2004.

Thereafter, the Magistrate of Tissamaharama has made an order to eject the Petitioner from the said premises on an application filed by the 2<sup>nd</sup> Respondent under Sec. 5 of the state land (recovery of possession) Act No: 7 of 1979. The Petitioner was ejected by the fiscal executing the said order on 11.10.2005. Even though it has been reported in the said case, the notice had been served, the Petitioner states that the said notice had been served on another person and not on the Petitioner. Therefore, the Petitioner has made an application to the Magistrate Court of Tissamaharama to vacate the aforesaid order of ejectment dated 07.10.2005 and to restore her in possession of the premises on the basis

that the order has been made without serving the notice. The Magistrate refuses the said application by the order dated 27.01.2006.

It appears that the learned Magistrate has refused the application of the Petitioner for the reasons given in the aforesaid order. It has been accepted that it was the Petitioner who was ejected by executing the order. The application has been made after 3 months of the execution of the order. Although it has been stated that writ application has been filed in the Court of Appeal in respect of a decision of the Urban Development Authority, no stay order has been obtained to stay any proceedings. Those are the reason given by the Magistrate in refusing the Application of the Petitioner.

It has been emphasized by the counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that the quit notice of the Magistrate Court case had been addressed to Raja Mawatha, Kataragama which is the address given in the caption of the cases filed by and against the Petitioner in the District Court, Court of Appeal and the Supreme Court. As the fiscal has reported, the summons had been served to the Petitioner's said address, she cannot take up the possession that the quit notice had not been served on her.

Admittedly, the premise in suit is owned by the 3<sup>rd</sup> Defendant, Urban Development Authority and the said Authority has rented out the premises to the 4<sup>th</sup> Respondent. Even if the Petitioner had continued to litigate claiming the

tenancy right, no lawful tenancy agreement had existed between Petitioner and the 3<sup>rd</sup> Respondent. Though it has been stated that the Petitioner has filed a writ application challenging the decision of the 3<sup>rd</sup> Respondent to give the premises in suit on rent to the 4<sup>th</sup> Respondent no decision of the said case is disclosed. As such, this court has no reason to set aside or to revise the orders of the learned Magistrate made in the case filed by the 3<sup>rd</sup> Respondent under the recovery of possession of state land Act. Therefore, this court dismisses the application of the Petitioner.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**