

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

In the matter of an application under
Article 154 (p) of the Constitution of the
Democratic Socialist Republic of Sri
Lanka to revise an order of the
Magistrate's Court.

**CA (PHC) APN 113/2011 with
CA (PHC) 68/11
High Court Nuwara Eliya
Case No. 39/10 Rev
M.C. Nuwara Eliya Case No. 4093/10**

J.M.C. Priyadarshani,
Authorized Officer/ Competent
Authority
Ministry of Plantation Industries,
No. 55/75, Vauxhall Lane,
Colombo 2.

Applicant

Vs.

Muttiah Shanmugam,
Glenlyon Division,
Portmore Estate,
Agarapatana.

Respondent

And

Muttiah Shanmugam,
Glenlyon Division,
Portmore Estate,
Agarapatana.

Respondent-Petitioner

Vs.

J.M.C. Priyadarshani,
Authorized Officer/Competent

Authority
Ministry of Plantation Industries,
No. 55/75, Vauxhall Lane,
Colombo 2.

Applicant-Respondent

And

Muttiah Shanmugam,
Glenlyon Division,
Portmore Estate,
Agarapatana.

**Respondent-Petitioner-
Petitioner**

Vs.

J.M.C. Priyadarshani,
Authorized Officer/ Competent
Authority
Ministry of Plantation Industries,
No. 55/75, Vauxhall Lane,
Colombo 2.

**Applicant-Respondent-
Respondent**

And now Between

Muttiah Shanmugam,
Glenlyon Division,
Portmore Estate,
Agarapatana.

**Respondent-Petitioner-
Petitioner(Deceased)**

Vs.

1. Sivapakim Shanmugam

2. Wijayakumaran Shanmugam
2(a) R. Pushparani
3. Wijayathilaki Shanmugam
4. Vijayakumarie Shanmugam
5. Vijayalatha Shanmugam
6. Wijeswari Shanmugam
7. Devika Shanmugam
All of Glenlyon Division,
Portmore Estate,
Agarapatana.
8. Wijkala Shanmugam
Palmston Estate,
Thalawakala.
9. Wijayanathy Shanmugam,
Manikam Pillayar Road,
Hatton.

**1st to 9th Petitioners seeking to be
Substituted in the room of the
Respondent-Petitioner-
Petitioner (Deceased)**

Vs.

J.M.C. Priyadarshani,
Authorized Officer/ Competent
Authority
Ministry of Plantation Industries,
No. 55/75, Vauxhall Lane,
Colombo 2.

**Applicant-Respondent-
Respondent-Respondent**

**Before : H.C.J. Madawala , J
&
L.T.B. Dehideniya, J**

Counsel : K. Aziz for the Petitioner.

Nihal Fernando PC with Anura Ranawaka and A. Silva for the
Applicant-Respondent-Respondent

Written Submissions On : 01 /11 /2016

Decided on : 06 / 04 /2017

Order

H. C. J. Madawala , J

This Revision application dated 25/07/2011 has been preferred to this court by the Respondent-Petitioner-Petitioner to revise and to set aside the judgment of the Learned High Court Judge of Nuwara Eliya dated 6th July 2011 in case No. HC/NE/39/10/REV. Further to revise and to set aside the order of the Learned Magistrate of Nuwara Eliya dated 7th October 2010 in case No. MC/NE 4093/10 and further to grant and issue an interim order restraining the operation of the judgment of the High Court Judge of Nuwara Eliya dated 6th July 2011 in case No. HC/NE/39/10/RE until the final determination of this application and further to grant and issue an interim order restraining the operation of the order of the Magistrate of Nuwara Eliya dated 7th October 2010 in case No. MC/NE 4093/10 and to grant cost.

On 13/9/2011 the Respondent-Petitioner-Petitioner made an application for an interim order. This court on being satisfied with the contents of the

petition and affidavit issued a stay order in terms of paragraph “e” of the prayer to the petition. On notice been served the Respondent appearing in court filed their objections to issue of the stay order. Thereafter on 4/11/2014 1st to 9th Petitioners filed their application for substitution in room of the deceased Respondent-Petitioner-Petitioner Mutthaia Shanmugam. After objections been filed inquiry regarding the substitution was held on 15/03/2016. This court after inquiry made its order on 15/03/2016 appointing 1st, 3rd, 4th, 5th and 7th Respondents as 1(a) to 1(e) substituted-Petitioner-Petitioner.

On 03/03/2014 both parties agreed to abide by the decision given in this case in respect CA (PHC) No. 68/11.

The Petitioner states that the Applicant-Respondent-Respondent instituted proceedings against the Respondent-Petitioner-Petitioner (herein after referred to as the Petitioner) under and in terms of section 5 of the State lands (Recovery of Possession) Act No. 7 of 1979 (as amended) by application dated 15th July 2010, seeking as substantive relief an order ejecting the Petitioner and his dependents from the premises more fully described in the schedule to the said application. The Respondent pleaded inter alia in the aforesaid application that;

- a) The Respondent is the relevant Competent Authority;

- b) The land pertinent described in the schedule to the application was in her opinion State Land;
- c) A notice to Quit(attached to the application)was served on the Petitioner;
- d) The Petitioner has failed to act in terms of section 4(b) of the State Lands (Recovery of Possession) Act.

The Petitioner thereafter duly tendered his objections/ show cause in writing, on or about 2nd September 2010, and pleaded inter alia that;

- (a) The Respondent's predecessor instituted proceedings against the Petitioner before the Magistrate's Court of Nuwara Eliya in case No. 86537 seeking the same relief sought by way of the application filed in the present matter.
- (b) The said application was dismissed by the Magistrate's Court, by order dated 12th June 2008.
- (c) Hence, the said order operated as Res Judicata in this instance and the Respondent was prevented and restrained in law from instituting fresh proceedings against the Petitioner concerning the identical subject matter.
- (d) The land concerned was vested with Agarapatana Plantations Ltd and therefore the Respondent was prevented and restrained in law

from seeking to act in terms of the state Lands (Recovery of Possession) Act No 7 of 1979.

(e) The notice to quit and / or the Affidavit were not in conformity with the State Lands (Recovery of Possession) Act No 7 of 1979.

The Learned Magistrate thereafter directed the parties to tender their respective written submissions which were duly tendered to court and the Learned Magistrate thereafter pronounced his order dated 7th October 2010, granting the relief sought for by the Respondent.

Being aggrieved by the said order of the Learned Magistrate, the Petitioner preferred an application for revision to the High Court of Nuwara Eliya in case No HC/NE/ 39/10/RE by petition dated 25th November 2010 seeking that the order of the Learned Magistrate dated 7th October 2010 be revised as substantive relief. The Respondent thereafter tendered statement of objections dated 5th May 2011 and thereafter parties tendered their written submissions as directed by the High Court Judge.

The Petitioner in his written submissions submitted inter alia paragraph 7 of the petition is as follows;

- a) The Land concerned has been vested with Agarapatana Plantations Ltd, which is a private entity;

- b) The Respondent cannot make avail of the State Lands (Recovery of Possession) Act No. 7 of 1979 in law, when the land concerned is vested and /or leased to a private entity.
- c) Hence, the Respondent has no power or authority to seek an order to evict the Petitioner, having regard to the following authorities;
- (i) Judgment of the Court of Appeal, dated 30th May 2002 (as affirmed by the Supreme Court in SC/SPL/LA/148/2002) in **Adakan Periyah Muthiah V. S.C.K.de Alwis, Consultant/ Plantation expert, Plantation Reform Project, Ministry of Plantations (CA Application No. 1560/2000).**
 - (ii) Judgment of the Court of Appeal, dated 5th April 2007, in **Sunil Chandrakumar Vs. K.S. Velu (CA(PHC) APN No. 176/1997).**

Attention court has been drawn to the judgment in the case of Adakan Periyah Muthiah Vs. S.C.K. de Alwis, Consultant/ Plantation Expert, Plantation Reform Project, Minister of Plantations (CA application No 1560/2000)

Page 5 of the Judgment

“ The Respondent in his affidavit has stated that the ownership of Stonycliff Estate remains with the JEDB which is an incorporation established in terms of the State Agricultural Corporation Act (paragraph 12(e). This is assertion is correct but on the basis of the JEDB’s bare ownership can it exercise control

over the quarters occupied by the petitioner. In my opinion JEDB cannot seek to exercise its right as a lesser unless the use of the quarters is contrary to the lease agreement between the JEDB and the Kotagala Plantation. There is no allegation that Kotagala Plantation has done anything in respect of the quarters contrary to the lease agreement. The Petitioner is simply an overstaying tenant under a public company. Then it is for the company to take steps under the law to have him evicted. A third party which has no nexus with the petitioner cannot direct the Petitioner to vacate the premises. Here it appears that the company is attempting to use a shortcut without getting involved in civil litigation to evict him.”

Page 8 of the Judgment

“by virtue of indenture of lease possession and control of the assets of the Stony cliff Group were vested in the Kotagala Plantations Company. Can the Respondents, claiming to be the agents of JEDB which has bare dominium without possession and power of control over the immovable property of Stony cliff Group, place an outsider in possession of the quarters occupied by the petitioner? The answer is obviously in the negative. Then it is necessarily follows that he cannot also interfere with the possession of a person who occupied the quarters as an employee of the lessee although such person is overstaying without any justification. Accordingly that the Petitioner is entitled to the relief he has prayed for in the petition...”

The Supreme Court thereafter, upon an application made to challenge the said judgment of the Court of Appeal, refused to grant leave and dismissed the Application.

Attention court has been drawn to the judgment in the case of Sunil Chandrakumar Vs. K.S. Velu (CA(PHC) No 176/1997 and specifically to the following pages;

Page 2 of the Judgment

“ This is an appeal against the order of the Learned High Court Judge of Kandy dated 5.11.1997 wherein he issued a writ of certiorari quashing the quit notice issued by the competent authority of the Ministry of Plantation. The main thrust of the Petitioner’s case, in the appeal is that the Learned High Court Judge erred when he held that the Competent Authority had no power to issue a quit notice, on the basis that the Competent Authority could not invoke the jurisdiction under the Government Quarters (Recovery of Possession) Act No 7 of 1969 as amended by Acts No. 3 of 1971, No. 40 of 1974 and No. 8 of 1981. As at the relevant time, the property was managed by a Private Company namely, Mathurata Plantations Ltd the Respondents argument was that although the property was given on an indenture of lease Mathurata Plantations Ltd. The ownership remained with the government and therefore the government had ut dominus over the property and everything on it and was entitled to issue the quit notice.”

Page 3 of the Judgment

“As against the argument, the Learned Counsel for the Respondent referred to Adakan Periyah Muthiah Vs. S.C.K. de Alwis, CA Application No 1560/2000 minutes dated 30.05.2002 and also CA 2166/2003 decided on 12.05.2005 R.M. Kusuma Ranasinghe Vs. Abeyananda Dias, Competent Authority, Plantation Management Division, Ministry of Plantation Industry.”

In the case of 2005 R.M. Kusuma Ranasinghe Vs. Abeyananda Dias (supra) the judgment delivered by H.L. Justice Sri Skandarajah at page 9 of the judgment is read as follows,

“ It cannot seek the assistance of the lesser (JEDB) to take under special law such as the State Land (Recovery of Possession) Act which was enacted to serve a specific purpose such as ejecting unauthorized occupiers of State and to recover possession of that law to the State.”

Page 4 of the Judgment

“ Whilst subscribing fully to the reasons expressed by Hon. Justice Sri Skandarajah he go a step further and state that one cannot allow or permit a private concern to achieve something indirectly what can be achieved directed under the Government Quarters (Recovery of Possession) Act.”

“ In a matter of this nature we are not concerned so much about the ownership of the particular land. We are only concerned with the intention of the legislature and the letter and spirit of the law and the purpose for which the law was enacted.”

“ with the execution of the lease the whole business of the plantations reform project was vested with the Mathurata Plantations Ltd and the whole business came under the management of Mathurata Plantations Ltd. Thus what was hitherto government quarters became private quarters for the benefit and at the disposal of the Mathurata Plantations Ltd. Occupied by the employees of the said concern in the course and within the scope of the employment, the government losing its control over the said premises, although the ownership of the said premises remained with the government?”

Page 5 of the Judgment

“ Having considered the submissions made by the counsel and after perusing the documents, and the case law referred to we are of the view that the Government Quarters (Recovery of Possession) Act No. 7 of 1969 cannot and should not be allowed to be made use of by private concerns to achieve their own ends which I this is completely against the letter and spirit of the particular law, which is meant to protect the interests and to ensure the smooth running of the business and other ventures of government concerns and public corporations.”

Thereafter the Learned High Court Judge of Nuwara Eliya pronounced his judgment dated 6th July 2011 by affirming the order of the Learned Magistrate dated 7th October 2010 and dismiss the Petitioner’s application. Being aggrieved by the said judgment of the High Court the Petitioner

preferred this application in Revision against the judgment pronounced on 6th July 2011 by the High Court Judge of Nuwara Eliya in revision, upon the following exceptional grounds. The exceptional grounds has been pleaded in paragraph 9 (a) to (e) of the petition of the said revision application as follows;

- (a) The said judgment of the High Court, dated 6th July 2011 and/or the said order of the Learned Magistrate, dated 7th October 2010 is/ are contrary to law and/or is/are per incuriam and/or is/are a grave mistake of fact and/or law;
- (b) The High Court and/or the Learned Magistrate have misdirected themselves, by failing to appreciate and/or determine that Respondent was prevented and/or restrained in law from seeking to act and/or take steps in terms of the State Lands(Recovery of Possession) Act No 7 of 1979, having particular regard to the fact that the land concerned has admittedly been vested and/or leased to Agarapatana Plantations Ltd and that Agarapatana Plantations Ltd being a private entity, cannot seek to achieve a purpose indirectly which it cannot achieve directly in law;
- (c) The High Court and/or the Learned Magistrate has/have erred in law by failing to appreciate and/or determine and/or apply in the correct perspective the following authorities, rendering the impugned

judgment and/or order contrary to the principles enumerated in the said authorities;

- (i) Judgment of the Court of Appeal, dated 30th May 2002 (as affirmed by the Supreme Court in SC/SPL/LA/148/2002) in Adakan Periyah Muthiah V. S.C.K. de Alwis, Consultant/ Plantation Expert, Plantation Reform project, Ministry of Plantations (CA Application No 1560/2000);
 - (ii) Judgment of the Court of Appeal dated 5th April 2007 in Sunil Chandrakumar Vs. K.S. Velu (CA(PHC)APN No 176/1997).
- (d) The High Court and/ or the Learned Magistrate has/ have misdirected in fact and/ or law by failing to appreciate and/ or determine, that the application of the Respondent did not conform to the mandatory provisions of the State Lands (Recovery of Possession) Act, in as much as that, there is a violation of the format and form and procedural requirements stipulated therein;
- (e) The High Court and/ or the Learned Magistrate has/ have therefore failed to appreciate and/or determine and/or apply in the correct perspective the case of **Kandiah V. Abeykoon (CA594/86) Reported at Sriskantha's Law Reports Vol IV part II pages 103-113**, having particular regard to the fact that the said anomalies and/or discrepancies contained in the application and/or notice to quit of the Respondent, did not conform to the statutorily prescribed forms in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979 and therefore that the Learned Magistrate had no jurisdiction to accept

the purported application of the Respondent and/or issue summons thereupon;

It was contended that the High Court Judge has misdirected himself in law by failing to appreciate and/ or determine that the aforementioned grounds/ reasons constituted exceptional circumstances for the granting of the substantive relief as prayed for in the petition of the Petitioner. The substantive relief prayed for by the petitioner is as follows,

- (a) Revise and set aside the judgment of the High Court of Nuwara Eliya dated 6th July 2011 in case No HC/NE/39/10/REV ;
- (b) Revise and set aside the order of the Magistrate's Court of Nuwara Eliya dated 7th October 2010 in case no MC/NE/4093/10.

The petitioner submitted that he has been in uninterrupted and independent possession of the said land concerned for a period exceeding Thirty Seven years and the Petitioner has constructed a residential premises, made substantial developments thereupon and is residing therein with his wife, son, daughter and his grandchildren. It was submitted that unless the following interim orders are granted and issued by courts until the final determination of this application grave and irreparable loss, damage and prejudice will be fall and/ or be caused to the Petitioner unjustifiably, and this application will be rendered nugatory.

- (a) An interim order restraining the operation of the judgment of the High Court of Nuwara Eliya dated 6th July 2011 in case No HC/NE/39/10/Rev, until the final determination of this application; and/ or
- (b) An interim order restraining the operation of the order of the Magistrate Court of Nuwara Eliya dated 7th October 2010 in case No MC/NE/4093/10, until the final determination of this application.

The Applicant-Respondent-Respondent file in his statement of objections admitted the averments contained in paragraph 1 and 2 of the petition, and states that she is the duly appointed competent authority under section 18 of the State Lands (Recovery of Possession) Act No. 7 of 1979. She also stated that ;

- (a) The land concurred is part of New Portmore Estate owned by the state, and it has been leased to Agarapatana Plantations Ltd. By the Janatha Estate Development Board. (Lease agreement bearing No 324 dated 17th March 1994 attested by C.J. Fernando Notary Public (marked as "R2") has been pleaded as part and parcel of the statement of objections True copies of the Gazette extraordinary No 183/10 dated 12th March 1982 and the Gazette extraordinary dated 22/06/1992 marked as "R3" and "R4" respectively and are pleaded as part and parcel of the statement of objections.
- (b) That the Petitioner was in unauthorized possession of the said land and therefore an application was made under the provisions of the State Lands (Recovery of Possession) Act No 7 of 1979 (as

amended) to the Magistrate's Court of Nuwara Eliya to evict the Petitioner and those holding under him.

The Respondent admits that the Petitioner tendered his show cause in the said Magistrate's Court action and took up several objections to the Respondent's application and states that the said objections are without merit. The Respondents admits the averments in paragraph 4 of the Petition. The Respondent responding to averments in paragraphs 5, 6, and 7 of the petition, the Respondent admitted that an application for revision bearing No HC/NE/39/10/RE was made by the Petitioner to the High Court of Nuwara Eliya seeking to set aside the Magistrate's Court's order and the Respondent filed her statement of objections and both parties tendered their written submissions. After considering the material before court and the written submissions of both parties the High Court Judge delivered his judgment affirming the order of the Magistrate's Court.

The Respondent denies the averments contained in paragraphs 9,10,11,12 and 13 of the petition. The Respondent further states that;

- (a) The land concurred remains the property of the state;
- (b) The leasing of the property has not deprived the state of its ownership;

- (c) Agarapatana Plantations Ltd is not a private entity as stated by the Petitioner, but the state owns a sizable percentage of shares and also a Golden share with certain special rights;
- (True copies of the articles of Association of the said company the statement offering for sale 51% of shares of the company by the state as marked "R5" and "R6" respectively and are pleaded as part and parcel of this statements of objections) and;
- (d) The authorities cited by the Petitioner are not applicable to this matter before this court.

It was submitted that the Petitioner has failed to comply with the mandatory provisions of Act No 19 of 1990 in that the Petitioner has failed exercise the right of appeal in terms thereof, and in any event the petition has been filed after lapse of time provided in the Act. Further the Petitioner has not disclosed any valid grounds or exceptional circumstances for invoking the revisionary powers. The Petitioner's application to be rejected and the Respondent states that the Petitioner is not entitled to the relief prayed.

When considering the submissions of the Petitioner and the Respondent we find that the main issue between the parties is that whether the land in dispute is State Land or Private Property. The Appellant has failed to

produce any valid permit for the possession of the land and has failed to produce any other valid authority under the State Lands (Recovery of Possession) Act section 9 it is stated that,

“ as such inquiry the person on whom summons under section 5 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the state granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.”

In the case of Mohandiram Vs. Chairman Janatha Estate Development Board 1992 1 SLR pg 110 his Lordship Grero J, held that ;

“in an inquiry under the State Lands (Recovery of Possession) Act, the onus is on the person summoned to establish his possession or occupation that it is possessed or occupied upon a valid permit or other written authority of the state granted according to any written law. If his burden is not discharged the only option open to the Magistrate is to order ejectment.”

The new Portmore Estate was vested in the Land Reform Commission and then vested with the Janatha Estate Development Board established under the State Agricultural Corporations Act vide document marked "R3". As per Gazette "R4" Agarapathana Plantations Ltd was incorporated under conversion of public corporations or Government owned business undertaking to public companies Act No. 23 of 1987 to take over the functions and carry on the business of the parts of the Sri Lanka State Plantations Corporation and Janatha Estates Development Board. The Gazette marked "R4" further shows that new Portmore Estate, Agarapatana is owned and managed by Janatha Estates Development Board. By indenture of lease No. 324 marked as "R2" the new Portmore Estate was leased to Agarapatana Plantations Ltd by Janatha Estates Development Board. The aforesaid lease is for 99 years with a termination clause thus clearly indicating that the estate had not been vested with Agarapatana Plantations Ltd. Accordingly we hold that the land in dispute had not been vested with the Agarapatana Plantations Ltd, but its owned by the state.

Accordingly in terms of section 18 of the State Lands (Recovery of Possession) Act No 58 of 1981 will apply in respect of the land and premises of land in dispute.

“ ‘state land’ means land to which the state is lawfully entitled or which may be disposed of by the state together with any building standing thereon, and with all rights, interests and privileges attached or appertaining thereto, and includes – (a); (b) land vested in or owned by, or under the control of- (i) the Land Reform Commission established by the land Reform; (ii) any corporate body established by or under the Rubber Research, the Sri Lanka State Plantations Corporation Act, the State Agricultural Corporations Act,.....”

Accordingly, we hold that the Learned Magistrate was correct in issuing the order of the ejectment when the Appellant failed to produce a permit under section 9 of the Act and the decision of the Provincial High Court was correct by refusing to exercise revisionary jurisdiction to revise the order of the Learned Magistrate. The contention of the 1st to 9th Substituted Petitioners was that the land in question was vested with Agarapatana Plantation Ltd and therefore the Respondent was prevented and restrained in law from seeking to Act in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979. We are of the view that it is not so and the said land is not a private entity in terms of the law. Hence we reject the argument of the Substituted-Respondent-Petitioner-Petitioner that the Respondent has no power or authority to seek an order to evict the original appellant having regard to the following authorities.

In the case of **Goonathilaka and Another Vs. Thollappan (2007) 2 SLR page 394** , wherein it was held by **S.N. Silva CJ** that;

“Bogawantalawa Plantations Ltd was an estate vested in the Land Reform Commission and later in the Sri Lanka State Plantations Corporation (SLPC). The Respondent was an employee of the SLPC and was permitted to occupy the land in question on the payment of a sum of Rs.50/- per month as rent. Subsequently the estates vested in the SLPC was leased out to companies established in terms of the Conversion of Public Corporations or Government Owned Business undertakings into Public Companies Act. Bogawantalawa Plantations Ltd was incorporated in terms of the said Act, the estate within which the land occupied by the respondent is situated was leased by SLPC to Bogawantalawa Plantations Ltd.

The Court of Appeal issued a writ of certiorari on the basis that the respondent had been given on rent a building and that the land is mere appurtenant to the building. The notice to quit was issued by the original Respondent-Appellant as the Competent Authority for the purpose of the State Land (Recovery of Possession) Act on the basis that the respondent (V.N. Thollappan) is in unauthorized occupation of state land. The land described in the schedule to the notice to quit is a portion of field 4 of the Bogawantalawa Estate.

Bogawantalawa Plantations Ltd was thus incorporated by an order dated 22.6.1992 made in terms of the said Act. The Bogawantalawa estate within which the land occupied by the petitioner is admittedly situated was leased by the SLPC to Bogawantalawa Plantations Ltd, by Lease bearing No 83 dated 18.01.1994 attested by J. Kottage, Notary Public.

The lease is for a period of 99 years and contains a provision for prior termination. Therefore the land remains vested in the Sri Lanka State Plantations Corporation.”

In the case of **Muttuvelu Vs. Dias and Another (2004)2 SLR 335** it was held that;

Per Wijerathne J,

“ A lease though considered a Pro tanto transfer, is a contract between the Lessor and the Lessee, governed by the terms of the indenture of Lease . Lessee during the tenure of the lessee may exercise all the rights of the owner with regard to the possession and enjoyment of the property leased as against third parties. A lessor by reason of the lease does not lose his right of ownership and may exercise his rights of ownership especially towards more

fully assuring the control and possession of the devised property to the lessee.”

Provisions of the State Lands (Recovery of Possession) Act reveal that it is a special enactment providing for the speedy recovery of State Lands from unlawful occupiers. The State continued to be the owner of the estates leased.”

Accordingly we hold that the said land in question remains the property of state whiles and the said leasing of the land has not deprived the state of its ut dominus upon the land concerned been leased to the Agarapatana Plantations Ltd.

Accordingly we hold that the Appellant has failed to provide any permit or authority under section 9 of the State Lands Recovery of Possession Act.

It was contention of the substituted-Respondent-Petitioner-Petitioner that the state has no rights or entitlement in law to issue any notice to quit to obtain possession of the land. It was contended that upon reading clause 4(e) of the said indenture of lease that it is clear that it is Agarapatana Plantations Ltd which has the power to take steps in terms of the Civil Law to see that the Original Petitioner and his Dependents be evicted from the premises

concerned, and not the Respondent to this application. However, on a perusal of the Indenture of lease been "R2" the lessee Agarapatana Plantations Ltd of the said document in paragraph 4(e) we find that it's read as follows,

4 (e) "The Lessee shall also be entitled to grant tenancies and licenses, accept tenancies and surrenders of them, collect rents and other payments, enforce tenancy and license terms, take defend and compromise legal actions, comply with the statutory obligations in relation thereto."

We find that by the said Lease agreement the power to institute legal action against 3rd parties has been given to the Agarapatana Plantations Ltd.

In the present case the original Respondent-Petitioner-Petitioner has not produced any lease agreement or Tenancy agreement with Agarapatana Plantations Ltd. The original Respondent -Petitioner-Petitioner has taken up the position that he has been in uninterrupted and independent possession of the said land concerned for a period exceeding Thirty seven years and that he has constructed a residential premises made substantial development there in and is residing with his wife, son and daughter and grandchildren. No material has been placed to prove this facts. As such it is evident that the original Respondent-Petitioner-Petitioner is a Trespassers in this land. Hence the substituted-Respondents too has not produced any lease

agreement or a contract of tenancy with Agarapatana Plantations Ltd or tendered proof to show that she is an independent possession of the land concerned or a permit holder from the state.

We find that, **all of the case law and authorities cited by the Substituted-Respondents-Petitioners-Petitioners are irrelevant to this Revision application.** The only matter to be considered in this application for revision is whether the Learned Magistrate was correct in issuing the order for ejection when the Petitioner failed to produce a permit under section 9 of the Act and whether the decision of the Provincial High Court was correct by refusing to exercise revisionary jurisdiction to revise the order of the Learned Magistrate.

In the circumstance, in view of the matters highlighted above that the Substituted-Respondents-Petitioners-Petitioners have failed to forward any permit or authority under section 9 of the State Lands (Recovery of Possession) Act. Accordingly we see no reason to interfere with the judgment of the Learned High Court Judge and the order of the Learned Magistrate.

State Lands (Recovery of Possession) Act

10 (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 dependents, if any, in occupation of such land to be ejected forthwith from such land.

(2) No appeal shall lie against any order of ejection made by a Magistrate under subsection (1)

As such we affirm the judgment of the High Court of Nuwara Eliya dated 6th July 2011 in case No HC/NE/39/10/Rev and the Order of the Learned Magistrate of Nuwara Eliya dated 7th October 2010 in case No MC/NE/4093/10 and dismiss this Revision Application of the Substituted-Respondent-Petitioner-Petitioner with costs of Rs.50,000/-.

As the parties had agreed to be bound by this order it is applicable and shall be binding on the parties in respect of case No. CA (PHC) 68/2011.

Judge of the Court of Appeal

L.T.B.Dehideniya, J

I agree.

Judge of the Court of Appeal