

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

**In the matter of an appeal made
under Article 154P(6) read with
Article 138 of the Constitution of
The Democratic Socialist Republic
of Sri Lanka**

Mannalage Sirisena
Resident Project Manager,
Mahaweli Authority of Sri Lanka,
Digana.

Applicant

CA (PHC) No: 94/2007

Vs,

Weerappan Kitnasamy Suppaiah
Dharmalingam,
No. 27,
Ambakote,
Kengalle.

Respondent

AND NOW BETWEEN

1. Weerappan Kitnasamy Suppaiah
Dharmalingum,
No. 27,
Ambakote,
Kengalle.

Respondent - Petitioner

2. M. S. R Saraswathie Devi,
No. 27,
Ambakote,
Kengalle.

Petitioner

High Court of Central Province

Case No. HCRA 14/2006

Vs,

Mannalage Sirisena
Resident Project Manager,
Mahaweli Authority of Sri Lanka,
Digana

Applicant - Respondent

AND NOW BETWEEN

1. Weerappan Kitnasamy Suppaiah
Dharmalingam,
No. 27,
Ambakote,
Kengalle.
2. M. S. R Saraswathie Devi,
No. 27,
Ambakote,
Kengalle.

Respondents – Petitioners- Appellants

Magistrate Court of Teldeniya

Case No. 66024/2005

Vs,

Mannalage Sirisena
Resident Project Manager,
Mahaweli Authority of Sri Lanka,
Digana

Applicant – Respondent- Respondent

**Before : S. Devika de L. Tennekoon, J &
S. Thurairaja PC, J**

**Counsel : Upul Hewage with Shamalee S. Arachige for the Accused-
Appellant
Chaya Sri Nammuni, SSC for the Applicant – Respondent-
Respondent**

Judgment on : 15th February 2018

Judgment

S.Thurairaja PC J

The Respondent – Petitioner - Appellant (Hereinafter sometimes referred as the Appellant) is seeking to set aside an order dated 20th July 2007, issued by the Learned Judge of the High Court of Kandy.

The Appellant was occupying a land at Ambakotte, Kengalla, Kandy. Both parties agreed that the land belongs to the State. The Appellant says that he has permission and the Mahaweli Authority who is the Plaintiff - Respondent – Respondent (Hereinafter sometimes referred to as the Respondent), says that the portion that the Appellant claimed was not given to them and that the Appellants were occupying the said land without any legal permission. Quit notices were issued, matter was referred to the Magistrate of Teldeniya to get the possession of the said land. The Magistrate also issued an order to quit against the Appellants. Being aggrieved with the said order the Appellants filed a revision application at the Provincial High Court of Kandy on the following grounds;

- a) The summons was not properly served.
- b) The Respondent (Mahaweli Authority) is not a Competent Authority.

The learned Judge of the High Court after hearing submissions of both parties had decided that the summons was not properly served, hence, he referred the matter back to the Magistrate to follow the proper procedure.

Being unsatisfied with the said order of the Judge of the High Court, the Appellants preferred this appeal to this Court and framed following grounds of appeal;

- i). Whether the 1st Appellant has been summoned by a proper summons.
- ii). Whether the Appellant has suffered a grave prejudice by not summoning by a proper summons. (sic)

iii). Whether the Respondent is the Competent Authority;

We carefully considered the Order of the Learned High Court Judge, (at page 107 of the appeal brief) he had considered the issue of issuing of summons comprehensively. But, the issue raised regarding the Competent Authority was not considered.

The appellants submit that the Respondent is not a competent Authority under Section 18 (h) and (l) of the State Land Recovery of Possession Act.

Section 18 (h) and (i) is reproduced for easy reference:

***Section 18** competent authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes,*

***18(h)** the head of any other Government Department or Institution being a department or institution created by law, where such land is under the control of such department or institution.*

***18(i)** the Commissioner of Local Government, where such land is under the control of a local authority;*

***18(l)** an officer generally or specially authorized by a corporate body, where such land is vested in or owned by or under the control of, such corporate body.*

The Respondent is a Resident Project Manager of Mahaweli Authority of Sri Lanka. Quit Notice dated 25th February 2005, which was marked as P 16 clearly shows that the Respondent had signed the said notice as a competent authority.

Considering the relevant laws and regulations it is proved that the Respondent is a Competent Authority as stipulated under the State Land Recovery of Possession Act, therefore that ground of appeal fails on its own merits.

Regarding the other ground of appeal namely that the summons were not properly served, the learned High Court Judge had decided to direct the Magistrate to follow the accepted procedures, hence we have no reason to interfere with the said order.

Considering the matters discussed above this court dismiss the appeal with costs. The cost is estimated at Rupees 12500/-

The Magistrate hereby directed to follow the orders of the learned Judge of the Provincial High Court.

JUDGE OF THE COURT OF APPEAL

S. Devika de L. Tennekoon, J
I agree,

JUDGE OF THE COURT OF APPEAL