

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

In the matter of an appeal against  
judgment of Provincial High Court  
exercising its revisionary jurisdiction.

C A (PHC) / 78 / 2013

Provincial High Court of

Western Province (Kalutara)

Case No. Rev 11 / 2011

Magistrate's Court Kalutara

Case No. 78607

Kalupahana Mesthrige Jayathissa,

No. 9/20,

Mahajana Pola,

Kalutara South.

**RESPONDENT - PETITIONER -**

**APPELLENT**

-Vs-

1. Divisional Secretary,  
Kalutara.

**APPLICANT - RESPONDENT -**

**RESPONDENT**

2. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENT - RESPONDENT**

**Before: P. Padman Surasena J (P/ C A)**

**K K Wickremasinghe J**

Counsel; Jeewani Perera for the Respondent - Petitioner - Appellant.

Ganga Wakishta Arachchi SSC for the Applicant - Respondent -  
Respondent.

Decided on : 2018 - 03 - 15

**JUDGMENT**

**P Padman Surasena J**

The Applicant - Respondent - Respondent (hereinafter sometimes referred to as the 1<sup>st</sup> Respondent) had issued a quit notice on the Respondent - Petitioner - Appellant (hereinafter sometimes referred to as the Appellant), in terms of section 3 of the State Lands (Recovery of Possession) Act (hereinafter sometimes referred to as the Act).

As the Appellant had failed to respond to the said quit notice, the Respondent had thereafter made an application under section 5 of the Act to the Magistrate's Court of Kalutara seeking an order to evict the Appellant from the land described in the schedule to the said application.

Learned Magistrate after an inquiry had pronounced the order dated 2011-03-04 evicting the Appellant from the said land on the basis that he had failed to produce a permit or due authority to remain in the said land.

Being aggrieved by the said order of the learned Magistrate, the Appellant had filed a revision application in the Provincial High Court of Western Province holden in Kalutara seeking a revision of the order of the learned Magistrate.

The Provincial High Court after the conclusion of the argument, had pronounced its judgment dated 2013 -06-06, holding that there is no basis to deviate from the conclusions arrived at by the learned Magistrate. The Provincial High Court on that basis had proceeded to dismiss the said revision application.

It is that judgment that the Appellant is canvassing in this appeal before this Court.

Upon consideration of the material adduced in this case this Court is unable to see any basis to assail the orders of the lower Courts as the scope of the inquiry to be conducted by the Magistrate is very limited one in the proceedings of this nature.

It must also be noted that section 9 of the Act sets out the scope of the inquiry to be held before the Magistrate in following terms;

"... At such inquiry the person on whom summons under section 6 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. ..."

This is so particularly in view of the conclusion by this Court in the case of Muhandiram vs. Chairman, No.111, Janatha Estate Development Board<sup>1</sup> which is to the following effect;

“ ... Unless the respondent-petitioner had established before the learned Magistrate that he was in occupation of the land stated in the schedule to the application on a valid permit or other written authority of the State, he cannot continue to occupy the said land and in terms of the State Lands (Recovery of Possession) Act, No. 7 of 1979, the Magistrate has to make an order directing the respondent and his dependents to be ejected from the land. ...”

In the case of L H M B B Herath, Chief Manager Welfare and Industrial Relations, Sri Lanka Ports Authority V Morgan Engineering (Pvt) Ltd.<sup>2</sup> the Supreme Court had held that section 9 of the Act has placed limitations on the scope of the inquiry which should be conducted by the Magistrate.

As the State Lands (Recovery of Possession) Act has been enacted for the speedy recovery of state lands from unauthorized possession or occupation, the Supreme Court went on to state in the above judgment as follows;

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<sup>1</sup> 1992 (1) SLR 110

<sup>2</sup> SC Appeal 214/2012 decided on 2013-06-27.

"... if the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. An interpretation of section 9 which defeats the intent and purpose for which it was enacted should be avoided. ..."

In the instant case, it is clear upon consideration of the material adduced before this Court, that the Appellant has failed to establish that he is in possession or occupation of the said land upon any written authority of the state granted in accordance with any written law and that such authority is in force and not revoked or otherwise rendered invalid as required by section 9 of the Act.

Thus, the conclusion arrived at by the learned Provincial High Court Judge that the learned Magistrate has issued the eviction order correctly is affirmed by this Court as well.

For the foregoing reasons, this Court decides to dismiss this appeal with costs fixed at Rs. 75,000/= payable by the Appellant to the state.

Appeal is dismissed with costs fixed at Rs. 75,000/=.

**PRESIDENT OF THE COURT OF APPEAL**

**K K Wickremasinghe J**

I agree,

**JUDGE OF THE COURT OF APPEAL**