

WEDAMULLA
v.
ABEYSINGHE

SUPREME COURT.
AMERASINGHE, J.,
GUNAWARDANA, J. AND
GUNASEKERA, J.
S.C. No. 48/98.
S.C. SPL LA No. 478/97.
C.A. (REV) No. 547/97.
M.C. GANGODAWILA No. 1957.
MAY 07, 12, 1999.

State Lands Recovery of Possession Act, No. 7 of 1979 – Amendment No. 29 of 1983 – Quit Notice – SS. 3, 4, 5, 5 (2) (a) Amendment No. 58 of 1981 s. 5 (4) – Urban Development Authority – Competent Authority – Right or status to file proceedings – Approval of Minister condition precedent – Omnia preasumuntur rite et solemniter esse acta.

Held:

1. Competent Authority includes an officer generally or specially authorised by a Corporate body.
2. The appellant was by name and designation appointed the "Competent Authority" by the Board of the UDA in whom the land was vested.
3. He had every right to make an application for the possession of the land and for ejection of the respondent. The proceedings under the State Lands (Recovery of Possession) Act are required to be initiated by a Competent Authority.
4. It must be assumed that the necessary steps were taken including the obtaining of the Minister's approval – in fact, it had been obtained prior to proceedings for ejection.

K. C. Kamalasekera, PC, SG with U. Egaḷahewa, SC for respondent-appellant. S. Mahenthiran for defendant-petitioner-respondent.

Appeal from the Judgment of the Court of Appeal.*

Cur. adv. vult.

*1997 3 SLR 417.

May 20, 1999.

AMERASINGHE, J.

The respondent was in occupation of a land that had been acquired by the State and vested in the Urban Development Authority.

The appellant filed an application in the Magistrate's Court of Gangodawila in the prescribed form set out in the schedule to the State Lands (Recovery of Possession) Act, No. 7 of 1979, for the recovery of the possession and occupation of the land and for the ejectment of the respondent. The application was supported by an affidavit in the prescribed form. The learned Magistrate on 7th May, 1979, made order in favour of the appellant and the respondent was thereafter evicted from the land upon the issue of a writ.

The respondent filed a revision application in the Court of Appeal against the order of the learned Magistrate on the basis that the land was not a State land and that he had had undisturbed and uninterrupted possession of the land in question. When the matter came up for hearing the learned Judge of the Court of Appeal reversed the order of the Magistrate on 2 counts, namely, (1) that the Addl. Director- General of the Urban Development Authority had "no status or right to file proceedings on behalf of the Urban Development Authority;" and (2) That the approval of the Minister of Housing was "a condition precedent for the institution of proceedings in Court directed at evicting or ejecting any person in possession of property vested in the Urban Development Authority".

The appellant obtained leave of the Supreme Court to appeal against the order of the Court of Appeal. When the matter came up for hearing on the 2nd of February, 1999, learned counsel requested the Court to decide the appeal on the basis of written submissions. Written submissions were filed on 7th May, 1999 and on 12th May, 1999.

The State Lands (Recovery of Possession) Act provides that where a quit notice has been issued to a person in unauthorised possession or occupation of any State land and such person fails to comply with

such notice, any "competent authority" may make an application in writing in the prescribed form to the Magistrate's Court having jurisdiction setting forth the matters referred to in section 5 (1) (a) and praying for the recovery of such land and for an order of ejection of the person in possession or occupation. (see sections 3, 4 and 5 of the State Lands (Recovery of Possession) Act, No. 7 of 1979 as amended by Act No. 29 of 1983). "Competent Authority includes "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". (Section 18 State Lands (Recovery of Possession) Act as amended by section 5 (h) of Act No. 58 of 1981).

In the matter before me, the appellant was by name and designation appointed the "competent authority" by the Board of the Urban Development Authority in whom the land in question was vested. He had every right, therefore, to make an application for the possession of the land and for ejection of the respondent. Admittedly, as the learned Judge of the Court of Appeal observes, a corporate body has then the right to sue and be sued. However, he overlooked the fact that proceedings under the State Lands (Recovery of Possession) Act are required to be initiated by a "competent authority".

With regard to the second ground, it might be assumed that the necessary steps were taken, including the obtaining of the Minister's approval. *Ominia praesumuntur rite et solemniter esse acta*. In fact, the Minister's approval under section 14 (2) of the State Lands (Recovery of Possession) Act had been obtained prior to proceedings for ejection being taken. The Minister's order is dated the 17th of June, 1996.

For the reasons set out in my judgment, I set aside the judgment of the Court of Appeal and affirm the order of the Magistrate.

GUNAWARDANA, J. – I agree.

GUNASEKERA, J. – I agree.

Appeal allowed.