

MUHANDIRAM

v.

CHAIRMAN, NO. 111, JANATHA ESTATE DEVELOPMENT BOARD

COURT OF APPEAL

GRERO, J.

C.A. NO. 1127/85,

M.C. BADULLA 75468,

22 NOVEMBER 1991

State Lands (Recovery of Possession) Act, No. 7 of 1979, section 5 (1), 9(1) and 9(1) – Burden of proof.

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 this burden is not discharged, the only option open to the Magistrate is to order ejection.

APPLICATION for revision or *restitutio in integrum*.

K. M. P. Rajaratne for respondent-petitioner.

Applicant-respondent absent and unrepresented.

Cur adv vult.

12th December, 1991.

GERO, J.

This is an application for revision or *restitutio in integrum* filed by the respondent-petitioner praying that he be granted the relief that he had asked in the petition. He has filed this application to this Court after the learned Magistrate of Badulla had made his order on 24.9.85 in M.C. Badulla Case No. 75468.

The said case arose as a result of an application made by the Chairman of the Janatha Estate Development Board who was also a Competent Authority under the State Lands (Recovery of Possession) Act No. 7 of 1979. He had made this application acting under Section 5(1) of the said Act. When this application was made to the Magistrate's Court of Badulla, the learned Magistrate had acted under Section 6(1) of the said Act and issued summons on the respondent-petitioner in this case to show cause why he and his dependants should not be ejected from the land mentioned in the schedule to the application. The record reveals that an inquiry had been held by the learned Magistrate with regard to this application. At the inquiry, several witnesses have given evidence on behalf of the respondent-petitioner, and certain documents also were tendered and marked at the inquiry. After inquiry was over, the learned Magistrate by his order dated 24.9.85, had allowed the application of the Competent Authority, and had ordered that the respondent and his dependants should be ejected from the land in question. Being aggrieved with this order, the respondent-petitioner has filed this application to this Court.

In the application to this Court, the Chairman of the JEDB (Competent Authority) had mentioned the land which is possessed or occupied by the respondent-petitioner in this case. According to the schedule, the land is described as follows:

All that defined and divided allotments of land situated in field No. 14, Seventh Division of Spring Valley Group, Spring Valley in Pelpola Korale Yatikanda Division, Badulla District of the Province of Uva bounded on the north by Estate land allotted for village expansion, East by field No. 14, South by field No. 14 and on the West by road from Kandana to Spring Valley and containing in extent within the said boundaries about 1/2 an acre together with the building, plantations and everything else standing thereon and appertaining thereto.

Under Section 9(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979, the person on whom summons has been served (in this instance, the respondent-petitioner) 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 in 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 written authority is in force and not revoked or otherwise rendered invalid.

The said section clearly reveals that at an inquiry of this nature, the person on whom the summons has been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law. The burden of proof of that fact lies on that particular person on whom the summons has been served and appears before the relevant Court. In this case the burden was on the respondent-petitioner to establish the fact that he had a valid permit or other written authority of the State to occupy the land which is stated in the schedule to the application of the Competent Authority.

This Court perused the evidence given by the witnesses who were called on behalf of the respondent-petitioner. Muhandiramilage Muthubanda, the brother of the respondent, had given evidence at the inquiry and according to his evidence, he had given the four boundaries of the land in dispute. According to him, the boundaries are as follows:-

South: Kandana Spring Valley High Road.

North: Land of the allottees of houses.

East: State waste land.

West: Houses constructed by Housing Authority.

The extent of the land according to him is about 55.7 perches.

The Technical Officer Weerasekera Mudiyanseelage Jayasekera had given evidence and according to him, the boundaries of this land are as follows:

- South: Road from Kandana to Spring Valley High Road.
 - North: Houses under construction.
 - East: The State waste land.
 - West: Houses,
- and extent of the land is about 40 perches.

When compared with the boundaries given to the land stated in the schedule to the application with the boundaries given by the said two witnesses, it would appear that the boundaries given to the land in the schedule are not the same boundaries as stated by the said two witnesses. According to the application made by the Competent Authority, the land is described in the schedule to the application, and the learned Magistrate has to consider whether the respondent-petitioner is in possession or in occupation of the said land upon a valid permit or other written authority of the State granted in accordance with any written law.

According to the evidence led by the respondent-petitioner at the inquiry, this Court is of the view that the respondent-petitioner has failed to establish the fact that he is in occupation of the land described in the schedule to the application by the Competent Authority upon a valid permit or any other written authority of the State granted to him as stated in paragraph 9(1) of the State Lands (Recovery of Possession) Act. He has produced a number of documents marked R1 to R8. It must be stated that these documents do not show the particular land with the boundaries as stated in the schedule to the application. Even the learned Magistrate had mentioned this matter in his order. He had specially focused his attention to R3 where the District Manager of the National Housing Development Authority of Badulla had sent a letter to the respondent stating that the District Minister of Monaragala had decided to allocate a block of land from the Watagoda Housing Scheme. Even in that document, there is no reference to the land, given in the schedule to the application. This Court perused the oral evidence as well as the documentary evidence placed before the learned

Magistrate by the respondent to find out whether this respondent-petitioner is in possession of the land described in the schedule to the application of the Competent Authority. It should be stated that this Court was unable to come to the finding that the respondent is in occupation of the land in question, (as stated in the schedule to the application) with a valid permit or other written authority of the State.

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 dependants to be ejected from the land. Even the learned Magistrate in his order had stated so. No doubt in his order, the learned Magistrate has stated that under Section 91 of the Evidence Ordinance that oral evidence should not be allowed when a matter has to be proved by documentary evidence. There is sense in what he has stated. If the respondent had been granted a permit or any other written authority by the State, it becomes a grant or other dispossession of the property by the relevant authority. Then, at an inquiry of this nature, he has to produce such document to show that such a permit or any other written authority of the State was granted to him.

This Court not only considered the documentary evidence placed before the learned Magistrate, but also considered the oral evidence given by the witnesses at the inquiry. But this Court is of the view that such evidence does not satisfy the requirement of Section 9 of the said Act that he is in occupation or possession of the land in question on the basis of a valid permit or other written authority granted by the State.

The learned Magistrate also stated in his order that if the burden that is cast on the respondent is not discharged properly, then he has to allow the application of the competent authority. The learned Magistrate had acted according to the provisions of the State Lands

(Recovery of Possession) Act and, had given ample opportunity to the respondent-petitioner to establish the fact that he is in occupation or in possession of the land in question (as described in the schedule to the application) as stated in Section 9 of the said Act. But this Court is of the view that he has failed to establish that he is in occupation or possession of the land in question (i.e. the land stated in the schedule to the application) in accordance with section 9 (1) of the said Act. Therefore, there is no alternative for the learned Magistrate other than to allow the application of the Competent Authority. This Court is of the view that there is no reason to disturb the findings of the learned Magistrate.

This Court is of the view that this Court cannot grant any relief that has been prayed for by the respondent-petitioner in his petition. Therefore, this Court dismisses his application, but without costs.

Learned Counsel for the respondent-petitioner submitted to court that he had erected a house and he is in occupation of the said house. As this Court has dismissed this application of the respondent-petitioner and affirmed the order of the learned Magistrate, the next step that will have to be taken by the learned Magistrate is to eject the petitioner from the land in question. This Court, after consideration of the fact that this respondent-petitioner has put up a substantial house and is in occupation of the house, directs the learned Magistrate not to issue a writ of ejectment till 31st of March, 1992. This period is given by this Court as some sort of relief to the respondent-petitioner, so that he could take steps to find out alternative accommodation before he is finally ejected or if he is so desirous, he may explore the possibility of getting a permit from the relevant authority to continue to occupy this land. But under no circumstances, this period should be extended beyond 31st March, 1992.

For the above stated reasons, the application of the respondent-petitioner is dismissed.

Application dismissed.