

ALWIS

v.

WEDAMULLA ADDITIONAL DIRECTOR-GENERAL U.D.A.

COURT OF APPEAL.  
JAYASURIYA, J.,  
C.A. 582/97  
M.C. COLOMBO 73487/2  
NOVEMBER 20, 1997.

*Urban Development Authority – Body Corporate – Competent Authority – Is the Additional Director-General the ‘Competent Authority’ to institute proceedings on behalf of the Authority – locus standi – Is the approval by the Minister for Housing a condition precedent to the institution of proceedings for ejection – State Lands Recovery of Possession Act.*

**Held:**

- (1) Having regard to the definition of the term "Competent Authority" in the U.D.A. Act, it is manifest that the Additional Director-General of U.D.A. is not a Competent Authority.

There is no averment in the affidavit/documents that the powers of the Director-General have been delegated.

- (2) Proceedings in ejection could be instituted by the UDA against a person who is an occupation of land vested in the U.D.A. provided such application to eject are authorised and have had the written approval of the Minister of Housing. The proof of grant of such approval is a condition precedent to the institution of proceedings in ejection.

**APPLICATION** in Revision from the Judgment of the Magistrate's Court of Colombo.

L. C. Seneviratne P.C., with A. Situge for respondent-petitioner.

F. Jameel SC with Kamani Wijesuriya SC for applicant-respondent.

*Cur. adv. vult.*

November 20, 1997.

**JAYASURIYA, J.**

The applicant-respondent has filed his objections. In his statement of objections the applicant-respondent is seeking to rectify the deficiencies and omissions in the application which the applicant-respondent has filed before the Magistrate's Court. In the application which was filed before the Magistrate of Colombo, the initial issue is whether the petitioner A. Wedamulla is an imposter or not?, whether A. Wedamulla did have a *locus standi* or a status to institute these proceedings before the Magistrate's Court? Is he the "Competent Authority" as defined in the Act?

The Urban Development Authority Act (as amended) states that the Urban Development Authority is a body corporate which can institute proceedings and also be sued in legal proceedings. Thus it is a legal *persona* which could have instituted proceedings even in its own name. In addition the statute provides for the "competent authority" to institute proceedings on behalf of the Urban Development Authority. Having regard to the definition of the term "Competent Authority" in the Urban Development Authority Act, it is manifest that the Additional Director General is not a Competent Authority. If there had been a delegation of powers, rights and functions of the Director-General of the Urban Development Authority to the Additional Director-General, then the petition and affidavit filed in the Magistrate's Court ought to have set out and pleaded such delegation or appointment. There is no averment in the affidavit and in the documents filed that the Powers of the Director-General have been delegated on A. Wedamulla, the Additional Director-General did not have a *locus standi* and a right and status to institute these proceedings.

Secondly, the proceedings in ejection could be instituted by the Urban Development Authority against a person who is in occupation of land vested in the Urban Development Authority provided such applications to eject are authorised and have had the written approval of the Minister of Housing. Thus, the statutory provisions of the Urban Development Authority Act and the State Lands (Recovery of possession) Act set out a condition precedent for the filing of applications for ejection before the Magistrate's Court and even if an application is wrongly accepted without such authority, the learned Magistrate would not have jurisdiction, without the satisfaction of the condition precedent, to further exercise jurisdiction upon such application. Persons affected by an intention to institute proceedings in ejection on the part of officials, frequently make representations and submissions to the Minister and after consideration of such representations, the Minister may or may not grant written approval. The proof of grant of such approval **is a condition precedent to the institution of proceedings in ejection** and, compare the provisions of sections 104 and 147 of the Criminal Procedure Code and sections 97(1) and 135 of the Code of Criminal Procedure Act. The obvious intention of these statutory provisions in the State Lands (Recovery of Possession) Act is to protect the private person from frivolous and vexatious proceedings in ejection. There is no averment either in the affidavit or in the documents filed before the learned Magistrate that the Minister of Housing has authorised and approved the proceeding in question to eject the respondent-petitioner from this land. Though the amended statutory provisions of the State Lands (Recovery of Possession) Act has precluded a respondent from challenging and impugning the notice served on him, still such respondent is entitled to urge successfully before the Magistrate that a condition precedent for the filing of the application has not been fulfilled by the petitioner. The giving of notice under section 3 of the said Act is **only a mere step** in the commencement of proceedings to secure such ejection.

Hence the learned Magistrate had no jurisdiction to entertain this application and he also had no jurisdiction even if he had wrongly entertained it, to exercise further jurisdiction in conducting the proceedings upon this application.

Therefore it is manifest that the application is defective in these respects and it is one that ought not to have been entertained by the Magistrate on account of the failure to comply with the condition precedent for the exercise of jurisdiction. These points have been strenuously urged by the learned President's Counsel before this court, belatedly under the guise of filing a statement of objections, the applicant-respondent is seeking to rectify defects omissions and deficiencies in the application filed before the Magistrate. I hold that this Court is not the forum for the correction of defects and deficiencies which have been perpetrated in filing proceedings before the Magistrate.

In the circumstances, I allow the application in revision and set aside the orders pronounced by the learned Magistrate of Colombo in case numbers 73484/2, 73485/2, 73486/2, 73487/2, 73488/2 dated 12.6.97 with costs in a sum of Rs. 2150/- payable by the applicant-respondent to the respondent-petitioner. I make order dismissing the applications for ejectment filed by the applicant-respondent in the Magistrate's Court of Colombo in the aforesaid applications.

However, I reserve the right of the properly constituted authority, who is the legal competent authority, as defined in the Act to file a properly constituted application in the appropriate Magistrate's court if he is so advised.

All the aforesaid revision applications and applications have been amalgamated and consolidated with the consent of the counsel.

*Application allowed.*