URBAN DEVELOPMENT AUTHORITY
VS
WEJAYALUXMI

COURT OF APPEAL.
SOMAWANSA. J(P/CA).
WIMALACHANDRA. J.
CA 1581/2002.
HC COLOMBO 70/2000/7.
MC COLOMBO 78849/5.

State Lands (Recovery of Possession) Act, No.07 of 1979 as amended by Act, No.58 of 1981 and Act No. 29 of 1983 - Sections 9, 9(1) - Ejectment - Recovery of Possession - Resistance- Valid permit or written authority - name in a list – Urban Development Authority - Locus standi- Competent Authority - Revision - Exceptional circumstances? – Gross miscarriage of justice - Laches?

The Additional Director General of the Urban Development Authority (UDA) as the competent authority of the petitioner UDA under the State Lands (Recovery of Possession) Act filed a certificate for the ejectment of the respondent and for the recovery of possession of the land.

The learned Magistrate ordered the eviction of the respondent. In the revision application filed in the High Court the learned High Court judge

revised the order of the Magistrate's Court on the basis that the respondent's name appears in a list of persons (P1) who were recipients of lands on a particular scheme. The Urban Development Authority sought to revise the said order.

HELD:

1. The document P1 is a list of persons schéduled for allotment of land; it is clear from the document that the persons scheduled for allotment of land had not been finalized.

   P1 is not a valid permit within the meaning of section 9(1) of the State Lands (Recovery of Possession) Act. The burden is on the respondent to establish that she is in possession upon a valid permit or the written authority of the State.

2. The Urban Development Authority is a legal person which can institute proceedings in its own name. The UDA Act provides for the competent authority to institute proceedings in its own name. The UDA Act provides for the competent authority to institute proceedings on behalf of the UDA. The Board of Management of the UDA had at a meeting authorized its Additional Director General to act as the competent authority in terms of section 8(1) (h) to carry out duties under the State Lands (Recovery of Possession) Act.

Per Wimalachandra, J.

"A competent authority appointed by the UDA has every right to initate proceedings for ejectment, however as regards this application the UDA being a corporate body in whom the land was vested has every right to make this application to Court".

(3) There exists a clear miscarriage of justice as the High Court had held that P1 is a valid permit when it was only a list of persons selected for allotment of lands and one of the persons selected was the respondent - this can only be corrected by invoking the Revisionary jurisdiction.

(4) When there is a satisfactory explanation with regard to the delay and the period of delay is not excessive and if it appears that the impugned order is manifestly erroneous application should not be dismissed simply on the grounds of delay.

APPLICATION in revision, from an order of the High Court of Colombo.

Cases referred to :

1. *Wedamulla vs Abeysinghe* 1999 - 3 SLR 26
2. *Farook vs. Gunawardane, Government Agent, Amparai 1980-2* Sri LR 243
3. *Rustom vs. Hapangama and Co. 1978 –79* – 2Sri LR 225
4. *Rasheed Ali vs. Mohamed Ali – 1981 – 1SRI LR 262*
5. *Soysa vs. Silva* 2000 2 Sri LR 235 –
6. *Bisomenike vs. Cyril de Alwis* 1982 1 Sri LR 368 at 379 –

A. P. Niles with *Arosha Silva* for petitioner.
P. Sivaloganathan for respondent petitioner respondent.

Cur.adv.vult.

January 10, 2006.

WIMALACHANDRA, J.

This is an application in revision from the judgment of the learned High Court Judge of Colombo dated 29.05.2002. Briefly, the facts relevant to this application are as follows :

The Additional Director General of the Urban Development Authority filed a certificate as the competent authority of the petitioner (Urban Development Authority) under the State Lands (Recovery of Possession) Act No.07 of 1979 as amended by Act No.58 of 1981 and Act No.29 of 1983, for the ejectment of the respondent-petitioner - respondent (respondent) and for the recovery of the possession of the land described in the certificate and affidavit filed by the petitioner. After hearing the submissions made by the petitioner and the respondent, the learned Magistrate made order on 14.07.1999 in favour of the petitioner, ordering the eviction of the respondent from the said land. Thereafter the respondent made an application to the Magistrate's Court moving the

Court to reconsider the aforesaid order dated 14.07.1999. The learned Magistrate who made the said order went on tranfer and the second application was taken up before the new Magistrate. The learned Magistrate by his order dated 15.03.2000 refused to set aside the order of his predecessor. Thereafter the respondent filed an application in revision from the aforesaid orders dated 14.07.1999 and 15.03.2000 in the High Court of the Western Province sitting in Colombo. When the matter came up for hearing the learned High Court judge reversed the aforesaid orders of the Magistrate's Court and dismissed the application of the petitioner by his judgment dated 29.05.2002.

When this matter was taken up for argument, the parties were content to rely on their written submissions and invited the Court to make order on the written submissions filed.

It is not in dispute that in the year 1993, applications were called for from persons who were below a certain income level for the allocation of lands in extent of two perches each by the National Housing Development Authority. The respondent submitted an application and was selected as one of the recipients of the allotment of lands in Kuruniyawatte.

She was alloted lot No.125 of the survey sketch produced at the Magistrate inquiry marked "P2." A copy of the list of 84 persons selected as successful recipients of lands was produced marked "P1" at the inquiry held before the learned Magistrate.

The respondent states that she took possession of the aforesaid lot allotted to her and spent large sums of money in developing the land.

A copy of the letter dated 13.01.1994 addressed to the Chairman and the Divisional Secretary of Kolonnawa for the publication of the list of persons who were recipients on this particular scheme was produced marked 'P3' at the inquiry held before the Magistrate. The respondent states that it is at this stage the Urban Development Authority gave "Quit Notice" without jurisdiction and without any reason by its letter dated 07.01.1997 under section 3 of the State Lands (Recovery of Possession) Act and followed it by filing action in the Magistrate Court for the ejectment of the respondent.

It is to be observed that the above mentioned document "P1" is a list of persons selected for the allotment of lands and the respondent was one of the persons selected as a recipient. 'P2' is the survey sketch showing the lot to be allotted to the selected recipients and 'P3' is a letter addressed to the Chairman and the Divisional Secretary of Kolonnawa for the purpose of publishing the list of persons selected as recipients of allotments, giving the opportunity for any person interested to make objections.

The learned High Court judge in his judgment held in favour of the respondent, having come to the conclusion that the document marked 'P1' was a valid permit issued to the respondent under section 9 of the State Lands (Recovery of Possession) Act. In his judgment at page 5, the learned High Court judge had made the following observations;

> " ඉන්පසු පෙත්සම්කාරයට කුරුණියවත්ත, නාලොන්නාව හි අංක 125 දරන කැබැල්ල පැවරීමෙන් අනතුරුව 84 දෙනෙකුට පෙත්සම්කාරියසේම ඉඩම් ලැබුනු බවට පෙත්සම්කාරිය වෙනුවෙන් කරුණු ඉදිරිපත් කොට ඇත. මෙම කාරණය තහවුරු කිරීම සඳහා 'P1' වශයෙන් ලකුණු කරන ලද ලියවිල්ල ඉදිරිපත් කරන ලදී. එම ලියවිල්ලේ සත්‍ය ඡායා පිටපතක් පරීක්ෂා කිරීමේදී එය කුරුණියවත්ත ඉඩම් කොටස් පැවරීමේ ලේඛනයක් බවට සඳහන් වී ඇත. "

The learned High Court judge had failed however to consider whether 'P1' fell within the meaning of section 9 of the State Lands (Recovery of Possession) Act. Section 9(1) reads thus :

> **"At such inquiry the person to 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 such permit or authority is in force or not revoked or otherwise rendered invalid".**

Therefore the burden is on the respondent to establish that she is in possession of the land in question upon a valid permit or other written

authority of the State granted in accordance with any written law. The document "P1" is a list of persons selected for allotment of land. It is clear from the aforesaid documents P1, P2 and P3 the persons selected for allotment of land had not been finalized. Accordingly, it is my considered view that the document 'P1' is not a valid permit within the meaning of section 9(1) of the State Lands (Recovery of Possession) Act. The respondent did not therefore possess the requirement of section 9 of the State Lands (Recovery of Possession) Act. In the circumstances the learned High Court judge has erred in law in holding that the document "P1" is a valid permit within the meaning of the provisions of section 9 of the said Act.

The next matter to be considered is the objection raised by the respondent that the Urban Development Authority has no *locus standi* to step into the shoes of the Competent Authority lawfully appointed under the State Lands (Recovery of Possession) Act to institute this application in revision. 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 the Urban Development Authority is a legal person which can institute proceedings in its own name. It is to be noted that the Act also provides for the "Competent authority" to institute proceedings on behalf of the Urban Development Authority. The definition of the term "competent authority" under the State Lands (Recovery of Possession) Act, reads as follows :

> **"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."**

The petitioner produced the document marked "A7" which is the minutes of the Board Meetings of the Urban Development Authority held on 26.11.1993. According to the Board Paper No.422/93 in item 14.06.01, the Board of Management of the Urban Development Authority had authorized Mr. A. Wedamulla, Additional Director General (Lands and Property) of the Urban Development Authority to act as the

competent authority in terms of section 18(i)(h) as described in the Board Paper for carrying out duties under the State Lands (Recovery of Possession) Act, No.07 of 1979 (as amended). The document marked "A8" produced by the petitioner is a document signed by the Minister in charge of the Urban Development Authority, granting approval for the taking of action to eject the respondent, Wejayalaxmi from the said land.

The proceedings under the State Lands (Recovery of Possession) Act are required to be initiated by a "competent authority" A Competent Authority appointed by the Urban Development Authority has every right to initiate proceedings for ejectment in the Magistrate Court. (*Vide* S. C. decision in *Wedamulla vs. Abeysinghe*[1]) However, as regards this application, the Urban Development Authority being a corporate body in whom the land in question was vested has every right to make this application before this Court.

It was held in the case of *Farook vs. Gunawardena, Goverment Agent Ampara*[2] that at an inquiry before the Magistrate, the only plea by way of defence that a party can put forward is 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.

In the instant case, the document relied on by the respondent is the document 'P1' which is not a valid permit or any written authority of the State granted under any written law. The document 'P1' is only a list of persons selected for allotment of land.

The last two grounds of objections of the respondent could be conveniently dealt with together. Counsel for the respondent submitted that the petitioner has failed to show exceptional circumstances to invoke the revisionary powers of the Court of Appeal and the petitioner has made this application nearly 3 1/2 months after the judgment has been delivered by the learned High Court judge. The learned counsel further submitted that the petitioner has failed to explain the delay.

It is settled law that in an application for revision it is necessary to urge exceptional circumstances warranting the interference of this Court by way of revision.

It was held in the case of *Rustom vs. Hapangama and Co.*[3] that "the powers by way of revision conferred on the Appellate Court are very wide and can be exercised whether an appeal has been taken against an order of the original Court or not. However, such powers would be exercised only in exceptional circumstances where an appeal lay and as to what such exceptional circumstances are is dependent on the facts of each case." Similarly in the case of *Rasheed Ali vs. Mohamed*[4] it was held that " the powers of revision vested in the Court of Appeal are very wide and the Court can in a fit case exercise that power whether or not an appeal lies. Where the law does not give a right of appeal and makes the order final, the Court of Appeal may nevertheless exercise its powers of revision, but it should do so only in exceptional circumstances".

In the instant case, the learned High Court judge held that the document 'P1' is a valid permit upon which the respondent was in possession of the said land when it appears that 'P1' is only a list of persons selected for allotment of lands and one of the persons selected was the respondent. It is clear that "P1" does not fulfill the requirments of section 9 of the State Lands (Recovery of Possession) Act. Accordingly, I am of the view that a miscarriage of justice has occurred. In the case of *Soysa vs. Silva*[5] it was held that "the power given to a superior Court by way of revision is wide enough to give it the right to revise any order made by an original Court. its object is the due administration of justice and the correction of errors sometimes committed by the Court itself in order to avoid miscarriage of justice".

In the present case there exists a clear miscarriage of justice as stated above. This can only be corrected by invoking the revisionary jurisdiction of this Court. Accordingly this application discloses exceptional circumstances to invoke the revisionary powers.

In this case the judgment sought to be revised was delivered on 29.05.2002. Whereas this application was made on 10.09.2002. Hence there is a delay of 3 1/2 months. The question whether delay is fatal to

an application in revision depends on the facts and circumstances of the case. The petitioner has given an explanation for the delay in filing this application. In paragraph 13 of the petition the petitioner states that since the High Court had postponed the delivery of the judgment several times an error was made in taking down the date fixed for the judgment, and when the petitioner became aware about the pronouncement of the judgment, an application was made by motion dated 03.07.2002 for a certified copy of the judgment. The certified copy of the judgment was issued only on 20.08.2002 as shown by the date stamp on it. The delay of nearly three months should be considered along with the facts and circumstances of the case. If it appears that the impugned order is manifeslty erroneous as in this case the application should not be dismissed simply on the ground of delay, moreso, when the petitioner has explained the delay. When there is a satisfactory explanation with regard to the delay and the period of delay is not excessive, the Court shall not dismiss the application on the ground of delay alone. If an authority is required for this equitable principle, it is found in the judgment of Sharvananda, J. (as he then was) in *Bisomenika vs. Cyril de Alwis*[6] at 379,

> **"When the Court has examined the record and is satisfied the order complained of is manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are extraordinary reasons to justify such rejection."**

For these reasons, I allow the application in revision. The order of the learned High Court judge dated 29.05.2002 is set aside and the orders of the learned Magistrate of the Magistrate's Court of Colombo dated 14.07.1999 and 15.03.2000 are restored. In all the circumstances I make no order as to costs.

SOMAWANSA, J. (P/CA) - *I agree.*

Application allowed.