SUNIL CHANDRA KUMARA

v.

VELOO

COURT OF APPEAL
JAYASINGHE, J.
JAYAWICKREMA, J.
AMERATUNGA, J.
CA(PHC) 2/99
HC 44/96
MARCH 1ST, 2000.
JULY 28TH, 2000.
OCTOBER 16TH, 2000.
NOVEMBER 2ND, 2000.

Constitution - 13th Amendment Art. 138, 145, 154, 154 p(9)b, 154 p4(b), 154 p(6), High Court of the Provinces (Special Provisions Act) 19 of 1990 - S. 3, 11(1), Agrarian Services Act S. 5,9 - Civil Procedure Code - S. 753 - Jurisdiction of Court of Appeal, to entertain an application in Revision from an order made by the High Court under Art. 154 p(4)b.

The Petitioner - Respondent filed application in the Provincial High Court of the Central Province for an order quashing two quit notices served on the Petitioner under the provisions of the Government Quarters Recovery of Possession Act. It was the position of the Petitioner - Respondent, that the Respondent - Petitioner (Competent Authority) has no authority to issue the quit notice as the estate had vested in a Public Company.

The Respondent - Petitioner took up the position that the estate is owned by the J.E.D.B. and also that the Provincial High Court (PHC) of the Central Province (C.P.) had no jurisdiction to issue a Writ of Certiorari in respect of the subject matter in terms of Art.154p4(b). The High Court Judge, rejected the Preliminary Objection and allowed the Petitioner - Respondent's application. Thereafter the Respondent-Petitioner (Competent Authority) moved in Revision.

It was contended by the Petitioner-Respondent that, the Court of Appeal did not have jurisdiction to entertain the application for Revision from an order of the High Court under Art.154(p)(4) and that from such orders only an appeal lay in terms of Art.154p(6).

Held :

1. Appellate and Revisionary jurisdiction of the Court of Appeal is set out in Art.138, the Appellate and Revisionary jurisdiction of the High Court of the Provinces is found in Art.154 p(3) (b).

2. The power to issue Writs are provided in Art.154p(4). S. 11(1) of the High Court of the Provinces (Special Provisions) Act 19 of 1990, expressly recognizes the Appellate and Revisionary jurisdiction of the Court of Appeal over the orders of the High Court.

3. Conceptually the expression Appellate jurisdiction included powers in appeal and Revision, yet such power is subject to the provisions of the Constitution or of any law.

Per Jayasinghe, J.

> "Revision is a discretionary remedy, it is not available as of right. This power that flows from Art.138 is exercised by the Court of Appeal, on application made by a party aggrieved or ex mero motu, this power is available even where there is no right of appeal.
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> The Petitioner in a Revision application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right. Revision is available unless it is restricted by the constitution or any other law."

4. S. 753 of the Civil Procedure Code and S. 364 of the Code of Criminal Procedure confer power on the Court of Appeal to call for the records, these sections cannot be construed as provisions which confer rights on parties to make Revision Applications. The Supreme Court rules set out the procedure for making Revision applications.

APPLICATION in Revision from the Order of the Provincial High Court of the Central Province.

Cases referred to :

1. *Martin v. Wijewardena* - 1989 2 Sri LR 40.
2. *Malegoda v. Joachim* - 1997 - 1 Sri LR 88.
3. *Thameena v. Koch* - 72 NLR 192.
4. *Sri Lanka Broadcasting Corporation v. De Silva* - 1981 2 SLR 228.
5. *Guanaratne v. Thambinayagam* - 1993 2 Sri LR 359.

6. *Mariam Bee Bee v. Seyed Mohamed* - 68 NLR 36.
7. Abeygunawardena v. Setunga - 1997 - 1 Sri LR 67.
8. Weragama v. Eksath Lanka Wathu Kamkaru Samithiya - 1984 1 SLR 293.
9. Somawathie v. Madawela - 1983 - 2 SLR 15.
10. Attorney General v. Podi Singho - 51 NLR 388.
11. Potman v. I. P. Dodangoda - 74 NLR 115.

R. K. W. Gunasekera with Ms. Shiranthi Jayatilake for Petitioner.

Anil Silva for Respondents.

Cur. adv. vult.

May 31, 2001.

JAYASINGHE, J.

The Petitioner-Respondent hereinafter referred to as the petitioner filed application in the Provincial High Court of the Central Province among other things for an order quashing the quit notice served on the Petitioner by the Respondent-Petitioner hereinafter referred to as the Respondent under the provisions of the Government Quarters Recovery of Possession Act No. 7 of 1969 as amended requiring him to deliver vacant possession of the Estate Quarters occupied by the Petitioner at Upper Division Ragalla Estate, Halgranoya. In his application to the High Court the Petitioner took up the objection that the Respondent had no authority to issue the quit notice under the Government Quarters Recovery of Possession Act, since the Management of the Ragalla Estate had vested in the Maturata Plantations Ltd., a Public Company under an order published in the Government Gazette No. 720/2 of 22.06.1992; the Petitioner also prayed for an interim order staying action under the quit notice. The Respondent in his objections took up the position that Ragalla Estate is owned by the Janatha Estates Development Board and that it was only the management of the Estate that was vested with the Maturata Plantations in terms of the Gazette Notification 720/2 and accordingly the Respondent as the Competent Authority of the Plantation

Reform Project of the Ministry of Plantations Industries had the authority to issue the quit notice. The Respondent also took up the position that the Provincial High Court of the Central Province had no jurisdiction to issue a writ of certiorari in respect of the subject matter in terms of Article **154 P(4) (b)** of the Constitution; that the High Court had no jurisdiction to grant interim relief staying proceedings under the said quit notice. The Respondent in its written submissions also took up the position that Article **154 P(4) (b)** of the Constitution enables Court to issue writs only in respect of any matter set out in the Provincial Council List; that while land as a subject is included in the Provincial Council List under item 18 of the List, it is subject to the restrictions in appendix II, that appendix II provides that State land shall continue to vest in the Republic; that in terms of item 1 of Appendix II sub item 1.3 it is clearly stated that alienation or disposition of State land within a Province shall be by the President; that the ownership of the Ragalla Estate was never transferred to Maturata Plantations. Hence the ownership is with the State.

The learned High Court Judge by his order dated 05.11.1997 rejected the preliminary objection of the Respondent and allowed the Petitioner's application and set aside the quit notice issued by the Respondent.

Being aggrieved by the order of the learned High Court Judge of the Central Province the Respondent moved in Revision.

When this matter was taken up before this Court, a preliminary objection was taken that the Court of Appeal did not have jurisdiction to entertain an application for Revision from an order of the High Court made under Article **154 P (4)**; that from such orders only an appeal lay in terms of Article **154 P(6)**. Accordingly two matters came up for determination before this Court -

(i) Does the Petitioner have a right to move the Court of Appeal by way of Revision against an order made by a Provincial High Court made under Article 154 P (4) (b).

(ii) Are the quarters provided to the Respondent State land and whether the Respondent was entitled to seek ejectment of the Petitioner in terms of a quit notice under Government Quarters Recovery of Possession Act No. 7 of 1969 as amended.

Before dealing with the question whether - the ejectment sought from the premises occupied by the Respondent is State land it is convenient to dispose of the preliminary objection raised by the Respondent whether the Respondent-Petitioner is entitled to invoke the revisionary jurisdiction of this Court in terms of Article 138 read with 154 P (6) of the Constitution.

While appellate and revisionary jurisdiction of the Court of Appeal is set out in Article 138 the appellate and revisionary jurisdiction of the High Court of the Provinces is found in Article 154 P (3) (b).

Article **138 (1)** provides that;

> "The Court of Appeal shall have and exercise subject to the provisions of the Constitution or of any law, an appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by the High Court, in the exercise of its appellate or original jurisdiction or by any court of First Instance, tribunal or other institution and sole and exclusive cognizance by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such High Court, Court of First Instance tribunal or other institution may have taken cognizance.

Article **154 P (3) (b)** provides that;

> "Every High Court shall - notwithstanding anything in Article 138 and subject to any law exercise appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrate's Courts and Primary Courts within the Province."

The power to issue writs are provided in Article **154 P (4)**.

Article **154 P (4) (b)** provides that;

> "Every such High Courts shall have jurisdiction to issue according to law -
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> (a) orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and
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> (b) orders in the nature of writs of certiorari, prohibition, procedendo mandamus and quo warranto against any person exercising, within the Province any power under -
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> (i) any law; or
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> (ii) any statutes made by the Provincial Council established for that Province in respect of any matter set out in the Provincial Council List."

The main contention of Mr. Anil Silva was that the right of appeal or revision must be specially provided for. In *Martin v. Wijeywardena*[1] Jameel, J. having set out the provisions of Article 138 observed that;

> "Article 138 is an enabling provision which create and grant jurisdiction to the Court of Appeal to hear appeals from Courts of first instance, tribunals and other institutions. It defines and delineates the jurisdiction of the Court of Appeal. It does not, nor indeed does it seek to create or grant rights to individual viz-a-viz appeals. It only deals with the jurisdiction of the Court of Appeal and its limitations and nothing more. It does not expressly nor by implication create or grant any rights in respect of individuals..... Article 138 is only an enabling Article and it confers the jurisdiction to hear and determine appeals to the Court of Appeal. The right to avail of or to take advantage of the jurisdiction is governed by several statutory provisions in various legislative enactments."

G. P. S. de Silva, C. J. in *Malegoda v. Joachim*[2] referring to the reasoning of Jameel, J. observed that;

> "this reasoning would apply with equal force to conferment of jurisdiction of the High Court established by Article **154 P**."

In *Malegoda v. Joachim (Supra)* it was held further that Article 154 P (3) (b) of the Constitution only conferred forum jurisdiction to hear appeals but does not create a corresponding right in any person to invoke the appellate jurisdiction. Right of appeal is a statutory right and must be expressly created and granted by Statute.

Mr. Silva argued that similarly the right to invoke the revisionary jurisdiction of the Court of Appeal must also be specifically provided. He submitted that in *Thameena v. Koch*[3] the appellant filed an appeal against the order of the Labour Tribunal to the Supreme Court. At the hearing an objection was raised that the appeal was out of time. At that stage Counsel for the appellant invited Court to exercise the revisionary powers of the Supreme Court. Tennakoon, J. (as he was then) held that the revisionary powers of the Supreme Court did not extend to orders made by labour Tribunals and the appeal was accordingly rejected. In *Sri Lanka Broadcasting Corporation v. De Silva*[4] Victor Perera, J. observed that;

> "The Industrial Disputes Law have provided only for an appeal on a question of law but not for application for revision. On the other hand the Civil Procedure Code in Section 753 provides for application by way of revision in addition to the right of appeal in all civil cases in the District Court. Sections 364 and 366 of the Code of Criminal Procedure Act No. 15 of 1979 has given this Court power to act by way of revision in criminal cases. A consideration of the next following articles of the Constitution indicate that the correct construction and application of the powers referred to in Article 138. Article 139 deals with exercise of

powers of this Court in appeal from an order, judgment, sentence of a Court of first instance, tribunals or other institutions. Article 140 has granted the Court of Appeal full power and authority to call for and inspect the records of any court of first instance or tribunal or other institution in the exercise of its power to issue writs. But in regard to the exercise of its revisionary powers, the Court of Appeal had been given the power to call for and inspect any record of any court first instance only and not the records of tribunal and other institutions. This would therefore exclude the examination of the record in a Labour Tribunal by way of Revision."

Mr. Anil Silva also invited the attention of Court to Article 145 of the Constitution which provides for the inspection of records of any court of first instance in the exercise of revisionary powers in the interest of justice may require. He submitted that eventhough Article 138 was amended by the 13th Amendment to the Constitution and no corresponding amendment was made to Article 145. Therefore he argued that relying on *Sri Lanka Broadcasting Corporation v. De Silva (Supra)* the Court of Appeal cannot call for and inspect a record of a Provincial High Court. Accordingly the Court of Appeal cannot revise an order made by a Provincial High Court. There are limitations placed on the revisionary jurisdiction of the Court of Appeal.

Article **154 P (6)** provides that;

"Subject to the provisions of the Constitution and any law, any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under Paragraph 3(b) or 3(c) or 4, may appeal therefrom to the Court of Appeal in accordance with Article 138."

An examination of Article 154 P (6) would show that it only provides for an **appeal** to the Court of Appeal.

In *Gunaratne v. Thambinayagam*[5] Kulatunga, J. stated that;

"The learned Counsel for the Petitioner submitted that particularly in the background of legislative provisions existing prior to the 13th amendment (viz the Courts Ordinance, the Administration of Justice Law, Article 138 of the Constitution and the relevant Statutes on Civil and Criminal Procedure), the expression "appellate jurisdiction" (as opposed to "original jurisdiction") would ordinarily include the power to review decisions by way of appeal, revision or restitutio in integrum; that Article **154 P (3) (b)** enacted by 13th amendment vested "appellate jurisdiction" in the High Court limited to appeal and revision of the decisions of the Magistrate's Courts and Primary Courts; that Section **3 of Act No. 19 of 1990** extended the exercise of such jurisdiction to orders made by Labour Tribunals and orders made under Section 5 and 9 of the Agrarian Services Act No. 58 of 1979; and that in the context the expression the "appellate jurisdiction" in Section 9 of the Act should not be limited to an appeal made "eo nomine" but should be interpreted to include the power of review by way of revision."

It was also argued in *Gunaratne v. Thambinayagam (Supra)* by the Counsel for the Respondent that;

whilst "appellate jurisdiction" would conceptually include appeal and revision, yet the power of revision is distinct from "appellate jurisdiction."

Counsel relied on a dicta of Sansoni, C. J. where His Lordship observed in *Mariam Beebee v. Seyed Mohammed*[6] that -

"The power of revision is an extra ordinary power which is quite independent of and distinct from the appellate jurisdiction of the Court. Its object is the due administration of the justice and the correction of errors, some times

committed by this Court itself, in order to avoid miscarriage of justice."

The Counsel relying on *Thameena v. Koch (Supra)* submitted that "prior to the enactment of Section **3 of Act No. 19 of 1990** the remedy by way of Revision was not available against the order of the Labour Tribunal, and that the right of appeal is a statutory right and must be expressly created and granted by statute. It was contended by Counsel in *Gunaratne v. Thambinayagam (Supra)* that Section 9 does not give the Appellant a right of appeal to the Supreme Court from an order of the High Court in the exercise of the revisionary jurisdiction and in contrast Section 31 (b) of the Industrial Disputes Act as amended by Act No. 32 of 1990 provided that: "that any workmen, trade union or employer who is aggrieved by any final order of a High Court established under Article **154 P** of the Constitution, in the exercise of the appellate jurisdiction vested in it by law or in the exercise of its **revisionary jurisdiction** by law in relation to an order of a Labour Tribunal may appeal therefrom to the Supreme Court with the leave of the High Court or the Supreme Court first had and obtained."

Kulatunga, J. observed that: "he has no difficulty in accepting the submission, that Section 9 imposes such a limitation. Section 9 of the Act and the Authorities would not permit the conferment of the right of appeal in respect of revisionary orders of the High Court."

In *Abeygoonasekara v. Setunga*[7] Kulatunga, J. observed that:

"Conceptually the expression appellate jurisdiction includes powers in appeal and revision."

Kulatunge, J. observed further that:

"..... Article 154 P (6) itself has not limited the right of appeal given by it to orders made by the High Court by way of appeal.

However that article refers back to Article **138** which spells out the jurisdiction of the Court of Appeal and the manner of its exercise."

It can therefore be stated that this reasoning applies to the revisionary jurisdiction of this Court as well. Even though conceptually the expression appellate jurisdiction includes powers of appeal and revision yet such power is **subject to the provisions of the Constitution or of any law**. There can be limitations. In *Weragama v. Eksath Lanka Wathu Kamkaru Samithiya*[8] Mark Fernando, J. took the view that "the jurisdiction of the Court of Appeal is not an entrenched jurisdiction because Article 138 provides that it is subject to provisions of any law. Hence it was always constitutionally permissible for that jurisdiction to be reduced or transferred by ordinary law...."

The matter presently before Court for determination is whether the Court of Appeal in the exercise of its appellate powers could sit in revision in respect of an order made by the Provincial High Court. Mr. Gunasekera submitted that Section **11(1)** of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 expressly recognizes the appellate and revisionary jurisdiction of the Court of Appeal over orders of the High Court.

Section 11(1) of Act No. 19 of 1990 provides that;

"The Court of Appeal shall have and exercise subject to the provisions of this Act or any other law. An appellate jurisdiction for the correction of all errors in fact or in law which shall be committed by any High Court established by Article **154 P** of the Constitution in the exercise of its jurisdiction under Paragraphs (3) (a) or (4) of Article **154 P** of the Constitution and sole and exclusive, Cognizance by way of appeal, revision and restitutio in integrum of all causes, suits, actions, prosecutions, matters and things of which such High Court may have taken Congnizance.

Article 154 P (6) provides that:

> "any person aggrieved by a final order, judgment or sentence of any such Court in the exercise of its jurisdiction under para 3 (b), 3 (c) or 4 may appeal therefrom to the Court of Appeal."

The argument presented to Court by Mr. Anil Silva in support of his contention that this Court did not have jurisdiction to entertain an application for Revision from an order of the High Court made under Article **154 P (4)** was on the basis that Article **154 P (6)** only provides for an appeal to the Court of Appeal and in the absence of any reference to revisionary jurisdiction in the said article, revision was excluded by implication. His argument was based on the proposition that appeal or Revision must be specially provided for and in terms of Article 154 P (6) only appeal is provided. In *Abeygoonasekara v. Setunge (Supra)* Kulatunge, J. accepted the contention that conceptually the expression appellate jurisdiction includes powers in appeal and Revision and this principal was formulated by Sansoni, J. in *Mariam Beebee (Supra).* In *Somawathie v. Madawala*[9] Soza, J. cited with approval the dicta of Sansoni, C. J. in **Mariam Beebee** that Revision was available for the ".....due administration of justice and the correction of errors committed..... in order to avoid miscarriage of justice."

In *Attorney General v. Podisingho*[10] Dias, J. stated that this power [(Revision) (which is a discretion)] is exercised "where there is a positive miscarriage of justice in regard either to the law or to the judges appreciation of the facts."

"..... this power is not limited to cases where there is no appeal, and that it is wide enough to embrace a case where an appeal lay but which for some reason was not taken." This power is so wide that Revision is available even after the appeal has been disposed of *Potman v. I. P. Dodangoda*[11].

Revision is a descretionary remedy; it is not available as of right. This power that flows from Article 138 of the Constitution

is exercised by this Court on application made by a party aggrieved or ex mero motu; this power is available even where there is no right of appeal as for instance Section 74 (2) of the Primary Courts Procedure Act. The Petitioner in a Revision application only seeks the indulgence of Court to remedy a miscarriage of justice. He does not assert it as a right. Revision is available unless it is restricted by the constitution or any other law. I am unable to see any such impediment as observed by Mark Fernando, J. in *Weragama (Supra).*

It is also relevant to mention that the reasoning of *Thamina v. Koch (Supra)* has no application and no analogy can be drawn from the observations of Tennakoon, J. for the reason that Labour Tribunal is not a Court.

Mr. Anil Silva submitted that Section 753 of the Civil Procedure Code and Section 364 of the Code of Criminal Procedure Act No. 15 of 1979 confer upon a party a right to make an application by way of revision. His contention was that the absence of a similar provision in respect of orders made by Provincial High Courts under Articles **154 P 3 (b), 3 (c) or (4)** is an indication that revision is not available against such orders.

We are unable to agree with this submission. Section 753 of the Civil Procedure Code and Section 364 of the Criminal Procedure Code confer power on the Court of Appeal to call for the records of the District Courts and Magistrate's Courts. Those Sections cannot be construed as provisions which confer rights on parties to make revision application. The Supreme Court Rules sets out the procedure for making revision applications. When an application is made in accordance with the Rule, the Court of Appeal can exercise its revisionary jurisdiction even without calling for the record.

Mr. Gunasekera submitted that an appeal has been filed in terms of the Court of Appeal (Procedure for Appeals from High Courts) Rules and the appeal is pending. He submitted that the ensuing delay in the matter coming up for argument before this

Court is an exceptional circumstances why the petitioner is seeking the indulgence of Court to act in Revision.

Mr. Gunasekera's argument that Section 11 (1) recognizes the appellate and revisionary jurisdiction of the Court of Appeal in respect of orders made by the Provincial High Court is valid. In the absence of any provision limiting the revisionary jurisdiction of this Court the preliminary objection of the Petitioner-Respondent must fail. The preliminary objection is accordingly overruled.

Registrar is directed to fix this matter for argument on the merits on a date convenient to Counsel. Since an important question of law was involved I make no order for costs.

JAYAWICKRAMA, J. - I agree.

AMARATUNGE, J. - I agree.

Preliminary objection overruled.

Matter fixed for argument