

**DIAS
VS
WANIGARATNE**

COURT OF APPEAL
AMARATUNGA, J. AND
BALAPATABENDI, J.
C. A. (PHC) No. 68/2002
H. C. BADULLA REV. 98/01
M. C. NUWARA ELIYA 9616/97
OCTOBER 29, 2002

Constitution - Thirteenth Amendment - Articles 138, 154P(1) and 154P(3)(b) - State Lands (Recovery of Possession) Act - Application to Magistrate's Court of Nuwara Eliya - Order of eviction challenged in High Court of the Uva Province - Does it have jurisdiction? - Judicature Act, No. 2 of 1978, section 3 - Can the Minister of Justice by Gazette Notification create or change the territorial limitation set out in the Constitution?

The petitioner filed an application in the Magistrate's Court of Nuwara Eliya under the State Lands (Recovery of Possession) Act to evict the respondent from a State land. The Magistrate's Court issued a writ to eject the respondent. The respondent challenged the said order in the High Court of the Uva Province.

The High Court relying on an order made by the Minister of Justice under section 3 of the Judicature Act held that the High Court of the Uva Province has jurisdiction.

- HELD** – (i) The appellate and revisionary jurisdiction conferred on the Provincial High Court by Article 154P(3) (b) has a territorial limitation. Appellate and revisionary jurisdiction can be exercised only in respect of convictions, sentences, and orders entered or imposed by Magistrate's Courts and Primary Courts within the Province. The Magistrate's Court of Nuwara Eliya is situated within the Central Province - not within the Uva Province.
- (ii) While the Minister retained his powers to demarcate the territorial limits of judicial zones, judicial districts and judicial divisions under section 3, the Provincial High Court exercises its new jurisdiction on the provincial basis. The provincial basis on which the Provincial High Court exercised its new jurisdiction cannot be changed by an order made by the Minister under section 3.
- (iii) The territorial limitation spelt out by the words 'within the Provinces' cannot be changed by an Order made under section 3 of the Judicature Act.

APPLICATION in revision from an Order of the Provincial High Court of the Uva Province.

Dr. Jayampathi Wickremaratne P.C., with Pubudini Wickramaratne for Petitioner.

Mohan Pieris P. C., for respondent.

Cur. adv. vult.

December 13, 2004

GAMINI AMARATUNGA, J.

This is a revision application to set aside the order of the learned High Court Judge of the Uva Provincial High Court holden at Badulla overruling the petitioner's preliminary objection with regard to the High Court's jurisdiction to hear and decide the revision application filed in that Court by the respondent.

The facts relevant to this application are as follows. The petitioner filed an application in the Magistrate's Court of Nuwara Eliya under the State Lands (Recovery of Possession) Act to evict the respondent from a State land which he was occupying without lawful authority. After inquiry the learned Magistrate issued the writ sought by the petitioner to eject the respondent from the land in question.

The respondent then filed a revision application in the High Court of the Uva Province to get the order of the learned Magistrate revised. The petitioner, appearing before the High Court, took up a preliminary objection that in view of the provisions of Article 154 P(3)(b) of the Constitution, the Provincial High Court of the Uva Province had no jurisdiction to deal with an application to revise an order made by the Magistrate's Court of Nuwara Eliya which is a Court situated within the Central Province. The learned High Court Judge, relying on an order made by the Minister of Justice, by virtue of the power vested in him by section 3 of the Judicature Act No. 2 of 1978, and published in Gazette Extraordinary No. 1182/2 dated 30.04.2001, overruled the petitioner's objections and held that the High Court of the Uva Province has jurisdiction to deal with the respondent's revision application. This revision application is against that order made on 09.05.2002.

Provincial High Courts were established by Article 154P of the Constitution, brought in by the Thirteenth Amendment to the Constitution. Article 154 P (1) reads as follows.

"There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province."

The Thirteenth Amendment gave appellate and revisionary jurisdiction to the Provincial High Court. Article 154 P (3)(b), which is the provision relevant to this application reads as follows.

"Every such 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 appellate and revisionary jurisdiction conferred on the Provincial High Court by Article 154P(3)(b) quoted above has a territorial limitation. The Provincial High Court's appellate and revisionary jurisdiction can be exercised only in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province. The words 'within the Province' used in Article 154P(3)(b) highlight the extent and at the same time the territorial limit of this new jurisdiction.

The Magistrate's Court of Nuwara Eliya is situated within the Central Province. The question to be decided is whether the Minister of Justice, by an order published under section 3 of the Judicature Act, No. 2 of 1978, can create a change of that territorial limitation set out in the Constitution. Can the Minister, by an Order made under section 3 of the Judicature Act,

confer appellate and revisionary jurisdiction on the High Court of the Uva Province in respect of convictions, sentences and orders entered or imposed by the Magistrate's Court of Nuwara Eliya which is situated within the Central Province?

Section 3 of the Judicature Act reads as follows.

"For the purpose of administration of justice Sri Lanka shall be divided into judicial zones, judicial districts and judicial divisions within such territorial limits as may in consultation with the Chief Justice and the President of the Court of Appeal from time to time be determined by the Minister by Order published in the Gazette." (proviso omitted as it is not relevant to the present purpose.)

For the purpose of administration of justice, dividing Sri Lanka on a provincial basis, was never thought of in 1978 when the Judicature Act was enacted. The Thirteenth Amendment to the Constitution passed in 1987, provided for devolution of power, legislative, executive and judicial within the framework of the unitary State. This devolution was made on a provincial basis. Appellate and revisionary jurisdiction, exercised up to that time by the Superior Courts, was conferred (in a limited way) on the Provincial High Courts established by the Thirteenth Amendment. Thus, in addition to the divisions for the purpose of administration of justice, referred to in section 3 of the Judicature Act, another division made on a provincial basis, came into existence with the Thirteenth Amendment to the Constitution. While the Minister retained his powers to demarcate the territorial limits of judicial zones, judicial districts and judicial divisions under section 3 of the Judicature Act, the Provincial High Court, commenced to exercise its new jurisdiction on the provincial basis, set out in Article 154P of the Constitution. The provincial basis on which the Provincial High Court exercised its new jurisdiction cannot be changed by an order made by the Minister under section 3 of the Judicature Act. Any order made by the Minister under section 3 of the Judicature Act must be made in conformity with the concept of the 'Province' upon which the Provincial High Court got its new jurisdiction.

The Eighth Schedule to the Constitution sets out the nine Provinces of the country. The exercise of appellate and revisionary jurisdiction of the Provincial High Court must strictly be on a provincial basis as decreed in the Constitution.

An order made by the Minister under section 3 of the Judicature Act cannot confer on the Provincial High Court of the Uva Province, jurisdiction which it does not have under Article 154P(3)(b) of the Constitution. The territorial limitation spelt out by the words 'within the Province' cannot be

changed by an Order made under section 3 of the Judicature Act. The Order published in Gazette No. 1182/2 of 30.04.2001 cannot be interpreted to mean that it confers on the Provincial High Court of the Uva Province appellate and revisionary jurisdiction in respect of an order made by a Magistrate's Court situated within the Central Province. I therefore hold that the learned High Court Judge was in error when he held that in view of the said order made by the Minister, the Provincial High Court of the Uva Province had revisionary jurisdiction to deal with the revision application filed by the respondent.

Accordingly I allow this application and in the exercise of the revisionary powers of this Court, set aside the order of the learned High Court Judge dated 09.05.2002, uphold the objection raised by the petitioner in the High Court and dismiss the respondent's revision application filed in the High Court of the Uva Province. I make no order for costs.

BALAPATABENDI, J. - I agree.

Application allowed.

Revision application filed in the High Court of the Uva Province dismissed.
