

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of a Special Leave to Appeal under Article 127(2) and 128(2) with 132 (3) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the judgment dated 04.10.2017 made by the Court of Appeal of the Democratic Socialist Republic of Sri Lanka.

J. M. Chandrika Priyadharshani,

The Competent Authority,

Plantation Management Monitoring
Division,

Ministry of Plantation Industries,

No. 55/75, Vauxhall Street,

Colombo 02.

S.C. Appeal No. 62/2018

S.C. (S.P.L.) L.A. Application No. 256/2017

C.A. Appeal No. CA/PHC/31/2014

H.C. Case No. HC/NE/ ප්‍රති 21/13

M.C. Hatton Case No. 68115/13

Applicant – Competent Authority

Vs.

Ammasi Krishna,

Kotiyagala Estate Lower Division,

No. 09, Housing Scheme,

Plot No. 26, Kotiyagala Estate,

Bogawanthalawa.

Respondent

AND BETWEEN

Ammasi Krishna,
Kotiyagala Estate Lower Division,
No. 09, Housing Scheme,
Plot No. 26, Kotiyagala Estate,
Bogawanthalawa.

Respondent – Petitioner

Vs.

J. M. Chandrika Priyadharshani,
The Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
No. 55/75, Vauxhall Street,
Colombo 02.

**Applicant – Competent Authority –
Respondent**

AND THEN BETWEEN

Ammasi Krishna,
Kotiyagala Estate Lower Division,
No. 09, Housing Scheme,
Plot No. 26, Kotiyagala Estate,
Bogawanthalawa.

Respondent – Petitioner – Appellant

J. M. Chandrika Priyadharshani,
The Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,
No. 55/75, Vauxhall Street,
Colombo 02.

**Applicant – Competent Authority –
Respondent – Respondent**

AND NOW BETWEEN

J. M. Chandrika Priyadharshani,
The Competent Authority,
Plantation Management Monitoring
Division,
Ministry of Plantation Industries,

No. 55/75, Vauxhall Street,

Colombo 02.

Applicant – Competent Authority –

Respondent – Respondent – Appellant

Vs.

Ammasi Krishna,

Kotiyagala Estate Lower Division,

No. 09, Housing Scheme,

Plot No. 26, Kotiyagala Estate,

Bogawanthalawa.

Respondent – Petitioner – Appellant –

Respondent

Before: Hon. Murdu N. B. Fernando, P.C., CJ.

Hon. S. Thurairaja, P.C., J.

Hon. E. A. G. R. Amarasekara, J.

Hon. A. L. Shiran Gooneratne, J.

Hon. Janak De Silva, J.

Counsels: K. V. S. Ganesharajan with R. C. Karunakaran and S. Sothilingam for the Applicant – Competent Authority – Respondent – Respondent – Petitioner
Niranjan de Silva with Shane Foster, Shynika Perera, S. R. Thambiah and

Jothini Weerawansa for the Respondent – Petitioner – Appellant – Respondent

Vikum de Abrew, PC, ASG with S. Wimalasena, DSG as amicus on behalf of the Hon Attorney General.

Written Submissions: 02.05.2023 by the Hon. Attorney General

23.08.2018 by the Applicant – Competent Authority – Respondent – Respondent – Appellant

08.11.2018 and 28.03.2023 by the Respondent – Petitioner – Appellant – Respondent

Argued On: 19.01.2023

Decided On: 24.03.2025

Janak De Silva, J.

The Applicant-Competent Authority-Respondent-Respondent-Appellant (Appellant) served a quit notice under Section 3 of the State Lands (Recovery of Possession) Act No. 07 of 1979 as amended (Act) on the Respondent-Petitioner-Appellant-Respondent (Respondent) directing him to hand over possession of the land more fully described in the schedule to the quit notice.

As the Respondent failed to do so, the Appellant made an application for ejectment to the Magistrate’s Court of Hatton. The learned Magistrate, after hearing the parties made an order for ejectment of the Respondent from the corpus.

The Respondent moved by way of revision to the High Court of the Central Province. The learned High Court Judge held that the High Court of the Central Province does not have jurisdiction to hear and determine the application and dismissed it. He did so based on

the decision in ***The Superintendent, Stafford Estate and Two Others v. Solaimuthu Rasu*** [(2013) 1 Sri.L.R. 25].

Aggrieved by the judgment of the High Court of the Central Province, the Respondent appealed to the Court of Appeal which held that the High Court of the Central Province had revisionary jurisdiction to hear and determine the application. Accordingly, the judgment of the High Court of the Central Province was set aside. The Court of Appeal directed the High Court of the Central Province to determine the application on the merits.

The Appellant sought special leave to appeal which was granted on the following questions of law:

- (1) Did the Court of Appeal err in law in coming to the conclusion that the High Court of the Central Provincial Province holden in Nuwara Eliya has jurisdiction to hear and determine the revision application filed against the order of the Magistrate's Courts in respect of State Lands?
- (2) Did the Court of Appeal err in law in failing to consider the fact that despite the remedies sought by the parties either by way of Writ or Revision the subject matter admittedly being the State Lands which continues to vest with the state and the jurisdiction vests with the Court of Appeal and not with the High Court of the Province?

Upon considering an application made by the Respondent, His Lordship the Chief Justice constituted this bench acting pursuant to Article 132(3) of the Constitution. On the invitation of the Court, the Hon. Attorney-General appeared as *amicus curiae* and assisted the Court.

High Courts

High Courts were established for the first time in Sri Lanka by the Administration of Justice Law, No. 44 of 1973 (AJL). Section 5 of the AJL identified High Courts as one of the institutions for the administration of justice in the Republic of Sri Lanka.

Sections 20 to 23 of the AJL went on to describe several jurisdictions vested in the High Courts. Accordingly, High Courts had original criminal jurisdiction (which was earlier exercised by the Supreme Court), power to grant injunctions to prevent irremediable mischief which might ensue within its jurisdiction before a party can apply for it from the District Court or the Magistrates Court, jurisdiction to try election petition in terms of the provisions of the Ceylon (Parliamentary Elections) Order in Council 1946 and Admiralty jurisdiction where the Minister so assigns.

High Court of the Republic of Sri Lanka

Article 105(1)(c) of the 1978 Constitution (Constitution) provided that the institutions for the administration of justice shall include the High Court of the Republic of Sri Lanka. Article 111(1) provided that the highest Court of First Instance exercising criminal jurisdiction and created by law shall be called and known as “the High Court of the Republic of Sri Lanka” and shall exercise such jurisdiction and powers as Parliament may by law vest or ordain. It is to be observed that Article 105(1)(c) continues to refer to the “High Court of the Republic of Sri Lanka” although Article 111(1) refers to “High Court of Sri Lanka”.

The Constitution established a High Court of the Republic of Sri Lanka through a *deeming* provision. Article 169(6) provided that the several High Courts established under Chapter I of the AJL shall be deemed for all purposes to constitute a single court created and established by Parliament called the High Court of the Republic of Sri Lanka having jurisdiction throughout the Republic of Sri Lanka to be exercised in the several Zones in accordance with the law for the time being in force.

Section 9 of the Judicature Act No. 2 of 1978 vested original criminal jurisdiction in the High Court of the Republic of Sri Lanka. Admiralty jurisdiction was vested by Section 13 of the said Act. Section 18 vested the High Court of the Republic of Sri Lanka with power and authority to take cognizance of and try in a summary manner any offence of contempt committed against or in disrespect of its authority.

The High Court of the Republic of Sri Lanka as constituted in 1978 by the Constitution was only a Court of First Instance. Article 111(1) of the Constitution was amended by the 11th Amendment to the Constitution in 1987 by substituting therefore a new sub-article which provided that “There shall be a High Court of Sri Lanka which shall exercise such jurisdiction and powers as Parliament may by law vest or ordain.” The object of this amendment appears to be to divest the High Court of Sri Lanka and its character as a Court of First Instance exercising criminal jurisdiction and enabling Parliament to vest appellate and revisionary jurisdiction in the High Court of Sri Lanka.

The amendment to Article 111(1) made in 1987 paved the way for Parliament to vest, appellate, revisionary and writ jurisdiction in the High Court of the Republic of Sri Lanka by the 13th Amendment.

High Court of the Province

Article 154P(1) of the Constitution provided that there shall be a High Court for each Province with effect from the date on which the 13th Amendment to the Constitution comes into force. Each such High Court is designated as the High Court of the relevant Province.

One question that arises at the outset, is whether the High Court of the Republic of Sri Lanka, the High Court of Sri Lanka and the High Court of the Province is one and the same Court. In *Sriyawathie v. Superintendent, Hapugastenne Estate and Others* [(1997) 1 Sri.L.R. 1] it was held that the Court referred to in Articles 105(1)(c), 111 (1) and 154P(2)

of the Constitution is one and the same Court namely the High Court of the Republic of Sri Lanka (High Court).

The 13th Amendment vested several specific jurisdictions in the High Court. The jurisdictions relevant to this appeal are the *revisionary* and *writ* jurisdictions.

Writ Jurisdiction

In terms of Articles 140 and 141 of the Constitution, it is the Court of Appeal which was vested with jurisdiction to issue according to law writs of *habeas corpus*, *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto*. It had and continues to have island wide jurisdiction and its jurisdiction is not limited by subject matter. In ***Swasthika Textile Industries Ltd. v. Thantrige Dayaratne* [(1993) 2 Sri.L.R. 348 at 352]** it was held that the jurisdiction conferred on the Court of Appeal by Articles 140 and 141 are entrenched and but for the proviso inserted by the First Amendment, its jurisdiction under Article 140 cannot be transferred even to the Supreme Court.

Article 154P(4) vested jurisdiction in the High Court to issue according to law, several orders. One was orders in the nature of *habeas corpus* in respect of persons illegally detained within the Province. The other was order in the nature of *writs* of *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto* against any person exercising within the Province, any power under (i) any law; or (ii) any statutes made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List.

Accordingly, unlike the writ jurisdiction vested in the Court of Appeal, the writ jurisdiction conferred in the High Court to issue writs of *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto* pursuant to Article 154P(4)(b) is restricted in two ways. Firstly, a writ is available only in respect of any matter set out in the Provincial Council List which is List I in the 9th Schedule to the Constitution. Secondly, the person against whom the writ is sought must be a person exercising within the Province any power under (i) any

law, or (ii) any statutes made by the Provincial Council in respect of any matter set out in the Provincial Council List.

In ***Weragama v. Eksath Lanka Wathu Kamkaru Samithiya and others*** [(1994) 1 Sri.L.R. 293] it was held that “*if a law or a statute is covered by a matter in the (exclusive) Provincial Council List, but not otherwise, the exercise of powers thereunder are subject to the writ jurisdiction of the High Court.*”

Revisionary Jurisdiction

In terms of Article 138(1) of the Constitution, the Court of Appeal has *inter alia* sole and exclusive cognizance by way of revision of all causes, suits, actions, prosecutions, matters and things which a Magistrates Court may have taken cognizance. This jurisdiction is again island wide and not limited by subject wise.

Notwithstanding anything in Article 138 of the Constitution, Article 154P(3)(b) vested appellate and *revisionary* jurisdiction in the High Court in respect of convictions, sentences and orders entered or imposed by Magistrates Courts *within the Province*. Hence the revisionary jurisdiction vested in the High Court is territorial unlike the Court of Appeal which has island wide jurisdiction.

Revisionary vs. Writ Jurisdiction

There is a clear difference between the revisionary jurisdiction and writ jurisdiction vested in the High Court.

Firstly, these two jurisdictions have been vested in the High Court by two different provisions. Article 154P(4) confers *writ* jurisdiction whilst Article 154P(3)(b) confers *revisionary* jurisdiction. This by itself is an acknowledgement by the legislature of the difference in scope between the two jurisdictions. Broadly speaking writ jurisdiction is aimed at controlling the exercise of power by administrative bodies. Revision on the other hand is aimed at due administration of justice.

Secondly, the limitations of the two jurisdictions are dissimilar. The revisionary jurisdiction of the High Court has only a territorial limitation. The writ jurisdiction on the other hand has two limitations, one is territorial and the other is subject matter.

This difference was acknowledged in ***Weragama* (supra. at page 300)** when it was held that the phrase "appellate and revisionary jurisdiction" has been used in Article 154P (3) in contradistinction to the writ jurisdiction.

The Superintendent, Stafford Estate [supra]

In this case, the Supreme Court had to determine the vires of a quit notice issued under the Act. The Court was called upon to examine whether the High Court had ***writ jurisdiction*** to issue a writ of *certiorari* in respect of a quit notice issued under the Act. All three of their Lordships and Ladyship who delivered three separate judgments were unanimous in their views that the High Court did not have jurisdiction to exercise ***writ jurisdiction*** in respect of quit notices issued under the Act. The High Court did not have jurisdiction as matters in respect of powers relating to recovery/dispossession, encroachment or alienation of state lands is not a matter in the Provincial Council List of the 9th Schedule to the Constitution. That is the ratio of that case.

Summary

There is a clear distinction between revisionary and writ jurisdiction.

The High Court has revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts *within the Province*. It is not limited by subject matter.

On the other hand, the writ jurisdiction vested in the High Court has both territorial and subject matter limitations.

The High Court does not have the jurisdiction to hear and determine a writ application made against a quit notice issued under the Act as it is not in respect of any matter set out in the Provincial Council List of the 9th Schedule to the Constitution.

An application made to the Magistrates Court under the Act deals with state lands. Nevertheless, a High Court has the power to hear and determine an application made in revision against an order made by a Magistrate's Court upon such an application made under the Act.

The ratio of the decision in ***The Superintendent, Stafford Estate [supra]*** is that the High Court does not have jurisdiction over an application for a *writ of certiorari* to quash a quit notice issued under the Act as matters in respect of powers relating to recovery/dispossession, encroachment or alienation of state lands is not a matter in the Provincial Council List of the 9th Schedule to Constitution.

The High Court erred in law in reading the decision in ***The Superintendent, Stafford Estate [supra]*** as applying to the revisionary jurisdiction of the High Court. The Court of Appeal correctly held that the High Court had jurisdiction. We affirm the judgment of the Court of Appeal dated 04.10.2017.

For all the foregoing reasons, we answer both questions of law in the negative.

We direct the High Court of the Central Province to give priority to this matter and determine the application on the merits expeditiously.

Our attention was drawn to an *ex-tempore* judgment of this Court in ***Walallawita Kankanamlage Mahinda v. Herath Mudiayanselage Nandasena, Divisional Secretary, Meegahakivula [S.C. Special Leave to Appeal No. 211/2013; S.C.M. 20.01.2014]*** where it was held that the High Court of Badulla did not have jurisdiction to hear and determine that application in view of the judgment in ***The Superintendent, Stafford Estate [supra]***. The application before the High Court of Badulla was a revision application made against an order made by the Magistrates Court upon a quit notice issued under the Act. This is

clearly erroneous in view of the reasons more fully set out above. We expressly overrule the judgment in ***Walallowita Kankanamlage Mahinda*** [supra].

Appeal dismissed. Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Murdu N. B. Fernando, P.C., C.J.,

CHIEF JUSTICE

S. Thurai Raja, P.C., J.

JUDGE OF THE SUPREME COURT

E. A. G. R. Amarasekara, J.

JUDGE OF THE SUPREME COURT

A. L. Shiran Gooneratne, J.

JUDGE OF THE SUPREME COURT