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

In the matter of an Application for Special Leave to Appeal from the Judgment of the Court of Appeal of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128(2) of the Constitution of Sri Lanka.

Mr M.R.M. Ramzeen,
Competent Authority,
Sri Lanka Ports Authority.
Colombo.

Complainant

S.C. Appeal 214/12
S.C.Spl. LA 19/12
CA/PHC/APN/158/06
HC (Rev.) 512/04
MC Fort Case No. 58439

Vs.

Morgan Engineering (Pvt) Ltd.,
No. 31A, Morgan Road,
Colombo 2.

Respondent

AND BETWEEN

Morgan Engineering (Pvt) Ltd.,
No. 31A, Morgan Road,
Colombo 2.

Respondent-Petitioner

Vs.

Mr. L.H.M.B.B. Herath,
Chief Manager Welfare and Industrial Relations,
Sri Lanka Ports Authority,
Colombo 01.

Complainant-Respondent

.

AND BETWEEN

Morgan Engineering (Pvt) Ltd.,
No. 31A, Morgan Road,
Colombo 2.

Respondent-Petitioner-Petitioner

Vs.

Mr. L.H.M.B.B. Herath,
Chief Manager Welfare and Industrial Relations,
Sri Lanka Ports Authority,
Colombo 01.

Complainant-Respondent-Respondent

AND NOW BETWEEN

Mr. L.H.M.B.B. Herath,
Chief Manager Welfare and Industrial Relations,
Sri Lanka Ports Authority,
Colombo 01.

Complainant-Respondent-Respondent-Petitioner

Vs.

Morgan Engineering (Pvt) Ltd.,
No. 31A, Morgan Road,
Colombo 2.

Respondent-Petitioner-Petitioner-Respondent

BEFORE : Mohan Pieris, P.C.,C.J.,
Sripavan, J.
Ratnayake, P.C.,J.

COUNSEL **:** Sanjeewa Jayawardene, P.C. With Sandamali Chandrasekera for the Complainant–Respondent- Respondent-Petitioner.
Johann Corera for the Respondent-Petitioner-Petitioner-Respondent

ARGUED ON : 13.05.2013

WRITTEN SUBMISSIONS FILED : By the Petitioner on - 28.05.13
By the Respondent on - 30.05.13

DECIDED ON : 27.06.2013

SRIPAVAN, J.

The Complainant-Respondent-Respondent-Petitioner(hereinafter referred to as the "Petitioner") sought, inter alia, to set aside the judgment of the Court of Appeal dated 10-01-12whereby the said Court set aside the judgment of the High Court of Colombo dated 26-09-06 which affirmed the Order of the Magistrate Court of Colombo dated 14-01-04.The Petitioner and the Respondent-Petitioner-Petitioner-

Respondent (hereinafter referred to as the "Respondent") conceded that the land which is the subject matter of the application is a "STATE LAND" falling within the ambit of the provisions of the State Lands (Recovery of Possession) Act No. 7 of 1979 as amended.

This Court granted Special Leave to Appeal on 03-12-12 on the following questions :-

(a) Has the Court of Appeal substantially erred by misinterpreting the provisions of the State Lands (Recovery of Possession) Act and its amendments and the specific definitions contained therein ?

(b) Can the document **X1** be classified as a lawful permit granted or any other written authority for the purposes of resisting an application for ejectment instituted under the State Lands (Recovery of Possession) Act ?

(c) Did the Court of Appeal err by failing to analyze the documents on record which amply demonstrate that the Respondent persistently neglected to execute a formal lease although distinctly called upon to do so?

(d) Did the Court of Appeal fall into substantial error when holding that there existed a monthly tenancy and the same constitutes a written authority given to the Respondent until such time the said authority is legally revoked ?

(e) Does the purported relationship that the Court of Appeal states was created between the parties, i.e., monthly tenancy, in any event, one that will suffice for the purposes of resisting an application for ejectment, given the clear and unambiguous provisions of the State Lands (Recovery of Possession) Act ?

(f) Has the Court of Appeal failed to appreciate the limited burden of a Competent Authority in any inquiry held in terms of Section 9 of the State Lands (Recovery of Possession) Act ?

(g) Assuming without conceding that there was any monthly tenancy countenanced by law, has the Court of Appeal substantially erred by failing to consider that in any event, if this were so, that prior to the institution of proceedings in the Magistrate's Court, there was ample evidence of the said "informal agreement" falling into abeyance as a result of the Respondent's repudiation and that even on this score, the Respondent was in unauthorized possession?

The State Lands (Recovery of Possession) Act (hereinafter referred to as the "Act") was initially enacted on 25-01-1979 in order to make provision for the recovery of possession of "State Lands" from persons in unauthorized possession or occupation of the said lands. Thus, it is

obvious that the intention of the legislature was to obtain an order of ejectment from the Magistrate's Court when the occupation or possession was unauthorized.

Section 9 of the said Act reads thus:-

> *(1) At such inquiry the person on 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 accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.*
>
> *(2) It shall not be competent, to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5. (*emphasis added)

Thus, one could see that a limitation has been placed on the scope and ambit of the inquiry before the Magistrate. The Magistrate can only satisfy him whether a valid permit or any other written authority of the State has been granted to the person on whom summons has been served.

If the language of the enactment is clear and unambiguous, it would not be legitimate for the Courts to add words by implication into the language. It is a settled law of interpretation that the words are to be

interpreted as they appear in the provision, simple and grammatical meaning is to be given to them, and nothing can be added or subtracted. The Courts must construe the words as they find it and cannot go outside the ambit of the section and speculate as to what the legislature intended. An interpretation of section 9 which defeats the intent and purpose for which it was enacted should be avoided.

His Lordship S.N. Silva, J. (as he then was) while examining the scope of the Act, in the case of *Ihalapathirana* vs. *Bulankulame,* Director-General,U.D.A.(1 S.L.R1988 at 416) made the following observations:-

> *The phrase "State Land" is defined in section 18 of the Act which as amended by Act No. 58 of 1981 includes "Land vested or owned by or under the control of", the U.D.A. It is conceded that the premises described in the quit notice "**P3**" is State Land within the meaning of this definition. It is also conceded that the Respondent is the appropriate Competent Authority in terms of the Act.*
>
> *The phrase "unauthorized possession or occupation" is defined in section 18 of the Act as amended by Act No. 29 of 1983 to mean the following :*
> *"every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon State Land."*

*This definition is couched in wide terms so that, in every situation where a person is in possession or occupation of State Land, the possession or occupation is considered as unauthorised unless such possession or occupation is warranted by a permit or other written authority granted in accordance with any written law. Therefore, I am unable to accept the contention of the Counsel for the Petitioner that a land which is the subject matter of an agreement in the nature of the document marked "**P1**" comes outside the perspective of the State Lands (Recovery of Possession) Act.*

The rights and liabilities under the agreement could be the subject matter of a civil action instituted by either the U.D.A. or the petitioner. The mere fact that such a civil action is possible does not have the effect of placing the land described in the notice marked "P3", outside the purview of the State Lands (Recovery of Possession) Act. Indeed, in all instances where a person is in unauthorised occupation or possession of State Land such person could be ejected from the land in an appropriate civil action. The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action." (emphasis added)

Thus, it could be seen, that what was meant was to provide an expeditious method of recovery of "State Lands" without the State

being forced to go through a very cumbersome process of a protracted civil action and consequent appeals.

Learned President's Counsel for the Petitioner argued that the entire issue revolves around Section 9 of the Act and the inability of the Respondent to establish the existence of a valid permit or other written authority of the State granted in accordance with any written law which is in force and has not been revoked or otherwise rendered invalid. (emphasis added).

Counsel submitted that by using the phrase "..... in accordance with any written law" , the legislature has intentionally placed a premium on the mode and manner or any instrument of disposition by which, any land which is subject to the application of the said Act is alienated either on a temporary or permanent basis. The significance of the use of the words ".... in accordance with any written law" means that the alienation per se, ie, the manner and mode of the alienation itself must be one that is prescribed by law.

Learned President's Counsel drew the attention of Court to another significant use of the phrase "written law" as found in the Constitution itself. The 13th Amendment to the Constitution in Appendix II under the caption "Land and Land Settlement" provides as follows :-

"State Land shall continue to vest in the Republic and may be disposed of, in accordance with Article 33(d) and written law governing this matter". (emphasis added)

The Constitution in Article 170, defines the phrase "written law" as follows :-

"Written law" means any law and subordinate legislation and includes statutes made by a Provincial Council,Orders, Proclamations, Rules, by-laws and Regulations made or issued by any body or person having power or authority under any law to make or issue the same."

This clearly shows that in alienating "State Lands" the President of the Republic is mandatorily required to do so in terms of the law. Assistance can be taken for purposes of interpretation of the phrase "written law" as found in the Constitution which is the Supreme Law of the land. Whether it is the Constitution or the Act, the Courts must adopt a construction that will ensure the smooth and harmonious working of the Constitution or the Act as the case may be, considering the cause which induced the legislature in enacting it.

In the aforesaid background, I now proceed to consider the observation made by the Court of Appeal in the impugned judgment dated 10-01-12. The said judgment noted, inter alia, as follows:-

"*Having placed Morgan into possession of the State land, Ports Authority has clearly accepted by way of monthly rentals prior to*

initiating proceedings in the Magistrate's Court. By having acknowledged the receipt of monthly rentals, Ports Authority has in no uncertain terms issued written authority according to law to Morgan to be in possession of the subject matter as a tenant at common law until it is terminated according to law. The learned Counsel for the Ports Authority has submitted that a monthly tenancy or lease in terms of the common law is not accepted under section 9 and it is the availability of such defences that prompted the Legislature to bring in such a specific and clearly defined phrase in section 9, in order to exclude such defences.

I am not attracted by the above submissions as being the correct proposition of law, for the reason that the payment of rents evident by the written receipts read together with ***X2*** *and* ***X1*** *had in effect created a monthly tenancy by itself and constitute a written authority given to Morgan until such time the said authority is legally revoked." (emphasis added)*

The document marked **X2** dated 17.7.89 contemplates

(a) *the handing over of possession of the premises in question by the Field Officer.*

(b) *the payment of rent based on a valuation obtained by the Chief Valuer.*

(c) *the entry into a lease agreement containing the terms and conditions; and*

(d) *the payment of Rs. 3000/- and one month's rental in order to show the good faith.*

X1 is a document dated 1.8.1989 by which possession of the premises in question was handed over to Morgan by an employee of the Ports Authority on the undertaking that Morgan would enter into a lawful agreement as soon as possible with the Ports Authority.

It is common ground that no legally valid lease agreement was entered into by the Respondent with the Ports Authority despite several reminders. The crucial question to be decided is whether documents **X2** and **X1** constitute a written authority granted in accordance with any written law. Payments of monthly rentals and the acceptance of the same by the Ports Authority do not by any means amounts to "written authority granted in accordance with any written law"' The possession of the premises in question was handed over to Morgan subject to the condition that a lease agreement containing the terms and conditions of the Ports Authority pertaining to land leases would be entered into by the Respondent. However, the Respondent has failed to satisfy the said condition.

A monthly tenancy without a formal lease is not covered by Section 9 of the Act. It is also noted that the Respondent defaulted in the payment of rent and had commenced payment once the Quit Notice was issued.

Learned Counsel for the Respondent relied on the case of *Farook* Vs. *Urban Development Authority* (C.A. Appl. 357/89; C.A. Minutes of 21.08.96). The submission in this case was made on the basis that the

occupation of the Petitioner was with the written authority marked **P2** of the Respondent and that the letter marked **P4** was not a termination of the authority granted but was merely a letter of demand with a threat of legal action. The Court noted that there was no termination of the authority granted by the document marked **P2** either on the basis that the premises in question was required since development activities have commenced or on the basis that the Petitioner has failed to pay the rent determined by the relevant local authority. The Court therefore held that the document **P2** which constitutes a permit granted to the Petitioner with the two conditions remained valid. The Court further observed that a termination of authority granted by **P2** had to be specific and should be effective from a particular date.

The second case on which the leaned Counsel for the Respondent placed reliance was the case of *Mohamed* Vs. *Land Reform Commission & Another* (1996) 2 S.L.R. 124. The issue was whether the Petitioner had a permanent lease over the land or whether he was given a temporary lease. The objections filed on behalf of the Land Reform Commission expressly admitted the averments in the petition that there was a lease in respect of the said land between the Petitioner and the Land Reform Commission and that the Land Reform Commission had in fact accepted the rents from the Petitioner.

The aforesaid two cases were decided on the basis that there were either a permit or a written authority granted to the Petitioners in accordance with the written law. In the instant application, no lease

agreement was entered into between the Respondent and the Ports Authority in accordance with the written law. The two cases cited by the learned Counsel for the Respondent have no relevance to the issue in hand.

For the reasons stated above, I answer the questions on which special leave was granted as follows:-

(a) Yes.

(b) Document **X1** cannot be classified as a lawful permit or any other written authority granted in accordance with any written law.

(c) Yes.

(d) Yes.

(e) "Monthly tenancy" does not suffice for the purposes of resisting an application under the State Lands (Recovery of Possession) Act unless a tenancy agreement in accordance with any written law, is in force.

(f) Yes.

(g) In view of the answer given to (e) above, the question of considering an informal agreement does not arise unless a legally enforceable agreement entered into in accordance with any written law, is in force.

Accordingly, I set aside the judgment of the Court of Appeal dated 10-01-12 and affirm the judgment of the High Court of Colombo and the Magistrate's Court of Colombo dated 26-09-06 and 14-01-04

respectively. Considering the considerable period of time the Respondent had been in unauthorized possession or occupation of the premises without a valid permit or any other written authority granted in accordance with any written law, I direct the Respondent to pay a sum of Rs. 250,000/- (Rupees Two Hundred and Fifty Thousand only) as costs to the Petitioner.

JUDGE OF THE SUPREME COURT.

MOHAN PIERIS, P.C.

I agree.

CHIEF JUSTICE

RATNAYAKE, P.C., J

I agree.

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JUDGE OF THE SUPREME COURT.