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

In the matter of an Appeal made in terms of Article 138, Article 154 P (6) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the Court of Appeal (Procedure for Appeals from High Court) Rules 1988.

Court of Appeal Case No: CA(PHC) 0115/2017

Provincial High Court Case No: Rev/86/2011

Theldeniya Magistrate Court Case No:1512

Divisional Secretary,
Medadumbara Divisional Secretariat Office,
Medadumbara.

Applicant

Vs

S. M. R. Samarakoon,
No: 265,
Bomure,
Medamahanuwara.

Respondent

AND NOW

Divisional Secretary,
Medadumbara Divisional Secretariat Office,
Medadumbara.

Applicant-Petitioner

Vs

S. M. R. Samarakoon,

No: 265,

Bomure,

Medamahanuwara.

Respondent-Respondent

AND NOW BETWEEN

Divisional Secretary,

Medadumbara Divisional Secretariat Office,

Medadumbara.

Applicant-Petitioner-Appellant

Vs

S. M. R. Samarakoon,

No: 265,

Bomure,

Medamahanuwara.

Respondent-Respondent-Respondent

Before : **D. THOTAWATTA, J.**

K. M. S. DISSANAYAKE, J.

Counsel : Dr. Peshan Giunaratne, S.C for the Applicant-Petitioner-Appellant.

Sameera Silva instructed by Chamindee C. Perera for the Respondent-Respondent-Respondent.

Argued on : 09.10.2025

Written Submissions of the Applicant-Petitioner-Appellant tendered on : 05.09.2022

Written Submissions of the Respondent -Respondent-Respondent tendered on : 29.05.2023

Decided on : 23.01.2026

K. M. S. DISSANAYAKE, J.

This is an appeal filed before this Court by the Applicant-Petitioner-Appellant (hereinafter called and referred to as 'the Appellant') against the order of the learned High Court Judge of the Central Province holden at Kandy dated 05.07.2017 made in an application in revision bearing No. Rev/86/2011.

The facts relevant to the instant appeal as can be gathered from the petition of appeal, may be briefly, set out as follows;

The Appellant had made an application to the Magistrate Court of Theldeniya in case bearing No. 1512 under and in terms of the provisions of Section 5 of the State Lands (Recovery of Possession) Act No. 07 of 1979 (as amended) (hereinafter called and referred to as 'the Act') for the eviction of the Respondent-

Respondent-Respondent (hereinafter called and referred to as 'the Respondent') from a State Land as morefully described in the schedule to the application (hereinafter called and referred to as the 'State Land'). The Respondent who appeared before the Magistrate Court of Theldeniya on summons, had raised a defence to the application that the land-the subject matter of the application is not a state land but a private land belonging to him in terms of the chain of title recited in his showing cause and therefore, he is not in unauthorized occupation or possession thereof, and hence, the Respondent is not liable to be ejected from the land belonging to him and therefore, it should be dismissed *in-limine*.

The learned Magistrate of Theldeniya in his order dated 15.07.2011 had having upheld the defence so raised by the Respondent to the application, proceeded to dismiss the application while refusing to grant an order for eviction of the Respondent from the State Land by *inter-alia*, holding that the land in question had been acquired by the State for the Kandy-Mahiyanganaya Road widening project and therefore, the Appellant should take steps under section 42 of the Land Acquisition Act to eject the Respondent therefrom and not under the provisions of the Act as held by this Court in **Edwin Vs. Thillakaratne 2001 [3] SLR 34**.

Being aggrieved by the said order of the learned Magistrate of Theldeniya dated 15.07.2011, the Appellant had invoked the extra-ordinary revisionary jurisdiction of the High Court of the Central Province holden at Kandy seeking to revise and set aside it. The learned High Court Judge of the Central Province holden at Kandy had by the order dated 05.07.2017, dismissed the application in revision by holding that the basis upon which the Appellant claims it to be State Land, was not clear and therefore, the order of the learned Magistrate is more accurate; and that the Appellant had decided to pay compensation to the Respondent for the land in question treating it as a private land; and that a civil action is already, pending in Court and therefore, necessity does arise for the

Appellant to invoke the extra-ordinary revisionary jurisdiction of the High Court for relief since an alternative remedy is available to the Appellant.

As can be seen from a careful scrutiny of his showing cause, the position so adverted to by the Respondent in the Magistrate Court of Theldeniya is that the land in question is not a state land but, a private land belonging to him in terms of the chain of title recited in his showing cause.

It may now, be examined.

Land in question is not a State Land but, a private land belonging to him in terms of the chain of title recited in his showing cause.

It is in this context, I would think it expedient at this juncture to examine the structure and/or the scheme embodied in the Act and the provisions contained therein with regard to an application that may be made to a Magistrate Court by a competent authority under section 5 thereof for the eviction of a person who in his opinion, is in unauthorized possession or occupation of a state land and for the recovery of the same.

Section 3 of the Act enacts thus;

> "3. (1) Where a competent authority is of the opinion
>
> (a) that any land is State land; and
>
> (b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependants, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such

notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.

(1A) No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1).

(2) Every notice under subsection (1) issued in respect of any State land is in this Act referred to as a "quit notice ".

(3) A quit notice in respect of any State land shall be deemed to have been served on the person in possession or occupation thereof if such notice is sent by registered post.

(4) Every quit notice shall be in Form A set out in the Schedule to this Act."

Section 4 of the Act deals with the obligation to comply with a quit notice and it enacts thus;

"4. Where a quit notice has been served or exhibited under section 3

(a) the person in possession or occupation of the land to whom such notice relates or any dependants of such person shall not be entitled to possess or occupy such land after the date specified in such notice or to object to such notice on any ground whatsoever except as provided for in section 9,

(b) the person in possession or occupation shall together with his dependants, if any, duly vacate such land and deliver vacant possession thereof to the competent authority or person to whom he is required to do so by such notice."

Section 5 of the Act deals with the effect of non-compliance with a quit notice and it enacts thus;

5. (1) Where any person fails to comply with the notice provisions of section 4 (b) in respect of any quit notice issued or exhibited or purporting to have

been issued or exhibited under this Act, any competent authority (whether he is or not the competent authority who issued or exhibited such notice) may make an application in writing in the Form B set out in the Schedule to this Act to the Magistrate's Court within whose local jurisdiction such land or any part thereof is situated

(a) setting forth the following matters

(i) that he is a competent authority for the purposes of this Act.

(ii) that the land described in the schedule to the application is in his opinion State land,

(iii) that a quit notice was issued on the person in possession or occupation of such land or was exhibited in a conspicuous place in or upon such land,

(iv) that such person named in the application is in his opinion in unauthorized possession or occupation of such land and has failed to comply with the provisions of the aforesaid paragraph (b) of section 4 in respect of such notice relating to such land, and

(b) praying for the recovery of possession of such land and for an order of ejectment of such person in possession or occupation and his dependants, if any, from such land.

(2) Every such application under subsection (1) shall be supported by an affidavit in the Form C set out in the Schedule to this Act verifying to the matters set forth in such application and shall be accompanied by a copy of the quit notice.

(3) Every application supported by an affidavit and accompanied by a copy of the quit notice under the preceding provisions of this section shall be referred to as an " application for ejectment ".

(4) No stamp duties shall be payable for any application for ejectment.

Section 6 of the Act deals with the role of a Magistrate upon receipt of an application made under section 5 thereof and it enacts thus;

"6. (1) Upon receipt of the application made under section 5, the Magistrate shall forthwith issue summons on the person named in the application to appear and show cause on the date specified in such summons (being a date not later than two weeks from the date of issue of such summons) why such person and his dependants, if any, should not be ejected from the land as prayed for in the application for ejectment.

(2) The provisions contained in the Code of Criminal Procedure Act shall, mutatis mutandis, apply to the issue of summons referred to in subsection (1) and the service thereof and other steps necessary for securing the attendance of the person summoned."

Section 7 of the Act, makes provisions for an order for ejectment where no cause is shown and it reads thus;

"7. If on the date specified in the summons issued under section 6 the person on whom such summons was issued fails to appear or informs the Court that he has no cause to show against the order for ejectment, the Court shall forthwith issue an order directing such person and his dependants, if any, to be ejected forthwith from the land."

Section 8 of the Act, makes provisions as to the inquiry if cause is shown and it enacts thus;

"8. (1) If a person on whom summons has been served under section 6 appears on the date specified in such summons and states that he has

cause to show against the issue of an order for ejectment the Magistrate's Court may proceed forthwith to hear and determine the matter or may set the case for inquiry on a later date.

(2) Where any application for ejectment has been made to a Magistrate's Court, the Magistrate shall give priority over all other business of that Court, to the hearing and disposal of such application, except when circumstances render it necessary for such other business to be disposed of earlier."

Section 9 of the Act deals with the scope of inquiry and it reads thus;

"9. (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 in 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 is mine]

Section 10 of the Act makes provisions for order of ejectment and it reads as follows;

"10. (1) If after inquiry the Magistrate is not satisfied that the person showing cause is entitled to the possession or occupation of the land he shall make order directing such person and his dependants, if any, in occupation of such land to be ejected forthwith from such land.

(2) No appeal shall lie against any order of ejectment made by a Magistrate under subsection (1)."

Upon a careful analysis of section 3 of the Act in conjunction with sections 9(1) which enacts that "**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 in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid**" and 9(2) thereof, which enacts "**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.**", it would become manifest that where the competent authority **is of the opinion** that; **a) any land is state land**, and **b) that any person is in unauthorized possession or occupation of such land**, the competent authority may serve a notice by any of the modes set out therein on such person in possession or occupation thereof, requiring such person to vacate such land with his dependents if any, and to deliver vacant possession of such land to competent authority or any other authorized person as may be specified in the notice on or before a specified date to be specified therein; and that **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 in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid**; and that **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 is mine]

It was *inter-alia*, held by this Court in **Farook vs. Gunewardene-Government Agent, Amparai 1980 (2) SLR 243**, at pages 245 and 246 that, "Section 9(2) is to the effect that the Magistrate cannot call for any evidence from the competent

authority in support of the application under section 5, which means that the Magistrate cannot call upon the competent authority to prove that the land described in the schedule to the application is a State Land (Section 5(1)(a)(ii))……The structure of the Act would also make it appear that where the competent authority had formed the opinion that any land is state land, even, the Magistrate is not competent to question his opinion. Alternative relief is given by section 12 which empowers any person claiming to be the owner of a land to institute action against state for the vindication of his title within 6 months from the date of the order of ejectment and section 13 is to the effect that where action is instituted by a person, if a decision is made in favour of that person, he will be entitled to recover reasonable compensation for the damage sustained by the reason of his having been compelled to deliver possession of such land…".

It was *inter-alia*, held by this Court in **CA/PHC/41/2010 decided on 31.01.2017** that, "The party noticed is not entitled to challenge the opinion of the competent authority on any of the matters stated in the application….By this amendment, the opinion of the competent authority in relation to the state land was made unquestionable….".

It was *inter-alia*, held by this Court in **CA (PHC) APN 29/2016**-decided on **09.07.2018** that, "….He cannot contest any of the matters stated in the application made under section 5 of the Act. One of the matters required to be stated in the application is that the land described in the schedule to the application is in the opinion of the competent authority state land. This fact cannot be contested by the person summoned….Hence, a dispute on the identity of the land cannot arise for consideration of the learned Magistrate. The identity of the land can arise for consideration only to the extent of examining whether the valid permit or other written authority produced by the party summoned is in relation to the state land described in the application. Where it is not, the Magistrate must issue an order of eviction in terms of the Act…"

It was *inter-alia*, held by this Court in **CA(PHC)48/2016-decided on 02.09.2025** that, "Under section 9 of the State Lands (Recovery of Possession) Act, as amended in 1983, the competent authority's opinion that land is a 'state land' is conclusive and not open to judicial challenge at the ejectment stage and the only permissible defence available to an occupier is to prove possession or occupation under a valid permit or written authority issued by the state with the burden of proof resting on the occupier, whose failure to establish such authority would necessitate an order of ejectment."

Upon a plain reading of section 5(1) of the Act together with sections 9(1) and 9(2) thereof and the judicial precedents referred to above, it becomes abundantly, clear that, where the competent authority had formed an opinion that any land is state land, even, the Magistrate is not competent to question his opinion and therefore, not open to judicial challenge at the ejectment stage in an application made to Court by a competent authority under section 5 of the Act.

In the light of the law set out in section 5(1) of the Act to be read with sections 9(1) and 9(2) thereof and in the light of the law established by the judicial precedents as referred to above, it is my considered view that a dispute as to the identity of the land-the subject matter of the application under section 5 of the Act, **is wholly, foreign and utterly alien to a proceedings that may be initiated before a Magistrate Court by a competent authority for eviction of a person** who in his opinion, is in unauthorized possession or occupation of a land which in his opinion, is state land and therefore, such a defence to an application made to Court by a competent authority under section 5 of the Act is wholly, untenable in law, and therefore, not in any manner available to such a person who in his opinion of the competent authority, is in unauthorized possession or occupation of a state land for; the Legislature in enacting section 9 of the Act had never intended a defence as such to be made available to a person as such except only, for the defence expressly, and explicitly, made available therein.[Emphasis is mine]

There is a further point which would in my opinion, fortify and strengthen my view taken as aforesaid and let me now, examine it.

Upon a careful analysis of the Act, it becomes abundantly, clear that "Urgency" appears to be the hallmark of this Act as observed by this Court in **Farook vs. Gunewardene-Government Agent, Amparai (Supra)**. Under section 3, 30 days notice shall be given. Under section 4, the person in possession is not entitled to object to notice on any ground whatsoever except as provided for in section 9 and the person who is in possession is required to vacate the land within the month specified by the notice. Under section 6, the Magistrate is required to issue summons forthwith to appear and show cause on a date not later than two weeks from the date of issue of such summons. Under section 8(2) the Magistrate is required to give priority over all other business of that court. Under section 9, the party noticed can raise objections only on the basis of a valid permit issued by the State. Under section 10, if the Magistrate is not satisfied, "he shall make order directing ejectment forthwith and no appeal shall lie against the order of ejectment. Under section 17, the provisions of this Act have effect notwithstanding anything contained in any written law.

Besides, it was *inter-alia*, held by the Supreme Court in ***Senanayake Vs. Damunupola*-1982 (2) SLR 621** that, "The scope of the State Land (Recovery of Possession) Act was to provide a speedy or summary mode of getting back possession or occupation of 'State Land' as defined in the Act", which was cited with approval by this Court in case bearing No. **CA (PHC) 140/2013-decided on 10.10.2019**.

Hence, it becomes abundantly, clear upon a careful analysis of sections 9(1) and 9(2) of the Act in particular that the Legislature in enacting this special piece of legislation, had never intended for a protracted trial to be held by a Magistrate in an application made to it by a competent authority under section 5 of the Act when it had enacted section 9 thereto expressly, and explicitly, setting out in unambiguous terms the scope of such an inquiry.

In the light of the above, the scope of the State Land (Recovery of Possession) Act is to provide a speedy or summary mode of getting back possession or occupation of 'State Land' as defined in the Act as explicitly, observed by the Supreme Court in the decision in **Senanayake Vs. Damunupola (Supra)**.

The learned Counsel for the Respondent sought to contend by relying on the decision of this Court in **Edwin Vs. Thillakaratne (Supra)** that the land in question had been acquired by the State for the Kandy-Mahiyanganaya Road widening project and therefore, the Appellant should take steps under section 42 of the Land Acquisition Act to eject the Respondent therefrom and not under the provisions of the Act and the learned Magistrate of Theldeniya had proceeded to uphold it. However, this Court in **CA(PHC) APN 29/2016-Decided on 09.07.2018** had while overruling the decision in **Edwin Vs. Thillakaratne (Supra)**, held that the procedure in the Act can be invoked even where a person is in unauthorized possession or occupation of a state land which was acquired under the Land Acquisition Act for; the intention of the legislature on the issue is clear, as the Hon. Minister of Land, Land Development and Mahaweli Development, during the second reading of the State Land (Recovery of Possession) (Amendment) Bill specifically, stated that recourse to existing law to recover possession of state land was time consuming.

Hence, it clearly, appears to me that such a contention was advanced by the Respondent upon a total misconception of the law as set out above and therefore, it ought to have been rejected *in-limine* by the learned Magistrate of Theldeniya, however, it is regretful to observe that, the learned Magistrate of Theldeniya had instead, proceeded to uphold it and rejected the application of the Appellant on this totally, erroneous premise.

Moreover, the contention so advanced by the learned Counsel for the Respondent and the decision of the learned Magistrate of Theldeniya based on the said premise, is not entitled to succeed in law on several other reasons too; **one being** that the decision in **Edwin Vs. Thillakaratne (Supra)** relied on by the learned

Counsel for the Respondent and upheld by the learned Magistrate of Theldeniya was a decision made by this Court in Writ applications and the key considerations in Writ jurisdiction are totally, different from the key considerations in an application under section 5 of the Act and therefore, the facts of the case relied on by the learned Counsel can be clearly, distinguishable from the facts of the instant case and therefore, the said decision relied on by the learned Counsel for the Respondent has if I may say so respectfully, no bearing on the facts of the instant application made to Court by the Appellant being the competent authority under section 5 of the Act; and **the other reason being** that the opinion of the competent authority that the land in dispute is State Land, cannot in any manner, be questioned by a person summoned to show cause under section 6 of the Act, in view of the provisions in section 5, sections 9(1) and 9(2) of the Act and in view of the binding judicial precedents cited above.

In the light of the above, I would find myself unable to agree with the contention so advanced by the learned Counsel for the Respondent and the decision of the learned Magistrate of Theldeniya based on that premise for; they cannot sustain in law and as such they ought to have been rejected *in-limine.*

In view of the law set out above, the Respondent in the instant appeal cannot in any manner, contest any of the matters stated in the application made under section 5 of the Act by the Respondent to the Magistrate Court of Theldeniya. One of the matters so required to be stated in the application under section 5 of the Act is that the land described in the schedule to the application, is in the opinion of the Appellant being the competent authority, State Land. Opinion so formed by the Appellant being the competent authority, that it is in his opinion, State Land, cannot in any manner, be contested by the Respondent who was summoned under section 6 of the Act in view of sections 9(1) and 9(2) of the Act.

Hence, dispute on the identity of the land morefully described in the schedule to the instant application made to Court by the Appellant, being the competent

authority under section 5 of the Act, namely; whether the land stated in the instant application is not state land but a private land as raised by the Respondent in his showing cause before the Magistrate Court of Theldeniya, cannot in law, be raised by him for consideration of the learned Magistrate of Theldeniya for; he has expressly, been prevented and precluded by section 9(1) and 9(2) of the Act by raising a contest as such inasmuch as this is an issue to be adjudicated upon in appropriate proceedings by a Court of competent jurisdiction for; such a dispute as to the identity of the land in question, is **utterly, foreign and alien to proceedings as such initiated by the competent authority under section 5 of the Act**. [Emphasis is mine]

Hence, I would hold that the contention advanced by the Respondent in the Magistrate Court that the land in question is not State Land but, a private land, ought to fail in law, but, however, to my regret, the learned Additional Magistrate of Theldeniya had erroneously, proceeded to uphold the same by relying on the decision of this Court in **Edwin Vs. Thillakaratne (Supra)** for the reasons as stated above, if I may say so respectfully.

The question that would next, arise for our consideration is as to the scope of the inquiry in proceedings that may be initiated by a competent authority under section 5 of the Act in a Magistrate Court and section 9 of the Act sets out the scope of the inquiry and it may be reproduced *verbatim* the same as follows;

> "9. (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 in 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 is mine]

It was *inter-alia*, held by this Court in **Farook vs. Gunewardene-Government Agent, Amparai (Supra)** that, "At the inquiry before the Magistrate, the only plea by way of defence that the Petitioner 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."

It was *inter-alia*, held in **Muhandiram v. Chairman, No. 111, Janatha EstateDevelopment Board 1992 (1) SLR 110** at page 112 that, "Under section 9(1) of the State Lands (Recovery of Possession) Act No. 7 of 1979, the person on whom summons has been served (in this instance, the Respondent-Petitioner) 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 that such permit or written authority is in force and not revoked or otherwise rendered invalid..... The said section clearly reveals that at an inquiry of this nature, the person on whom the summons has been served has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law. The burden of proof of that fact lies on that particular person on whom the summons has been served and appears before the relevant Court.".

It was *inter-alia*, held by this Court in **CA/PHC/41/2010(Supra)** that, "Under section 9 of the State Land (Recovery of Possession) Act, the scope of the inquiry is limited to the person noticed to establish he is not in unauthorized occupation or possession by establishing that;

1. Occupying the land on a permit or a written authority.
2. It must be a valid permit or a written authority.

3. It must be in force at the time of presenting it to Court.
4. It must have been issued in accordance with any written law."

It was *inter-alia*, held by this Court in **CA (PHC) APN 29/2016(Supra)** that, "A person who has been summoned in terms of section 6 of the Act can only 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 that such permit or authority is in force and not revoked or otherwise rendered invalid. He cannot contest any of the matters stated in the application under section 5 of the Act."

It was *inter-alia*, held by this Court in **CA(PHC)48/2016 (Supra)** that, ".... the only defence available is to prove possession is upon a valid permit or written authority, issued in accordance with law, and which should be in force....".

In the light of the law set out in section 9 of the Act and the judicial precedent referred to above, at an inquiry of this nature, the person on whom the summons has been served (in this instance the Respondent) has to establish that his possession or occupation is upon a valid permit or other written authority of the State granted according to the written law and that such permit or written authority is in force and not revoked or otherwise rendered invalid.

It is significant to observe that, it had never been the position of the Respondent taken up in the Magistrate Court that his possession or occupation of the land in dispute which in the opinion of the Appellant being the competent authority is State Land, is upon a valid permit or other written authority of the State granted according to the written law and that such permit or written authority is in force and not revoked or otherwise rendered invalid, but, a private land which belongs to him in terms of the chain of title recited in his showing cause.

It is to be observed that, although there is no duty as such cast upon a competent authority by the provisions of the Act, nonetheless, the Appellant being the

competent authority had proceeded to identify the State Land by furnishing relevant material to the Magistrate Court.

Hence, the Respondent's argument that the land is not a state land but, a private land claimed by him by virtue of the chain of title recited in his showing cause filed before the Magistrate Court of Theldeniya, cannot sustain at least, for two reasons; **one being** that, he is precluded by section 9(1) and 9(2) of the Act from raising such a contest on the land-the subject matter of the application made to Court by the Appellant being the competent authority; **the other being** that although, the Appellant-being the competent authority does not have any burden in an inquiry before the Magistrate so to do, nevertheless, the land in dispute had been properly, identified by the Appellant being the competent authority with reference to a plan, made and prepared by the Surveyor-General.

On the other hand, the Appellant being the competent authority had already, formed an opinion that the land-the subject matter of the application, is a State Land and that the Respondent is in unauthorized possession or occupation therein.

However, as observed by me elsewhere in this judgment, it is significant to note that, not an iota of evidence had been adduced by the Respondent to establish that he is in possession or occupation of the State 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 as required by section 9 of the Act. Hence, the Respondent did not have semblance of such a permit or authority as envisaged by section 9 of the Act.

In view of the above, it clearly, appears to me that the Respondent had adduced not even an iota of evidence to satisfy the learned Magistrate of Theldeniya that he was entitled to the possession or occupation of the State Land, nevertheless the learned Magistrate of Theldeniya had proceeded to reject the application relying on a totally, erroneous basis as enumerated above.

Hence, I would hold that, the contention advanced by the learned Counsel for the Respondent that, the land in dispute is not a state land but, a private land belonging to the Respondent as asserted by him in his showing cause, is not entitled to succeed, both in fact and law and as such, it should inevitably, fail.

Hence, I would hold that the learned Magistrate of Theldeniya was in grave error, both in fact and law in rejecting the application preferred to it by the Appellant under section 5 of the Act.

I would therefore, hold that the order of the learned Magistrate of Theldeniya cannot in any manner, sustain both in fact and law and as such it should be set aside

For the reasons stated above, I would further, hold that the order of the learned High Court Judge of the Central Province holden in Kandy based on the findings arrived at by him as enumerated above, dismissing the application in revision preferred to it by the Appellant from the order of the learned Magistrate of Theldeniya rejecting his application, cannot in any manner, sustain both in fact and law and as such it too, should be set aside.

Hence, I would hold that, the instant appeal is entitled to succeed both in fact and law.

Hence, I would proceed to allow the instant appeal with costs of this court and the courts below.

In the result, I would set aside the orders of both the learned High Court Judge of the Central Province holden in Kandy and the learned Magistrate of Theldeniya.

In view of my findings as aforesaid, I would acting under section 10(1) of the Act, proceed to grant the application made by the Appellant to the Magistrate Court of Theldeniya under section 5 of the Act thus, directing the Respondent and his dependents, if any, in occupation of the State Land as morefully, described in

the schedule to the application made to Court by the Appellant being the competent authority, be ejected forthwith therefrom.

I would direct the learned Magistrate of Theldeniya to act according to the law.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL