

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

In the matter of an Appeal in terms of Article 154P (6) of the Constitution read with Rule 2(1) of the Court of Appeal (procedure for Appeals from the High Court established by Article 154P of the Constitution) Rules 1988.

Nelson Bernard Hettiarachchi of No.B.9/4, National Housing Development Houses, Crows Island, Colombo 15, and presently of No.384/2-A, Gonahena, Kadawatha.

Respondent-Petitioner-Appellant

C.A.(PHC) NO.197/2001
PHC COLOMBO CASE NO.860/97 (REV)
M.C.COLOMBO CASE NO.75057/5

Vs.

S.B.Bandusena, Secretary, Ministry of Fisheries, Maligawatta, Colombo 10.

Applicant-Respondent-Respondent

BEFORE : **K.T.CHITRASIRI, J.**

H.N.J.PERERA, J

COUNSEL : Sanath Jayathillaka, Attorney -at- Law for the Respondent-Petitioner-Appellant

P.Ranasinghe, Deputy Solicitor General with H.P.Ekanayake, Senior State Counsel for the Applicant-Respondent-Respondent

ARGUED ON : **15TH NOVEMBER 2011**

DECIDED ON : **14TH DECEMBER 2011**

CHITRASIRI, J.

This is an application to set aside the judgment of the learned High Court Judge of Colombo in the Revision Application filed by the respondent-petitioner-appellant (hereinafter referred to as the appellant) wherein he affirmed the order of the learned Magistrate of Colombo made in the application filed in terms of the Government Quarters (Recovery of Possession) Act No.7 of 1969, as amended subsequently. (hereinafter referred to as GQROP Act) In that order, learned Magistrate issued a writ of possession allowing an application made by the applicant-respondent-respondent (hereinafter referred to as the respondent) to obtain possession of the premises referred to in the quit notice dated 25.04.1995 (page 217 of the brief) sent by the respondent to the appellant.

Prior to the filing of action in the Magistrate's Court; respondent sent the aforesaid quit notice to the appellant directing him to hand over possession of the premises referred to in the quit notice. Consequently, since the appellant did not comply with the said directive mentioned in the quit notice, respondent filed the said application in the Magistrate's Court of Colombo on 21st February 1996 (page 219 of the brief). Learned Magistrate refused the said application of the respondent for the reason that the respondent was not properly authorized to act under the GQROP Act.

Failure to obtain possession of the premises by instituting the said action in the Magistrate's Court resulted in filing a similar application by the respondent once again in the Magistrate's Court of Colombo in terms of the provisions contained in the same

GQROP Act. In the affidavit filed along with the subsequent application dated 17th December 1996, respondent had stated that he is properly authorized to act under the GQROP Act. The authority given to the respondent was supported by letter dated 21st December 1996 (**page 176 of the brief marked V4**) issued by the Secretary to the Ministry of Public Administration who is the Secretary to the Minister in charge of the subject.

The appellant, in this subsequent action too, challenged the authority given to the respondent. This matter was carefully considered by the learned High Court Judge and had correctly held that the respondent had been properly authorized by the said letter dated 21.12.1996. Learned Counsel for the appellant did not challenge the contents of the letter of authority at any stage. Therefore, I am not inclined to accept the position that the respondent was not properly authorized to file action in terms of the GQROP Act.

Having received summons in the subsequent case, appellant appeared before the learned Magistrate on 4th February 1997. On that date he was given time to show cause why he should not be evicted from the premises in suit. Accordingly, the appellant filed submissions showing cause for him to remain in possession and objected to the writ being issued. However, the learned Magistrate made order issuing writ to evict the appellant from the premises in suit. Apparently, no reasons were assigned by the learned Magistrate for this decision to issue the writ.

Being aggrieved by the said order of the learned Magistrate, appellant filed a Revision Application in the High Court of Colombo. Learned High Court Judge, having considered the merits of the case, dismissed the revision application stating that

the Magistrate need not assign reasons when issuing a writ in an application filed under the GQROP Act. The appellant thereafter filed this appeal challenging the said decision of the learned High Court Judge as well as the learned Magistrate. Therefore, the main issue in this instance is to ascertain whether it is necessary to consider the merits of the case before issuing writ, in a case filed in terms of the provisions contained in the GQROP Act.

Contention of the learned Counsel for the appellant was that the order made by the learned Magistrate without assigning reasons is bad in law as it also amounts to violation of principles of natural justice.

Section 7 (1) of the Govt. Quarters' (Recovery of Possession) Act stipulates thus:-

“Upon receipt of an application for ejectment in respect of any Government quarters, a Magistrate’s Court shall forthwith issue, and if need be reissue, a writ of possession to the Fiscal requiring and authorizing such Fiscal before a date specified in the writ, not being a date earlier than three or later than seven clear days from the date of the issue of such writ, to deliver possession of such quarters to the competent authority or other authorized person specified in the quit notice relating to such premises. Such writ shall be sufficient authority for the said Fiscal or any police officer authorized by him in that behalf to enter such quarters with such assistants as the Fiscal or such officer shall deem necessary and to give possession accordingly, and to eject the occupier and his dependents, if any, from such quarters”.

Looking at the plain reading of the aforesaid Section, it is clear that the Magistrate shall issue a writ of possession upon filing an application under GQROP Act even without informing the person against whom such an application is made. Also, it seems that it is only a ministerial act of a Magistrate to give effect to a decision of a person who is authorized under the law to have the assistance of the

fiscal in a Court of Law in order to obtain possession of the buildings claimed to be owned by the Government.

However, the learned Counsel for the appellant advanced an argument that the person against whom the application is made should be given an opportunity to present his case to the Magistrate before issuing writ. He has further contended that it would amount to violation of the principles of natural justice if such an opportunity is not afforded to such a person. In support of his argument, he has basically relied upon the case of *M.A.Prema de Silva vs. The Special Commissioner, Anuradhapura in C. A. Application No.902/82*. In that decision His Lordship Sarath N. Silva J. (as he then was) held that the Magistrate has the jurisdiction to examine the correctness of certain matters stated in the report or certificate upon which a particular action is filed. In that case it was further held that there is no provision under section 165 A (4) of the Urban Council Ordinance removing the ordinary jurisdiction of the Magistrate's Court to consider the basic validity of the imposition of the tax that is to be recovered. Learned Counsel for the appellant also relied upon the decision of **Bandahamy V. Senanayake 62 NLR at page 313** where it was held that the party against whom the award is sought to be enforced should be noticed and given an opportunity of showing the existence of defects. Accordingly, the learned Counsel for the appellant argued that the learned Magistrate should have considered the submissions made by the appellant in the Magistrate's Court and given reasons for his decision before issuing writ of possession to evict the appellant from the premises in suit.

Contention of the learned Counsel for the respondent was that it is not necessary to give an opportunity to a person who had been served with a quit notice

under the provisions of the GQROP Act before issuing writ in a case filed there under. He depended solely on the case of *In Re D.S.E.P.R.Senanayake (Inspector General of Police) 75 NLR at page 215*. In that case Samarawickreme, J held that when an application to evict a person from Govt. Quarters is made *ex parte*, in regular and proper form, under the Govt. Quarters (Recovery of Possession) Act, the Magistrate has, in the first instance, no option but to issue writ of possession forthwith in terms of section 7 of the Act.

At this stage, it is pertinent to note that the cases cited by the learned Counsel for the appellant had been instituted either to recover taxes levied by the Government or fines imposed by authorities' such as the Commissioner of labour or the Commissioner of Cooperatives. The case of, **M.A.Prema De Silva Vs. The Special Commissioner Anuradhapura (supra)** was filed to collect taxes imposed by the Urban Council of Anuradhapura. *Bandahamy Vs. Senanayake (supra)* was filed to recover monies due under the Co-operative Societies Ordinance. I have also looked into the cases referred to in the judgment of His Lordship Justice Sarath N. Silva and found that all those cases cited in that judgment also do not refer to any case filed in terms of the GQROP Act. In that judgment two cases namely *A.T.Duraiappah vs. The Municipal Commissioner Jaffna 73 NLR page 230* and *The Chairman Village Committee of Gandahe South vs. P.B.Hippola 61 NLR page 236* had been referred to and in both cases the matters in issue were to recover audit charges imposed under the Municipal Council Ordinance and the Village Committee Ordinance respectively. The case referred to in *68 NLR at Page 168* namely *Abdulally vs. Assistant Government Agent Jaffna* too had been filed to recover taxes due under the Heavy Oil Motor Vehicles Taxation Ordinance. In the case of *W.Barnes de Silva vs.*

Galkissa-Wattarappola Co-op. Stores Society, 54 NLR page 326 also was a case to recover money under an award made by a person duly authorized under the Co-operative Societies Ordinance. Therefore, it is seen that the learned Counsel for the appellant has not referred to a single authority to support his argument citing a case filed in terms of the GQROP Act.

To the contrary, the authority namely *In Re D.S.E.P.R.Senanayake (Inspector General of Police)* (supra), cited by the learned Deputy Solicitor General had been filed directly under the GQROP Act. In that decision Samarawickrama J had extensively dealt with the issue referring to the provisions contained in the GQROP Act, particularly to the Section 7 of the Act.

Therefore, it is my opinion that the authorities cited by the learned Counsel for the appellant should be identified differently with that of the case referred to by the learned Counsel for the respondent when applying the law referred to in the GQROP Act. Therefore, I am not inclined to apply the law referred to by the learned Counsel for the Appellant in this instance as those cases do not discuss the manner in which the provisions of the GQROP Act is worded.

It is now necessary to refer to the provisions contained in the GQROP Act. As I have discussed herein before, plain reading of Section 7 (1) of the GQROP Act requires a Magistrate to issue writ immediately after an application is filed under the Act. This Section reads thus:

“Upon receipt of an application for ejectment in respect of any Government quarters, a Magistrate’s Court shall forthwith issue writ of possession”

Therefore, it is clear that the object of the Legislature when enacting this Act had been to allow a person who is properly authorized to obtain possession of Government quarters immediately after filing action under the Act, avoiding delay that may take place due to litigation. Hence, it is my considered view that the object of

having Section 7 is to prevent, even notice being given to a person who is to be evicted from occupying government quarters. As I have stated earlier in this judgment, in such a situation the Magistrate is merely performing a ministerial act.

Furthermore, it is important to note that a person who is wrongly evicted by making use of the provisions of the GQROP Act, is not without a remedy in such a situation. The remedy is found in Section 7(2) (b) in the amending Act No. 45 of 1985. It reads thus:

Section 7(b)(3)

“Nothing in this Act shall be read and construed as precluding any person who claims to have been unlawfully ejected from Government quarters under this section from instituting an action for damages or other relief“.

This provision of law recognizes a statutory right to a person who is wrongly evicted of claiming damages. Therefore, such a person is not without a remedy. However, it must be noted that such a person should complain only after complying with the directive issued by a person who is authorized to do so. At this stage, I may state that this process could even be justified since such a directive is issued only after taking the responsibility as to the correctness of the facts by filing an affidavit in Courts by the person who makes the application. In the event a false declaration is made in the affidavit, the person filing action could even be dealt with for contempt of court.

Furthermore, it is seen that several steps are to be taken before filing action under the GQROP Act in order to obtain a writ of possession. A proper quit notice should be sent to the person to be evicted. The applicant has to be properly authorized to file action. Such a person should file an affidavit stating that the premises claimed in the application belong to the Government and that he had complied with all the pre-

requisites referred to in the Act. This procedure also would help to prevent causing injustice to a person who is to be subjected to the provisions contained in the GQROP Act.

Accordingly, I am not inclined to accept the argument advanced by the learned Counsel for the appellant that it is bad in law for the learned Magistrate, not to assign reasons in the impugned order violating the rules of natural justice. In the circumstances, it is my considered view that a Magistrate should issue a writ of possession in favour of the applicant who makes an application under section 7 of the Govt. Quarters (Recovery of Possession) Act without affording an opportunity to show cause to the person who is to be evicted from the premises in suit.

For the reasons mentioned above, I dismiss the appeal with costs.

Appeal is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

H.N.J.PERERA, J.

I agree.

JUDGE OF THE COURT OF APPEAL

C.A.(PHC)Appeal No. 197/2001

P.H.C.Colombo No.860/97

Before : K.T.Chitrasiri, J.
H.N.J.Perera, J

Counsel : Sanath Jayathilake for the Appellant
K.A.P.Ranasinghe DSG with H.P.Ekanayake SC for the
Respondent.

Argued &

Decided on : 02.01.2012.

K.T.Chitrasiri, J.

Heard both Counsel in support of the leave to appeal application filed by the learned Counsel for the appellant.

Having considered the submissions on the suggested substantial question^a of law, we are of the view that there is no merit in this application. Therefore we refuse the application for leave to appeal against the judgment dated 14.12.2011.

JUDGE OF THE COURT OF APPEAL

H.N.J.Perera, J

I agree.

JUDGE OF THE COURT OF APPEAL

KLP/-