

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

In the matter of an Application for writ of
Certiorari and writ of Prohibition.

K.I.Thilakasiri,
13A, of C "Grade" N.H.D.A Housing
Scheme (Formerly Irrigation Quarters)
Ratmalana.

Petitioner

C.A. Writ Application No: 2478/2004

Vs

1. Panditha Wattaga Upaly Wickramaratne,
Deputy Director of Irrigation,
Irrigation Department
Jawatte Road, Colombo 5.
2. Dhammika Weerakoon,
Director General of Irrigation,
Irrigation Department
Jawatte Road, Colombo 5.

Respondents

<u>BEFORE</u>	:	S. SRISKANDARAJAH, J.
<u>COUNSEL</u>	:	S.N.Vijith Singhe for the Petitioner, Ms. Uresha de Silva, S.C for the 1 st and 2 nd Respondents
<u>Argued on</u>	:	23.11.2010
<u>Decided on</u>	:	10.01.2011

S.Sriskandarajah, J.

The Petitioner is occupying a quarters bearing No. 13A Grade C, Housing Scheme Ratmalana. This quarters was allocated to him in 1985 by the Director of the Machinery Equipment Department. The said quarters had been taken over by the Ministry of Lands, Irrigation and Mahaveli Development in 1992. In 1998 by a decision of Cabinet of Ministers dated 12.12.1998, an extent of 18.7 acres of land where the said quarters allocated to the Petitioner was situated released to National Housing Development Authority to construct 223 houses for the Irrigation Department. The existing houses in the housing scheme including the quarters occupied by the Petitioner remained under the control of the Irrigation Department.

The Petitioner submitted that the 1st Respondent purportedly calming to act as a Competent Authority issued a notice to quit dated 27.07.2004 under the Government Quarters (Recovery of Possession) Act, requesting him to vacate the quarters that he occupies within two months with effect from 31.07.2004.

The Petitioner in this application is seeking to quash the said order contained in the quit notice dated 27.07.2004 on the basis that the quarters in which the Petitioner resides is now vested with the National Housing Development Authority and the 1st Respondent is not vested with the powers to function as Competent Authority. The purported notice served on the Petitioner by the 1st Respondent is ultra vires and is null and void as well as the action No.1593/S/04 filed in the Magistrate Court of Mt.Lavinia.

The 1st Respondent's position is that the Government Housing Scheme at Ratmalana was constructed by the Irrigation Department, for the employees of the then Department of Heavy Equipment and Machinery, which was affiliated to the Irrigation Department. Upon the abolition of the said Department of Heavy Equipment and Machinery, in or about 1985, the relevant Ministry viz Land and Land Development had transferred the housing scheme to the Ministry of Irrigation Power and Energy. The

Ministry of Irrigation Power and Energy by its letter dated 27.12.1995 handed over the housing scheme to the Irrigation Department with effect from 1.1.1996 (1R2). The quarters occupied by the Petitioner is also in the said housing scheme. Pursuant to a Cabinet Decision an extent of 18.7 acres of land on which the housing scheme was situated was released to National Housing Development Authority to construct 223 houses in the said land at a location identified by the Irrigation Department and hand them over to the Irrigation Department. The existing houses in the housing scheme including the quarters occupied by the Petitioner remained under the control of the Irrigation Department. The 1st Respondent submitted that the Petitioner is ceased to be entitled to occupy the Irrigation Department quarters as the Petitioner had retired from his employment on 12.04.2001. However the Petitioner continues to be in unauthorised occupation of the said quarters bearing No. 13A of the said housing scheme. Hence the 1st Respondent is entitled to issue a quit notice to the Petitioner under the Government Quarters (Recovery of Possession) Act. The Secretary Ministry of Public administration, by his letter dated 14th May 1981(1R1) duly authorised the 1st Respondent to be a Competent Authority for the purpose of the Government Quarters (Recovery of Possession) Act No 7 of 1969 as amended.

The said government quarters was allocated to the Petitioner by the Director of the Machinery Equipment Department. The said quarters had been taken over by the Ministry of Lands, Irrigation and Mahaveli Development in 1992. The houses in the said housing scheme including the quarters occupied by the Petitioner remained under the control of the Irrigation Department. As the Petitioner is now ceased to be in employment he cannot have a claim in the said quarters. Under the above circumstances the 1st Respondent is entitled to issue a quit notice to the Petitioner under the Government Quarters (Recovery of Possession) Act. Therefore this Court dismisses this application without costs.

Judge of the Court of Appeal