

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

Shanmugam Eswaramurthy
No. E/G/2,
National Housing Authority Building
N. H. S., Central Road,
Colombo 12.

PETITIONER

C.A. 280/2013 (Writ)

Vs.

1. National Housing Development Authority
No. 34,
Sir Chittampalam A Gardiner Mawatha,
Colombo 2.
2. Mr. Mahinda Mudhalige
General Manager,
National Housing Development Authority
No. 34,
Sir Chittampalam A Gardiner Mawatha,
Colombo 2.
3. The Chairman
General Manager,
National Housing Development Authority
No. 34,
Sir Chittampalam A Gardiner Mawatha,
Colombo 2.

RESPONDENTS

BEFORE: Anil Gooneratne J. &
W. M. M. Malinie Gunaratne J.

COUNSEL: K. V. S. Ganesharajah for the Petitioner
D. Tilakawardena S.C., for 1st, 2nd & 3rd Respondents

ARGUED ON: 21.10.2013

DECIDED ON: 28.10.2013

GOONERANTE J.

This is an application for a Writ of Certiorari to quash notice marked P15 of 6.8.2013 (quit notice issued by 1st Respondent Authority). Petitioner has also sought a Writ of Prohibition as per sub paragraph (c) of the prayer to the petition and interim relief (paragraph (d)). Learned counsel for the Petitioner on 21.10.2013 supported this application, before this court to obtain formal notice on the Respondents and for interim relief. State Counsel who appeared for the Respondents objected to issuance of formal notice.

The learned counsel for Petitioner drew the attention of this court to lease agreement P3 between the Petitioner and the 1st Respondent Authority. P3 lease agreement was entered on or about 31.10.1996, for a period of 2 years and

a limited purpose of using same for a shop. P3 indicates the period of use for the said limited purpose between 1.3.1996 to 28.2.1998. It was the position of the learned counsel for the Petitioner that the petitioner had duly paid the lease rental and sought to demonstrate due payments by referring to document P6 A1 to P6 A36 as pleaded. In brief it was his position that although the lease period was only for a period of 2 years the 1st Respondent Authority had even after the said lease period, accepted rent payments and thereby he is entitled in law to continue as a lessee. In fact paragraphs 7, 9 & 11 of the petition the Petitioner attempts to demonstrate that Petitioner has paid the amounts due. At a certain stage the 1st Respondent Authority offered to sell the premises. Learned Counsel for the Petitioner also argued that notice P15 is invalid and issuance of such a notice is illegal.

We also had the benefit to hear learned State Counsel, who submitted to court that the premises in question along with other such premises were offered for sale to the respective tenant and the Petitioner made no attempt to enter into any sales agreement but continued to make defaults in the amounts due to the 1st Respondent Authority. As such proceedings had to be instituted in the Magistrate's Court to recover possession of the premises in

dispute (proceedings instituted in August 2013). The case in the Magistrate's Court is pending, and that the Petitioner is in the footing of a trespasser.

This court had the opportunity to examine documents P7, P8 and P9 to P11A. All these documents suggest that the Petitioner is in arrears of rent and or the amount due to the 1st Respondent Authority. Document P7 indicates that as at 31.12.2008 the Petitioner is in arrears in a sum of Rs. 468000/-. P8 seems to be a payment receipt reflecting payments for the period January 2001 to March 2002 with surcharge and payments received for the period 2002 April to 2004 February. P9 & P10 again reflect the amount due for 2012 April to January 2013 and April 1st 2002 to 30.9.2012. The payment receipt reflect payments for April 2002 to February 2004 and January 2001 to March 2002 with surcharge. Letter P11A is self explanatory indicating the amount in arrears and the minute referred to therein to institute legal proceedings. Learned Counsel for the Petitioner also submitted that there is a dispute as regards the calculation of the amount due. If that be so it remains a disputed fact which would not be well suited for any court to review a dispute by way of a writ application.

The review procedure would not be well suited for the determination of disputed facts 2001(3) SLR 330; 1981 (2) SLR 471

Part VII (Section 62 – 69) of the National Housing Development Authority Act refer to recovery of possession of houses, flats and buildings of the 1st Respondent Authority. The quit notice P15 had been issued by the General Manager of the 1st Respondent Authority. It refers to Section 69(b) of the Act. It is a new part introduced by Amendment Act No. 30 of 1999. It reads as Part VII A. It appears to this court that all necessary steps by the 1st Respondent Authority to evict the Petitioner who is in default of payment and thereby in unauthorized possession, were proceeded and initiated in terms of the new Part VII A of the Amendment Act. This part of the statute empowers the General Manager to take steps to evict unauthorized persons in occupation of premises belonging to the 1st Respondent Authority. These provisions contained in the said Part of the statute are very wide and specific. Sections 69 A to 69 G covers a variety of situations commencing from the issuance of quit notice to writ of possession. The Petitioner is not without a remedy as the inquiry before the Magistrate would entitle the Petitioner to show cause and plead a valid defence as per Section 69E (5) of the Amendment Act. If the Magistrate is of the opinion that it would be unjust to order eviction (vide Section 69E(8), the Magistrate's Court could require the 1st Respondent Authority to enter into an agreement with the Petitioner. As such the Petitioner is not without an alternate remedy. I reject the argument of the

learned Counsel for the Petitioner that P15 quit notice is invalid. Further P15 quit notice is the earliest stage in the proceedings in the Magistrate's Court. In a way it is premature, application.

In all the facts and circumstances of this application for a prerogative writ, we are of the view that the Petitioner's application is without merit, and this is not a fit case to grant and permit the issuance of formal notice. Based on Petitioner's own pleadings he is a habitual defaulter of payments due to the 1st Respondent Authority, and thereby in terms of the above statute a trespasser, and or a person in unauthorized possession of 1st Respondent's premises The records produced by the Petitioner indicates default from the year 2004. In view of the reasons stated above we reject and refuse this application for notice. Application dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL