

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

Provincial Engineer,
Provincial Engineer's Office,
Anuradhapura.

Complainant.

VS.

**CA (PHC) 128/2008
HC Anuradhapura 22/2006(Rev)
MC Anuradhapura 44382**

Kumudini Shiraz,
336, Maithripala Senanayake Mw.
Anuradhapura.

Defendant

AND

Kumudini Shiraz,
336, Maithripala Senanayake Mw.
Anuradhapura.

Defendant-Petitioner

VS.

Provincial Engineer,
Provincial Engineer's Office,
Anuradhapura.

Complainant-Respondent

Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

Respondent

AND BETWEEN

Kumudini Shiraz,
336, Maithripala Senanayake Mw.
Anuradhapura.

Defendant-Petitioner-Appellant

Provincial Engineer,
Provincial Engineer's Office,
Anuradhapura.

**Complainant-Respondent-
Respondent**

Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12

Respondent-Respondent

BEFORE: **W.M.M. Malinie Gunaratne, J. and
P.R. Walgama, J.**

COUNSEL: Kalinga Indatissa, P.C. with Mahesh Senaratne and
Amila Palliyage with Eranda Sinharege
For the Defendant-Petitioner-Appellant.

Sobitha Rajakaruna DSG
For the Complainant-Respondent-Respondent.

Argued on : 10.03.2015 and 17.07.2015

Decided on:02.12.2015

Malinie Gunaratne, J.

The Complainant – Respondent – Respondent (hereinafter referred to as the Respondent) acting under Section 6 of the Government Quarters (Recovery of Possession) Act No.7 of 1969 (amended by Government Quarters Recovery of Possession Amendment Act No.8 of 1981 and Act No. 45 of 1985), instituted proceedings in the Magistrate’s Court of Anuradhapura under M.C Case No. 44382 on 30th August 2005, praying for the recovery of possession of government quarters situated at No. 336, Maithripala Senanayake Mawatha, Anuradhapura and for the ejectment of the Defendant - Petitioner-Appellant (hereinafter referred to as the Appellant) and her dependents from the said quarters.

After serving summons the Appellant appeared before the Magistrate’s Court and the learned Magistrate has given the opportunity to show cause as to why Writ of Eviction should not be issued against her.

The Appellant filed her objections in writing and the Respondent also filed objections thereto in writing. Having considered the submissions made by both parties the learned Magistrate delivered his Order on 24.03.2006, ejecting the Appellant from the subject quarters.

Being aggrieved by the said Order, the Appellant sought to move in revision against the said Order by the Revision Application No. 22/2006, filed before the High Court of Anuradhapura.

The learned High Court Judge of Anuradhapura, delivering his Order on 30.10.2008 affirmed the Order of the Magistrate and dismissed the Revision Application of the Appellant.

The Appellant has preferred this Appeal against the decision of the learned High Court Judge, praying for annulling of the said Order and for the reliefs prayed for in the Petition filed in the High Court of Anuradhapura.

The facts as admitted by both parties at the stage of hearing are as follows:

The Respondent (Provincial Engineer) instituted the action No.44382 in the Magistrate's Court of Anuradhapura under Section 6 of the Government Quarters (Recovery of Possession) Act and sought an order to eject the Appellant from the premises bearing No.336, Maithripala Senanayake Mawatha, Anuradhapura. The said premises was occupied by the husband of the Appellant which was allocated to him incidental to his employment in relation to his office held in public service. The husband died on 22nd January 2004 and the Deputy Secretary permitted the Appellant and her children to occupy the subject premises under the Establishment Code until 29.04.2004. Subsequently, she was requested by the relevant authorities to hand over the premises, but without complying with the request the Appellant is still occupying the said premises illegally and without any authority or permission.

Thereafter, the Respondent, made an application under Section 6 of the Government Quarters (Recovery of Possession) Act to eject the Appellant from the said premises and the learned Magistrate made an order to eject her from the said premises. The Appellant filed a Revision Application in the High Court of Anuradhapura against the said Order. The learned High Court Judge affirmed the Order of the learned Magistrate and dismissed the Revision Application. Aggrieved by the said Order the Appellant has preferred this appeal to this Court against the said Order of the learned High Court Judge.

In the course of the hearing in this case the main point that was very strenuously argued by the learned President's Counsel for the Appellant was, that the term "Government Quarters" is defined under Section 16 of the Government Quarters (Recovery of Possession) Act and in terms of the said definition any house or even quarters owned under the control of a Provincial Council would not fall within the definition of the term "Government Quarters" of the aforesaid Act. He further contended that in the aforesaid circumstances the Respondent has no authority to file an application under Section 6 of the Government Quarters (Recovery of Possession) Act.

Hence, the main ground urged by the learned President's Counsel for the Appellant in this appeal is Locus Standi / authority of the Respondent to file the application in the Magistrate's Court under Section 6 of the Government Quarters (Recovery of Possession) Act. The learned President's Counsel's contention is that officers of the Provincial Council are not empowered to act or to take action under a law enacted by the Parliament.

It is relevant to note that the Provincial Councils in Sri Lanka were established in 1987 under the 13th Amendment in order to devolve political powers regionally. Although the Government Quarters (Recovery of Possession) Act was enacted in 1969, every Provincial Council may subject to the provisions of the Constitution, make statutes applicable to the province with respect of any matters set out in List 1 (The Provincial Council List).

The learned Deputy Solicitor General has drawn the attention of this Court to an Article of President's Council Uditha Egalahewa – Judicial Approach to Devolution of Power Interpretation of the 13th Amendment to the Constitution. It is read as follows:

“Where there is a law with respect to any matter on the concurrent List on the date on which the 13th Amendment came into being, and a Provincial Council makes a statute on the same matter which is inconsistent with that law, the provisions of that law shall, unless the Parliament by resolution decides to the contrary, remains suspended and be inoperative within that province (Article 154 (G) (9))”.

Hence it is the contention of the learned Deputy Solicitor General that the Government Quarters (Recovery of Possession) Act which is enacted well before the implementation of Provincial Council system is still in force and the Provincial Councils are bound by the said law. He further contended, therefore, that the Provincial Councils are at the liberty of taking steps in terms of the said Act in relation to the Government Quarters in the respective Province and the officers of the Provincial Council are empowered to act or to take action under a law enacted by the Parliament.

I am of the view that there is merit in the submissions made by the learned Deputy Solicitor General although the learned President's Counsel had sought to impress upon Court that the only mechanism to apply the provisions of the Government Quarters (Recovery of Possession) Act in respect of official quarters belonging to a Provincial Council would have been passed a law enabling the provisions of Government Quarters (Recovery of Possession) Act to be applied in the case of Recovery Possession in respect of official quarters belonging to Provincial Councils.

Hence, the view of this Court is that the Respondent has authority to file the application under Section 6 of the Government Quarters (Recovery of Possession) Act in the Magistrate's Court of Anuradhapura.

The next matter to be considered is whether the Respondent could be identified as a "competent authority" for the purpose of the Government Quarters (Recovery of Possession) Act. Although the subject of "Government Quarters" is not listed under the Provincial Council List of the 9th Schedule of the 13th Amendment to the Constitution, the documents marked as Y 1 to Y 14 filed in the Magistrate's Court by the Respondent shows the delegation of power and authority that has been conferred upon the Respondent who filed the application in the Magistrate's Court of Anuradhapura. The contention of the learned Deputy Solicitor General is that the North Central Provincial Council has not legislated any statute in derogation of the Government Quarters (Recovery of Possession) Act and therefore the said Provincial Council is empowered to exercise powers under the said Act of Parliament and the said Act is in full force within the said Provincial Council and thereby the Respondent is a Competent Authority for the purpose of the Government Quarters (Recovery of Possession) Act.

In addition the learned Deputy Solicitor General has drawn the attention to the Section 9.1 of the Chapter XIX of the Establishment Code. In terms of the said section the competent authority in relation to Government Quarters Act, is the Secretary to the Ministry of Public Administration who has delegated his powers to the Director of Establishments, the Additional Director of Establishments and all Government Agents and, in appropriate instances on request, to other Local Heads of Departments or Heads of Departments and Secretaries to the Ministries. Hence, the contention of the learned Deputy Solicitor General is that in view of the said provisions of the Establishment Code and in the light of the above submissions, the Respondent can be identified as a Competent Authority for the purposes of the Government Quarters (Recovery of Possession) Act.

Hence, I am agreeable with the submissions of the learned Deputy Solicitor General that the statement made in the application that P.H. Sunil Bandara, Deputy Chief Secretary (Engineer) was the competent authority for the purpose of the Act must therefore be taken to be correct.

The next issue to be examined is whether the subject premises comes within the purview of "Government Quarters" under the definition of the Government Quarters (Recovery of Possession) Act.

The "Government Quarters" is defined in Section 9 of the Act as follows:

"Government Quarters means any building or room or other accommodation occupied for the use of residence which is provided by or on behalf of the Government or any public corporation to any person and

includes any land or premises in which such building or room or other accommodation is situated, but does not include any house provided by the Commissioner for National Housing to which Part V of the National Housing Act applies”.

In *Piyathilake vs. Vincent Pandita* (1989) 1 SLR 109, it was held, according to this definition two requirements should be satisfied for premises to be considered as Government Quarters.

- i. The building room or other accommodation should be occupied or used for the purpose of residence.
- ii. It must be provided by or on behalf of the Government or a Public Corporation to any person.

According to the long title to the Government Quarters (Recovery of Possession) Act, its provisions are intended for the recovery of possession of quarters provided by or on behalf of the Government or a Public Corporation for the occupation of persons.

In the course of the hearing in this Court, although the learned President’s Counsel for the Appellant had sought to impress upon Court that the disputed premises is not a Government Quarters, the learned Deputy Solicitor General invited the attention of Court to the documents filed by the Respondent along with the application filed in the Magistrate’s Court, marked as 1 – 11. On a consideration of those documents it is very clear that the Appellant has conceded that the disputed premises is Government Quarters. Hence, the view of this Court is, that the disputed premises lie

within the strict and exhaustive definition of "Government Quarters" and therefore the contention of the learned President's Counsel is untenable.

In view of the provisions of the Government Quarters (Recovery of Possession) Act, that every application for ejectment should be conclusive evidence of the facts set out and therein. In the case of *Re. Vs. D.S.E.P R Senanayake* 75 N.L.R 215, it was held that the Government Quarters (Recovery of Possession) Act makes provision for the issue of writ upon an *ex parte* application and in the first instance, upon an application the Magistrate has no option but to make order for the issue of the Writ.

In the context of the case in hand it is important to consider, although the Government Quarters (Recovery of Possession) Act does not provide any mechanism to grant an opportunity to show cause before the Magistrate after filing an application under Section 6 of the Government Quarters (Recovery of Possession) Act, the Magistrate has allowed the Appellant to show cause, why she should not be issued an order for ejectment.

However, for the reasons aforesaid, the view of the Court is, reasons set out by the Appellant do not find any matters which are legally relevant to the question of ejectment.

For the reasons set out above I hold that the learned Magistrate's Order for ejecting the Appellant is correct and as such there is no reason to set aside the said Order. I hold, the view that the learned Magistrate had correctly made the order for ejectment. Therefore it is not necessary to interfere with the judgment of the learned High Court Judge who affirmed the Order of the learned Magistrate. Accordingly no ground exists which justifies the intervention of this Court to set aside the Order of the learned

High Court Judge dated 30.10.2008 and the Order of the learned Magistrate dated 24.03.2006.

For the above reasons I hold that there is no merit in this appeal and dismiss it.

JUDGE OF THE COURT OF APPEAL

P.R. Walgama, J.

I agree

JUDGE OF THE COURT OF APPEAL

Appeal dismissed.