

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

<b>Court of appeal case no.</b>	Ranaweera Demodarasage Somadasa,
<b>CA/PHC246/2004</b>	Assistant Field Quarters,
<b>H.C. Badilla case no.</b>	Wewelhinna Section, Demodara
<b>136/2002</b>	<b>Respondent Respondent Appellant</b>
<b>M.C. Bandarawela case</b>	<b>Vs.</b>
<b>no. 14907</b>	Abhayananda Dias,
	Director,
	Plantation Management and Monitoring
	Division,
	No. 55, Vauxhall Street, Colombo 2.
	<b>Substituted Petitioner Petitioner Respondent.</b>

**Before** : P.R. Walgama J.

: L.T.B. Dehideniya J.

**Counsel** : Shehan Wijegunawardhana for the Respondent Respondent  
Appellant.

: Dephni Peiris for the Petitioner Petitioner Respondent.

**Argued on** : 31.05.2016

**Written submissions filed on** 07.07.2016

**Decided on** : 09.09.2016

**L.T.B. Dehideniya J.**

The Petitioner Petitioner Respondent (the Respondent) as the competent authority under the Government Quarters (recovery of possession) Act filed an application in the Magistrate Court of Bandarawela under section 6 of the Act seeking an order of eviction against the Respondent Respondent Appellant (the Appellant). On notice, the Appellant appeared in Court and sought the indulgence of Court for time to vacate the premises. The learned Magistrate allowed the Appellant to vacate on a date after three months, on 05.03.2001. On that day the Appellant did not appear in Court and later surrendered. Thereafter he took several days to show cause but not file any show cause. The learned Magistrate called for the indenture of lease entered into between the Janatha Estate Development Board (JEDB) and the Hapugasthenna Plantation Ltd and held that the estate is leased to the Hapugasthenna Plantation Ltd and dismissed the application. The Petitioner moved in revision in the High Court of Badulla where the order of the learned Magistrate was set aside and the eviction order granted. Being aggrieved by the said order, the Appellant presented this appeal to this Court.

Under section 6 of the Government Quarters (recovery of possession) Act the competent authority has to file in Court the application with relevant documents which is called "the application for ejection" in Court. The section reads thus;

*(1) In any case where the occupier of any Government quarters fails to comply with the provisions of paragraph (b) of section 4 in respect of any quit notice served on him relating to any Government quarters, any competent authority (whether or not he is the competent authority who issued 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 having jurisdiction over the area in which such quarters are situated*

*(a) setting forth the following facts, namely*

- (i) that he is a competent authority for the purposes of this Act,*
  - (ii) that a quit notice (a copy of which is attached to the application) was served on the occupier of such quarters,*
  - (iii) the reason for the serving of such quit notice on the occupier, and*
  - (iv) that such occupier has failed to comply with the provisions of the aforesaid paragraph (b) in respect of such notice relating to such quarters; and*
- (b) praying for the recovery of possession of such quarters and for the ejectment of such occupier and his dependants, if any, from such quarters.*

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

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

*(4) Every application for ejectment shall be conclusive evidence of the facts stated therein.*

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

In the present case the competent authority has filed the application for ejectment in the Magistrate Court. Under subsection 4 of section 6 application for ejectment is conclusive evidence of the facts stated therein. The learned Magistrate is not expected to inquire in to the veracity of the

facts stated in the application. In the present case, the learned Magistrate called for the indenture of lease to verify the facts stated in the application. The learned Magistrate stepped out of his authority. Section 7 of the Act stipulates that the next step is to issue the writ of possession. If the Magistrate is satisfied that the application is in order, not the veracity of the facts stated in the application but whether the papers are in order, he has to proceed to issue the writ of possession. The section 7 reads;

*(1) 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 dependants, if any, from such quarters.*

*(2) Notwithstanding anything in any other law, the issue or re-issue of a writ of possession under subsection (1) shall not be stayed in any manner, by reason of any steps taken or proposed to be taken in any court with a view to questioning the issue or re-issue of such writ of possession or the quit notice in pursuance of which such writ of possession is issued or re-issued.*

*(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.*

In the present case the learned Magistrate adhering to the law, went on a voyage of discovery to determine the correctness of the facts pleaded by the competent authority.

The learned High Court Judge has correctly decided that the learned Magistrate's function under this Act is only a ministerial act and set aside the order of the learned Magistrate and issued a writ of execution.

The Appellant in the present appeal has taken the stand that the proof of the service of the quit notice is not tendered with the revision application and it is violation of the Rule 3(1). The Rule requires only tendering the originals or certified copies of the material documents. The proof of service of the quit notice was not challenged in the Magistrate Court. In fact, the Appellant appeared in Court and requested Court to grant time to vacate the premises. When the Appellant made the application for time, he impliedly admits that the application for ejectment is in order and the Court can issue the writ of possession forthwith. Thereafter he cannot challenge any of the contents of the application for ejectment. He is precluded from doing so.

Under these circumstances, I do not see any reason to interfere with the finding of the learned High Court Judge. I affirm the order of the learned High Court Judge.

The appeal is dismissed subject to costs fixed at Rs. 10,000/-

Judge of the Court of Appeal

**P.R. Walgama J.**

I agree.

Judge of the Court of Appeal