

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

*In the matter of an Application in terms
of Article 105(3) of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

C A (Contempt) Application

No. 105 / 2015

Don Piyasena Karunaratne,

No. 01,

Stadium Road,

Anuradhapura.

PETITIONER

-Vs-

1. H P Somadasa,
Mayor
Municipal Council,
Anuradhapura.

2. S S M Sampath Rohana Dharmadasa,
Municipal Commissioner,
Municipal Council,
Anuradhapura.

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

RESPONDENTS

Before: Vijith K. Malalgoda PC J (P/CA)

P. Padman Surasena J

Counsel: Senany Dayaratne with Pulasthi Hewamanne for the Petitioner,

Dharshana Kuruppu with Chinthaka Udayanga for the 1st & 2nd

Respondents,

Anusha Samaranayake DSG for the 3rd Respondent.

Written submissions of the Petitioners filed on: 2016-05-31

Written submissions of the 1st & 2nd Respondent filed on: 2016-05-31

Decided on: 2016-11-08

JUDGMENT

P Padman Surasena J

Petitioner had filed a writ application in the High Court of North Central Province holden in Anuradhapura, upon which, learned High Court Judge of Anuradhapura in his judgment dated 1998-03-10, held that the house which is the subject matter of the dispute is not a house which has been given to the Petitioner as an official quarters. Learned High Court Judge appears to have held that this house had been given to the Petitioner on rent. Upon an appeal preferred by the Urban Council, Anuradhapura, this court by its judgment dated 2010.03.18 [marked as **P 7(a)**], has affirmed the judgment of the learned High Court Judge and dismissed the said appeal.

It is the complaint made to this court by the Petitioner that the decision made by the 1st Respondent in **P 13** and the report made by the 2nd Respondent dated 2014-11-11 disclosed a deliberate disdain of the court or a disregard, or defiance of the court.¹ Petitioner has on this basis prayed in his petition that the 1st and 2nd Respondents be punished for the offence of contempt of court.

It is now appropriate to turn to the portion relevant from the charge served on the 1st and 2nd Respondents. It is reproduced below;

" for the offence of Contempt of Court committed against the Honourable Court of Appeal, and in disrespect of the authority of the Honourable Court of Appeal, and of the Honourable High Court of the North Central Province, by

- (a) deliberately and willfully refusing to accept and give effect to the said Judgment of their Lordships of the Court of Appeal in C A/ (PHC)/ 108/ 98 and of the attendant Judgment of the Honourable High Court of the North Central Province in (Writ) Certiorari Application No. 19/1996, and deliberately and willfully acted contrary to the letter and spirit of the said Judgments; and,

¹ Paragraph 16 of the petition

(b) willfully disobeying the said Judgment of their Lordships of the Court of Appeal in C A/(PHC)/108/98 and of the attendant Judgment of the Honourable High Court of the North Central Province in (Writ) Certiorari Application No. 19/1996, and deliberately and willfully acted contrary to the letter and spirit of the said Judgments. "

Issue before this court in this proceeding at this moment is whether the 1st and 2nd Respondents are responsible for whatever the actions alleged to have been committed by them as set out in the charge. It would also be necessary to ascertain in this exercise, whether any actions or omissions on the part of either the 1st Respondent or the 2nd Respondent as disclosed by the document marked **P 13** and the report dated 2014-11-11 amount to contempt of court. It has to be noted that the letter marked **P 13** has been sent by the 1st Respondent to the Petitioner replying his letter dated 2014-11-03. The 1st Respondent has also annexed to that reply, the report (**P 13**) dated 2014-11-11 made by the 2nd Respondent.

What the letter **P 13** has stated is that it is not possible to transfer to the Petitioner, the house in which the Petitioner resides on rent. It must be noted that neither the High Court nor the Court of Appeal had directed that this house be handed over to the Petitioner. All what the High Court has done is to have the quit notice quashed by a writ of Certiorari. There is no direction by Court on either of the Respondents that they should take steps to hand over this house to the Petitioner.

Indeed, as pointed out by the learned counsel for the 1st and 2nd respondents, learned High Court Judge has refused to issue a writ of Mandamus to compel the Urban Council of Anuradhapura and the secretary of the Urban Council, Anuradhapura to transfer this house to the Petitioner. That was on the basis that the available material in that case had not warranted an issuance of a writ of Mandamus for that purpose. It is therefore clear that the prayer by the Petitioner to compel the owners of this house to transfer the said house in the name of the Petitioner, has been refused by the learned High Court Judge of Anuradhapura. It is therefore abundantly clear that the Respondents of this application are not under direction of Court to effect a transfer of this house to the Petitioner. In these circumstances, the attempt by the Petitioner to get this Court to

hold that the Respondents are guilty of contempt for violation of the judgment delivered by the High Court could only be viewed as an attempt to have the once refused Writ of Mandamus activated through unlawful means.

Indeed, the 2nd Respondent in his report dated 2014-11-11 has referred to the High Court case and its decision. The 2nd Respondent has merely set out in that report the present state of affairs with regard to this house. In any case it is a report addressed to the 1st Respondent made by the 2nd Respondent in the course of his official duties.

Learned counsel for the Petitioner submitted that he has also filed a Fundamental Rights application in the Supreme Court seeking a direction to have this house transferred in the name of the Petitioner on the basis that the Petitioner has been discriminated against some others.

It is the view of this court that for a person to be held liable for an offence of contempt of court, there must be a deliberate defiance or disobedience of a Court order and that defiance or disobedience must be capable of being attributed to that person.

The defiance on the part of the 1st and 2nd Respondents complained of by the Petitioner is their failure to transfer this house to the Petitioner. For this court to hold that the 1st and 2nd Respondents have defied a court order, firstly there must exist a court order to that effect. When there is no Court order to that effect, there can't be a question of defiance or disobedience.

For the reasons set out above we hold that the 1st and 2nd Respondents are not liable to be dealt with for an offence of contempt of court and hence we discharge the rule made against the 1st and 2nd Respondents and dismiss this application with costs.

Application is dismissed with costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL