IN THE COURT OF APPEAL OF THE

DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Appeal to Court of Appeal under Article 154 P (6) read with Article 138 of the Constitution against a judgment of Provincial High Court exercising its writ jurisdiction.

C A (PHC) / 200 / 2012

Provincial High Court of

North Western Province

(Kurunegala)

Case No. NWP/HCCA/KUR 23 / 2011 (Writ)

1. Chairman,

   Polgahawela Pradeshiya Sabha,

   Polgahawela.

2. Polgahawela Pradeshiya Sabha,

Polgahawela.

RESPONDENT - APPELLANTS

-Vs-

Ratnayaka Mudiyanselage

Chandrawathie Rathnayake,

Prarthana Café,

Alawwa Junction,

Polgahawela.

PETITIONER – RESPONDENT

Before: K K Wickremasinghe J

P. Padman Surasena J

Counsel; R Chula Bandara with Mangala Jeevendra for the Respondent - Appellants.

Geeshan Rodrigo for the Petitioner-Respondent

Argued on : 2017-09-04

Decided on : 2017 - 10 – 23

JUDGMENT

P Padman Surasena J

The Respondent - Petitioner (hereinafter sometimes referred to as the Respondent) had filed an application in the Provincial High Court of the North Western Province holden in Kurunegala praying for a writ of Certiorari to quash the decision of the Respondent - Appellants (hereinafter sometimes referred to as the Appellants) to evict the Respondent from the premises relevant to this case.

The Respondent admittedly had entered in to a contract with the Appellants to carry on a business of running a canteen situated in the building, which has housed the Polgahawela Bus Stand.[1]

A dispute between the Respondent and the Appellants had arisen over the rent chargeable by the Appellant for the said canteen premises.

The Respondent had instituted the case No. 71125/L in the District Court of Kurunegala in the year 2007 regarding the said impugned premises. However, it has transpired that the learned District Judge had refused to grant the interim relief the Respondent had prayed for in that case. The Respondent had thereafter withdrawn the said District Court case.

It appears that it was at that stage that the Respondent had chosen to obtain a ban, to prevent her being evicted from the impugned premises by way of a writ of certiorari. It has become impossible, due to the impugned judgment of the Provincial High Court, for the Appellants to take any action against the Respondent. This is despite the fact that the Respondent continues to enjoy the possesson carrying on her private business in a

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[1] Paragraph 2 & 3 of the application filed in the Provincial High Court by the Respondent.

premises built and maintained by public funds while not paying a cent as rental. It is not disputed that the Respondent had not paid up to now, the sum payable by her to the Appellant. This is despite the fact that the 18 months period reckoned from 2011-06-06, the date of the letter produced marked ඔඋ **6** by the Respondent, has long passed. Indeed this is the letter, which formed the very foundation of the case for the Respondent.

Learned counsel for the Respondent on being inquired by this Court confirmed that the sum payable to the Appellant by the Respondent in terms of ඔඋ **6** has not been paid up until now. It would be difficult for any Court to condone such a state of affairs and it is indeed a quite regrettable state of affairs. Mockery of the issuance of the writ of certiorari by the Provincial High Court is that no course of action has been left to the Appellants. As a result, they cannot either recover the rent due to them or take back their own property from the Respondent. This is despite the fact that the Respondent does not have any right either legal or moral, to remain in that premises.

Perusal of the material adduced by parties and the judgment dated 2012-03-15 pronounced by the learned Provincial High Court Judge shows that it is a common ground that rights and obligations of parties in the instant case are purely contractual.

The Appellant had raised that issue before the Provincial High Court as an objection to the exercise of writ jurisdiction. Unfortunately learned Provincial High Court Judge has failed to appreciate the importance of that point. He appear to have misunderstood the law pertaining to this issue as well as the concept of legitimate expectation.

This Court is of the view that the 'legitimate expectation' which the learned Provincial High Court Judge has referred to, must be seen only as an offer subject to certain condition[2] and not as a legitimate expectation. It remains as an option given to the Respondent and it is the Respondent who should choose to fulfil the conditions attached to it.

In any event the Appellant being a Pradeshiya Sabha, will have to follow necessary tender procedures etc. before it could lawfully permit anyone to

[2] To carry on her business by entering into a fresh agreement after paying the sums due.

occupy the impugned premises which is a building maintained at the expense of public funds.

There is no legal duty cast on the Appellants to allocate the impugned premises to the Respondent in the said bus stand.

Further, an expectation whose fulfillment requires that a decision maker should make an unlawful decision cannot be a legitimate expectation. Thus, it is necessary that the fulfillment of the legitimate expectation, breach of which is complained of, must be within the powers of the relevant public authority.

In the case of Wannigama V The Incorporated Council of Legal Education and 16 others[3], the Supreme Court held that an applicant in a writ application cannot rely upon a legitimate expectation unless such expectation is founded upon either a promise or an established practice.

Thus, the Respondent had not established before court that the Appellant had given her a legitimate expectation.

The document marked ඔඅ **3** is merely a contractual agreement between the Chairman of the Pradeshiya Sabha and the Respondent. It stands as a commercial transaction between them. The Respondent by letter produced marked ඒ ඇ **6** had requested for more time, namely two weeks, to pay the amount of money payable by her to the Appellants. The letter produced

[3] 2007 Bar Association Law Reports 54.

marked ඉඅ 8 is clearly a reply to the above letter, sent by the Respondent granting the very request made by her. It is the receipt of the said letter dated 20111-07-06 produced marked ඉඅ 8, which had prompted the Respondent to seek a writ of certiorari from the Provincial High Court.

As has been mentioned before, it is clear that the Respondent, for the reasons best known to her, had decided to discontinue the District Court case.

Writ jurisdiction of this court would be exercised at the discretion of court. One main requisite condition is that the Petitioner must come to court with clean hands. It is also necessary that the right such Petitioner asks Court to protect in writ proceeding must be a legally protectable right.

The relationship between the Appellants and the Respondent in the instant case is purely contractual. That contract is commercial in nature. The Respondent has failed to prove any arbitrary action on the part of the Appellants. Besides, an undue advantage has been accrued to the Respondent by the impugned issuance of the writ.

The circumstances set out above, convince this Court that the application to the Provincial High Court for a writ of certiorari is misconceived in law and that the Respondent has filed this application for ulterior motives.

Despite the undertaking by the learned counsel for the Respondent to file written submission in this Court by 2017-09-22, the said undertaking was observed in the breach. Thus, this Court has no alternative but to conclude that the Respondent has no ground to be placed before this Court on his behalf, for its consideration. Therefore, this Court has to proceed on the basis that there indeed exists not a single ground in favour of the Respondent. Resultant position would be for this Court to conclude that it should allow this appeal.

If this court does not set aside, the judgment of the Provincial High Court issuing a writ of Certiorari referred to above (which issuance is illegal), all what this court does would be facilitating the continuance of an illegal activity unabated.

In these circumstances, this Court decides to allow the appeal and set aside the judgment of the learned Provincial High Court Judge dated 2012-03-15.

The Respondent has abused the writ jurisdiction of Provincial High Court to gain a personal benefit, which she is not entitled to obtain in law. She, in the course of that process has made the system of administration of justice

of this country a mockery. The rule of law demands that a clear message should be sent to the Respondent as well as to the others who would dare to engage in that kind of practices. Hence this Court decides to direct the Respondent to pay to the 2nd Appellant a cost in a sum of Rs. 300,000/=.

JUDGE OF THE COURT OF APPEAL

K K Wickremasinghe J

I agree,

JUDGE OF THE COURT OF APPEAL