

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

In the matter of an Appeal under  
Section 11 of the Provincial High  
Courts (Special Provisions) Act No.  
19 of 1990 .

**C.A.(PHC) No. 09/2012**  
**P.H.C. Anuradhapura**  
**No. NCP/ HCCA (Writ)09/2011**

G.M. Jayakody  
No.146, Mihinthala Road,  
Old Town,  
Anuradhapura  
**Petitioner-Appellant**

Vs.

1. Municipal Council of Anuradhapura,  
Anuradhapura.
2. Ajantha Gunawardane  
Commissioner,  
Anuradhapura Municipal Council.  
**Respondent-Respondent**

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**BEFORE** : JANAK DE SILVA, J. &  
ACHALA WENGAPPULI, J.

**COUNSEL** : Ranjith Perera for the Petitioner-Appellant  
instructed by Tanya Thabrew.  
Esara Wellala for the Respondent-Respondents

ARGUED ON : 13<sup>th</sup> June, 2018

WRITTEN SUBMISSIONS

TENDERED ON : 03-07-2018 (by the Respondent)

DECICED ON : 24<sup>th</sup> July, 2018

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ACHALA WENGAPPULI, J.

The Petitioner-Appellant (hereinafter referred to as the "Appellant") was served with a quit notice, issued under Section 3 of the Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978 as amended, by the 2<sup>nd</sup> Respondent-Respondent on behalf of the 1<sup>st</sup> respondent (hereinafter referred to as the "Respondents") on 05.04.2011.

It is stated that the Appellant was employed by the 1<sup>st</sup> Respondent as a meter reader since February 1976. He was provided with official quarters, which he occupied until he was served with the said quit notice. The official quarters was made available to the Appellant by the Respondents, under an agreement of rent with the condition that it is only a temporary arrangement and he is to handover its possession on short notice. Parties have entered into the said agreement on 15.09.1976.

Thereafter, in November 1984 the parties entered into another agreement of rent which included a clause that it is subject to the provisions of Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978.

When the quit notice was issued on the Appellant, he sought a Writ of Certiorari from the Provincial High Court holden in Anuradhapura to quash the said notice. The Provincial High Court, by its order dated 29.02.2012, refused the Appellant's application and he seeks to invoke appellate jurisdiction of this Court to set it aside.

The Appellant, in seeking to quash the quit notice, sought a Writ of Certiorari on the basis that he is not an employee of the 1<sup>st</sup> Respondent since 01.11.1984 and therefore the 2<sup>nd</sup> Respondent could only claim possession through a civil action instituted under the Rent Act.

In refusing relief to the Appellant, the Provincial High Court considered primarily that he is not entitled for a Writ of Certiorari as he claims relief under a contract. The Provincial High Court opted to follow the reasoning of the judgments of *Perera v NHDA* (2001) 3 Sri L.R. 50, *Podi Nona v Municipal Council, Horana* (1980) 2 Sri L.R. 141 and *Jayaratne v Wijesekere*(1985) 2 Sri L.R. 413.

The Appellant, in support of his appeal submitted to this Court that the quit notice was issued unlawfully as the parties are bound by the terms of the agreement and therefore the Provincial High Court should have issued the Writ.

In view of this submission, it is necessary to consider the said agreement of tenancy and the applicable provisions of the Local Authority Quarters (Recovery of Possession) Law.

As already noted the clause 6 of the agreement of rent dated 10.10.1986, has reserved the Respondents' right to recover possession of

the quarters which the Appellant occupies, under the provisions of Local Authority Quarters (Recovery of Possession) Law.

Section 2 of the said Law states that;

“The provisions of this Law-

- (a) Shall apply to all local authority quarters;  
and
- (b) Shall be deemed at all times to have been, and to be, an implied condition of the occupation by persons of such quarters.”

In relation to the Appellant, in addition to the said deeming provision, there is specific clause in the agreement that in recovery of the quarters, the provisions of the said Law will be resorted to. This particular Section made all persons in occupation of such quarters under the purview of the said Law.

A similar situation arose before the apex Court in *Balasunderam v The Chairman, JEDB and Others* (1997) 1 Sri L.R. 83 for consideration. The appellant before the Supreme Court was issued with a quit notice under Section 3 of the Government Quarters (Recovery of Possession) Act No. 7 of 1979.

It was held that;

*“the power to serve quit notice is not limited to a case where the person in occupation is an employee of the*

*estate. Quarters provided "to any person" by a public corporation can be recovered under the act."*

The Supreme Court also held that a "*person who had been provided quarters prior to the date of the Act would also be subject to be ejected under the Act*". This reasoning was followed by this Court in *Thamel v Road Development Authority and Others* (2005) 2 Sri L.R. 175.

Considering the wording used in Section 2 of the Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978 as emended, it is clear that the Respondent could serve a quit notice on the Appellant as the occupier of the quarters. Clause 6 of the agreement of rent also referred to the provisions of the said Law for the recovery of possession.

Therefore, the Appellant brought himself under the purview of the said Law and is therefore subject to its provisions. Since there is no challenge as to the 2<sup>nd</sup> Respondent's decision to issue quit notice on the Appellant, this Court holds that the Appellant is not entitled with the relief he sought from the Provincial High Court upon the very agreement he relied on to challenge the quit notice.

In relation to the order of the Provincial High Court, it must be observed that it proceeded to dismiss the Appellant's application also on the basis that the Respondents have not acted in *ultra vires*. In addition, it proceeded to hold that the availability of alternative efficacious remedy under breach of contract and as the Appellant claimed that the parties are bound by the terms of a written contract, he is not entitled to a discretionary remedy by way of a prerogative Writ.

We see no reason to interfere with the order of the Provincial High Court and therefore hold that there is absolutely no merit in the appeal of the Appellant.

Accordingly, the Appeal of the Appellant is dismissed with costs fixed at Rs. 25,000.00

**JUDGE OF THE COURT OF APPEAL**

**JANAK DE SILVA, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**