

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

E.K. Premasiri

No.21/09, Beheth Gabadawa Para,

Monaragala.

Case No: CA(PHC) 176/2013

Respondent-Petitioner-Appellant

H.C. Moneragala Case No. 09/2012 (Revision) Vs.

M.C. Moneragala Case No. 54356

01. District Secretary,

- District Secretariat,

Monaragala.

Applicant-Respondents-Respondents

02. Attorney General

Attorney General's Department,

Colombo 12.

Respondent-Respondent

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel:

Shyamal A. Collure with A.P. Jayaweera for Respondent-Petitioner-Appellant

Nuwan Pieris State Counsel for Applicant-Respondent-Respondent and Respondent-Respondent

Written Submissions tendered on:

Respondent-Petitioner-Appellant on 08.05.2018

Applicant-Respondent-Respondent and Respondent-Respondent on 31.05.2018

Argued on: 26.02.2018

Decided on: 03.08.2018

Janak De Silva J.

This is an appeal against the judgement of the learned High Court Judge of the Uva Province holden in Moneragala dated 19.11.2013.

The Applicant-Respondent-Respondent (Respondent) made an application under the Government Quarters (Recovery of Possession) Act No. 7 of 1969 as amended (Act) to the Magistrates Court of Moneragala in terms of section 6 of the Act to evict the Respondent-Petitioner-Appellant (Appellant) from the government quarters referred to therein. The Appellant appeared before the Magistrate's Court and submitted that:

- (1) The said application has not been verified by a duly perfected affidavit
- (2) Without prejudice to the said position, the wife of the Appellant has been issued a grant in terms of section 19(4) of the Land Development Ordinance for the said land on which the government quarters are situated

The learned Magistrate overruled the objections and issued a writ in terms of section 7 of the Act requiring and authorizing the Fiscal to deliver possession of such quarters to the Respondent.

The Appellant moved in revision against the said order to the High Court of the Uva Province holden in Moneragala. The learned High Court Judge after hearing parties dismissed the revision application. Hence this appeal.

The learned Counsel for the Appellant submitted that the judgement of the learned High Court Judge should be set aside for any one or more of the following reasons:

- (1) The notice to quit has failed to give the Appellant two months' notice as required by section 3(4) of the Act
- (2) There was no valid application for ejectment inasmuch there was no proper affidavit filed in support of the application for ejectment
- (3) The wife of the Appellant has been issued a grant in terms of section 19(4) of the Land Development Ordinance for the said land on which the government quarters are situated

The question for determination is whether the learned High Court Judge was correct in refusing to exercise revisionary jurisdiction against the impugned order of the learned Magistrate. The learned High Court Judge refused to do so as he was of the view that the revision application was made after undue delay, that there was a valid affidavit filed with the application and that the grant produced by the Appellant was not in relation to the government quarters in question.

However, there is a much more fundamental issue on which the revision application ought to have been dismissed in limine. Revision is a discretionary remedy. The conduct of a petitioner is a relevant consideration when he asks for relief by invoking a discretionary remedy such as revision. Where a petitioner invokes the jurisdiction of the Appellate Court by way of revision as in the present case, the Court expects and insists on *uberrima fides* [*Navaratnasingham v. Arumugam and another* (1980) 2 Sri.L.R. 1]. Revision will be refused where a petitioner is guilty of suppression of material facts [*Seneviratne v. Francis Fonseka Abeykoon* (1986) 2 Sri.L.R. 1]. If there is anything like deception the Court ought not to go in to the merits, but simply say "we will not listen to your application because of what you have done" [*Fonseka v. Lt. General Jagath Jayasuriya et al* (2011) 2 Sri.L.R. 372]. During the argument the parties were requested to address this point in their written submissions.

The facts of this case clearly establish the unmeritorious conduct and complete lack of *uberrima fides* on the part of the Appellant as well as the deception he sought to practice on court.

The Appellant was given the government quarters in issue on 16.09.1988 (වග.1). It was given on a temporary basis and the Appellant was specifically informed that the quarters must be handed back if required for an officer of the relevant grade. The Appellant was given it when he was working as a driver attached to the Moneragala District Combined Village Development Project. He went on transfer in 1995 and in 1996 he was requested to hand back the quarters (වග.2). As he failed to do so, several reminders were sent (වග.3) (වග.4) (අ), (වග.4) (ආ), (වග.4) (ඇ), (වග.4) (ඈ). After what appears to be a prolonged silence and refusal on his part, the Appellant on 11.12.2000 requested time until December, 2000 to hand over possession as his children are schooling (වග.5). He was then given time until 02.01.2001 to hand back the quarters (වග.6). As he failed to do so, proceedings were commenced under the Act in August, 2001 (වග.7). A request was made to the Registrar, District Court, Moneragala on 26.10.2001 to execute the order obtained under the Act (වග.8). The request was repeated on 17.05.2002 and 15.08.2002 (වග.9) (ආ), (වග.9) (ඇ).

After the Moneragala District Combined Village Development Project was concluded, part of the houses and assets of the said project was vested in the Reawakening Wellassa project and the balance in the Moneragala District Secretaries Office and other institutions (වග.10). The District Secretary, Moneragala by letter dated 02.12.2008 directed the Appellant to hand back the quarters (වග.11). In response to the said letter, the Appellant requested that he be permitted to occupy the quarters until he retired in 2009 (වග.12). The Appellant was informed that it was not possible to accede to his request (වග.13). It appears that the Appellant continued to occupy the quarters even after he retired from government service on 31.03.2011. (වග.14) (වග.15) (වග.16). These proceedings were begun only thereafter.

The above facts clearly show that the Appellant continued to occupy the government quarters many years after he ceased to be permitted to do so. He initially sought to extend his stay on the basis that his children were schooling. Thereafter, he disregarded all notices sent requesting the quarters to be handed back. Importantly, in 2008 by වග.12 he requested for permission to occupy the quarters until his retirement in 2009. The grant under section 19(4) of the Land Development Ordinance purportedly in relation to the land on which the quarters are situated issued in favour

of his wife is dated 13.09.1999. If the said grant was in relation to the quarters in dispute the Appellant would have certainly responded to the above letters by asserting that his wife has become the owner of the said quarters. But he never took up that position. The necessary conclusion is that the said grant is not in relation to the quarters in dispute as correctly concluded by the learned High Court Judge. The Appellant has attempted to mislead first the Magistrates Court, then the High Court and finally this Court into believing that the said grant was in relation to the quarters in dispute. This conduct is certainly unmeritorious and shows a complete lack of *uberrima fides*. More importantly, it shows a blatant attempt at deceiving court. The revision application of the Appellant to the High Court must be dismissed on that ground alone.

In *Seneviratne v. Francis Fonseka Abeykoon* (supra) Tambiah J. held (at page 7):

“Revision is a discretionary remedy. The conduct of a petitioner is a relevant consideration when he asks for relief by invoking a discretionary remedy such as Revision.”

For the foregoing reasons, I see no reason to interfere with the judgement of the learned High Court Judge of the Uva Province holden in Moneragala dated 19.11.2013.

The appeal is dismissed with costs of Rs. 50,000/=.

The Registrar, Magistrates Court of Moneragala is directed to expeditiously execute the writ issued in Magistrates Court of Moneragala case no. 54356.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal