

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

Ahangama Baduge Sunethra
Damayanthi,
No. A-33,
Danyagama Housing Scheme,
China Bay,
Trincomalee.
Petitioner

CASE NO: CA/MC/REV/6/2014

MC TRINCOMALEE CASE NO: 7836/S/13

Vs.

N. Nimalka Dias,
Food Commissioner,
Food Commissioner's
Department,
No. 330,
Union Place,
Colombo 2.
Applicant-Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Hijaz Hisbullah for the Petitioner.

Maithree Amarasinghe, S.C., for the Respondent.

Decided on: 01.11.2018

Samayawardhena, J.

The Applicant (the Food Commissioner under the Ministry of Cooperatives and Internal Trade)¹ as the Competent Authority made an “application for ejectment” in the Magistrate’s Court of Trincomalee under section 6 of the Government Quarters (Recovery of Possession) Act, No. 8 of 1981, as amended, (hereinafter “the Act”) to recover possession of the Government Quarters (in Danyagama Housing Scheme in China Bay) given to the Petitioner’s father as an employee of the Prima Ceylon Limited. The learned Magistrate has, in terms of section 7 of the Act, issued the writ of possession forthwith. It is against the said order, the Petitioner has filed this revision application.

CA/MC/REV/7/2014,CA/MC/REV/8/2014,CA/MC/REV/11/2014,CA/MC/REV/12/2014,CA/MC/REV/13/2014,CA/MC/REV/14/2014 are similar cases where the Applicant-Competent Authority is the same, but the Petitioners are different, in that, in CA/MC/REV/7/2014, the Petitioner is the son of the Lessee, and in all the other cases, the Petitioners are overholding Lessees. Therefore, the learned counsel for the Petitioners and the learned State Counsel for the Respondents agreed that the parties in the other connected cases will abide by the Judgment pronounced in this case.

As seen from the petition, the Petitioner challenges the eviction order on three grounds. (In the other connected cases also, the Petitioners are challenging the impugned orders on the same three grounds.)

¹ Vide Y2.

The first ground is that “*the premises are not Government Quarters provided by the Government but the houses provided by the private sector obtained on lease from the Government*”² and therefore the Applicant-Competent Authority could not have used the provisions of the Government Quarters (Recovery of Possession) Act to evict the Respondent and his dependents.³

According to the said submission, the Petitioner admits that the premises/quarters belong to the Government, but the Petitioner’s argument is that, it was given to the Petitioner’s father “by the private sector obtained on lease from the Government”. This is in the teeth of the admitted document marked “X/06-2014”, which is the Tenancy Agreement, entered into between the “*Food Commissioner in the Food Commissioner’s Department hereinafter called and referred to as the Lessor for himself and his successors in the said office for the time being acting for and on behalf of the Democratic Socialist Republic of Sri Lanka*” as one Part; and the Petitioner’s father of “*Prima Ceylon LTD hereinafter called and referred to as the Lessee*” as the other Part.

Hence it is abundantly clear that the premises have not been given by “*the private sector*” as alleged by the Petitioner, but by the Food Commissioner for and on behalf of the Government.

More importantly, this Tenancy Agreement expressly states that “*The demised premises are Government Quarters in terms of the Government Quarters (Recovery of Possession) Act, No.7 of 1969.*”

² Vide paragraph 12 of the Petition.

³ Vide paragraph 15 of the Petition.

Even though it has not been put in issue by the Petitioner in this application, I must emphasize that the character of the occupant is immaterial, so long as the premises in suit are Government Quarters.

The Act does not speak of “Government Employees”, but of “Persons” or “Occupiers” in occupation of Government Quarters.

The preamble to the Act reads as follows: “*An Act to make provision for the recovery of possession of quarters provided by or on behalf of the Government or a public corporation for the occupation of persons, and for matters connected therewith or incidental thereto.*”

Section 2 explains “*Application of Act*”, which reads as follows: “*The provisions of this Act (a) shall apply to all Government 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.*”

Sections 3, 4, 6 speak of “Occupiers”; and section 9, which is the interpretation section, states: “*occupier, in the event or the death of the person who first came into occupation, includes a dependent of that person.*”

In defining “Government Quarters”, section 9, states: “*Government quarters*” means any building or room or other accommodation occupied for the use of residence which is provided by or on behalf of the Government or any public corporation to any person and includes any land or premises in which such building or room or other accommodation is situated,

but does not include any house provided by the Commissioner for National Housing to which Part V of the National Housing Act applies.”

Hence the first argument fails.

The second ground taken up by the petitioner is that the Quit Notice is bad in law as it only states that the Petitioner’s father has “*violated the terms of the Lease Agreement*” without giving adequate reasons.⁴

The third ground is connected to the second ground. The third ground is that the application to the learned Magistrate was fatally flawed because the reasons given in the application are not the same as the reasons given in the Quit Notice.⁵

I cannot understand on what basis the Petitioner states that the reasons given in the application to Court are different from those of the Quit Notice. In the Quit Notice (in Form A to the Schedule to the Act) the reason given is “*Violation of the Tenancy Agreement*”, and the reason given in the application for ejectment (in Form B to the Schedule to the Act) is “*Violation of the Tenancy Agreement by continuing in occupation without legal authority even after the retirement of service.*”

There is no complaint that the Quit Notice is not in Form A to the Schedule to the Act, and the Application for Ejectment tendered to Court is not in Form B to the Schedule to the Act. In Form A, there is no requirement to give detailed reasons, and

⁴ Vide paragraphs 16-20 of the Act.

⁵ Vide paragraphs 22-24 of the Petition.

in Form B, there is a requirement to give little more reasons, in that, Form B says: “*State whether the period for which the Government quarters were given to the occupier has expired, or whether the occupier has been transferred from the station which qualified him to occupy the Government quarters, or whether the occupier to whom the Government quarters were originally given has died, or any other reason which is considered.*”

In *Balasunderam v. The Chairman, Janatha Estate Development Board* [1997] 1 Sri LR 83 at 88 it was held that: “*The reasons set out in Form B are not exhaustive and are merely by way of illustration; and the reasons contemplated at (iv) above [which means, “any other reason which is considered”] need not be “ejusdem generis”. The relevant question is whether such reason is adequate, which is a matter that would depend on the facts and circumstances of each case. In interpreting the Act, I have adopted the principle that words are to be construed in accordance with the intention as expressed, having regard to the object or policy of the legislation, which in the instant case is to facilitate the speedy recovery of Government quarters.*”

Clause (d) of the Tenancy Agreement, which spells out one of the several obligations to be discharged by the Lessee, reads as follows:

“To vacate the demised premises immediately the Lessee ceases to be employed at the Prima Floor Milling Complex at Trincomalee. A certificate from the District Manager of Prima Ceylon Limited that the Lessee has ceased to be an employee of Prima Ceylon Limited shall be treated as final and conclusive for purpose of this

Agreement irrespective of any dispute or doubt as to the Lessee's employment with Prima Ceylon Limited."

Admittedly, the Lessee has not vacated the demised premises immediately after the Lessee ceased to be employed at the Prima Floor Milling Complex at Trincomalee.

How the "application for ejectment" shall be made to the Magistrate's Court has been explained in section 6 of the Act. It is significant to note that section 6(4) thereof particularly states: "*Every application for ejectment shall be conclusive evidence of the facts stated therein.*"

Section 7(1) of the Act enjoins: "*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.*"

Section 7(2) of the Act further states that: "*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.*"

When it comes to recovery of possession of Government Quarters, the Act leaves no room to adopt dilatory tactics to further stay in occupation of the premises. There is no legal requirement even to issue notice on the Respondent so long as Notice to Quit has been served. Upon the application being properly made to the Magistrate in terms of the Act, the Magistrate has no alternative but to issue the writ forthwith. The Act has only nine sections, and the procedure is conspicuously simplified.

In the case of *In re Senanayake (1972) 75 NLR 215*, when an application for ejectment was made under the Act, the learned Magistrate took the view that notice should be served on the party against whom the application for a writ is made on the principle of *audi alteram partem*. The State moved in revision against the said order. Samerawickrame J. setting aside the order of the learned Magistrate stated:

“In point of fact after the present application was filed in this Court the widow of the police officer who had continued to be the occupier has filed an affidavit. I have perused that affidavit and do not find in it any matters which are legally relevant to the question of ejectment. In view of the provision that every application for ejectment should be conclusive evidence of the facts set out therein, there is little purpose in notice being issued on the party against whom the application is made. It appears to me that this Act makes provision for the issue of writ upon an ex parte application. It will no doubt be open to the party affected by an order for issue of writ, if he is able to do so, to bring to the notice of the Magistrate any matter that may constitute ground for

asking that the order for issue of writ should not stand and that the writ should be recalled. It appears to me however that in the first instance, upon an application that is regular and in proper form, the Magistrate has no option but to make order for the issue of the writ. I set aside the order made by the learned Magistrate and send the case back with the direction that writ be issued in terms of section 7.”

By Act No. 45 of 1985, sub section 3 was introduced to section 7 of the Principal Act. It reads: “*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.*” By this section, the legislature has, to some extent, justified making eviction orders *ex parte*.

I reject the second and third arguments.

The application is dismissed with costs.

The parties in CA/MC/REV/7/2014, CA/MC/REV/8/2014, CA/MC/REV/11/2014, CA/MC/REV/12/2014, CA/MC/REV/13/2014, CA/MC/REV/14/2014 shall abide by this Judgment.

Judge of the Court of Appeal