

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

M.A.S.D. Munasinghe,
No. 2/6,
Vipulasena Housing Scheme,
Sri Vipulasena Mawatha,
Colombo 10.
Petitioner

CASE NO: CA/WRIT/56/2016

Vs.

1. D.C. Shehan Seneviratne,
Competent Authority,
Former Chairman/Managing
Director,
Ceylon Petroleum Storage
Terminals Limited,
Kolonnawa,
Wellampitiya.
1st Respondent
- 1A. Dammika Ranatunga,
Chairman,
Ceylon Petroleum Storage
Terminals Limited,
Kolonnawa,
Wellampitiya.

- 1B. H.M. Sanjeewa Lushantha
Wijeratne,
Managing Director,
Ceylon Petroleum Storage
Terminals Limited,
Kolonnawa,
Wellampitiya.
Added Respondents
2. Ceylon Petroleum Storage
Terminals Limited,
Kolonnawa,
Wellampitiya.
2nd Respondent

Before: Mahinda Samayawardhena, J.

Counsel: Chamantha Weerakoon Unamboowe for the
Petitioner.

Kaushalya Nawarane for the Respondents.

Decided on: 20.02.2019

Samayawardhena, J.

The petitioner filed this application seeking a writ of certiorari to quash the Notice of Quit (P4) issued by the 1st respondent under section 3 of the Government Quarters (Recovery of Possession) Act, No. 7 of 1969, as amended, to recover possession of the quarters occupied by the petitioner.

It is the submission of the petitioner that the 2nd respondent is a public limited liability company incorporated under the Companies Act in Sri Lanka in terms of section 2 of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987; and the quarters relevant to the Notice to Quit is now vested in the said company; and therefore the said public company with a separate legal personality from its shareholders has no authority to make use of the provisions of the Government Quarters (Recovery of Possession) Act to recover possession of the said quarters as *“any contract of tenancy between the petitioner and the 2nd respondent company is private in nature and shall be governed by the private law principles of contract.”*¹

Whether I accept or reject that argument, the application for writ shall fail.

There is no question that if I reject this argument, the application for writ shall fail.

If I accept this argument too, the application for writ shall fail as *“The activities of private persons, whether natural or juristic, are outside the bounds of administrative law. A public commercial company like the respondent, incorporated under the Companies Ordinance in which the Government or a Government-sponsored Corporation holds shares, controlling or otherwise, is not a public*

¹ Vide page 6 of the written submission of the petitioner dated 16.02.2017.

body whose decisions, made in the course of its business, can be reviewed by this Court by way of writ.”²

Whilst vehemently stating that the relationship between the 2nd respondent company and the petitioner shall be governed by the private law as opposed to the public law when it comes to the issuance of Notice to Quit by the respondent, the petitioner cannot, in the same breath, state that public law remedy by way of writ shall be available to him against the same respondent when it comes to the quashing of Quit Notice.

I am unable to accept the argument of the petitioner that *“though CPSTL (the 2nd respondent) is a public limited liability company, by opting to use the Government Quarters (Recovery of Possession) Act, the company has attempted to exercise a function that is dedicated to state bodies or in other words have ventured into use public authority. Therefore in the event a private body is using public authority specified in a legislative enactment in managing its affairs, Court shall have jurisdiction to issue a writ of certiorari.”³*

Writ is a discretionary remedy, which cannot be asked as of right. A party applying for writ shall come to Court with clean hands and place the facts before the Court quite straightforwardly for the Court to take a right decision. He cannot play a hide and seek game with the Court interpreting

² Trade Exchange (Ceylon) Limited v. Asian Hoels Corporation Ltd [1981] 1 Sri LR 67 at 76 per Sharvananda J. (later CJ) with the agreement of Samarakoon C.J. and Samarawickrame J. Vide also Mendis v. Seema Sahitha Panadura Janaha Santhaka Pravahana Sevaya [1995] 2 Sri LR 284, Somatunga v. Ceylon Fertilizer Company [2005] 2 Sri LR 166.

³ Vide page 9 of the same written submission of the petitioner.

the law in one way when it is favourable to him and interpreting it in another way when it is unfavourable to him.

Whether it is writ or otherwise, it is settled law that a party cannot be inconsistent in his approach in legal proceedings. He cannot blow hot and cold, affirm and disaffirm the same transaction simultaneously to suit the occasion. The doctrine of approbate and reprobate forbids him from doing so.⁴

For the aforesaid reasons, there is no necessity to consider the merits of the argument for the purpose of this application.

Application of the petitioner is dismissed with costs.

Judge of the Court of Appeal

⁴ Vide *Ranasinghe v. Premadharm* [1985] 1 Sri LR 63, *Bandula v. Karthelis Appuhamy* [1988] 2 Sri LR 114.