

**In the Court of Appeal of the Democratic Socialist Republic of
Sri Lanka**

CA(PHC) Application No:
200/17

H.C. Revision Application No:

HC.R.A. 98/2011

M.C. Mt. Lavenia Case No:
5321/S/11

**In the matter of an appeal in terms of Article 138 and
154P of the Constitution of the Democratic Socialist
Republic of Sri Lanka, read with the High Court of the
Provinces (Special Provisions) Act, No. 19 of 1990 (as
amended) and the Government Quarters (Recovery of
Possession) Act, No. 7 of 1969 (as amended)**

and now between:

Krishni Manika Rupasinghe
No. 97B, C Grade,
Ratmalana Irrigation Housing Complex,
Ratmalana.

Respondent-Petitioner-Appellant

VS.

1. Engineer P.K. Padmakeerthi
Divisional Irrigation Director,
Colombo Division,
Jawatta Road, Colombo 05.

Substituted Applicant- Respondent-Respondent

2. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondent-Respondent

Before: Prasantha De Silva, J.
S.U.B. Karalliyadde, J.

Counsel: Mr. Geoffrey Alagaratnam PC with Mr. Falila Fazuldeen for the
Respondent-Petitioner-Appellant
Ms. Kanishka De Silva, SSC for the Respondents

Written submissions

tendered on: 28.11.2019. by the Respondent-Petitioner-Appellant
21.08.2020. by the Substituted Applicant-Respondent-Respondent

Argued on: 02.02.2021.

Decided on: 29.04.2021.

S.U.B. Karalliyadde, J.

By this appeal the Respondent-Petitioner-Appellant (hereinafter referred to as the appellant) seek to set aside the orders of the learned Additional Magistrate of Mt. Lavenia dated 10.06.2011. and the High Court Judge of Colombo dated 10.11.2017. The appellant is a Government servant who initially served as a Stenographer attached to the Department of Machinery which was under the purview of the Department of Irrigation. By the letter/agreement marked as 03.7 dated 29.04.85. (at page 68 of the appeal brief) quarters bearing No.97 B in C Grade category, situated in Ratmalana Irrigation Housing Complex, which is the subject matter of the action has been released to the appellant by the Director of Machinery for her occupation. While, the appellant occupying the said quarters for a period of about 35 years, the predecessor in office of the Substituted Applicant-Respondent-Respondent (hereinafter referred to as the respondent) initiated proceedings in terms of section 6 of the Government Quarters (Recovery of Possession) Act, No. 7 of 1969 (as amended) (hereinafter referred to as the Act) against the appellant in the Additional Magistrate's Court of Mt. Lavenia to recover the possession of the quarters. Even though, there are no provisions in the Act to grant permission to the occupant to show

cause before the Court, after giving an opportunity to the appellant to show cause, by order dated 10.06.2011. the learned Additional Magistrate issued the ‘writ of possession’. Being aggrieved by the said order the appellant filed a revision application in the High Court of Colombo. The learned High Court Judge, by the order dated 10.11.2017, affirmed the order of the learned Additional Magistrate. The appellant seeks to set aside the said orders of the learned Additional Magistrate and the High Court Judge by this appeal. The main argument of the appellant before the Magistrate’s Court has been that the respondent is not the competent authority to make an application under and in terms of the Act to recover the possession of the quarters. Refusing to accept that argument, the learned Additional Magistrate issued the writ of possession. In revision, the learned High Court Judge affirming the order of the Additional Magistrate, held that the appellant has failed to establish the exceptional circumstances to exercise the revisionary jurisdiction of the High Court.

The main argument of the learned Counsel for the appellant before this Court is that the ownership of the subject Housing Complex has been vested with the Land Commissioner General’s Department which is under the purview of Ministry of Lands and Land Development and it has never been vested or assigned to the Department of Irrigation for the respondent to make an application under section 6 of the Act to recover the possession of the subject quarters before the Magistrate’s Court as the competent authority.

The learned Counsel for the respondent submitted that the subject Housing Complex has been vested with the Ministry of Irrigation and the Ministry has assigned it to the Irrigation Department (as per the document marked 1-Θ-1 at page 289 of the appeal brief). The learned Counsel for the appellant contends that even though, that letter states that a decision has been taken to assign the Housing Complex to the Irrigation Department, it has not been vested in the Department of Irrigation.

In section 9 of the Act the words “competent authority” is defined as follows;

“the Secretary to the Ministry charged with the subject of Public Administration or any public officer authorized by such Secretary”

In the action at hand, the Land Commissioner General has consented (by letter marked as 1ඨ3 at page 582) for action being taken by the Secretary of the Ministry of Public Administration to evict the unlawful occupants from the quarters in the subject Housing Complex and by virtue of document marked as 1ඨ2 (at page 290 of the appeal brief) in terms of Clause 9 in Chapter XIX of the Establishment Code the Secretary to the Ministry of Public Administration has delegated his powers to the Divisional Director of Irrigation in Colombo Division to evict the illegal occupants from the quarters in terms of the Act. The learned Counsel for the appellant submitted that on 1ඨ2, the Secretary to the Ministry of Public Administration has delegated powers on the respondent **only** for a limited purpose of recovering the possession of Government quarters **owned** by and **situated** within the Divisional area of Colombo and argue that the subject matter of the action neither **owned** by the Irrigation Department nor **situated** within the area of Colombo Division. In an action instituted under and in terms of the Act, the duty of the Magistrate is to issue the writ of possession and he is not supposed to consider the ownership or where the particular quarters are situated. In addition to that, according to the preamble of the Act, the purpose of the Act is to facilitate the provisions to recover the possession of the Government quarters from the illegal occupants and therefore, in the instant action it is immaterial whether the quarters in litigation belongs/owned/assigned/vested on the Irrigation Department. The important fact to be considered is whether the Divisional Irrigation Director of Colombo is the competent authority to institute proceedings under the Act in the Magistrate's Court against appellant. Under such circumstance, the documents marked as ඩ4, ඩ5, පෙ22, පෙ23 and පෙ28 (respectively at pages 76, 219, 221, 270, 273 and 309) which are primarily the correspondence between the Commissioner General of Lands and the Director of Department of Irrigation regarding the ownership of the quarters in question are irrelevant and does not help to establish the above stated position of the appellant. In addition to that, there is no evidence before the Court that the quarters in question is situated outside the geographical area of Colombo Division. The appellant heavily relies on the letter dated 26.10.19. of the Attorney General marked as පෙ14 (at page 623 of the appeal brief) which states that the Housing Complex, which the subject matter of the action is situated is not assigned to the Ministry of Irrigation and therefore, the Department of Irrigation has no power to issue quit notices on the occupants of that Housing Complex.

Nevertheless, on previous occasions subsequent to that letter, this Court has expressed the view in the cases of Hemalatha Amarasinghe vs. B. M. S. Amarasekara Deputy Director General of Irrigation and others (Court of Appeal Writ application No. 570/02) and S. Abeywickrama vs. B. M. S. Amarasekara Deputy Director General of Irrigation and others (Court of Appeal Writ application No. 449/03) that the subject Housing Complex has been assigned to the Irrigation Department by the Ministry of Irrigation and it is under the control of that Department. There is no material before this Court contrary to that position. Under the above circumstances, I hold that the respondent falls within the ambit of the “competent authority” in terms of the Act and has the powers to issue quit notice in terms of section 3 of the Act on the appellant and institute action in the Magistrate’s Court in terms of section 6 to recover the possession of the quarters.

As per the terms and conditions contained in the agreement/letter dated 29.04.1985. marked as 7 (at page 68 of the appeal brief) and the provisions of Clause 6 in Chapter XIX of the Establishment Code, appellant is entitled to occupy the quarters assigned to her only for the period she serves for the Irrigation Department or for a maximum period of five years. Nevertheless, to the date of filing the action in the Magistrate’s Court the appellant has been in possession of the quarters in question for more than 5 years and nearly 35 years. Admittedly, to the date of preferring the appeal appellant is serving in the Ministry of Health. In addition to that, there is no material before the Court that the conditions mentioned in 7 have been changed later. Therefore, it is clear that the appellant is overstaying in the quarters in question violating the provisions of the Establishment Code and the terms and conditions of the agreement/letter marked as 7. For the reason of the said violations, appellant is in any event not entitled to the coverage of 7, the letter issued by the Attorney General marked as 14 and the provisions of the Establishment Code.

The appellant contends that she has a legitimate expectation to continue in occupation of the subject quarters until she is provided with alternative accommodation. Based on the document marked as 36 (at page 329 of the appeal brief) the appellant denotes that the Government, by a Cabinet decision dated 12.08.1998. agreed/promised to offer the quarters

in the Housing Complex, which the quarters in question is situated to its occupants or to construct new quarters therein to provide housing facility to the present occupants. The appellant further states that in the letter dated 31.05.2005. marked as 15 (at page 229 of the appeal brief) the Secretary to the President suggested to the Secretary to the Ministry of Irrigation to take appropriate steps to hand over the quarters to its occupants.

The principle of legitimate expectation is derived from Europe and it safeguards fairness and natural justice in matters pertaining to Administrative Law. In “**Administrative Law**” by **H. W. R. Wade and C. F. Forsyth** (Wade & Forsyth, page– 450) defines the concept of legitimate expectation in the following manner.

“Where some boon or benefit has been promised by an official (or has been regularly granted by the official in similar circumstances), that boon or benefit may be legitimately expected by those who have placed their trust in the promises of the officials. It would be unfair to dash those expectations without at least granting the person affected an opportunity to show the official why his discretion should be exercised in a way that fulfil his expectations. Hence there has developed a doctrine of the protection of legitimate expectation”

“It is not enough that an expectation should exist; it must in addition be legitimate. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. The test is ‘how on a fair reading of the promise it would have been reasonably understood by those to whom it was made’.”

“First of all, for an expectation to be legitimate it must be founded upon a promise or practice of a public authority that is said to be bound fulfil the expectation. Second, clear statutory words, of course, override any expectation howsoever founded. Third, the notification of a relevant change of policy destroys any expectation founded upon the earlier policy, fourth, there is no artificial restriction in the material on which a legitimate expectation rests may be based. Fifth, the individual seeking protection of the expectation

must themselves deal fairly with the public authority, sixth, consideration of the expectation may be beyond the jurisdiction of the court.”

As mentioned hereinbefore, the appellant has violated the terms and conditions of the agreement/letter 367 which the quarters had been assigned to her. The period which she is entitled to occupy the quarters has been ended by the year 1990. Therefore, by the time the Cabinet decision mentioned in 36 was taken in 1998, the appellant had been in violation within her knowledge the conditions stated in 367. The document marked as 3615 which has been written by the Secretary to the President contains simply recommendations and therefore, it does not bear clear, unequivocal and unambiguous promise to the appellant that the quarters in question will be given to her. Under the above stated circumstances, the appellant is not entitled to a judgment in her favour on the concept of legitimate expectation.

The learned Counsel for the appellant submits that the affidavit tendered to the Magistrate's Court in terms of Section 6(2) of the Act is not a valid affidavit for the reason that it does not contain a jurat and has not certified by the person who administered the affirmation. The learned Counsel for the respondent denies that submission and submit that the affidavit filed in the Magistrate's Court is according to the Form C in the Schedule to the Act. The affidavit is filed of record (at page 600 of the appeal brief) marked as 363. When perusing 363, the Court can be satisfied that it is according to the Form C of the Schedule to the Act and in terms of section 12 of the Oaths and affirmation Act, No. 13 of 1954.

The appellant further argues that a certain amount of money has been deducted from her monthly wages as the rent for the quarters which she is occupying. However, the appellant has failed to furnish material to establish that fact. On the other hand, in the absence of a valid agreement for possession of the quarters, the appellant cannot argue that she is legally entitled to possess the quarters for the mere reason that the money has been deducted from her salary. Considering all the above stated facts, I hold that the impugned orders of the learned Additional Magistrate and the High Court Judge are according to the law and the facts of the case and necessity does not arise for this Court to interfere with the finding of

the learned Additional Magistrate and the High Court Judge. Therefore, I affirm the impugned orders and dismiss the appeal. The appellant should pay Rs. 25,000/- as cost of this appeal to the respondents.

JUDGE OF THE COURT OF APPEAL

I agree.

Prasantha De Silva J.

JUDGE OF THE COURT OF APPEAL