

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

In the matter of an application in the nature of a Writ of Certiorari made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**J. M. D. Gamini**

B 88, Danyagama Housing Scheme,  
China Bay.

CA Writ Application No: 164/2019

**Petitioner**

Vs.

**Jebaraj Krishnamoorthy**

Food Commissioner,  
Food Commissioner's Department,  
330, Union Place, Colombo 02.

**Respondent**

**Before** : Sobhitha Rajakaruna, J.  
Dhammika Ganepola, J.

**Counsel** : Saliya Peiris, PC for the Petitioner  
Madubashini Sri Meththa, SC for the Respondent

**Decided on** : 25. 11. 2021

## Dhammika Ganepola, J.

The Petitioner seeks to invoke the jurisdiction of this Court by way of a *Writ of Certiorari* to quash the quit notice issued in terms of the Government Quarters (Recovery of Possession) Act No.7 of 1969, marked as P3 to the Petition. Both parties agreed to get the argument disposed by way of written submissions. Anyhow none of the parties have filed the written submissions. There are several connected matters that were taken up together with this matter. The court observes that the facts relating to each are different. The Petitioner states that he is a public officer serving in the Sri Lanka Principal's Service and has served as a teacher for over 39 years. While serving in Trincomalee, the Petitioner has been given a house in Daanyagama Housing Scheme on the basis of a Lease Agreement entered into between the Petitioner and the Food Commissioner. The Petitioner states that he has complied with all terms and conditions of the said agreement. Later on, the Respondent had taken steps to recover the possession of the said house and accordingly, proceedings had been instituted before the Magistrate's Court of Trincomalee against the Petitioner in order to recover the possession of the house in issue in terms of the Government Quarters (Recovery of Possession) Act. Nevertheless, the said action has been later withdrawn by the Food Commissioner. Thereafter, the Respondent has issued the purported quit notice dated 18.02.2019 (P3) against the Petitioner demanding him to hand over the vacant possession of the said premises alleging that the Petitioner has acted in breach of the Lease Agreement. In spite of such circumstances, the Petitioner has made this application moving for a *Writ of Certiorari* to quash the quit notice marked P3 stating that the purported quit notice is bad in law for the reasons mentioned below.

- i. no valid reason has been given and the reasons stated in the said notice are vague
- ii. the Respondent has procured a violation of the Lease Agreement by refusing to accept the rental payment.

The Petitioner further states that the subject premises were not given to him claiming it's a 'Government Quarters' since he was not entitled to receive such Government Quarters through the Ministry of Education. However, the fact that the subject premises is a Government Quarters, is not in dispute.

As per section 2 of the Act, the provisions of the Government Quarters (Recovery of Possession) Act shall apply to all Government Quarters and

shall be deemed at all times to have been, and to be, an implied condition of the occupation by persons of such quarters. The term "Government Quarters" referred to in Section 2 above, is defined under Section 9 of the Act to include 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.

Upon perusal of the above provisions, it appears that the applicability of the terms of the Government Quarters (Recovery of Possession) Act to a particular premise simply does not depend on a public officer's entitlement to a Government Quarters or on such capacity of a person occupy such premises as a public officer. Applicability of the Act must be decided upon considering whether the premises concerned is a "Government Quarters" in terms of interpretation provided in Section 9 of the Act.

The Petitioner has conceded the fact that the possession of the subject house and the premises have been granted to him by the Food Commissioner upon a Lease Agreement which implies that the possession of the premises concerned has been granted by or on behalf of the Government.

Although the Petitioner has failed to annex a copy of the purported agreement to the Petition, the Respondent has tendered a copy of the Lease Agreement (R2) dated 02.03.2005 entered into between the Petitioner and the Respondent along with their Statement of Objections. The Petitioner has not challenged the authenticity of the said agreement R2. In terms of said Lease Agreement R2 Impugned house and premises has been conceded as Government Quarters under said Government Quarters (Recovery of Position) Act by the parties. Therefore, the Petitioner is estopped from denying the same. In view of the above premise, the applicability of the Government Quarters (Recovery of Possession) Act to the impugned house and premises cannot be excluded.

It appears that the Petitioner has taken the possession of the premises in issue upon a said Lease Agreement R2. The said Lease Agreement is applicable only for period from 02.03.2005 to 01.03.2006 and therefore, in terms of its Clause 3, the agreement expires on the 01.03.2006. No evidence has been produced before this Court to the effect that the Lease

Agreement has been extended beyond 01.03.2006. Hence, this Court observes that there is no Lease Agreement in existence as to this date.

Apart from the above findings, in order to decide as to whether the impugned quit notice is bad in law based on the reasons alleged by the Petitioner, this Court will have to inquire into the fact whether the Petitioner or the Respondent has acted in breach of the terms and conditions of the Lease Agreement. Furthermore, the court will have to take into consideration the alleged contractual relationship between parties. However, in the case of **Podinona Urban Council Horana 1981 (1) SLR 141**, it was held that in as much as the relationship between the parties was contractual the Petitioner was not entitled to the remedy by way of *Certiorari*. In the case of **Ariyaratne vs. the National Insurance Corporation and Others (2003 2 Sri Lr 212)** it was held as follows;

*“The fact that the authority has failed or refused to fulfil certain terms contained in that contract does not give rise either to public law rights or to any statutory obligations under which court can assume jurisdiction to issue a writ.”*

Accordingly, depending on the relationship between parties I am of the view that the Petitioner is not entitled for a remedy under prerogative powers of this Court.

The Section 7(3) of the Government Quarter's (Recovery of Possession) Act provides the remedies available for such person who claims that they have been unlawfully ejected from Government Quarter. Therefore, if at all the Petitioner claims that he has been unlawfully ejected from Government Quarters, the Petitioner may resort to the alternative remedy available and institute an action for damages or other reliefs in terms of the above section.

In terms of section 4 of the Government Quarter's (Recovery of Possession) Act where a quit notice has been served on the occupier of any Government Quarters neither such occupier nor any dependent of such occupier shall be entitled to occupy such quarters after the expiry of the period of within such occupier is required to such notice to vacate the quarters. Accordingly, such occupier has no option other than delivery the

vacant possession of such quarters before the expiry of the period of the relevant authorities or persons.

In view of the reasons mentioned above, I dismiss the application of the Petitioner.

Judge of the Court of Appeal

Sobhitha Rajakaruna, J.

I agree.

Judge of the Court of Appeal