

**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.

R.P. Sunilawathi,

A-06, Danyagama Housing Scheme,
China Bay.

CA Writ Application No:166/2019

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* 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 conclude the case 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 she was a teacher and retired as a principal. While the Petitioner was serving, she has been given a house at Daanyagama Housing Scheme in Trincomalee, upon a Lease Agreement entered into between the Petitioner and the Food Commissioner in which, even after her retirement she continues to remain as a resident. The Petitioner states that she has complied with all terms and conditions of the above-mentioned Lease Agreement up to date. Later on, the Respondent had taken steps to obtain back the possession of the said house and accordingly, proceedings had been instituted before the Magistrate 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 Nevertheless, said action has been later withdrawn by the Food Commissioner.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 requiring her to hand over the vacant possession of the premises in issue claiming that the Petitioner has acted in breach of the Lease Agreement. In spite of such circumstances, the Petitioner has lodged this Petition before this Court moving for a *Writ of Certiorari* quashing 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 has conceded the fact that the subject house and the premises has been granted to her by the Food Commissioner upon a Lease Agreement. However, she denies the allegation of violation of terms and conditions of the Lease Agreement referred in the quit notice.

Unfortunately, the Petitioner had failed to produce said Lease Agreement before this court neither has the Petitioner provided any justification justifying her inability to produce the said Lease Agreement.

The Petitioner states that the reasons for the issuance of the said quit notice P3 are vague and the Petitioner denies the allegation of violation of any term or condition of the Lease Agreement referred in the quit notice. Although the Petitioner has failed to submit a copy of the subject Lease Agreement along with her Petition the Respondent has submitted a copy of the said Lease Agreement (R2) dated 29.09.2014 entered into between the Petitioner and the Respondent along with their limited Statement of Objections. The Petitioner has not challenged the authenticity of the said agreement marked R2. However, it is observed that on the face of the said agreement, it has expired.

Apart from the above findings, in order to decide upon whether the impugned quit notice is bad in law due to the reasons averred by the Petitioner, this Court will have to consider whether the Petitioner or the Respondent has acted in breach of the terms and conditions of the Lease Agreement and will have to take into consideration the 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 Quarters. 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