

**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.

K.B. Piyadasa,

B-43, Danyagama Housing Scheme,

China Bay.

CA Writ Application No:167/2019

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 P4 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 was an employee of the Prima Ceylon Ltd and that he retired from his service eight months ago. The Petitioner states that he has been granted a tenancy in respect of the premises at B-43 in Daanyagama Housing Scheme, China Bay, Trincomalee upon a Lease Agreement has been entered into between the Petitioner and the Food Commissioner. Nevertheless, only a copy of a renewal rent agreement (marked as P3) of the said agreement entered into between the Petitioner and the Food Commissioner has been tendered along with the Petition. Although the Petitioner has failed to produce the copy of the original Lease Agreement referred to in said P3, he states that he has fully complied with terms and conditions of the said agreement including the payment of the monthly rental. The Petitioner further states that there had been several attempts to recover the possession of the premises by the Respondent. Later on, the Petitioner has been served with a quit notice in term of the Government Quarters (Recovery of Possession) Act No.03 of 1971, dated 18th February 2019 (P4) against the Petitioner demanding him to hand over the premises alleging that the Petitioner has acted in breach of the terms of the said 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 P4 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 conceded the fact that the subject house and the premises has been granted to him by the Food Commissioner upon a Lease Agreement. Hence the applicability of the Government Quarters (Recovery of Possession) Act to the subject house and premises is not disputed. The Petitioner denies the allegation of violation of any term or condition of the Lease Agreement referred to in the

quit notice. The Petitioner's stance is that the Respondent has violated the said Lease Agreement. The original Lease Agreement R1 entered in to between the Petitioner and the Respondent has been submitted by the Respondent with his Statement of Objections. The lease period of the impugned Lease Agreement has been renewed by the said agreement P3. However, the lease period specified in the said Lease Agreement (P3) itself has expired on 29.09.2016 and the Petitioner has retired from the service of Prima Ceylon Limited. Therefore, it is observed that in view of Clause (iv) of the said Lease Agreement P3, the Lease Agreement has come to an end.

Apart from the above findings, in order to decide as to whether the disputed quit notice is bad in law base on the reasons alleged 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. Furthermore, the court 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 his 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