

**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.

G. W. Thilan Sameera Fonseka,

C-26, Danyagama Housing Scheme,
China Bay.

CA Writ Application No:168/2019

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* quashing 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 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. While the Petitioner was an employee of the Prima Ceylon Ltd, he had been granted a tenancy in respect of the premises at C-26 in Daanyagama Housing Scheme, China Bay, Trincomalee upon the Lease Agreement P2 entered into between the Petitioner and the Food Commissioner. The Petitioner states that though he has complied with all terms and conditions of the said agreement P2, there had been several attempts on the part of the Food Commissioner to recover possession of the premises in issue. Later on, the Petitioner has been served with a quit notice in term of the Government Quarters a requiring him to vacate the premises since the Petitioner has acted in breach of the terms of the said 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 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 impugned house and the premises has been granted to him by the Food Commissioner on a Lease Agreement p2. The said agreement R4 specifies that the subject house and the premises are Government Quarters in terms of Government Quarters (Recovery of Possession) Act. Hence the Petitioner is stopped from denying the same. On the above-premise, the applicability of the Government Quarters (Recovery of Possession) Act in respect of the impugned house and premises cannot be disputed.

The Petitioner denies the allegation of violation of terms and conditions of the Lease Agreement referred in the quit notice.

It appears that the Petitioner has taken the possession of the premises in issue upon a Lease Agreement marked P2 to the Petition. The said Lease Agreement,

in terms of its clause (iv), becomes inoperative with effluxion of the time or if the Petitioner cease to hold employment at the Prima Ceylon Ltd. The said Lease Agreement is applicable only for period from 29.09.2014 to 28.09.2015 and therefore, in terms of its Clause 3, the agreement expires on the 28.09.2015. No evidence has been produced before this Court to the effect that the Lease Agreement has been extended beyond 28.09.2015. Further to that, the Counsel for the Petitioner conceded the fact that the Petitioner has already retired. 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 whether the impugned quit notice is bad in law based on the reasons alleged by the Petitioner, this Court will have to inquire 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 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