

**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.

Prabath Indrajith Ranasinhge

G-18, Danyagama Housing Scheme,
China Bay.

CA Writ Application No:172/2019

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 dated 18.02.2019 issued in terms of the Government Quarters (Recovery of Possession) Act No.7 of 1969, marked as P8 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 an Inspector of Police. The house and premises at G-18, Daanyagama Housing Scheme in Trincomalee, has been provided to the Petitioner upon a Lease Agreement entered into between the Petitioner and the Food Commissioner. Despite, the Petitioner's failure to submit a copy of the said Lease Agreement along with his Petition, the Petitioner claims that he has complied with all the terms and conditions of the said Lease Agreement. Petitioner states that the Respondent had instituted actions against the Petitioner before the Magistrate Court of Trincomalee against the Petitioner in order to recover possession of the said premises. Nevertheless, said action has been later withdrawn by the Food Commissioner. Thereafter, the Respondent has issued the purported quit notice (P8) dated 18.02.2019 against the Petitioner demanding the Petitioner 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 P8 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.

Although the Petitioner denies the allegation of violation of any term or condition of the said Lease Agreement as referred in the quit notice P8, it is observed that the Petitioner has failed to present before this Court the most substantial document i.e., the Lease Agreement upon which the Petitioner intends to base his case upon. Even so the Petitioner's stance is that the Respondent has violated the Lease Agreement.

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 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.

Despite the Petitioner’s failure to submit the relevant Lease Agreement, the Respondent has submitted a copy of the said Agreement (R4) entered into between the Petitioner and the Respondent with his Statement of Objections. The Petitioner has not denied the authenticity of the said agreement R4. The Petitioner has conceded the fact that the subject house and the premises has been granted to him by the Food Commissioner upon a Lease Agreement. 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 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