

**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.

**Dorape Vithanage Nihal Amaranayake**

A-37, Danyagama Housing Scheme,  
China Bay.

CA Writ Application No:175/2019

**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 P5 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 a sailor attached to Sri Lanka Navy and that while he was serving the Sri Lanka Navy, he was provided a house in Daanyagama Housing Scheme, China Bay, Trincomalee, upon a Lease Agreement P3 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 including payment of rent. The Petitioner further claims that once the war came to an end, the Food Commissioner took steps to recover the possession of the said house and that as a pretext to such move, refused to accept rent. Subsequently, the Food Commissioner had instituted proceedings against the Petitioner before the Magistrate 's Court of Trincomalee in terms of the Government Quarters (Recovery of Possession) Act and the same had been later withdrawn. Thereafter, the Respondent has issued the purported quit notice dated 18.02.2019 (P5) against the Petitioner demanding him to hand over the vacant possession of the said premises alleged that the Petitioner has acted in breach of the Lease Agreement. In spite of such circumstances, the Petitioner has made this application before this Court moving for a *Writ of Certiorari* to quash the quit notice marked P5 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 denies the allegation of violation of any term or condition of the Lease Agreement referred to in the quit notice. The Petitioner's contention is that the Respondent has violated the Lease Agreement P3.

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 as an officer of the Sri Lanka Navy. 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 Government Quarters (Recovery of Possession) Act to a particular premises does not simply depend on a public officer's entitlement to a Government Quarter or on such capacity of a person to occupy such premises as a public officer. Applicability of the Act must be decided upon the fact whether such premises concerned is a "Government Quarter" in terms of in Section 9 of the Act by which an interpretation given for the term 'Government Quarters.' 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 given by or on behalf of the Government.

Furthermore, the Petitioner has conceded the fact that the subject house and the premises has been granted to him by the Food Commissioner upon the Lease Agreement P3. The said agreement P3 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. On the above premise, the applicability of the Government Quarters (Recovery of Possession) Act to the impugned house and premises cannot be excluded.

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 SLR 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**