

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 Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA Writ Application No:
495/2019

Thawalama Gamage Sunil
No. 94, Ratnapura Road,
Avisawella

Petitioner

Vs.

1. C.D. Wickramarathna,
Inspector General of Police (Acting)
Police Head Quarters, Colombo 01
2. C.D. Wickramarathna,
Senior Deputy Inspector General of
Police,
Police Head Quarters, Colombo 01
3. Ujith N.P. Liyanage,
Superintendent of Police,
Seethawakapura Division, Avisawella
4. Hon. Attorney General,
Attorney General's Department
Colombo 12

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

N. Jayasinghe instructed by Senaka De Silva for the Petitioner

R. Aluwihare SC instructed by Sithi Rizni Firdous for the Respondents

Written submissions tendered on:

19.01.2022 by the Petitioners

02.08.2021 and 08.11.2021 by the Respondents

Argued on: 25.01.2022

Judgement delivered on: 24.03.2022

S.U.B. Karalliyadde, J.

The Petitioner served in the Police Department and retired from the service on 08.02.2018 as a Sub-Inspector of Police. After his retirement, the Police Department did not send his personal file to the Department of Pensions to process his pension and gratuity. By this writ Application, the Petitioner seeks a writ of Mandamus compelling the 1st to 3rd Respondents to forward his personal file to the Pensions Department. According to the 1st to 3rd Respondents, the reason for not sending the personal file of the Petitioner to the Pensions Department is that, at his retirement the Petitioner did not hand over the vacant possession of the quarter which he and his family is living. The position of the 1st to 3rd Respondents is that it is reserved by the Divisional Secretary for the use of the police officers who serve in the Avissawlla police station. The Petitioner denies that it is a reserved quarter for police officers. According to the Petitioner, the house which he is occupying is situated on the railway reservation. It was in a dilapidated condition and without knowing to whom it belongs he renovated it

and made it habitable and started to occupy it. However, later he came to know that it belongs to the Railway Department. To establish his position, the Petitioner has tendered to Court the receipts and bills for payment of assessment tax and utility bills for the premise by him in his name (marked P 4, P 5 and P 5-A), a quit notice served on him by the District Secretary of Colombo under the Government Quarters (Recovery of Possession) Act, No 7 of 1969 (marked as P 6), a letter sent subsequently to P 6 by the same official to the Petitioner stating that the premise belongs to the Railway Department and therefore, P 6 has been withdrawn (marked as P 7). The learned Counsel for the Petitioner argued that since the premise which the Petitioner is occupying does not belong to the Police Department, withholding the personal file of the Petitioner by the 1st to 3rd Respondents is illegal, unreasonable and arbitrary.

According to the guild lines and circulars issued by the Police Department, retiring Police officers are duty bound to hand over the vacant possession of the official quarters, they occupy and settle all arrears and payments due to the State for sending their personal files to the Pensions Department to process their pension and gratuity.

The position of the learned State Counsel for the Respondents is that, the premise which the Petitioner is occupying is a government quarter and since 1998, it is reserved by the Divisional Secretary for the police officers attached to the Avissawella Police Station as residential premise. In 2008, it has been allocated to the Petitioner being a police officer attached to the Avissawella Police Station and he continued to occupy it until he retired in 2018. During that period, monthly rent for the premise had been deducted from the Petitioner's salary. The learned State Counsel submitted to the Court that after the retirement, the Petitioner did not handover the vacant possession of the quarter and

therefore, steps had been taken by the Divisional Secretary of Hanwella to recover the possession of it under the Government Quarters (Recovery of Possession) Act. According to the learned State Counsel, the reasons for not sending the personal file of the Petitioner to the Pensions Department are the failure of the Petitioner to handover the vacant possession of the quarter and as long as the Petitioner is in possession of the quarter, it is impossible to calculate the arrears and payments which the Petitioner is liable to pay in respect of the quarter to the State to recover the same from the Petitioner. The learned State Counsel appearing for the Respondents argued that the Petitioner is well aware that it is a government quarter, which is reserved for the use of the police officers attached to the Avissawlla police station but the Petitioner has intentionally suppressed and misrepresented those facts. Therefore, the learned State Counsel argued that on the ground of suppression and misrepresentation of material facts, this Application should be dismissed.

On behalf of the Respondents the documents marked R1a, R1b and R1c has been produced to Court to establish that the premise bearing assessment No. 94 (which is in dispute) is a government quarter and the control over it had been vested in the Divisional Secretary of Hanwella. A police report dated 23.04.1985 has been marked as R2 to prove that it is reserved for the occupation of the police officers attached to the Avissawella Police Station since 1985. Several documents have been tendered to the Court under the same marking, R 2. Among those documents, there is a statement dated 27.02.2009 given by the Petitioner to the police when he came to the occupation of that premise. In that statement, the Petitioner had stated that from 2003 to 2007 he occupied the official quarter bearing No. D/4 and in 2008 he moved onto the official quarter bearing assessment No. 94 (which is in dispute). By the letter dated 09.10.2013 marked

R3a, the HQI of Avissawella Police Station had requested from the Divisional Secretary of Hanwella to take necessary steps under the law against the Petitioner to recover the possession of the quarter provided to him as he had not vacated the quarter even though, he had been transferred from Avissawella Police Station to a Police Station in the Hatton Police area. The same request had been made by the HQI again from the Divisional Secretary by letter dated 26.11.2013 marked R3b. By the letter dated 19.12.2013 marked R3c, the Divisional Secretary had requested from the HQI Avissawella to inform the Petitioner to handover the vacant possession of the quarter. A letter dated 30.01.2014 by which the HQI of Avissawella had recommended to the Superintendent of Police to take disciplinary action against the Petitioner for not handing over the possession of the disputed property upon his transfer to the Hatton Police division has been marked as 3Rd. A document which indicates that the house rent for the official quarter occupying by the Petitioner had been deducted from his salary from 2008 to 2018 has been tendered to Court marked as R4. The Petitioner has admitted that the house rent had been recovered from his salary. Even though, his position is that the recovery of rent from his salary is arbitrary, beyond his control and though, he occupied the house on 10.12.2007, rent had been deducted from December 2008, he had not produced any material to the Court to show that he had taken any action against the recovery of rent from his salary. After the retirement of the Petitioner, by latter dated 12.06.2018 marked R5, the Superintendent of Police has requested from the Petitioner to handover the vacant possession of the official quarter he is occupying. A quit notice dated 14.01.2019 issued to the Petitioner under the Government Quarters (Recovery of Possession) Act, No. 7 of 1969 tendered to Court marked as R6a.

When considering all the above stated facts and circumstances, the Court can be satisfied that the Petitioner is occupying a government quarter, which is under the control of the Divisional Secretary and reserved for the use of the police officers attached to the Avissawella Police Station. It has been reserved for the Petitioner when he was serving in the Avissawella Police Station and even though, he had been transferred out from the Avissawella Police Station, he had not vacated the quarter. Therefore, the HQI Avissawella had requested from the Divisional Secretary to take steps to recover the possession of the quarter. For the reason that the Petitioner has not handed over the vacant possession of the quarter, in terms of rules and regulations of the Police Department, the Respondents had not sent the personal file of the Petitioner to the Pensions Department. The facts stated above are the material facts to this Application of the Petitioner. But he had suppressed and misrepresented those facts.

It is established law that discretionary relief will be refused by Court without going into the merits, if there has been suppression and/or misrepresentation of material facts. It is relevant to refer to the following portion of the judgment of Justice Pathirana in *W. S. Alphonso Appuhamy v. Hettiarachchi*¹,

“The necessity of a full and fair disclosure of all the material facts to be placed before the Court when, an application for a writ is made and the process of the Court is invoked is laid down in the case of the King v. The General Commissioner for the Purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmorbd de Poigns. Although this case deals with a writ of prohibition, the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground

¹ 77 N.L.R. 131 at 135,6.

that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of prohibition without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the Court would not go into the merits of the application, but will dismiss it without further examination”.

The aforementioned finding of Justice Pathirana have been followed in many cases.² Furthermore, in the case of *Sarath Hulangamuwa Vs Siriwardena, Principal, Vishaka Vidyalaya*³ and others, it was held that “*Petitioner who seeks relief by writ which is an extraordinary remedy must in fairness to this court, bare every material fact so that the discretion of this court is not wrongly invoked or exercised.*”

As mentioned hereinbefore, since the Petitioner has suppressed and misrepresented the material facts and not come to Court seeking to invoke the discretionary power of this Court with clean hands, in law, he is not entitled to a writ of Mandamus to compel the 1st to 3rd Respondents to send his personal file to the Pensions Department.

On the other hand, in terms of Chapter XIX, section 6 of the Establishment Code, at the retirement, the government servants should vacate the government quarters which they occupy and hand over the vacant possession to the State. After the retirement, such

² *Blanca Diamonds (Pvt) Ltd Vs Wilfred Van Els And Two Others* (1997) 1 Sri LR 360, *Laub Vs Attorney General And Another* (1995) 2 Sri LR 88, *W.A Bhathiya Indika Wickramasinghe Vs Land Commissioner General & Others*

CA (Writ) 381/2017.

³ (1986) 1 SLR 275 at 282.

officers are not entitled to continue possession of the government quarters. Considering all the above stated facts and circumstances, I dismiss the Application of the Petitioner. The Petitioner should pay Rs. 60,000/= to the 1st to 3rd Respondents as costs of this Application.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL