

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

*In the matter of an application for the grant of Writ
of Mandamus, Certiorari & Prohibition under and in
terms of Article 140 of the constitution.*

CA (Writ)

Application No – 236/2018

1. Hettiarachchige Sarath Dayananda
2. Ahangama Withanage Alanka Indrani Perera

The 1st & 2nd Petitioners of; No.60 IRDP House,
Single Tree Road, Nuwara Eliya.

3. Deundara Kodippili Nimali Wasana, No.56, IRDP
Hose, Single Tree Road, Nuwara Eliya.
4. Malwenna Hewage Sumithra, No.54, IRDP
House, Single Tree Road, Nuwara Eliya.

Petitioners

- Vs -

1. S.H. Kurukularachchi, Deputy Chief Secretary
2. Mr. Sarath Premawansa, Chief Secretary,
Central Province

The 1st & 2nd Respondents of; Chief Secretary's
office – Central Province, Central Provincial
Council Complex, Pallekale, Kundasale,

3. Land Reform Commission, C 82, Hector
Kobbekaduwa Mawatha, Gregory's Road,
Colombo 07.

Respondents

Before: C.P. Kirtisinghe – J
Mayadunne Corea – J

Counsel: Pulasthi Hewamanna with Upendra Walgampaya and Harini Jayawardhena for the Petitioners.
Udayasiri Rajapakse with Wasanthi Balasooriya for the 3rd Respondent.
R. Aluwihare, SC for the 1st and 2nd Respondents.

Argued on: 03.03.2022

Decided on: 09.06.2022

C.P. Kirtisinghe – J

The petitioners are seeking for a mandate in the nature of a writ of certiorari quashing the decisions of the 1st Respondent to issue the quit notice, the application for ejectment and the form C affidavit marked P9A, P9B, P9C, P10A, P10B and P10C, P11A, P11B, P11C, P12A, P12B and P12C, a mandate in the nature of a writ of certiorari quashing the quit notice, the application for ejectment and the form C affidavit marked P9A, P9B, P9C, P10A, P10B and P10C, P11A, P11B, P11C, P12A, P12B and P12C, a mandate in the nature of a writ of certiorari quashing the decisions of the 1st Respondent to issue the quit notice marked P12D on an individual who is not in residence, a mandate in the nature of a writ of certiorari quashing the quit notice marked P12D, a mandate in the nature of a writ of prohibition preventing the Respondents from proceeding with P9, P10, P11 and P12, a mandate in the nature of a writ of mandamus directing the 3rd Respondent to consider taking steps to alienate the lands on which the petitioners are residing, to the petitioners and for the interim relief prayed for by the petitioners.

The facts of the case can be summarized as follows,

Some of the petitioners were employed by the integrated rural development programme (Nuwara Eliya) funded and managed by the government of Netherlands and the petitioners were awarded residences while working for the programme. It is the case of the petitioners that they were notified that they could

continue to reside there in on the conclusion of the programme. The Petitioners and their family members had been residing in those houses for a long period of time. The petitioners state that on completion of the IRDP project the petitioners were not directed to handover their residences and the petitioners were verbally informed by the team leaders of the IRDP that the petitioners together with their family members could continue to reside in those residences and therefore they made substantial efforts to improve and maintain those residences. According to the petitioners there had been previous attempts by the District Secretariat - Nuwara Eliya and the Chief Secretary's office (Central Province) to eject some of the petitioners from these residences which had failed. Thereafter all the petitioners were noticed by the 1st Respondent, The Deputy Chief Secretary of the Central Province to vacate their residences and the petitioners were summoned to appear before the Magistrate of Nuwara Eliya as action had been filed under the government quarters (Recovery of possession) act to evict the petitioners.

The petitioners state that the steps taken by the Chief Secretary's office (Central Province) to evict the petitioners from their residences are arbitrary, irrational, capricious and *ultra vires* and contrary to the government quarters (Recovery of possession) Act no. 07 of 1969 (as amended) for the following reasons.

01. The Chief Secretary's office (Central Province) has no nexus with the petitioners and it cannot direct the petitioners to vacate their homes.
02. The land on which these residences are situated is vested in the 3rd Respondent Land Reform Commission and it belongs to the LRC. That land is not vested in the Central Provincial Council.
03. Therefore the 1st Respondent is not the competent Authority to move to evict the petitioners from the land belonging to the LRC.
04. The residences in issue were constructed by the government of Netherlands for a programme funded and carried out by that government and they do not come within the definition of **the government** as set out in section 2 dd of the interpretation ordinance or the definition of **government quarters** under government quarters (Recovery of possession) Act no. 07 of 1969 (as amended).
05. There has been no proper lawful exercise of power by the Respondents nor the fair and reasonable exercise of discretion and as such the decisions of the Respondents are a nullity and/ or void *ab initio*.

06. The decisions are contrary to the legitimate expectations of the petitioners' and they are in violation to the rules of natural justice.

Applicability of Government Quarters (Recovery of Possession) Act No. 7 of 1909 (as amended)

It is the case of the Petitioners that the residential quarters in issue are situated in the Scrub Division of the Pedro Estate which is vested in the 3rd Respondent LRC and that land does not belong to the Central Provincial Council. Therefore, the 1st Respondent is not the competent authority to move to evict the Petitioners from the land belonging to LRC. Further, the Petitioners have taken up the position that as those residences were constructed by the Government of Netherlands for a programme funded, managed and carried out by that Government, they do not come under the definition of 'Government' within the meaning of section 2 (dd) of the Interpretation Ordinance or the definition of 'Government Quarters' under the Government Quarters (Recovery of Possession) Act No. 7 of 1969.

There is no dispute between the parties that the land on which these houses are situated was vested in the Land Reform Commission at the time they were constructed and the LRC had permitted the I.R.D.P. to construct those houses on the land belonging to the LRC. But it is the case of the 1st and 2nd Respondents that as per Government Circular No. 269, the 4 houses located in the location described as "Single Tree" were vested with the Central Provincial Council and they have a legal right to those 4 houses.

According to the Circular No. 269 marked 1R4, entitled "වත්කම් පලාත් සභාවලට පැවරීම" the state corporations and departments were permitted to transfer their assets to the provincial councils and according to the document marked 1R5 the assets belonging to the නුවරඑළිය දිස්ත්‍රික් ග්‍රාමීය සංවධර්න ව්‍යාපෘතිය (Integrated Rural Development Programme) had been transferred to the Central Provincial Council under that Circular and the Central Provincial Council had accepted those assets. According to 1R5 those assets include the 4 houses situated in the locality of "Single Tree". Thus, it is abundantly clear that the houses claimed by the Petitioners and in which they are living had been transferred to the Central Provincial Council and the Central Provincial Council is in the control of those houses. It is also clear that those houses do not belong to the LRC.

1R5 only refers to 4 houses situated at 'Single Tree'. It does not refer to the soil covered by those houses. Therefore, it appears that only the buildings had been transferred to the Central Provincial Council. According to the contents of the documents marked 1R9, 1R10 it is clear that the title to the soil covered by those houses still remains with the LRC and the Central Provincial Council is planning to acquire those soil rights. From the contents of the documents marked 1R10 and 1R11 it is apparent that LRC had consented to the eviction of the unlawful occupants from those houses and agreed that the Central Provincial Council should take appropriate steps under the provisions of the Government Quarters (Recovery of Possession) Act No. 7 of 1969.

The 3rd Respondent LRC has not denied this position. Although the LRC still owns the soil rights covered by these buildings these are not applications made under the provisions of the State Lands (Recovery of Possession) Act. Therefore, the ownership to the soil covered by these buildings becomes irrelevant to these proceedings. Section 9 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 (as amended) defines "Government quarters" as follows, "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 **including any land or premises** in which such building or room or other accommodation is situated, but does not include any house provided by the Commissioner for National Housing to which Part V of the National Housing Act applies".

Once these houses are transferred to the Central Provincial Council, they become buildings or accommodation occupied for the use of residence which is provided by or on behalf of the government or any public corporation. The definition of "Government quarters" includes not only the buildings (houses) but also the land or premises in which such buildings are situated. Therefore, the Central Provincial Council is empowered to institute action under this Act for the recovery of possession of these residences irrespective of the fact that they stand on the land belonging to the LRC.

According to the definition contained in Section 9 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 (as amended), "competent authority" means the Secretary to the Ministry charged with the subject of Public

Administration or any public officer authorized by such Secretary to be the competent authority for the purpose of the Act. By the letter marked 1R13 the Secretary to the Ministry of Public Administration – the Ministry charged with the subject of Public Administration – has authorized the 1st Respondent to be the competent authority for the purposes of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 (as amended) to recover possession of the government buildings belonging to the Central Provincial Council.

Therefore, the 1st Respondent is empowered to institute proceedings in the Magistrates Court under the provisions of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 to recover possession of the residences in issue which belong to the Central Provincial Council.

The legal right and legitimate expectations of the Petitioners

The Petitioners have tendered a deed of transfer marked P7 to show that the 3rd Respondent LRC had sold and transferred a block of land from the Scrub Division of the Pedro Estate to a private individual. The Petitioners state that they made requests to the 3rd Respondent LRC to permit them to purchase the plots of land where they were residing but there was no response from the LRC.

The 3rd Respondent LRC states that the Petitioners did not make formal applications to the LRC to purchase the land in question. The 3rd Respondent further states that the Land Reform Commission is not under any public duty to alienate lands to the Petitioners. As the Petitioners occupy several buildings at the expense of a government sponsored project and do not occupy buildings that they themselves had erected; their title cannot be regularized under the prevailing state policy and the provisions of the Land Reform Law. In the case of **Wannigama v Incorporated Council of Legal Education [2007] 2 Sri L.R. 281**, a case where the admissions to the Sri Lanka Law College were challenged by an unsuccessful candidate, Amaratunga J had observed as follows:-

“For the Appellant to insist that, *Mandamus* be issued to direct Sri Lanka Law College to admit him to follow its programme, he should have fulfilled the basic requirement for the said writ by indicating that **he has a legal right** as he had obtained over and above 69 marks. The appellant has obtained only 66 marks, thus has no **legal right for admission**, on the basis of the results. When the Appellant

has no **such legal right** there cannot be **any legal duty** for the 1st respondent to admit the Appellant to Sri Lanka Law College.”

“The appellant could not have any legitimate expectation on the basis of his marks obtained at the entrance examination. The intervening circumstances, was the selection of a group of students who had sat for the entrance examination in Tamil medium. The appellant did not belong and could not have belonged to that group. **It is not possible to rely upon a legitimate expectation, unless such expectation is founded upon either a promise or an established practice”.**

For the expectation to be legitimate, the act that caused the expectation to arise should be legitimate H.W.R. Wade and C.F. Forsyth in their text book on administrative law (11th edition) at pages 450 – 452 observe as follows;

“It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those who it was made.” (page 452)

The Petitioners say that on the conclusion of the I.R.D.P. Programme the Petitioners were notified that they could continue to reside in these houses. The Petitioners say that they were verbally informed by the Team leaders of the I.R.D.P that the Petitioners and their families could continue to reside in those houses after the conclusion of the project. Even assuming it to be true, such a verbal promise will not create a right to an immovable property in favour of the Petitioners. There is no binding effect in such a promise.

The Petitioners are licensees and they do not have an independent right to the houses they occupy. Therefore, the Petitioners do not have a legal right to be violated and without such a legal right there cannot be any legal duty on the part of the 1st and 2nd Respondents not to initiate legal proceedings to evict the Petitioners. Therefore, the Petitioners cannot make the allegation that there has been no proper lawful exercise of power by the Respondents and a reasonable

exercise of discretion and therefore, the decisions of the Respondents are a nullity or void *ab initio*. It is not possible to rely upon a legitimate expectation unless such expectation is founded upon either a promise or an established practice. There is no valid promise upon which the expectations of the Petitioners are founded. There is no evidence to show that there was an established practice to transfer government quarters to the occupants after their tenancy had come to an end. The 3rd Respondent LRC is not bound to transfer the plots of land upon which these houses are situated to the Petitioners and the LRC does not owe a legal duty to do so. It is purely a discretion of the Land Reform Commission. The 3rd Respondent LRC says that since the Petitioners occupy buildings at the expense of a government sponsored project and they do not occupy buildings that they themselves had constructed, their title cannot be regularized under the prevailing state policy and the provisions of the Land Reform Law. It is the Central Provincial Council which owns these buildings and it is more reasonable for the LRC to sell the plots of land on which these houses are situated to the Central Provincial Council than to sell them to the Petitioners whose occupation has become unlawful.

The two documents marked 1R1 and 1R2 show that the 1st Petitioner had entered into a tenancy agreement with the Central Provincial Council in 2001 in respect of the house in which he is in occupation and agreed to vacate the house at the end of 5 years. Therefore, The Petitioners could not have had any legitimate expectation to acquire rights to these houses.

For the aforesaid reasons, the Petitioners are not entitled to a mandate in the nature of a writ of certiorari to quash the decisions and the procedural steps taken by the 1st Respondent to eject the Petitioners from the houses occupied by them, to a mandate in the nature of a writ of prohibition preventing the Respondents from proceeding with P9, P10, P11 and P12, to a mandate in the nature of a writ of mandamus directing the 3rd Respondent LRC to consider taking steps to alienate the lands upon which the Petitioners are residing to the Petitioners.

Therefore, I dismiss the applications of the Petitioners without costs.

Mayadunne Corea – J
I agree

Judge of the Court of Appeal

Judge of the Court of Appeal