

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

In the matter of an Appeal made under
Article 154P(6) read with 138(1) of the
Constitution of Sri Lanka.

Secretary,
Ministry of Public Administration,
Independence Square,
Colombo 07.

Petitioner

CA (PHC) No.82/2011 Vs.

B.H.B. Pieris

Defendant

Colombo HC No: HCRA 101/10

And

B.H.B. Pieris

Defendant – Petitioner

Vs.

01. Secretary,
Ministry of Public Administration,
Independence Square,
Colombo 07.

02. Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondent

And Now Between

B.H.B. Pieris,
1/F/9, Government Housing,
Jayawadenagama,
Battaramulla.

**Defendant – Petitioner –
Appellant**

Vs.

01. Secretary,
Ministry of Public Administration,
Independence Square,
Colombo 07.

02. Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondents – Respondents

**Before : W.M.M.Malinie Gunarathne, J
: P.R.Walgama, J**

**Counsel : S.N. Vijithsingh for the appellant.
: Chaya Sri Nammuni SC for the respondent.**

Argued on: 09.12.2015

Decided on: 27.04.2016

P.R.Walgama, J

The question in this appeal is whether the Court below was correct in its reasoning and conclusions. by making order for the Respondent-Petitioner –Appellant to vacate the Government quarters.

The Plaintiff-Respondent-Respondent (in short Respondent) instituted action against the Respondent- Petitioner-Appellant(in short the Appellant) in terms of Section 6 of the Government quarters (Recovery of possession) Act, in the case bearing No.85764/05 in the Magistrate Court of Colombo.

The Learned Magistrate by his order dated 12.02.2010 has issued the writ, but had given on sympathetic grounds for the Appellant 3 months to vacate the suit premises. As the Appellant did not vacate the said premises the Learned Magistrate has ordered to eject the Appellant accordingly.

Being aggrieved by the said order the Appellant came by way of Revision to the High Court of Colombo to have the said order quash or set aside.

The Learned High Court Judge in dealing with the issue in hand had observed the fact that the Respondent – Appellant against whom the notice of ejectment was issued had filed a case in the Court of Appeal for a writ of Certiorari to quash the decision

of the Secretary , Public Administration, but nevertheless the application has been refused by the Court of Appeal accordingly.

It was also observed by the Learned High Court Judge, that although the Learned Magistrate would have made order for the immediate vacation of the suit premises , nevertheless on sympathetic ground has allowed him to stay for three months.

It was the contention of the Petitioner – Respondents that there are no provisions in terms of Government quarters (Recovery of Possession Act) to stay the execution of the writ issued by the Magistrate.

It is also to be noted that the Appellant had failed to disclose the fact that the certain parties who was served with quit notice has made an application for a mandate in the nature of a writ of Certiorari to quashed the order of the Petitioner – Respondent has been refused by the Court of Appeal.

In the above setting the Learned High Court Judge was of the view that the above factual matrix do not warrant to revise the said impugned order of the Magistrate.

Being aggrieved by the said order of the Learned High Court Judge the Appellant has appealed to this Court to have the said order vacate or set aside.

As tersely stated facts in the Petition of Appeal are as follows;

That the Learned Magistrate has not given the opportunity to show cause and there by violated the audi alteram partem rule. But it is trite that show cause procedure is not followed in the recovery of possession act.

That as per Cabinet decision taken on 14.08.1991 it was decided that the houses that were occupied by the Government Servants at Jayawadenagama Housing Scheme to be transferred to the occupier on payment decided by the Cabinet.

The Petitioner- Appellant has been in occupation in the suit premises over 20 years , and in 1990 has retired from the Telecommunication Department.

It is the position of the Petitioner - Appellant that when he retired from the services the Secretary to the Ministry of Public Administration and Home Affairs had permitted the Petitioner - Appellant and his family members to occupy the said quarters even after his retirement.

The Petitioner - Appellant stressed the fact that by the Cabinet decision bearing No. 1991/116(52) dated 21st August 1991 has been decided to hand over the Government Quarters to the government servants who are occupying the quarters.

The afore said decision of the Cabinet was communicated by the Secretary to the Ministry of Housing and Construction to the National Housing Development Authority by the letter marked as P4A.

Pursuant to the afore said decision the Manager of the National Housing Development Authority had informed the Petitioner - Appellant that he should pay a sum of Rs. 76,250/ to the said Authority for the preparation of the quarters to the Petitioner - Appellant.

Although the said proposal was indicated to the Petitioner - Appellant by letter dated 12th June 2001, by the letter dated 24th July 2003 the Additional Secretary of the said Ministry had informed thus;

That the Cabinet had not approved the memorandum containing the proposals to purchase the quarters by the Petitioner at the current Market price.

That a committee was appointed by the said Minister to look into the grievances of the Petitioner and the proposals the said committee would be implemented in terms of the decision taken by the said Ministry.

That the Petitioner should pay the rent for the said quarters from the date from which he stopped paying the rent.

And the rent to be paid in terms of the schedule attached to the said letter. The said letter is marked as P10.

It is more fully averred in the petition that the Petitioner -Appellant had been paying rent to the disputed premises and also the water and the electricity bills were paid with the expectation of purchasing the said quarters.

Further it is to be noted that by notice to quit dated 31st August 2005 the 2nd Respondent directed the Petitioner to vacate the quarters within 2 months thereon in terms of Government Quarters Recovery of Possession Act No. 7 of 1969.

By the letter dated 30th September 2005 marked as P24 the Assistant Secretary informed the Petitioner that he would take steps to recover the Quarters.

It is alleged by the Petitioner -Appellant that the notice to quit dated 31st August 2005 is null and void and non est in law for the grounds stated in the paragraph 32 of the petition.

The ground norm of the argument of the Respondent is basically that the said quarters are required for the succeeding government servant employed with the 1st Respondent.

Along with the Petitioner- Appellant quit notices were served on occupants and an action was filed in the

Magistrate Courts to eject them. The said parties had appealed against the order of the Magistrate and the said appeals had been dismissed by the High Court and the Appellate Court.

Further it is contended by the Respondents that although the Petitioner - Appellant has planked on the Cabinet decision taken on 14.08.1991 to transfer ownership of the Government quarters to the occupants, nevertheless the said Cabinet decision was revoked by the Cabinet decision dated 17.11.1993 and has decided not to transfer ownership of Government Quarters in any manner.

As it is been observed the said Cabinet decision was taken much prior to the serving of the quit notice, the Petitioner - Appellant could have not had any legitimate expectation of purchasing the quarters.

As a comprehensive response to the position taken by the Petitioner- Appellant regarding the non compliance of the Section 12(1) of the Oaths and Affirmation Ordinance, the Respondent states thus.

The above section is reproduced for easy reference here under thus;

“provided that the commissioner for oaths shall not exercise the powers given by this section in any

proceedings or matter in which he is the attorney - at-law to any of the parties, or in which he is otherwise interested”.

It is the contention that said P.E.M.D.K.Palipana has signed the as the Competent Authority, and also has certified as the Commissioner of oaths.

But it is the position of the Petitioner – Respondent that the said Attorney at the time the oath was administered to the affidavit in 2005, was not the attorney-at-law on record of the 1st Respondent. Therefore it is said that there is no violation of the said provision in the year 2005 when the oath was administered as the said Ms. Palipana was not the attorney for any party. Hence this Court is of the view that there is no merits in the objection raised by the Defendant – Petitioner – Appellant and same should stand rejected.

Therefore in the above setting it is contended by the Petitioner – Respondent that the said Ms. Palipana was not the Attorney for the 1st Respondent and therefore the said affidavit is valid in law.

In essence it is abundantly clear that the Learned Magistrate has given an opportunity for the Appellant three months time to vacate, although there is no provisions for such, and further this court could accept the alleged affidavit, and compelled to hold that the ejectment order is valid in law.

Thus I affirm the of the ORDER of the Learned High Court Judge and the Order of the Learned Magistrate and dismissed the Appeal accordingly.

Appeal is dismissed subject to a cost of Rs. 5000/.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunarathne, J

I agree,

JUDGE OF THE COURT OF APPEAL