

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

In the matter of an application for *Restitutio in
Integrum* and Revision under and in terms
of Article 138 (1) of the Constitution of the
Democratic Socialist Republic of Sri Lanka

Court of Appeal

Case No: RII/0076/2024

DC Galle

Case No: SP/4095

Fathima Rushda Waseel

(Before marriage, Fathima Rushda Rauff)

No. 29/1A, Station Road,

Wellawatte

Applicant

Vs

Hemawarna Wijesinghe Senarath,

No. 9, Light House Street,

Fort, Galle

Respondent

And NOW BETWEEN

Hemawarna Wijesinghe Senarath,

No. 9, Light House Street,

Fort, Galle

Respondent-Petitioner

Vs.

Fathima Rushda Waseel

(Before marriage, Fathima Rushda Rauff)

No. 29/1A, Station Road,

Wellawatte

Applicant-Respondent

Before :

R. Gurusinghe J

&

M.C.B.S. Morais J

Counsel : Maura Gunawansha, PC. With
Isuru Siriwardana and Dineth Gunasekara
Instructed by Yashodi Wijayasekara
for the Respondent-Petitioner

Neomal Senatilleke with Tanya Morjan
Instructed by Anurangi Singh
For the Respondent

Supported on : 04-03-2025

Decided on : 29-05-2025

ORDER

R. Gurusinghe

The respondent-petitioner (hereinafter referred to as the petitioner) filed this *Restitutio-in-Integrum* application, seeking to set aside the Order of the Learned District Judge dated 23 August 2024 in the case of SP/4095 in the Additional District Court of Galle, and to restore the petitioner to his original position before the absolute *decree nisi* entered in that case.

The applicant-respondent (hereinafter referred to as the respondent) made an application to the Commissioner of National Housing in terms of the provisions in section 18 A of the Rent Act No. 7 of 1972, to demolish the building assessment nos. 5, 7, 9, 9A, 9 1/1, 9 1/2, 9 1/5, and to redevelop the land for more efficient utilisation. The petitioner was a tenant of assessment Nos. 9, 9A, 9 1/1, 9 1/2, and 9 1/5.

After an inquiry, the Commissioner of National Housing (Southern Province), by her Order dated 15-10-2023, decided that buildings with assessment numbers 5, 7, and 9 were to be demolished and the possession was to be handed over to the owners. Further, the owners were ordered to pay compensation to the tenants. The petitioner was also awarded compensation of Rupees One Million One Hundred and Fourteen Thousand (Rs. 1,114,000/-).

Thereafter, the respondent instituted an action before the District Court of Galle, in terms of Section 23 of the Rent Act, to recover possession of assessment numbers 9, 9A, 9 1/1, 9 1/2, and 9 1/5. The Learned District

Judge issued a *rule nisi* against the petitioner. Upon receiving the *rule nisi*, the petitioner filed objections and moved to dissolve the said *rule nisi*. After an inquiry, the District Judge of Galle, by her Order dated 23-08-2024, decided that the possession to be handed over to the respondent (landlord-owner) only with regard to assessment no. 9. In respect of the assessment numbers 9A, 9 1/1, 9 1/2, 9 1/5, the Learned District Judge did not grant a writ of possession. Accordingly, the writ of possession was issued in respect of the building assessment no.9 only, and possession of assessment no. 9 was handed over to the respondent.

Being aggrieved by the order of the Learned District Judge dated 23-08-2024, the petitioner filed this application before this court, and the grounds urged by the petitioner are as follows:

- (a) The said order is totally contrary to the intention in enacting the statutory provisions of the Rent Act No. 7 of 1972 as amended.*
- (b) The Learned Trial Judge has totally failed and neglected to duly evaluate and to consider the vital facts and the documentary evidence in arriving at her findings.*
- (c) The Learned trial Judge has entered the order without duly analysing and considering the legal provisions, especially relating to the demolition of the buildings under the Rent Act No. 7 of 1972 and summary procedure under the Civil Procedure Code.*
- (d) The Learned Trial Judge in determining the order impeached and issuing the writ of execution, has not at all considered the misleading, mala fide conduct, suppression of facts and fraudulent intention of the Respondent.*
- (e) The Learned Trial Judge has totally failed and ignored to consider the vital legal matters raised by the Petitioner to the extent of denying audi alteram partem to the Petitioner.*
- (f) The Learned Trial Judge has failed to properly evaluate the material facts and evidence placed in relation to the violation of uberima fides, the duty towards court in applying for ex-parte orders and she further erred in law allowing the execution of the writ when her order itself reveals the existence of other rented out premises not covered by the demolition order.*

(g) The impeached order and the execution thereof by the Learned Trial Judge is contrary to the actual purpose and intention of the legislature specially in enacting Section 18 A of the Rent Act No. 7 of 1972.

(h) The execution of the writ only in respect of assessment No. 09 of the subject premises is futile and meaningless as per the impugned order of the Learned Trial Judge, as the entire building could not be demolished.

The petitioner has not challenged the decision of the Commissioner of National Housing (Southern Province); therefore, that decision remains valid. The petitioner, without challenging the decision of the Commissioner of National Housing (Southern Province), does not wish to implement that decision. The objections raised against the *rule nisi* by the petitioner were that the *rule nisi* was not in conformity with the decision of the National Housing, as the respondent had included premises numbers for which the Commissioner of National Housing (Southern Province) had made no decision. The Learned District Judge made the *rule nisi* absolute after removing the assessment numbers for which no order had been made by the Commissioner of National Housing (Southern Province).

The grounds that were put forward by the petitioner seeking to set aside the decision of the Learned District Judge of Galle dated 23 August 2024 are vague and incoherent. For instance, ground A is as follows:

(a) The said order is totally contrary to the intention in enacting the statutory provisions of the Rent Act No. 7 of 1972 as amended.

The Learned District Judge, by her order, issued a writ of possession in favour of the respondent, exactly as per the decision of the National Housing. The petitioner has no complaint about the decision of the National Housing or that the Learned District Judge's order was not in accordance with the decision of the National Housing. Therefore, the above ground is not acceptable.

The Ground (b) is this;

The Learned Trial Judge has totally failed and neglected to duly evaluate and to consider the vital facts and the documentary evidence in arriving at her findings.

To substantiate ground (b), the petitioner does not state which vital facts or documentary evidence the Learned District Judge had failed to consider. The Learned District Judge has to consider only the decision of the National Housing and if there was a good and valid cause shown by the petitioner not to deliver possession in terms of section 23 of the Rent Act.

The petitioner did not challenge the National Housing Commissioner's decision either by a writ application or even in this application. There is no complaint that the execution of the writ of possession was not in conformity with the decision of the National Housing Commissioner.

Section 23 sub-section 9 of the Rent Act is as follows:

(9) Any person who -is dissatisfied with any final judgment, or any order having the effect of a final judgment, pronounced or made by a District Court under this section may appeal to the Court of Appeal against such judgment or order; and the provisions of any other written law relating to appeals to the Court of Appeal from the judgments or orders of District Courts shall apply in the case of any appeal preferred under the preceding provisions of this subsection.

The petitioner has not filed any appeal against the impugned order of the Learned District Judge. When the law provides for a specific remedy to a party, he should seek that remedy.

For the reasons stated in this order, we refuse to issue a formal notice to the respondent. The application of the petitioner is dismissed.

Judge of the Court of Appeal.

M.C.B.S. Morais J.
I agree.

Judge of the Court of Appeal.