

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

*In the matter of an application for
mandates in the nature of Writs of
Certiorari, Prohibition, and Mandamus,
under and in terms of Article 140 of the
Constitution.*

C.A. Case No. WRT - 0250/22

1. Palitha Hemaratne Kankanamge,
Carrying on business at No.270/3,
Main Street, Ground Floor,
'Ratna Building', Colombo 11.
2. Lane Anton Rosario Johnson,
Carrying on business at No.270/4,
Main Street, Ground Floor,
'Ratna Building', Colombo 11.

The 2nd Petitioner appearing by his
lawful Power of Attorney holder,
Thomas Joseph Anthony Venister
Fernando of No. 51/6,
Galpoththa Street, Colombo 13.

3. Suppiah Sivasubramaniam,
Carrying on business at No 270/5,
Main Street, Ground Floor,
'Ratna Building', Colombo 11.
4. Sivam Raman,
Carrying on business at No.270,
Main Street, Ground Floor,
'Ratna Building', Colombo 11.

PETITIONERS

Vs.

1. Urban Development Authority,
6th and 7th floors, 'Sethsiripaya',
Battaramulla.
2. Major-General (Retd) Udaya
Nanayakkara,
Chairman,
Urban Development Authority,
6th and 7th floors, 'Sethsiripaya',
Battaramulla.
3. N. P. K. Ranaweera,
Director-General,
Urban Development Authority,
6th and 7th floors, 'Sethsiripaya',
Battaramulla.
4. Secretary,
Ministry of Urban Development,
17th and 18th floors, 'Suhurupaya',
Battaramulla.
5. Prasanna Ranatunga.
Minister of Urban Development,
Ministry of Urban Development,
17th and 18th floors, 'Suhurupaya',
Battaramulla.
6. Rathna Enterprises (Pvt.) Limited,
No B4/1, Sucharitha Mawatha,
Colombo 12.
7. Ranhotigedara Wilson,
8. Jayasuriya Mudiyanse
Shirani Jayasuriya.

The 7th and 8th Respondents Above-named carry on business under the name and style of "Wilson Stores", at No. 20, 1.X. Pereira Mawatha, Colombo 11.

RESPONDENTS

BEFORE : **M. T. MOHAMMED LAFFAR, J**

WICKUM A. KALUARACHCHI, J

COUNSEL : Nilshantha Sirimanne with Deshara Goonetilleke
for the Petitioners.

Suranga Wimalasena, DSG with R. Aluwihare, SC,
for the 1st to 5th Respondents.

Gamini Perera with Wijitha Salpitikoralala for the 6th
Respondent.

Niranjan De Silva with Shane Foster for the 7th and
8th Respondents.

WRITTEN SUBMISSIONS

TENDERED ON : 20.10.2023 (On behalf of the Petitioners)

24.10.2023 (On behalf of the 7th and 8th
Respondents)

DECIDED ON : 20.11.2023

ORDER

WICKUM A. KALUARACHCHI, J.

The four petitioners filed this application seeking writs of Certiorari, Mandamus and Prohibition. Twenty-six reliefs have been prayed for in the petition, including interim reliefs. Quit notices marked as P-16(a) to P-16(d) have been issued to the petitioners by the 1st respondent Urban Development Authority on the ground that the petitioners unlawfully occupy several shops situated at a state land. The petitioners' challenge the said quit notices by this application.

The learned counsel for the petitioner made oral submissions in supporting the application. The learned Deputy Solicitor General for the 1st to 5th respondents, the learned counsel for the 6th respondent and the learned counsel for the 7th and 8th respondents agreed to file written submissions without making oral submissions. However, only the written submission on behalf of the petitioners was filed by the given date, which is the 20th October 2023. On 25th October 2023, written submissions were filed on behalf of the 7th and 8th respondents, apologizing for the delay and the learned Counsel for the 7th and 8th respondents urged to consider the written submissions filed by him. This order has to be made to determine whether the notices should be issued to the respondents and whether the interim reliefs prayed for by the petitioners should be granted.

Briefly, the facts relating to this case are as follows:

There was a lease agreement between the Urban Development Authority (hereinafter referred to as the “UDA”) and the 6th respondent. The 6th respondent had constructed a seven-story commercial building on the land, which was leased out to the 6th respondent. However, due to the reasons explained in the petition, the said lease agreement had been revoked by the UDA. The learned counsel for the petitioner contended that on the fresh lease agreement marked P-18, the UDA leased out the said premise again to the 6th respondent. The learned counsel for the petitioner asserted that the UDA is going to eject the petitioners to hand over the premise to the 6th respondent. The learned counsel pointed out that in the District Court case bearing No. 00067/17/DSP, the petitioners’ rights were decided without the petitioners being made as parties. So, the complaint of the learned counsel for the petitioners was that the rights of the petitioners had been decided without them being heard. The learned counsel for the petitioners stated that by the order of the Civil Appellate High Court in the case bearing No. WP/HCCA/COL/14/2020 (LA), the UDA undertook not to take actions against the 1st petitioner of the instant application (the plaintiff

of the said case) to eject him without resorting to law, but even without hearing the petitioners, the UDA issued quit notices to eject the 1st petitioner and the other petitioners. The learned counsel contended further that the respondents acted in violation of the rules of natural justice.

In this application, the petitioners seek the reliefs prayed for in the petition on the basis that the quit notices that were issued to the petitioners are bad in law. The learned counsel for the petitioners also contended that the UDA can take steps to get back the vacant possession of this state land in terms of Section 3 of the State Lands (Recovery of Possession) Act, but the opinion of the competent authority must be formed in a reasonable way, and this court is vested with the power to ascertain whether the competent authority has formed its opinion in a reasonable way.

In addition, the learned counsel for the petitioners contended that the petitioners were in possession of the premises for the last 19 years, and although they were monthly tenants, they had the legitimate expectation of continuing the possession of the premises in question.

The learned counsel for the 7th and 8th respondents stated in his written submissions that the 1st respondent indicated its willingness to transfer the leasehold of the subject property to the 7th respondent if the 6th respondent pays off the arrears of rent on the subject property. It is stated further that the 7th and 8th respondents paid off a debt of Rs.41,926,158.17 to the 1st respondent in lieu of the 6th respondent because the 1st respondent undertook to clear the subject property of any lessees possessing the same.

Section 3 of the State Lands (Recovery of Possession) Act (hereinafter referred to as the “Act”) reads as follows:

3(1) Where a competent authority is of the opinion

- (a) that any land is State land; and
- (b) that any person is in unauthorized possession or occupation of such land, the competent authority may serve a notice on such person in possession or occupation thereof, or where the competent authority considers such service impracticable or inexpedient, exhibit such notice in a conspicuous place in or upon that land requiring such person to vacate such land with his dependents, if any, and to deliver vacant possession of such land to such competent authority or other authorized person as may be specified in the notice on or before a specified date. The date to be specified in such notice shall be a date not less than thirty days from the date of the issue or the exhibition of such notice.

According to the Interpretation Section, 18(h) of the Act, "Competent Authority" used in relation to any land means the Government Agent, an Additional Government Agent or an Assistant Government Agent of the district in which the land is situated and, includes;

- (h) the head of any other Government Department or Institution being a department or institution created by law, where such land is under the control of such department or institution.

The Director General of the Urban Development Authority is the head of that institution and as the competent authority, he has acted in accordance with Section 3 of the Act and sent quit notices.

There is no dispute on the fact that the land in question is owned by the UDA. The petitioners admit that they are monthly tenants. It is also not in dispute that the lease agreements bearing numbers 3475, 3476, 3477, and 3471 (marked as P6(a) to P6-(d)) are the lease agreements between the UDA and the petitioners in respect of the premises pertaining to this application. It is vital to note that in all four agreements, the following clause is contained:

“ මෙම කුලී ගිවිසුමේ ආරම්භක දිනය 2003.04.01 වන අතර මෙකී පළමු පක්ෂය විසින් මාසයක පූර්ව දැනුම් දීමකින් පසු ගිවිසුම අවසාන කරන තෙක් මෙම කුලී ගිවිසුම ක්‍රියාත්මක වේ.”

According to the aforesaid clause of the agreement, the only requirement to terminate the monthly tenancy is to give one month's notice. In such circumstances, the petitioners could not have a legitimate expectation that they would be permitted to possess and/occupy the said premises peacefully and without any disturbances in the absence of a clear breach of the conditions of the lease agreements because it is clearly stated in the lease agreements that the monthly tenancy could be terminated by giving one month's notice. To terminate the tenancy by giving one month's notice, breach of any condition in the agreement is not required. The UDA has leased out the premises, and when they want to take back possession, the only requirement to be fulfilled is to give one month's notice. Therefore, both arguments advanced by the learned counsel for the petitioners that the petitioners had a legitimate expectation and the competent authority has not formed the opinion under Section 3 of the Act in a reasonable way cannot be accepted. It is apparent that every step that has been taken up to the stage of issuing quit notices has been done in accordance with the law.

The other contention of the learned counsel for the petitioners was that in the District Court of Colombo case bearing No. DSP/00067/2017, it was decided to eject the petitioners from the property, considering them as unlawful occupants in order to hand over the possession to the 6th respondent without the petitioners being heard.

It is correct that the petitioners were not parties to the said District Court action. The said District Court action was between the 7th & 8th respondents and 6th & 1st respondents of this application. The said action had been filed with regard to a dispute between those parties, and in the said District Court action, it was not decided to eject the

petitioners. According to the proceedings of the said District Court action dated 09.03.2022, it was informed to the District Court that the Minister's approval has been obtained in terms of Section 14(2)B of the State Lands (Recovery of Possession Act) to issue quit notices to eject the petitioners as unlawful occupants. As stated previously, what is required by law to eject petitioners from the premises is to give one month's notice. There is no requirement to have a court hearing and obtain a decision from the court to eject the petitioners. Section 3 (1A) of the Act specifically states that "No person shall be entitled to any hearing or to make any representation in respect of a notice under subsection (1)." According to the clause 1 of the agreements marked P6(a) to P6(d), one month's notice has been given to the petitioners to handover the vacant possession of the premises. As mentioned in the notices, the petitioners had to hand over the possession of the premises on or before 30th May 2022. Therefore, the petitioners' occupation after 30th May 2022 is unlawful and after 30th May 2022, they are liable to be ejected.

One of the main contentions of the learned Counsel for the petitioners was that the Minister's approval (P-21) is illegal, *ultra vires*, and amounts to dictation and usurpation of the powers of the purported competent authority. The learned Counsel for the petitioners contended that the Minister in charge of the UDA cannot determine or dictate to the Competent Authority what to do or how he is to discharge or exercise his powers, duties, or functions. The learned Counsel for the petitioners advanced these arguments because of the following portion contained in the document marked P-21:

1979 අංක 7 දරන රජයේ ඉඩම් (සන්නකය ආපසු ගැනීමේ) පනතේ 14(2)B වගන්තිය
යටතේ අනුමැතිය

නාගරික සංවර්ධන හා නිවාස අමාත්‍ය මහින්ද රාජපක්ෂ වන මම, 1981 අංක 58 දරන රජයේ ඉඩම් සන්නකය ආපසු ගැනීමේ (සංශෝධිත) පනතින් සංශෝධිත 1979 අංක 7 දරන රජයේ

ඉඩම් (සන්නකය ආපසු ගැනීමේ) පනතේ 14 (2)B වගන්තිය යටතේ මා වෙත පැවරී ඇති බලතල ප්‍රකාරව පහත උපලේඛනයේ විස්තර කෙරෙන නාගරික සංවර්ධන අධිකාරිය සතු ඉඩම තුළ පිහිටි ගොඩනැගිල්ලේ බිම් මහලේ කුලීකරුවන් ඉවත් කර ගොඩනැගිල්ලේ හිස් භුක්තිය ලබාගැනීම සඳහා ඉහත සඳහන් 1979 අංක 7 දරන පනතේ 3 වන වගන්තියෙහි විධිවිධාන අනුව කටයුතු කිරීමට නාගරික සංවර්ධන අධිකාරිය වෙත බලය මෙයින් පවරමි.

The learned counsel for the petitioners contended further that the Minister of Urban Development and Housing had to grant only the approval for the decision of the competent authority to get back possession of the state land, but according to the document marked P-21, the Minister has also given directions to eject the tenants. That is why the learned counsel contended that the Minister directing the competent authority, UDA what to do is illegal and *ultra vires* and the quit notices issued as a result of the approval given by the Minister is bad in law.

The UDA issued a notice on 5th October 2007 marked P-8 according to the petition. In the said notice, it is stated that according to clause one of the lease agreement, the petitioner has agreed to hand over possession back to the UDA with one month prior notice. Accordingly, the said notice states to hand over the vacant possession after 30 days of the notice. Again, on 16th August 2019, the UDA issued quit notices to the petitioners. Those quit notices have been marked as P10(a) to P10(d). In the said quit notices, it is mentioned to pay the arrears of rent in addition to giving notice to quit the premises in 30 days. In response thereto, the petitioners sent a written appeal to the Minister and the 1st and 4th petitioners instituted actions in the District Court of Colombo bearing numbers DSP 202/2019 and DSP 203/2019. The 1st and 4th petitioners sought an interim injunction, but the District Court refused. Thereafter, an appeal was preferred to the Civil Appellate High Court, Colombo, and subsequently, it was withdrawn.

Again, on 29th April 2022, in terms of the State Lands (Recovery of Possession) Act, quit notices P16(a) to P16(d) were issued to the petitioners by the UDA informing to handover the vacant possession of the premises on or before 30th May 2022. The Minister of Urban Development and Housing granted approval to recover the vacant possession of the said premises (P-21). The petitioners seek to quash the quit notices marked P16(a) to P16(d) as well as the quit notices marked P10(a) to P10(d) by this application. The petitioners also seek interim relief to suspend the operation of the said quit notices until the final determination of this application.

The Director General of the Urban Development Authority has signed and issued the quit notices marked P16(a) to P16(d). According to Interpretation Section 18(h) of the Act, as mentioned above, the Director General of the UDA is the competent authority. The Director General, as the competent authority, issued the quit notices P16(a) to P16(d) in accordance with the law. Hence, there is no issue regarding the legality of the quit notices issued to the petitioners.

The document P-21 is the approval given by the Minister in terms of Section 14(2)B of the State Lands (Recovery of Possession) Act. The said approval has been given by the Minister of Urban Development and Housing for the purpose of ejecting the petitioners and getting back the vacant possession of the said premises to the Urban Development Authority. The contention of the learned counsel for the petitioners was that, apart from granting approval, the Minister cannot direct the competent authority to eject the petitioners or to give directions with regard to the other things that have to be done by the competent authority.

Section 14 of the State Lands (Recovery of Possession) Act reads as follows:

14(1) In the exercise, performance and discharge of his powers, duties and functions under this Act a competent authority shall be

subject to the direction and control of the Minister in charge of the subject of State lands.

(2) A competent authority shall not exercise any power conferred on him by section 3 in relation to any land vested in, owned' by, or under the control of-

(a) the Sri Lanka Army or the Sri Lanka Navy or the Sri Lanka Air Force, except with the prior approval of the Minister in charge of the subject of Defence;

(b) the Urban Development Authority 'established by the Urban Development Authority Law. No. 41 of 1978, except with the prior approval of the Minister in charge of that Authority;

(c) the Sri Lanka Ports Authority established by the Sri Lanka Ports Authority Act, No. 51 of 1979, except with the prior approval of the Minister in charge of that Authority.

According to Section 14, although the competent authority identifies the relevant land and decided to take back the vacant possession of the land, obtaining the approval of the Minister is mandatory. To fulfill the said legal requirement, the matter has been referred to the Minister. Therefore, it is obvious that the decision to issue quit notices in order to eject the petitioners from the premises has been taken by the competent authority before forwarding it to the Minister for the approval. Hence, the allegation that the petitioners are going to be ejected as a result of the direction given by the Minister at the stage of granting approval is baseless.

In addition, the contention of the learned counsel for the petitioner that in P-21, the Minister had given directions to the competent authority exceeding his powers to eject the petitioners is also baseless. I must say that the Minister has not given a direction in P-21 to eject petitioners. He has given approval in terms of Section 14(2)B for the purpose of obtaining vacant possession of the premises by ejecting the

tenants. That is why it is mentioned in P-21 that “... කුලීකරුවන් ඉවත් කර ගොඩනැගිල්ලේ හිස් භුක්තිය ලබා ගැනීම සඳහා...”. Minister states that he gives approval for obtaining the vacant possession. In addition to granting approval, the Minister has never given a direction in P-21 to eject the tenants.

In summary, the one-month's quit notices have been given according to the lease agreements between the UDA and the petitioners. It has been correctly referred to the Minister in charge of the UDA for approval in terms of Section 14(2)B of the Act. The petitioners, as monthly tenants, should vacate the relevant premises in 30 days after issuing the quit notices marked P16(a)-P16(d). This was the 3rd time the petitioners were noticed to vacate the premises according to their own petition. For the foregoing reasons, it is apparent that no illegality occurred in issuing the quit notices. The Minister's approval, P-21 is not illegal and *ultra vires*. The approval has been given correctly in terms of Section 14(2)B of the State Lands (Recovery of Possession) Act. There was no violation of the rules of natural justice. The petitioners could not have legitimate expectations, as explained above. In the circumstances, I hold that there is no legal basis to proceed with this application.

Accordingly, the application to issue notices to the respondents is refused. The writ application is dismissed with costs fixed at Rs. 75,000/-.

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J

I agree.

JUDGE OF THE COURT OF APPEAL