

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 a writ of certiorari and prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (WRIT) 228/2023

Dandeniye Kankanamalage Gamini
483/1, Jeremias Fernando Mawatha
Rawathawathta
Moratuwa

Petitioner

Vs.

1. Upali Kodikara
Chairman
Western Province Provincial Road
Development Authority
(Western Province)
No. 59, St. Sebastian Hill
Colombo 12.

2. Registrar
Land and Title Registration Office
Nugegoda.

3. H.M. Namida Wilsini Bandara
Internal Auditor
Western Province Provincial
Road Development Authority
(Western Province)
No. 59, St. Sebastian Hill, Colombo 12.

Respondents

Before: N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: Chula Bandara with Ananda Silva and Hasini D Silva for the Petitioners
Avanthi Weerakoon, SC, SC for the 1st Respondent

Argued On: 01.10. .2024

Written

Submissions: 04.10.2024 (by the 1st Respondent)

On

Judgment On: 29.10.2024

B. Sasi Mahendran, J.

This is an application filed by the Petitioner by the amended petition seeking to quash the quit notice issued by the 1st Respondent dated 29.09.2022 marked as P17 and to order the 1st Respondent to permit the Petitioner to re-enter the quarters bearing Assessment number 483/1, Jeremias Fernando Mawatha, Rawatawatta, Moratuwa.

According to the petition filed on 03.05.2024, the Petitioner has sought for a writ of prohibition, prohibiting the 1st Respondent and the Registrar of Magistrate Court Moratuwa from proceeding with action No.05176 instituted before the Magistrate's Court of Moratuwa and issue a stay order until a final determination of the application restraining the 1st Respondent and the Registrar of Magistrate Court Moratuwa from proceeding with the writ of possession dated 28.03.2023 issued by the Learned Magistrate of Moratuwa.

According to the Petitioner, the Petitioner worked at the Western Province Provincial Road Development Authority in the capacity of Chief Internal Auditor from 02.01.2006 to 23.09.2015. After reaching 60 years of age, the Petitioner continued to work in the same capacity as a Chief Internal Auditor in the said Authority on a contractual basis from 29.05.2015 to 27.04.2019. Somewhere in 2008, the Petitioner has requested the Authority

for government quarters and the Petitioner was granted permission for the said quarters by the said Authority. At the end of the said agreement, the Petitioner has requested for a three months' extension to stay in the said quarters which was allowed. Again, by letter dated 18.07.2019, the Petitioner has further requested for an extension of another three months. The 1st Respondent, the Chairman has indicated to the Petitioner by letter dated 10.06.2020 marked as 1R7, informing the Petitioner to hand over the said quarters. In reply to that letter, by letter dated 23.06.2020, the Petitioner requested for a further 6 months extension to stay in the said quarters on the basis that he was receiving treatment at a hospital in Katubedda. Thereafter, on 05.01.2021, the Chairman sent another letter to the Petitioner to vacate the said premises. In reply to the said letter, by letter dated 05.01.2021, the Petitioner requested to stay further in the quarters due to the Covid-19 pandemic.

By letter dated 01.03.2021, the 1st Respondent requested the Petitioner to vacate the premises on or before 31.03.2021. Thereafter, the Chairman issued a quit notice under the Government Quarters Recovery of Possession Act No. 7 of 1969 on 29.09.2022 and filed the papers in the Magistrate's Court of Moratuwa bearing case No. 05176 praying for the recovery of the said quarters and ejection of the Petitioner. Upon the receipt of the application for ejection, the Learned Magistrate issued a writ of possession on 28.03.2023.

The main ground urged by the Petitioner is that, the Quit Notice was not issued by a competent authority.

We are mindful that, the particular quarters was given by the 1st Respondent by letter marked 1R2. According to Section 9 of the Government Quarters Recovery of Possession Act, a competent authority includes, the Secretary to the Ministry charged with the subject of Public Administration or any public officer authorized by such Secretary to be a competent authority.

We are also mindful that, after the retirement in 2015 as a government servant, the 1st Respondent has given several extensions to the Petitioner to stay in the said quarters. This Court notes that, the government quarters are designated for the accommodation of the public servants. By this application, the Petitioner deprives the public officers who are in need of such accommodation.

In any event, the Learned Magistrate has issued a writ of possession and the Petitioner was dispossessed by the order. The Petitioner has failed to challenge the particular order made by the Learned Magistrate.

The Petitioner has also failed to show that, the Chairman did not have the authority to issue notice.

We observe that, the Respondents have given sufficient time for the Petitioner to occupy the quarters even after his retirement.

Therefore, we hold that, there are no reasons to issue notices to the Respondents as the 1st Respondent has followed the proper procedure when issuing the Quit Notice.

For the aforementioned reason, we dismiss the application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL