

BALASUNDERAM
v.
THE CHAIRMAN, JANATHA ESTATE DEVELOPMENT
BOARD AND OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.,
S.C. APPEAL NO. 94/95
C.A. APPLICATION NO. 581/92
DECEMBER 8, 1995.

Writ of Certiorari – Recovery of Government Quarters – Government Quarters (Recovery of Possession) Act No. 7 of 1969 as amended by Act No. 8 of 1981 – Sections 3 and 9 of the Act – Persons subject to a quit notice – Applicability of Section 9 as amended – Reasons for issue of a quit notice.

By a Quit Notice served under Section 3 of the Government Quarters (Recovery of Possession) Act, the appellant who was the Manager of the Dunsinane Estate Co-operative Society Ltd., was required to vacate the estate Quarters provided by the Janatha Estate Development Board (JEDB) on the ground of cessation of his employment. The Dunsinane Estate was owned by the JEDB.

Held:

- (1) The power to issue a quit notice is not limited to a case where the person in occupation is an employee of the estate. Quarters provided "to any person" by a public Corporation can be recovered under the Act.
- (2) A person who had been provided quarters prior to the date of Act. No. 8 of 1981, which extends the definition of "Government Quarters" in Section 9 of the principal enactment to quarters provided by a public Corporation, would also be subject to ejection under the Act. The word "Provided" in Section 9 should not be construed to mean "provided after the Act."

- (3) In determining the validity of the reason for issuing the quit notice, the reason referred to at paragraph IV of 'Form B' in Schedule 'E' to the Act should not be read "*ejusdem generis*" with the reasons set out in paragraphs (1) - (111). The question is whether the reason is adequate, which is a matter that would depend on the facts and circumstances of each case.

APPEAL from the judgment of the Court of Appeal

S. Mahenthiran for appellant.

1st and 2nd respondents absent and unrepresented.

Romesh de Silva, P.C. with *Paliitha Kumarasinghe* for 3rd respondents.

Cur. adv. vult.

January 23, 1995.

KULATUNGA J.

The appellant has unsuccessfully sought to quash by way of Certiorari in the Court of Appeal, a quit notice dated 02.06.92 served on him in terms of S.3 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 as amended. The said notice was issued by the 1st respondent (Chairman, Janatha Estates Development Board, Nuwara Eliya) who is a competent authority under S.9 of the Act to issue such notice. The appellant appeals to this Court against the judgment of the Court of Appeal.

By the aforesaid notice the appellant was required to vacate the estate quarters on Dunsinane Estate, Pundaluoya which he was occupying. The said estate is owned by the 2nd respondent (JEDB) and is presently leased to the 3rd respondent company.

The appellant had been employed as the Manager of the Dunsinane Estate Labourers' Co-operative Society Ltd., which is managed by a committee of Management of which the Superintendent of the estate is the ex-officio President. By letter dated 06.05.87 the Society terminated the employment of the appellant. However, pending an appeal by the appellant against his dismissal to the Co-operative Employees Commission, which was dismissed on 06.03.92 he had continued to occupy the quarters. Shortly prior to the said dismissal the Superintendent by his letter dated 18.02.92 requested the appellant to hand over the quarters on or before 25.03.92, as he had ceased to be an employee on the estate.

The appellant replied through an Attorney-at-Law who stated that the appellant was in occupation of the Co-operative Manager's quarters of which he had been placed in occupation by the Co-operative Society; that he had never been an employee of the estate; hence the JEDB had no power to serve a quit notice on him. The Superintendent replied stating that as the quarters belongs to the estate the appellant should vacate the same. The Superintendent's position was that the appellant's employment with the Co-operative Society did not affect the rights of the JEDB. This was followed by the impugned quit notice.

S.3 of the Act empowers a competent authority to serve a quit notice "on the occupier of any Government quarters". Under S.9 as amended by Act No. 8 of 1981 –

"Government Quarters" means any building, 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 includes 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".

It is thus clear that the power to serve a quit notice is not limited to a case where the person in occupation is an employee of the estate. Quarters provided "to any person" by a public corporation can be recovered under the Act.

Mr. Mahenthiran for the appellant referred to the definition of "competent authority" in S.9 of the Act as amended which provided *inter alia*, that in relation to quarters **belonging to a public corporation**, it means the Chairman of such corporation or any officer authorised by such Chairman to be a Competent Authority for the purposes of the Act. Counsel submits that the ownership of the premises is, therefore, a condition precedent to the right to have recourse to the Act; but there is no proof that the premises in question belongs to the JEDB.

In view of the fact that as regards quarters provided by the Government, there is no reference to ownership, there is a doubt as to whether the right to recover premises under the Act is limited to

premises that "belong" to the Government or a public corporation in the sense that such premises are owned by the Government or a public corporation. Assuming that ownership is a pre-requisite, I am of the opinion that in the instant case, there is proof of ownership by the JEDB. Firstly, premises situated on the estate must presumably be owned by the JEDB. Secondly, the Superintendent of the Estate in his letter dated 26.02.92 specially claimed the quarters as belonging to the estate. This has not been contradicted in the reply sent to the Superintendent by an Attorney-at-Law on behalf of the appellant. Appellant's position was that the quarters were provided by the Co-operative Society and that he was not an employee of the JEDB. In the proceedings before us, Counsel for the appellant has specially submitted that the quarters were not provided by or on behalf of the JEDB.

On the available material, it has been established that the quarters belong to the JEDB. If so, the same has to be provided by or on behalf of the JEDB and not by the Co-operative Society. Even if the Committee of Management of the Society had placed the appellant in physical occupation thereof, the appellant cannot urge, for that reason, that the quarters were not provided by or on behalf of the JEDB, within the meaning of S.9 of the Act.

I have no doubt that the provision of quarters was a facility provided by the JEDB to the appellant who was the Manager of the Co-operative Society of which the estate labourers were members. It was an amenity provided by the JEDB for the benefit of estate labourers.

In his written submissions, Mr. Mahenthiran has urged two additional grounds in support of the appellant's case. The first of these grounds is that as at the date of Act No. 8 of 1981 which made the recovery provisions of the Act applicable to public corporations, the appellant was already in occupation of the quarters. The amendment not being retrospective, it cannot be used to evict him. Counsel further submits that the appellant first occupied the quarters in 1960. As such, the Government Quarters (Recovery of Possession) Act No. 7 of 1969 itself has no application to him.

The rule against retrospectivity is intended to protect vested rights. Maxwell (Interpretation of Statutes) 12th Ed. 216 states:

"In the words of Craies on Statute Law (6th Ed. 386) a statute is retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past".

Act No. 7 of 1969 as amended does not seek to take away or impair any vested right. It provides for a summary procedure for the recovery of Government quarters provided by or on behalf of the Government or a public corporation. A person who had been provided quarters prior to the date of the Act would also be subject to be ejected under the Act. The word "provided" in S.9 should not be construed to mean "provided after the Act".

A man who has been provided with Government quarters prior to the date of the Act, cannot be said to have a vested right. If the appellant had been given quarters prior to 1969, that was not a "transaction already past". His right is a continuing right the exercise of which would become subject to the Act.

The second new point raised is that the impugned quit notice does not state the reason for the issue of such notice. The reason stated in the said notice is that the appellant's services have been terminated and hence he had no authority to continue to occupy the quarters. Schedule 'E', Form 'A' to the Act prescribes the Form of the quit notice but it does not specify the nature of the reason which has to be stated. However, Counsel relies on Form 'B' which is the Form to be used for making an application to a Magistrate for ejection. The reason for the issue of the quit notice has to be set out in such application. At the foot of the said Form there is reference to the nature of the reason which has to be stated. Briefly, they are:

- (i) period of occupation of quarters has expired;
- (ii) a transfer of the occupier from the station which qualified him to occupy Government quarters;
- (iii) death of the occupier to whom the quarters was originally given;
- (iv) any other reason which is considered adequate.

Counsel submits that the reason referred to at (iv) above should be read "*eiusdem generis*" with the reason at (i) – (iii). I cannot agree with

this submission. The reasons set out in Form 'B' are not exhaustive and are merely by way of illustration; and the reasons contemplated at (iv) above need not be "*eiusdem generis*". The relevant question is whether such reason is adequate, which is a matter that would depend on the facts and circumstances of each case.

In interpreting the Act, I have adopted the principle that words are to be construed in accordance with the intention as expressed, having regard to the object or policy of the legislation, which in the instant case is to facilitate the speedy recovery of Government quarters.

For the foregoing reasons, I hold that the impugned quit notice is valid and that there are no grounds for quashing it by way of certiorari. Accordingly, I dismiss the appeal, but without costs.

G. P. S. DE SILVA C.J. – I agree

RAMANATHAN, J. – I agree

Appeal dismissed.
