

WIJESINGHE

v.

THE MAGISTRATE, KURUNEGALA

COURT OF APPEAL

K. C. E. DE ALWIS, J. AND SENEVIRATNE, J.

C. A. APPLICATION 894/80- M. C. KURUNEGALA 60001

DECEMBER 1, 1980.

Local Authority Quarters (Recovery of Possession) Law, No. 42 of 1978, sections 3, 10—Local Authorities Housing Act, No. 14 of 1964, as amended by Act. No. 63 of 1979, sections 3, 5A, 6—Application to quash eviction order by Magistrate— Whether premises "local authority quarters" within meaning of Law No. 42 of 1978— When provisions of section 5A introduced by Act No. 63 of 1979 applicable in case of premises belonging to local authority— Whether occupier of quarters entitled to a hearing before vacation notice served— Natural justice— Functions of Commissioner— Whether a Writ of Certiorari lies.

The petitioner, a Local Government Service employee, who was working as a clerk in the Kurunegala Municipal Council had been given certain premises belonging to the Council for his occupation. Shortly after the petitioner went into occupation, on an application made by the Council the Rent Board also fixed the authorised rent of the premises. The petitioner was subsequently transferred and in view of the transfer the Municipal Council passed a resolution under section 3 of the Local Authority Quarters (Recovery of Possession) Law, No. 42 of 1978, that the Municipal Commissioner who was the competent authority under the Act should serve a notice to quit on the petitioner requiring him to vacate and deliver vacant possession of the premises and the Commissioner acting on this resolution served such notice. The petitioner replied stating that what he occupied was not "official quarters" and in his letter also requested the Municipal Commissioner to take action under Act No. 63 of 1979. This Act which amended the Local Authorities Housing (Amendment) Act, No. 14 of 1964, had introduced a new section 5A to the principal Act which made provision for the transfer free of charge of a house to which that Act applied to a tenant if the Advisory Board constituted under the Act was satisfied as to certain conditions. Proceedings were taken nevertheless against the petitioner under the said Act No. 42 of 1978 and an order was made by the Magistrate, Kurunegala, for the eviction of the petitioner.

The petitioner made the present application for writs of certiorari and/or prohibition to quash the order for eviction made by the Magistrate, Kurunegala (1st respondent) and the Municipal Commissioner (2nd respondent). It was also submitted on his behalf that there was a denial of natural justice in that he was not given an opportunity of being heard before the notice to quit was served on him by the Municipal Commissioner.

Held

(1) The petitioner was not entitled to a transfer of the said premises as he had requested and a person entitled to such a transfer under the Local Authorities Housing Act must be a tenant to whom in terms of section 3 (1) a house had been let on rent purchase terms. There was no evidence that the premises were let to the petitioner on such a basis. In any event, there was also no evidence that an Advisory Board constituted for the

Municipal Council of Kurunegala under the provisions of section 6 of the Act had made a determination as required by section 5A(2).

(2) Accordingly the premises occupied by the petitioner were "local authority quarters" within the meaning of the Local Authority Quarters (Recovery of Possession) Law, No. 42 of 1978, and on the transfer of the petitioner from Kurunegala the Council was entitled to recover possession under the provisions of the said statute.

(3) In any event, the Municipal Commissioner in issuing the eviction notice that he did was carrying out a direction of the Municipal Council as contained in the resolution passed by it and acted in a purely ministerial capacity. The writs applied for by the petitioner therefore did not lie.

Per K. C. E. de Alwis, J.

"In the case of *Fernandopulle v. Minister of Lands and Agriculture*, Samarakoon, C. J. stated, 'This writ of certiorari is not confined to judicial or quasi-judicial acts. It extends even to administrative acts that affect the rights of the subject.' This act of the Municipal Commissioner does not fall into even the third category mentioned by His Lordship; therefore, a Writ of Certiorari does not lie."

Case referred to

Fernandopulle v. Minister of Lands and Agriculture, (1978) 79 (2) N.L.R. 119.

APPLICATION for Writs of Certiorari and/or Prohibition and/or for revision of an order of the Magistrate, Kurunegala.

S. Mahenthiran, for the petitioner.

A. K. Premadasa, with *T. B. Dillimuni*, for the 2nd respondent.

Cur. adv. vult.

January 23, 1981.

K. C. E. DE ALWIS, J.

This is an application for writs of certiorari and prohibition to quash an order for eviction of the petitioner from premises designated "annexure B" of the premises bearing assessment number 7, Rest House Road, Kurunegala, and "to stay all proceedings". Also included in the petition is a prayer to "Revise the order made by the 1st respondent". The 1st respondent is the Magistrate, Kurunegala. The Municipal Commissioner, Kurunegala, is the 2nd respondent. It is relevant to remark that the Kurunegala Municipal Council is not a respondent.

In the course of his argument, counsel for the petitioner submitted that he was not seeking any relief against the Magistrate; but the substantial reliefs in the prayer refer to orders: "order for eviction," and "order made by the 1st respondent". There is also an item in the prayer seeking an order from this Court, "to stay proceedings". The proceedings referred to therein allude to action which the fiscal has to take on the Magistrate's order and

consequential action, if any, by the Magistrate after the fiscal had complied with his order. One cannot conceive of any "proceedings" before the 2nd respondent. It must also be noted that he had made no order whatsoever in the matter that has given rise to a grievance to the petitioner. Therefore, the petition does not reflect any relief as against the 2nd respondent. On the submission of counsel that he is not seeking relief as against the Magistrate, the application merited dismissal.

However, we heard arguments to consider whether any relief lay as against the 2nd respondent. At this stage it is appropriate to set out the relevant facts relating to the application. The petitioner, a Local Government Service employee, had been appointed as a clerk in the Kurunegala Municipal Council and had been given the said premises for his occupation to obtain efficient service from him. The premises belong to the Municipal Council. Sometime after the petitioner had gone into occupation of the premises, on the application of the Council, the Rent Control Board had fixed the authorised rent of the premises at Rs. 21.96. In the affidavit filed by the 2nd respondent he states that the said application was made on an erroneous understanding of the law that even Municipal premises were governed by the Rent Act, No. 7 of 1972. The petitioner was later transferred out of the Municipality of Kurunegala, and in view of the transfer the Council has passed a resolution under section 3 of Local Authority Quarters (Recovery of Possession) Law, No. 42 of 1978, that the Municipal Commissioner should serve a quit notice on the petitioner requiring him to vacate and deliver vacant possession of the premises. Acting on this resolution the Commissioner served the notice on or about the 9th April, 1980—(see document G). The petitioner replied by letter dated 13.6.1980 stating that he was not in occupation of "official quarters"—(see document H). It must be stated that this document indicates that the petitioner appears to have erroneously misconstrued the order of the Rent Control Board fixing the authorised rent as an order determining the question whether the premises were official quarters, or not. In his letter the petitioner has also requested the Commissioner to take action under Act No. 63 of 1979.

This Act is an amendment to Local Authorities Housing Act, No. 14 of 1964. It introduces a new section, 5A, to the principal Act. Section 5A states—

"5A (1) Where prior to the date of coming into force of this section a house to which this Act applies has been let to any person under the provisions of section 3 (1) and the monthly rental of such house immediately prior to such letting did not exceed twenty-five rupees, the local authority within the administrative limits of which the house is situated shall..... transfer free of charge that house to that person.

(2) Where prior to the date of coming into force of this section, a house to which this Act applies has been let to any person otherwise than under the provisions of section 3 (1) and the monthly rental of that house does not exceed twenty-five rupees, the local authority within the administrative limits of which that house is situated shall.....transfer free of charge that house—

(a) to the tenant.....in occupation thereof on the date of coming into force of this section;

(b) to the person in occupation of that house on the date of coming into force of this section where the tenant of that house is not in occupation.....;

if, and only if the governing Board constituted for that local authority is satisfied that—

(i) such tenant or person in occupation as the case may be, is in need of housing accommodation,

(ii) such tenant or the person in occupation as the case may be, is a citizen of Sri Lanka, and

(iii) the name of such tenant or person in occupation, as the case may be, appears in the electoral list prepared for the general election of members of that local authority."

The petitioner is of the view that he is entitled to a transfer of the premises by virtue of this section. It is not so; a person entitled to a transfer is a tenant to whom section 3 (i) of the principal Act applies, or is a tenant qualified under 5A (2), which has been set out above.

' Act is as follows—

Section 3 (1) of the principal

"Subject as hereinafter pr

vided, a local authority may,

either upon a resolution passed in that behalf at a duly constituted meeting of that local authority or upon the direction of the Minister, let to any person any house—

(a) which has vested in that local authority under section 2;

or

(b) which has been, or may be constructed by that local authority within administrative limits of that local authority for the purpose of residence,

on such terms as will enable that person to become owner of that house and the land appertaining thereto after making certain number of monthly payments as rent.”

It would be seen that section 3 (1) above is a provision enabling a local authority to let houses on a rent-purchase basis. There is no evidence that the premises were let to the petitioner on such a basis. Therefore, section 5A (1) does not apply to him, nor is there evidence that an Advisory Board constituted for the Municipal Council of Kurunegala, under the provisions of section 6 of the principal Act, made a determination as in section 5A (2) of the Act. In the absence of such evidence, the annexe is “local authority quarters” within the meaning of Local Authority Quarters (Recovery of Possession) Law, No. 42 of 1978, and the provisions of that law applies to the annexe. In the said Law, “Local Government quarters” has been defined as—

“Any such building or room or other accommodation occupied or used for the purposes of residence as is provided by or on behalf of any local authority.....”.

Under section 3 (1) of the Law, the local authority may pass a resolution at any meeting of such local authority that a quit notice shall be served by the competent authority on the occupier on the happening of certain events specified in that section. The competent authority for a Municipality is the Municipal Commissioner. One event specified in the section is that the occupier has been transferred from the station and in this case the relevant event is that the petitioner was so transferred. The document, marked R3, is such a resolution as is contemplated in the Law. In terms of this resolution the Municipal Commissioner has served a notice on the petitioner—(see document G).

There is no gainsaying that the petitioner was a servant or officer of the Kurunegala Municipal Council and that he was put

in occupation of the premises because he was such, for purpose of his residence and on an appeal by him to the Council to "allocate" it "on the usual terms and conditions". (see R4). In R4 he pointed out that the Council will derive revenue in a sum of Rs. 46 per month on the basis of his salary. His request for these premises was because he was a servant or officer of the Council and needed quarters in proximity to the office of the Council. His request had been recommended by an officer whose abbreviated designation is noted in document R5 as "M.S.W.". In making the recommendation this officer has said that if he was given the premises it would enable the petitioner to go for work early, to work after office hours and to concentrate on his work with peace of mind. The work referred to is obviously the petitioner's duties. On this recommendation the premises had been given to him and deductions had been made from his salary as stated in R4. Therefore, it is clear that he had taken possession of the premises as an occupier of "Local Authority quarters". This fact is underlined in an application which the Council made to the Rent Control Board to fix the authorised rent—(see document A). A levy of rent on the basis of salary is usually made on official quarters provided to public officers. Unless the premises is official quarters, I cannot see under what circumstances rent is fixed on the basis of salary.

For some inexplicable reason, the Municipal Commissioner in making certain recommendations regarding the recovery of rent from the petitioner has stated that the premises cannot be considered official quarters and that it had not been given to him as such—(see document, marked C). This statement is no more than an opinion by the Municipal Commissioner expressed to the Commissioner of Local Government and an erroneous one at that. It cannot detract from the obvious fact, evident from the documents and other circumstances in evidence, that the premises is "local authority quarters".

No doubt, notwithstanding this clear position with regard to the nature of the premises, a controversy has been raised by the petitioner deeming that he has a right take a transfer of the premises. On the facts it is clear that he has no such right. The petitioner complained that he was denied natural justice in not being given an opportunity to be heard before the notice was served on him. The Municipal Commissioner had no function to perform before he issued the notice, his duty was to carry out the

directions of the Council as contained in the resolution, in a purely ministerial capacity.

In the case of *Fernandopulle v. Minister of Lands and Agriculture*, (1), Samarakoon, C.J. stated, "This writ of certiorari is not confined to judicial or quasi-judicial acts. It extends even to administrative acts that effect the rights of the subject". This act of the Municipal Commissioner does not fall into even the third category mentioned by His Lordship; therefore, a writ of certiorari does not lie. I refuse the application with costs fixed at Rs. 200 payable to the 2nd respondent.

SENEVIRATNE, J.—I agree.

Application dismissed.