

**THAMEL
VS
ROAD DEVELOPMENT AUTHORITY AND OTHERS**

COURT OF APPEAL
SALEEM MARSOOF P. C., J (P/CA),
SRISKANDARAJAH J,
C. A. 532/2003
SEPTEMBER 1, 2004

Writ of Certiorari - Government Quarters (Recovery of Possession) Act 7 of 1969 as amended by Act 8 of 1981 - Section 3, 9 - Is the power to serve a quit notice limited to a case where the person in occupation is an employee of the State? Can an independent contractor be evicted? Locus standi?

The Petitioner who was a private sub-contractor for the Road Construction Development Company (RCDC), In 1988, the house in dispute had been handed over to him by the RCDC and occupied by him from 1988 while he was working for the R. C. D. C. The R. C. D. C. requested the Petitioner to hand over possession of the said premises to the Road Development Authority (R. D. A.) and as these premises were not handed over as required a quit notice under the provisions of the Government Quarters Recovery of Possession Act was issued by the R. D. A.

The Petitioner contends that the premises were not handed over to him by the R. D. A. and therefore the Respondents are not entitled to issue a Notice to quit.

HELD

- (i) The premises belong to the R. D. A. The R. C. D. C. had requested the R. D. A. to hand over the premises for a stated purpose and it was handed over to the R. C. D. C. by the R. D. A.

The R. C. D. C. is the construction arm of the R. D. A., when the RCDC handed over the premises to the Petitioner it was given on behalf of the R. D. A. Therefore the Respondent R. D. A. is entitled to issue a quit Notice.

- (ii) The power to serve a quit Notice is not limited to a case which the person in occupation is an employee of the State, Quarters provided "to any person" by a Public Corporation can be recovered under the Act.

APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Balasundaram vs Chairman, Janatha Estate Development Board and others* 1977- 1SLR 84 at 85

Sunil F. Cooray with *Liyanage* for Petitioner.

M. N. Idroos State Counsel for Respondent.

October 15, 2004

cur. adv. vult.

SRISKANDARAJAH J.,

Marsoof, P. C., J (P/CA) - I agree.

Application dismissed.

S. SRISKANDARAJAH, J

The Petitioner after retirement from the Department of Highways in 1986 had been functioning as a private sub contractor for the Road Construction Development Company from 1988. The house in dispute had been occupied by the petitioner from 1988 while he was working as a contractor for the Road Construction and Development Company Private Limited. By a letter dated 16.12.1998 (X9) the District Manager of the Road Construction and Development Company had requested the petitioner to hand over possession of the said premises to the Road Development Authority the respondent. It is common ground that the premises had been originally handed over to the petitioner by the Road Construction and Development Company.

The respondent by his letter dated 27.1.2003 had issued a quit notice under Section 3 of the Government Quarters (Recovery of Possession)

Act No. 7 of 1969 as amended by Act No. 8 of 1981, notifying the petitioner to vacate the premises in dispute on or before 10.4.2003. The petitioner submits that the premises in dispute on which the aforesaid quit notice had been issued is not given to the petitioner by the respondent. But it was handed over to the petitioner by the Road Construction and Development Company and therefore the respondents is not entitled to issue a quit notice under Government Quarters (Recovery of Possession) Act for the said premises as a competent authority under the said Act. Therefore he submitted the quit notice is ultra vires and it has to be quashed.

The counsel for the respondents submitted that on the request made by the Road Construction and Development Company Limited which is the construction arm of the respondent by its letter dated 19.10.1990 (Y1) handed over the said premises to the Road Construction and Development Company Limited (Y2). Thereafter On the 4th November 98 (X8) the respondent requested the possession to be restored and consequence to this request the Road Construction and Development Company Limited requested the petitioner who was in occupation of the said premises to hand over possession to the respondent by its letter dated 3rd February 1999 (X9). In the mean time the respondent also by its letter dated 25th July 2000 requested the petitioner to hand over possession of the said premises within fourteen days. The petitioner by his letter of 9th August 2000 (Y7) requested respondent to grant him time to vacate the premises and the respondent acceded to this request and permitted the petitioner to occupy the said premises for a period of two years from 9.8.2000. And at the expiration of the two years the respondent by its letter dated 24th December 2002 requested the petitioner to hand over vacant possession of the said premises. The petitioner had sought further six months time to vacate the said premises by his letter of 26th August, 2002 (Y9). The respondent after considering this request had given him further period of four months until the 9th of December, 2002 by its letter dated 29.8.2002 (Y10). As the petitioners failed and neglected to hand over possession of the said premises to the respondent a notice of quit was sent to the petitioners by the respondent a notice of quit was sent to the petitioners by the respondent on 13th December, 2002 (Y11) in terms of Government Quarters (Recovery of Possession) Act.

In this instance case the respondent has sought the provisions of the Government Quarters (Recovery of Possession) Act to recover possession of a premises belonging to them. This was given to the respondent by the

Road Construction and Development Company Limited which is the construction arm of respondent. The position of the petitioner is that he was neither an employee of the respondent nor an employee of the Road Construction and Development Company Limited but he is only a sub contractor to the said company when he went into occupation and now he is an independent contractor. In addition he takes up the position that the respondent has not given this quarters to him for occupation, for these reasons the respondent has no authority to invoke the provisions of the Government Quarters (Recovery of Possession) Act to recover possession of the said quarters.

Kulathunga, J in *Balasundaram The Chairman, Janatha Estate Development Board and Others* at 85 observed ;

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

"Government quarters" means any building, room or other accommodation occupied for the use of resident 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 note 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."

Therefore the respondent is entitled to invoke the provisions of the Government Quarters (Recovery of Possession) Act to recover possession of the quarters provided to the petitioner even though the petitioner was not an employee of the respondent.

The next question that has to be determined is whether the said premises belongs to the respondent and if it so was it given on behalf of the respondent. The fact that the said premises belongs to the respondent is not disputed. The petitioners also by his letter of 9th August 2000 (Y7) and of 26th August, 2002 (Y9) accepted this position and had sought

extensions of time from the respondent to occupy the said premises. Even though the petitioner has not disclosed these facts in the petition, when these communications were brought to the notice of this court by the respondents the petitioner admitted this fact in his counter affidavit. It is also evident from the pleadings of the petitioner that after his retirement in 1988. He was functioning as a private sub contractor to the Road Construction and Development Company Limited and he has submitted bills of payments issued by the said company for September 96 (X4) and May 97 (X5). The petitioner also submitted that he came into occupation of the said premises when he was functioning as the sub contractor to the Road Construction and Development Company Limited. But the petitioner has no document to substantiate the date or the year on which he went into occupation.

The respondents submitted when the Road Construction and Development Company Limited by its letter dated 19th October 1990 (Y1) requested the respondents to hand over the said premises for their purpose and accordingly it was handed over on the 5th November 1990 (Y2) to the said company. By these letters it is established that the premises in question belongs to the respondent. The Road Construction and Development Company Limited which was the construction arm of the respondent has requested this premises from the respondent for storage and distribution purpose and it was given to the petitioner. In these circumstances it can be construed that the said premises was given on behalf of the respondent. Therefore the respondent is entitled to invoke the provisions of the Government Quarters (Recovery of Possession) Act, as it provides to recover possession of Quarters provided to any person by a public corporation. For the foregoing reasons I hold that the impugned quit notice is valid and that there is no grounds for quashing it by way of certiorari. Accordingly I dismiss this application without cost.

Judge of the Court of Appeal.

Saleem Marsoof P. C., J. (P., C/A) - I agree.

President of the Court of Appeal.