

1972

Present : Samerawickrame, J.

IN RE D. S. E. P. R. SENANAYAKE (Inspector-General of Police)

*S. C. 754/70—Application in Revision in M. C. Colombo South, 17724/A**Government Quarters (Recovery of Possession) Act, No. 7 of 1969—Section 7—Ex parte application made thereunder—Duty of Magistrate to issue writ of possession forthwith in the first instance.*

When an application for ejectment in respect of any Government quarters is made *ex parte* in regular and proper form under the Government Quarters (Recovery of Possession) Act, the Magistrate has, in the first instance, no option but to issue writ of possession forthwith in terms of section 7 of the Act.

APPPLICATION in revision in respect of an order of the Magistrate's Court, Colombo South.

S. Sivarasa, Crown Counsel, for the petitioner.

H. M. P. Herath, for the party noticed.

March 6, 1972. SAMERAWICKRAME, J.—

This is an application made under Section 7 of the Government Quarters (Recovery of Possession) Act, No. 7 of 1969. In the application made in the form set out in the schedule to the Act it is stated that Eleric Lanty Abeygunawardena, Inspector-General of Police was the competent authority for the purpose of Recovery of Possession Act. The learned counsel for the petitioner submits that in terms of the Act as it stood on the date of the application, it is the Deputy Secretary to the Treasury or any other public officer authorised by him who is a competent authority and that no authority from the Deputy Secretary to the Treasury has been produced. Section 6 (4) however states that every application for ejectment shall be conclusive evidence of the facts stated therein. The statement made in the application that Eleric Lanty Abeygunawardena, Inspector-General of Police was the competent authority for the purpose of the Act must therefore be taken to be correct.

The learned magistrate took the view that notice should be served on the party against whom the application for a writ is made. He applied the principle of *audi alteram partem*, and refused the application made to him. In point of fact after the present application was filed in this Court the widow of the police officer who had continued to be the occupier has filed an affidavit. I have perused that affidavit and do not find in it any matters which are legally relevant to the question of ejectment.

In view of the provision that every application for ejection should be conclusive evidence of the facts set out therein, there is little purpose in notice being issued on the party against whom the application is made. It appears to me that this Act makes provision for the issue of writ upon an *ex parte* application. It will no doubt be open to the party affected by an order for issue of writ, if he is able to do so, to bring to the notice of the Magistrate any matter that may constitute ground for asking that the order for issue of writ should not stand and that the writ should be recalled. It appears to me however that in the first instance, upon an application that is regular and in proper form, the magistrate has no option but to make order for the issue of the writ.

I set aside the order made by the learned magistrate and send the case back with the direction that writ be issued in terms of s. 7.

Order set aside.