

## IHALAPATHIRANA

v.

### BULANKULAME, DIRECTOR-GENERAL, U.D.A.

COURT OF APPEAL,

S. N. SILVA, J.

C.A. No. 456/86.

MC. CHILAW No. 85937.

APRIL 25, 1988.

*Writ of Certiorari – Quit notice under State Lands (Recovery) of Possession Act, No. 7 of 1979.*

The Rest House Chilaw was vested in the Urban Development Authority (U.D.A.). The petitioner was appointed by the U.D.A. as Manager of the Chilaw Rest House Under section 5 of the Rest House Act. The Petitioner had to make payments monthly as agreed to the U.D.A. He however fell into arrears for 4 1/2 months and the U.D.A. issued notice to pay the arrears before 29.02.1984 in default of which steps would be taken to terminate the agreement. The petitioner undertook to settle the arrears but failed to do so. By letter dated 27.06.1985 the agreement was terminated and the petitioner was requested to hand over possession of the Rest House on a date to be mutually agreed on. The petitioner did not reply this letter and so the U.D.A. sent letter dated 30.08.1985 stating possession of the Rest House would be taken 01.10.1985. On 01.10.1985 the petitioner made an application to the Primary Court under section 66 of the Primary Courts Procedure Act complaining there was a dispute with regard to property which was likely to result in a breach of the peace. On the same day the Primary Court Judge made an interim order stating the petitioner was entitled to remain in possession until conclusion of the Inquiry. The Attorney-at-law informed the Primary Court that action would be taken to evict the petitioner in the appropriate Court. On 10.12.1985 the U.D.A. sent the petitioner notice to quit and instituted proceedings in the Magistrate's Court for the eviction of the petitioner. Thereupon the petitioner applied for a writ of certiorari to quash the quit notice and to stay proceedings in the Magistrate's Court. The stay order was made valid until determination of the writ application. The only question was whether the machinery of the State Lands (Recovery of Possession) Act could be invoked against the manager of a Rest House who was there on the basis of a contract and could be evicted only on a civil action.

**Held—**

Land vested in the U.D.A. is state land. A Rest House is state property. Possession of it without a permit or other written authority is unauthorised possession. The State Lands (Recovery of Possession) Act can be used to secure eviction without recourse to a civil action.

**Cases referred to:**

- (1) *Weerakoon v. Ranhamy* (1922) 23 NLR 23.
- (2) *Roncarelli v. Duplessis* (1959) 16 D.L.R. 689.

APPLICATION for a writ of certiorari.

*Faiz Musthapha P.C. with H. Withanachchi* for petitioner.

*K. N. Choksy P.C. with Miss J. R. Rajapakse* for respondent.

*Cur. adv. vult.*

June 8, 1988.

**S. N. SILVA, J.**

The Petitioner has filed this application for a Writ of Certiorari to quash the quit notice dated 10.12.1985 (marked P3) served on him by the Respondent, in terms of the State Land (Recovery of Possession) Act No. 7 of 1979 as amended by Acts Numbers 58 of 1981 and 29 of 1983. The quit notice relates to the land and premises described as "Rest House Chilaw" with the boundaries as specified in the schedule to the notice.

The control of the Rest House Chilaw was vested in the Urban Development Authority (U.D.A.) in September, 1980 upon an order made by the appropriate Minister in terms of section 3(1) of the Rest Houses Act. Thereby, the U.D.A. became the appropriate authority in respect of the said Rest House. The U.D.A. by an agreement (marked P1) appointed the Petitioner as Manager of the Rest House to manage and operate the Rest House for a period of ten years from 1.9.1981. This act of the U.D.A. is referable to section 5 of the Rest Houses Act which empowers the appropriate Authority to let to any other person the right to maintain the Rest House on such terms and conditions as may be approved by the Minister. One of the terms and conditions as contained in P1 is that the Petitioner will pay the U.D.A., for the first six months, Rs. 10,000 per mensem and thereafter Rs. 16,000 per mensem. It is common ground that at a later stage the monthly payment was reduced from Rs. 16,000 to Rs. 12,000 on representations made by the Petitioner.

Clause 3 of the agreement marked marked 'P1' states as follows:

"In the event of the MANAGER failing or neglecting to make payment of the money due to the Authority after notice in writing of such default is given by the Authority to the Manager and no compliance of such demand is effected within a period of 30 days from the date of such notice, the Authority shall thereupon be entitled to take over Possession, Management and the Operation of the said Rest House from the Manager, and this agreement shall be deemed to have been determined."

By letter dated 23.1.1984 (marked R3) the U.D.A. notified the Petitioner that he is in arrears of the monthly payment for a period of 4 1/2 months, preceding the notice. This letter, further states, that if the Petitioner fails to settle the sum due before 29.2.1984, action will be taken to terminate the agreement. By letter marked

'R4' the Petitioner acknowledges the receipt of letter R3 and stated that he will settle the arrears before the specified date. Admittedly, as payment was made and, by letter dated 27.6.1985 (marked R5) the agreement was terminated in terms of clause 3 and the Petitioner was requested to hand over the possession of the Rest House on a date to be mutually agreed upon. There was no response from the Petitioner to this letter and the U.D.A. sent letter dated 30.8.1985 (marked R6) stating that the possession of the Rest House will be taken on 1.10.1985.

On 1.10.1985 the Petitioner made an application to the Primary Court in terms of section 66 of the Primary Courts Procedure Act complaining that there is a dispute with regard to property which is likely to result in a breach of peace. On the same day, the Primary Court Judge made an interim order that the Petitioner is entitled to remain in possession of the Rest House until the conclusion of the inquiry.

According to the journal entry of 29.11.1985 the Attorney-at-Law for the U.D.A. informed the Primary Court that action would be taken against the Petitioner, upon an order of an appropriate Court. Accordingly, the Primary Court Judge made order that the status quo be maintained until such an order is obtained.

On 10.12.1985 the respondent sent to the petitioner the quit notice marked 'P3' as stated above and since the petitioner failed to comply an application for ejectment was made in the Magistrate's Court of Chilaw in case No. 85937. Thereupon, the petitioner filed this application to quash the quit notice and to stay proceedings in the Magistrate's Court. This Court, issued a stay order in respect of the application for ejectment pending before Magistrate's Court until the final determination of this case. It is admitted that the petitioner has not made any payment to the U.D.A. from the month of September 1983 and that the petitioner has continued to operate the Rest House and to appropriate the entirety of its profits.

Counsel for the petitioner challenged the validity of quit notice on the single ground (the other grounds stated in the petition were not urged) that the machinery of the State Lands (Recovery of Possession) Act cannot be invoked against the petitioner because he is in occupation of the Rest House on the basis of a contract entered into with the U.D.A. Counsel submitted that the contract has to be enforced in the ordinary Civil Court, and that the action of the respondent in resorting to the machinery of the State Lands (Recovery of Possession) Act is an abuse of process.

Counsel relied on the judgment of the full bench of the Supreme Court in the case of *Weerakoon v. Ranhamy* (1) and certain dicta of a Canadian case quoted by Professor H. W. R. Wade in his book titled *Administrative Law (5th Edition)* at page 361.

In the case of *Weerakoon vs. Ranhamy* (supra) a person was prosecuted under the Forests Ordinance for the offence of clearing land at the disposal of the Crown. In that case and in several other cases that were considered, persons who had been in possession of lands in the Kandyan Province for long periods of time on notarially executed deeds but without a grant or 'sannas' in their favour, were prosecuted under the Forests Ordinance. It is in this context, that the full bench held inter alia, that where the real object of the proceedings is not to protect State lands but to obtain an expeditious decision of a claim, there is an abuse of process and the Magistrate ought to refer the prosecution to a Civil Court.

The case of *Roncarelli v. Duplessis* (2) referred to by Professor Wade relates to the cancellation of a restaurant proprietor's liquor licence by the Quebec Liquor Commission for certain extraneous and political considerations. The Commission had a discretion in the matter of cancellation. With regard to limits of the discretion vested in the Commission Rand, J. observed as follows:

"Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption. Could an applicant be refused a permit because he had been born in another Province or because of the colour of his hair? The ordinary language of the Legislature cannot be as distorted."

The petitioner does not allege that the respondent was motivated by any extraneous considerations. Counsel's submission is that the respondent by seeking summary relief in a dispute arising on a contract is acting outside the intended perspective of the State Lands (Recovery of Possession) Act. The State Lands (Recovery of Possession) Act provides an expeditious machinery for the recovery of State lands from persons in unauthorised possession or occupation.

According to section 3(1) of the Act as amended by Act No. 29 of 1983, the machinery of the Act is initiated by the Competent Authority forming an opinion as to the following matters:

- (1) that any land is State Land; and
- (2) that any person is in unauthorised possession or occupation of such land.

The phrase 'State Land' is defined in section 18 of the Act which as amended by Act No. 58 of 1981 includes "Land vested or owned by or under the control of", the U.D.A. It is conceded that the premises described in the quit notice 'P3' is State Land within the meaning of this definition. It is also conceded that the Respondent is the appropriate Competent Authority in terms of the Act.

The phrase 'unauthorised possession or occupation' is defined in section 18 of the Act as amended by Act No. 29 of 1983 to mean the following:

"every form of possession or occupation except possession or occupation upon a valid permit or other written authority of the State granted in accordance with any written law, and includes possession or occupation by encroachment upon State Land."

This definition is couched in wide terms so that, in every situation where a person is in possession or occupation of State Land, the possession or occupation is considered as unauthorised unless such possession or occupation is warranted by a permit or other written authority granted in accordance with any written law. Therefore, I am unable to accept the contention of the Counsel for the Petitioner that a land which is the subject matter of an agreement in the nature of the document marked 'P1' comes outside the perspective of the State Lands (Recovery of Possession) Act.

The rights and liabilities under the agreement could be the subject matter of a civil action instituted by either the U.D.A. or the petitioner. The mere fact that such a civil action is possible does not have the effect of placing the land described in the notice marked 'P3', outside the purview of the State Lands (Recovery of Possession) Act. Indeed, in all instances where a person is in unauthorised occupation or possession of State Land such person could be ejected from the land in an appropriate civil action. The clear object of the State Lands (Recovery of Possession) Act is to secure possession of such land by an expeditious machinery without recourse to an ordinary civil action. The dicta of the Supreme Court in the case of *Weerakoon vs. Ranhamy* (Supra) and the passage of the Canadian judgment quoted by Professor Wade, therefore, do not have a bearing on this case. Accordingly the application of the petitioner is dismissed with costs.

*Application refused.*