IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1. Rajiv Hundlani,
2. Manohar Naraindas Hundlani,
3. Reshma Manohar Hundlani,
4. Niki Hundlani,
   All of No.7A, Havelock Place,
   Colombo 5.
   Petitioners

CASE NO: CA/WRIT/261/2016

Vs.

1. Sumedha Pujitha Rathnayake,
   Director General,
   Urban Development Authority,
   6th and 7th Floors, Sethsiripaya,
   Battaramulla.
2. Urban Development Authority,
   6th and 7th Floors, Sethsiripaya,
   Battaramulla.
3. Nayana Mawilmada,
   Former Director General of the
   Urban Development Authority,
   6th and 7th Floors, Sethsiripaya,
   Battaramulla.

4. H. A. Dayananda,
Director (Land Development and Management),
Urban Development Authority,
6th and 7th Floors, Sethsiripaya,
Battaramulla.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Sanjeeva Jayawardena, P.C., with Lakmini Warusevitane for the Petitioner.

Milinda Goonethilake, S.D.S.G., for the Respondents.

Argued on: 13.02.2020

Decided on: 26.02.2020

Mahinda Samayawardhena, J.

The four Petitioners filed this application seeking a writ of certiorari to quash the decision contained in the Notice to Quit marked P20 issued under the State Lands (Recovery of Possession) Act, No. 7 of 1979, as amended. By this Notice to Quit, the Director General of the Urban Development Authority (UDA), as the competent authority under the Act, directed "*Victory Silk Stores*" to deliver vacant possession of the land described in the schedule to the Notice to Quit to the said competent authority on or before 15.08.2016. Upon failure to comply with this direction, proceedings have been instituted in

the Magistrate's Court, but were put on hold pending determination of the instant application.

At the argument, learned President's Counsel for the Petitioners raised three points in challenging the Notice to Quit.

1. Failure to obtain the approval of the Minister in charge of the UDA before issuance of the Notice to Quit, as required by section 14(2)(b) of the Act
2. Failure to identify the land/property
3. The Notice to Quit being addressed in the name of the partnership business

Regarding (1) above, the submission of learned Senior Deputy Solicitor General for the Respondents is that such a position had not been taken up either in the petition or in the written submissions and it was taken up for the first time at the argument. This is correct. Although learned President's Counsel for the Petitioners drew the attention of the Court to paragraph 10(E) of the petition, there is absolutely no reference either to section 14(2)(b) of the Act or anything regarding the Notice to Quit being issued without approval of the Minister. It is the position of learned Senior Deputy Solicitor General that had this been taken up in the petition, he would have tendered in his statement of objections proof regarding the Minister's approval. I agree and reject the first ground raised on behalf of the Petitioners.

The next argument relates to failure to identify the corpus. According to the Notice to Quit P20, the property from which eviction is sought is No.10/1 and 10/4 in Lot 1 of Plan No. 5623. A copy of this Plan P21 has been tendered by the

Petitioners to say that the 10/1 and 10/4 buildings are not shown in the Plan. It is the submission of learned Senior Deputy Solicitor General that there is no legal requirement to attach a Plan to the Notice to Quit, and what is necessary is identification of the corpus. If the property can be identified, a Plan can be disregarded. Senior Deputy Solicitor General referred to several correspondences between the UDA and *Victory Silk Stores*, where 10/1 and 10/4 of Dharmapala Mawatha, Colombo 3 (which are admittedly the two buildings from which eviction is sought) have been clearly identified. Even the P6 sketch—the Petitioners' own document—clearly identifies 10/1 and 10/4 of Dharmapala Mawatha, Colombo 3. The District Court action previously filed by the Petitioners is also in respect of 10/1 and 10/4 of Dharmapala Mawatha, Colombo 3. Hence there is absolutely no question in identifying the property without a Plan. In reply, learned President's Counsel for the Petitioners stated that what matters is not whether the property from which eviction is sought can be identified but whether the Quit Notice is valid in law.

This argument is purely technical and has nothing to do with the merits of the application.

The State Lands (Recovery of Possession) Act was passed to recover possession of State lands from persons in unauthorised possession expeditiously. The procedure is simple and straightforward. There is no place for high technical objections which will defeat the purpose of the Act. *Vide Gunaratne (Alexis Auction Rooms) v. Abeysinghe (Urban Development Authority) [1988] 1 Sri LR 255, Jayathilaka v Ratnayake [2007] 1 Sri LR 299, Ihalapathirana v. Bulankulame [1988] 1 Sri LR 416.*

Let me further explain this point, as learned President's Counsel for the Petitioners referred to the Court of Appeal Judgment of *Kandiah v. Abeykoon [1986] III CALR 141* in his submission to say that Statutes which encroach on the rights of the subject shall be strictly interpreted.

According to section 3(1)(b) of the Act, the Notice to Quit shall specify the date on or before which the person in possession shall vacate the land. It further states that the date to be specified shall be not less than thirty days from the date of issue.

In *Gunaratne (Alexis Auction Rooms) v. Abeysinghe (Urban Development Authority) (supra)*, the Supreme Court took the view that although giving notice under that section is mandatory, giving less than thirty days' notice would not *ipso facto* vitiate the Notice to Quit, if no prejudice is caused thereby.

Tambiah J. at pages 262-263 stated:

> *The object of the State Lands (Recovery of Possession) Act, No. 7 of 1979 is the speedy recovery of possession of State lands from persons in unauthorised possession or occupation. The object of giving notice is to tell the occupier that he must vacate the land and hand over possession; otherwise, the Competent Authority will resort to, the speedy remedy provided for in the Act. The giving of notice under s. 3(1) to vacate and hand over possession is a mandatory requirement and must be complied with, and that has been done in this case.*
>
> *It seems to me that the stipulation of 30 days in s. 3 (1) has been inserted for the benefit of the occupier. The Competent*

> *Authority, at his discretion, may specify a date not less than 30 days or a longer period, having regard to the type of premises to be dealt with, e.g., if it is factory premises, he might specify 90 days to enable the occupier to dismantle the equipment and find an alternate site. The notice that was given in this case was defective in form it gave only 15 days to vacate. In the words of De Smith "breach of procedural or formal rules is likely to be treated as a mere irregularity if no substantial prejudice has been suggested by those for whose benefit the requirements were introduced."*
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> *The notice to quit is dated 10.10.83. The application for ejectment was filed on 24.1.84, i.e. the Petitioner had 106 days to move out before legal proceedings were instituted. In addition, on Petitioner's own request, the learned Magistrate granted him a further 2 weeks for occupation. Thus, no substantial prejudice has been caused to the occupies for whose benefit the time requirement was introduced. In my view, the requirement in s. 3(1) of Act, No. 7 of 1979, that a minimum of 30 days be given to vacate must be treated as directory and there has been a substantial compliance with the time requirement specified in s. 3(1) of the Act.*

There is no issue that the premises from which eviction is sought is State land. During the course of the argument, although there was an attempt to say that *Victory Silk Stores* was the tenant under the UDA, there is no evidence at all to that effect. According to P17—a document tendered by the Petitioners themselves—*Victory Silk Stores* pays a monthly usage

fee to the UDA. Learned President's Counsel submitted in passing that monthly tenancy could have been created between *Victory Silk Stores* and the UDA thereby.

There is no doubt that *Victory Silk Stores* did not pay rent but a monthly usage fee for occupation. Even assuming without conceding that *Victory Silk Stores* did pay rent to the UDA, mere payment of rent does not create tenancy unless parties have actually intended to do so. There shall be *ad idem* (meeting of minds) as to the essential requirements: (1) that the object of the contract is to let and hire; (2) ascertained property; (3) a fixed rent. *Vide Wille on Landlord and Tenant in South Africa, 2nd Edition, page 2, Eileen Prins v. Marjorie Patternott [1995] BLR 41, Jayawardena v. Bandaranayake [1998] 3 Sri LR 72 at 74-75, Bastian v. Panagoda [1998] 3 Sri LR 173.* No such agreement has taken place in this case.

The business in the name of *Victory Silk Stores* is carried on in No. 8 and 10, Dharmapala Mawatha, Colombo 7. The UDA does not need the portion wherein the Petitioners engage in actual business. No. 10/1 and 10/4 are located at the rear side of the business whereas 10/1 is used as a garage and 10/4 as a security point and storeroom. These seem to be additions to the main building. The UDA at least since 2007 has been requesting that *Victory Silk Stores* vacate premises No.10/1 and 10/4, but this request has not been complied with. *Vide inter alia* P15, P15A, P15B, P15C, P15D.

I think this is a suitable point to refer to the District Court action (7839/SPL) filed by the Petitioners as partners of *Victory Silk Stores* when the UDA repeatedly demanded that they vacate the premises 10/1 and 10/4. It is significant that the relief

prayed for by the Petitioners in the prayer to that plaint was an order preventing the UDA from ejecting the Petitioners without a Court Order. The District Court issued an interim injunction. However the case was later laid by on the submission of the State Counsel who stated that the UDA would take steps to recover possession of the property under the Urban Development Authority Act or State Lands Recovery of Possession Act or any other Law.

> මේ අවස්ථාවේදී විත්තිය විසින් පෙනී සිටින ජ්‍යෙෂ්ඨ රජයේ අධිනීතිඥ මහතා පවසා සිටින්නේ මෙම නඩුවට අදාල විෂය වස්තුව රජයේ දේපළක් බව දැනටමත් පාර්ශවකරුවන් පිළිගෙන ඇති නිසා සහ රජයේ දේපළ සන්තකය හෝ අදාල දේපළ නැවත ලබාගැනීම සඳහා රජය විසින් ගතයුතු පියවර වලට මෙම නඩුවේ අතුරු තහනම් නියෝගය මගින් කිසිදු බාධාවක් නැති නිසා නාගරික සංවර්ධන අධිකාරී පනතේ හෝ රජයේ සන්තකය ආපසු ලබාගැනීම් පනත යටතේ හෝ රජයට සන්තකය ලබාගැනීමට හැකි වෙනත් නීතිරීති අනුව කටයුතු කිරීමට විත්තිකරු බලාපොරොත්තු වන බවත්ය.
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> පැමිණිල්ලේ ආයාචනයේ ඉල්ලා ඇති සහනද, දැනට මෙම නඩුවේ සටහන් කර ඇති පිළිගැනීම් අනුවද, නිකුත් කර ඇති අතුරු තහනම් නියෝග අනුවද අධිකරණයට පෙනී යන්නේ විත්තියේ ඉල්ලීම සලකා බලන විට මෙම නඩුව බහා තැබීම ඉතා සුදුසු බවත්ය. ඒ අනුව මෙම නඩුව බහා තබමි. කෙසේ නමුත් මාස 12 තුල පැමිණිල්ල හෝ විත්තියේ ඉල්ලීම පරිදි මෙම නඩුව නැවත ආරම්භ කලයුතුය.[1]

The UDA took steps under the State Lands (Recovery of Possession) Act. Therefore the submission of President's Counsel that the UDA could only have taken steps under the Urban Development Authority Act is unsustainable.

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[1] Vide pages 193-194 of P16.

Connected to the District Court case, another argument mounted by President's Counsel was that the UDA ought to have taken steps within a period of 12 months from the date of the said Order. This argument is clearly misplaced. Although the District Judge has not stated so in so many words, the 12-month period mentioned in the District Judge's Order refers to section 402 of the Civil Procedure Code. According to this section, "if a period exceeding 12 months in the case of a District Court…elapses subsequently to the date of the last entry of an order or proceeding in the record without the plaintiff taking any steps to prosecute the action where any such step is necessary, the court may pass an order that the action shall abate". Under section 403 of the Civil Procedure Code, when an action abates the action dies a natural death once and for all. Learned President's Counsel states that the action was abated. If this is the case, there is no interim injunction in operation.

When there is no ambiguity in identifying the portion to be evicted, the Notice to Quit need not be quashed on a mere technicality which has caused no prejudice to the Petitioners.

In *Seneviratne v. Urban Council, Kegalle [2001] 3 Sri LR 105 at 108*, J.A.N. de Silva J. (later C.J) quoted with approval the following passage of *Judicial Review of Administrative Action* by De Smith (5th Edition, 1995), where it is stated that "*If the applicant has not been prejudiced by the matters on which he relies then the Court may refuse relief even though he has succeeded in establishing some defect. The literal or technical breach of an apparently mandatory provision in a Statute may be so insignificant as not in effect to matter. In these circumstances the Court may in its discretion refuse relief.*"

I reject the second argument of the Petitioner.

The third argument is in relation to the name of the party to be ejected as described in the Notice to Quit. The party on whom Notice to Quit was served is *Victory Silk Stores*. The Petitioners to this application are the partners of that partnership business. Learned President's Counsel for the Petitioners, drawing attention to the provisions of the State Lands (Recovery of Possession) Act, argues that the words used are "persons" and "his dependents" and therefore Notice shall be addressed to a natural person. If this argument is to prevail, incorporated bodies who can sue and be sued are also not covered. It is true that a partnership is neither a natural nor a juristic person. Nevertheless, section 2(s) of the Interpretation Ordinance, No. 21 of 1901, as amended, states that "person" includes any body of persons corporate or unincorporate. A partnership is an unincorporated body. Hence there is no legal obstacle to serve a Notice to Quit on the partnership. All the correspondence, including payment receipts, which the Petitioners heavily rely on, are in the name of the partnership and not in the name of the partners. No prejudice has been caused to the Petitioners thereby. When the UDA sent letters in the name of the partnership, the Petitioners being the partners have readily responded. The Petitioners have even responded to the summons directed on the partnership and submitted to the jurisdiction of the Magistrate's Court. *Vide Jayasinghe v. Gnanawathie Menike [1997] 3 Sri LR 410*, *W.M. Mendis & Co. v. Excise Commissioner [1999] 1 Sri LR 351*.

I am not inclined to agree with the third submission as well.

Before I part with this Judgment, I must state that writ is a discretionary remedy. It is an equitable relief. A party cannot invoke the writ jurisdiction of this Court as of right. Even if a party is technically entitled to the relief sought, the Court can still refuse to grant the relief, if other factors stand against the granting of that relief. The Court shall take stock of everything including the conduct of the party applying for the writ and decide what is best.

In *Siddeek v. Jacolyn Seneviratne [1984] 1 Sri LR 83 at 90,* the Supreme Court observed:

> *It is necessary at this stage to bear in mind that certiorari is a discretionary remedy—see Wade: "Administrative Law" 5th Ed. (1982) pp. 546, 591. As de Smith says in his work "Judicial Review of Administrative Action" 4th Ed. (1980) p. 404: "Thus, certiorari is a discretionary remedy and may be withheld if the conduct of the applicant, or, it would seem, the nature of the error does not justify judicial intervention". The Court will have regard to the special circumstances of the case before it before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality.*

Vide also *Siriwardena v. Provincial Public Service Commission [2012] BLR 373, Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura [1996] 2 Sri LR 70, Edirisooriya v. National Salaries and Carde Commission [2011] 2 Sri LR 221, Abee Kuhafa v. The Director General of Customs [2011] 2 BLR 459, Selvamani v. Dr. Kumaravelupillai [2005] 2 Sri LR 99.*

I dismiss the application of the Petitioners with costs.

Judge of the Court of Appeal