

**MUTHUVELU**  
**v**  
**DIAS AND ANOTHER**

COURT OF APPEAL  
WIJEYARATNE, J.  
C.A. WRIT APP. 573/ 2002  
JULY 11, 2003  
AUGUST 12, 2003  
OCTOBER 8, 2003

*State Lands (Recovery of Possession) Act 7 of 1979, Section 9, 13 and 18 – State Land leased to Public Company - Validity of Quit Notice? – Government Quarters (Recovery of Possession) Act – Comparison? – Lease – Is it a protanto transfer? – Estate Quarters Act 2 of 1971.*

The 1st respondent Competent Authority issued a quit Notice in terms of the State Lands (Recovery of Possession) Act requiring the petitioner to vacate and handover vacant possession of the land he is admittedly in occupation owned by the Sri Lanka Plantation Corporation.

The Petitioner sought to quash the said Notice on the basis that the 1st respondent cannot in law invoke the provisions of the State Lands Recovery of Possession Act, as part of the estate had been leased to the 2nd respondent – a Public Company and that he is an employee of the said company and that a Lease is a protanto transfer and the land is no longer the property of the State, to be governed by the Act.

**Held:**

*Per* Wijeratne, J.

"A Lease though considered a *Pro tanto* transfer, is a contract between the Lessor and the Lessee, governed by the terms of the indenture of Lease. Lessee during the tenure of the lessee may exercise all the rights of the owner with regard to the possession and enjoyment of the property leased as against third parties. A lessor by reason of the lease does not lose his right of ownership and may exercise his rights of ownership specially towards more

fully assuring the control and possession of the devised property to the lessee."

- i) Provisions of the State Lands (Recovery of Possession) Act reveal that it is a Special enactment providing for the speedy recovery of State Lands from unlawful occupiers. The State continued to be the owner of the estates leased.

*Per Wijeratne, J.*

"The striking difference of the application of the two Acts being – Section 9 of the State Lands (Recovery of Possession) Act provides for a party given quit notice to establish that he is in possession or occupation upon a valid permit or other authority and under section 13 may even vindicate his title to the land, but under the Government Quarters (Recovery of Possession) Act no such mechanism of establishing title or authority is provided because it is conceded that the party noticed is in occupation of the quarters under a service contract and his authority to remain in occupation is terminated."

4. State Lands (Recovery of Possession) Act being a special enactment would operate notwithstanding the provisions of the Estate Quarters Act.

**APPLICATION** for a Writ of *Certiorari*.

**Cases referred to:**

1. *N. Chandrabose v Sunil C.K.de Alwis* – CA 920/2000 – CAM 12.5.2003
2. *Muthiah v De Alwis*- CA 1560/2000 – CAM 30.5.2002-S.C.Spl.LA 148/2002 S.C. 12.06.2003
3. *Nirmal Paper Converters (Pvt) Ltd., v Sri Lanka Ports Authority* – 1993 1 Sri LR 219
4. *Senanayake v Damunupola* – 1982 2 Sri LR 621

*J.C.Weliamuna* with *Janaka Sumanasuriya* for petitioner.

*Gomin Dayasiri* with *Ms Salini Jayasinghe* for 1st and 2nd respondents.

*Cur. adv. vult*

May, 31, 2004

**WIJAYARATNE, J.**

The petitioner through this application invoked the jurisdiction of this court seeking the grant of a mandate on the nature of writ of *certiorari* quashing the quit notice (P2) requiring the petitioner to vacate and hand over vacant possession of the parcel of land he is admittedly in occupation as land owned by the Sri Lanka State Plantations Corporation (SLSPC). He also sought a writ of Prohibition restraining the first respondent from taking steps under State Lands (Recovery of Possession) Act, No. 7 of 1979 as amended, to evict the petitioner from his quarters. 01

The petitioner in his affidavit affirmed that he was employed as a labourer at Loinorn Estate managed by the second respondent. He stated that in or about October 2000 he was given accommodation in a quarter situated in Bogawana Division of the said estate and such quarter the petitioner is occupying is situated within the land described in the schedule to the quit notice (P2) issued by the first respondent. The petitioner however does not adduce any proof of his being given such quarter for his occupation nor does he explain how the petitioner who is a labourer is given staff quarters as residence. The petitioner impugns the quit notice (P2) issued by the first respondent for the reasons given more fully in paragraph 15 of the petition. The main thrust of the application is on the ground that the first respondent has no authority to invoke the provisions of the State Lands (Recovery of Possession) Act, as the land in suit is part of a land in the control of the 2nd respondent, which is a public company.

The respondents responding to the application of the petitioner asserted that the first respondent is duly appointed Competent Authority (R6a & R6b), that the land referred to in the quit notice P2, the subject land in this application, remains state land though subject to a lease in favor of the second respondent company (R1, R2a and R2b ) and the petitioner is in unlawful and unauthorized occupation of the land described in the quit notice which includes staff quarters standing thereon (R3,R4 and R5).

During the hearing the petitioner did not contest the fact that the first respondent is the duly appointed competent authority of the SLSPC for the purposes of the State Lands (Recovery of Possession) Act. However the graveman of the argument for the petitioner was that the first respondent cannot in law invoke the provisions of the State Lands (Recovery of Possession) Act in respect of the land in suit as described in the quit notice in so far as the same was part of the estate leased to the second respondent. The petitioner urged that according to the decisions of the Supreme Court, a lease is a *pro tanto* transfer and the land in suit is no longer the property of the SLSPC to be governed by the provisions of the State Lands (Recovery of Possession) Act, as the SLSPC has lost control over the lands by reason of such lease.

Section 18 of the State Lands (Recovery of Possession) Act, No.7 of 1979 as amended defined state land as;

"State land means land to which the state is lawfully entitled or which May be disposed of by the state, together with any building standing thereon....."

The petitioner conceded that the SLSPC as the lessor continued to be the owner of the estates leased, but left with only bare dominium of the property. It was argued that the bare dominium the SLSPC has, is not sufficient to invoke the provisions of the State Lands (Recovery of Possession) Act in respect of the land leased out to the second respondent, which is a public company. A lease though considered a *Pro tanto* transfer, is a contract between the lessor and the lessee, governed by the terms of the indenture of lease. The lessee during the tenure of lease may exercise all the rights of the owner with regard to the possession and enjoyment of the property leased, as against third parties. His right *vis a vis* that of the a lessor will be subject to the terms of the Indenture of lease. A lessor by reason of the lease does not lose his rights of ownership; and may exercises his right of ownership specially towards more fully assuring the control and possession of the demised property to the lessee. In this context it will be relevant to note the decision given by the Court of Appeal in the case of *N.Chandrabose v Sunil C.K. de Alwis and others* CA Writ application No. 920/2000 (CA minutes dated 12.05.2003).

The learned counsel for the petitioner drew attention of this court to the decision in the case of *Muttiah v de Alwis*<sup>(1)</sup> affirmed by the Supreme Court in. It must be noted that the above decision relates to a Quit Notice issued under the provisions of Government Quarters (Recovery of Possession) Act, and has no bearing on the matters in issue in this application. A notice under the provisions of Government Quarters (Recovery of Possession) Act, according to the scheme of the act, necessarily implies that the person in occupation of the quarter occupied the same for the purpose of residence provided by or on behalf of the government and his occupation thereof was as a result of a contract (of service). In terms of the provisions of section 3 of the said act, the notice requiring the occupier to vacate such quarter shall state the reasons for the issue of such notice. This means that the

occupation of the quarter by the party noticed was by reason of service contract, which occupation the competent authority has terminated for the reasons given in the notice. It is this aspect that the decision of the case of *Muttiah v de Alwis (Supra)* dealt with as dealing with the possession or occupation of an estate quarter given under a service contract, necessarily falls within the ambit of the management of the estate. The decision of *Chandrabose v Alwis (Supra)* however has dealt with the distinction of the application of the provisions of the two acts, should be relevant here too.

The striking differences of the application of the two acts can best be appreciated with the examination of relevant provisions and the scheme of the statutes. State Lands (Recovery of Possession) Act as amended, section 9 provides for a party given quit notice to establish that he is in possession or occupation of the land in question, upon a valid permit or other authority, and under section 13 may even vindicate his title to the land. Under the Government Quarters (Recovery of Possession) Act, no such mechanism of establishing title or authority is provided, because it is conceded that the party notice is in occupation of the quarter under a service contract and his authority to remain in occupation is terminated.

Accordingly any decision affecting the rights of a lessor in relation to a quarter provided for the business of running the estate, cannot apply fully and fairly to the right of the lessor in ejecting a person in unlawful and unauthorized occupation or possession of part of the demised premises. Moreover, the examination of the provisions of the State Lands (Recovery of Possession) Act reveals that it is a special enactment providing for the speedy recovery of state land from unlawful occupiers, this view was endorsed in the cases of *Nirmal Paper Converters (Pvt) Ltd. v Sri Lanka Ports Authority* <sup>(3)</sup> and *Senanayake v Damunupola*.<sup>(4)</sup>

It was further argued that in view of the provisions of Estate Quarters Act No.2 of 1971, the petitioner could not be evicted on the strength of the quit notice issued. The above act applies to the occupation of quarters or line rooms provided to the labourers of an estate and not to land unlawfully occupied by employees of an estate. Moreover the provisions of State Lands (Recovery of Possession) Act shall operate notwithstanding the provisions of

### Estate Quarters Act.

Section 17 of the State Lands (Recovery of Possession) Act provides;

"provisions of this act shall have effect notwithstanding anything contained in any other written law..."

This provision clarifies the intention of the legislature that the provisions of the State Lands (Recovery of Possession) Act as amended, shall prevail over or supersede provisions of any other law. The validity of a quit notice issued in terms of the provisions of the State Lands (Recovery of Possession) Act cannot be affected by the provisions of any other written law including the Estate Quarters Act.

Accordingly I hold that the Competent Authority appointed by the SLSPC is entitled to invoke the provisions of the State Lands (Recovery of Possession) Act in respect of lands to which SLSPC as a state agency is lawfully entitled to and the Quit Notice P2 is validly issued by the first respondent.

Consequently the application of the petitioner is dismissed with costs fixed at Rs.5000/=

With the appointment of Shiranee Tilakawardena, J. then President, Court of Appeal, and with the consent and agreement of both parties to this application, this judgement is written by me as a single judge.

This judgement is to bind the parties in cases Nos: CA 574/2002 and CA 187/2002 as agreed by the parties in those cases.

*Application dismissed.*