

PIYATILAKE  
V.  
VINCENT PANDITA

COURT OF APPEAL  
S.N. SILVA J.  
C.A. APPLICATION NO. 873/82.  
JUNE 9, 1988.

*Writ of Certiorari — Notice to quit under s. 3 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969 — Government Quarters as defined by s. 9.*

The petitioner was served with notice to vacate premises (occupied by him) of the Workers Quarters of the Pugoda Textile Mill of the Government owned Business Undertaking of the National Textile Corporation, issued by the Secretary to the Ministry of Textiles. The petitioner was an employee of the Pugoda Textile Mill and the Notice was consequent to the termination of his employment. The question was whether the premises occupied by the petitioner were Government Quarters. After acquisition of the business in 1979, the competent Authority entered into a Joint Venture Agreement with a firm called Lakshmi on 22.6.1980.

**Held :**

Two requirements should be satisfied for premises to be considered as Government Quarters.

- i. The building, room or other accommodation should be occupied or used for the purpose of residence.
- ii. It must be provided by or on behalf of the Government or a public corporation to any person.

(1) When a vesting order was made in terms of the Business Undertaking (Acquisition) Act the petitioner became an employee of the Government occupying quarters owned by the Government.

(2) The quarters did not cease to be government quarters upon the Joint Venture Agreement entered into on 22.6.1980 with Lakshmi because the latter was to provide only technical and managerial services and it cannot be contended that it (Lakshmi) provided quarters for the petitioner.

**APPLICATION** for certiorari to quash notice to quit quarters:

*R. Weerakoon* for the petitioner

*S. Marsoof S.S.C.* for respondent

*Cur. adv. vult.*

July 29, 1988

**S. N. Silva, J.**

The Petitioner has filed this application for a Writ of Certiorari, to issue on the Respondent, to quash notice to quit dated 4-5-1982 sent in terms of section 3 of the Government Quarters (Recovery of Possession) Act No. 7 of 1969. The notice has been produced marked "B" and it requires the Petitioner and his dependents to vacate premises bearing No. C1 of the Workers Quarters of the Pugoda Textile Mill of the Government owned Business Undertaking of the National Textile Corporation, within two months of 10-5-1982. The notice has been issued by the Respondent as the Secretary, Ministry of Textile Industries.

The facts, as admitted by both parties at the stage of hearing are as follows.

The Petitioner was an employee of the National Textile Corporation established under the State Industrial Corporations Act No. 49 of 1957. The Acting Minister of Finance by order made in terms of section 2 (1) (b) of the Business Undertakings (Acquisition) Act No. 35 of 1971 vested in the Government with effect from 18-10-1979, the business undertaking of the National Textile Corporation. The vesting order published in Gazette Extraordinary, No. 58/6 of 18-10-1979 is produced marked "R1". In terms of section 4 (1) of the Business

Undertakings (Acquisition) Act, the rights and liabilities, under the contract of employment of the Petitioner which was subsisting on the date of the vesting order, vested in the Government with the Business Undertakings of the National Textile Corporation. Although the Petitioner had taken up a contrary position in his pleadings, at the stage of hearing his Counsel conceded that as a result of the vesting order, the Petitioner became an employee of the government. On 21-3-1980, the appropriate Minister acting in terms of section 19 of the Finance Act No. 38 of 1971 dissolved the National Textile Corporation. On 15-3-1982, the Petitioner's services were terminated by the Mill Manager of the Pugoda Textile Mill, by letter marked "A". The letter states that a formal disciplinary inquiry was held on charge sheet dated 3-11-1981 and that the Petitioner was found guilty of charges Nos. 1-6 and 8. The Petitioner made an application to the Labour Tribunal, Colombo, in terms of section 31 B of the Industrial Disputes Act, seeking relief against the termination of employment.

In the petition and affidavit filed in this Court, the Petitioner has specifically averred that the building occupied by him ceased to be government quarters as defined in the Government Quarters (Recovery of Possession) Act upon the dissolution of the National Textile Corporation on 21-3-1980. He has stated that the building is a facility provided to him by his employer being a "private company". To support this position he filed a further affidavit in September 1984 to which he annexed marked "A1" a copy of a Joint Venture Agreement entered into between the Competent Authority of the Government Owned Business Undertaking of the National Textile Corporation and Lakshmi Textile Exporters (Private) Ltd. At the hearing, Counsel for the Petitioner deviated from the pleadings and made a submission on the following lines. That upon the Joint Venture Agreement marked "A1" being entered into, the Petitioner ceased to be an employee of the Government and became an employee of "Lakshmi" Ltd. or in the alternative an employee of the Joint Venture consisting of "Lakshmi" Ltd. and the Government. On this basis Counsel contended that the building occupied by the Petitioner ceased to be government quarters since it was provided to him by "Lakshmi" or the Joint Venture of which "Lakshmi" is a partner.

The Respondent admits that a Joint Venture Agreement was entered into by the Competent Authority with "Lakshmi". However, he has stated that the Agreement only entrusted the management of the Textile Mill to "Lakshmi". Even the Indian National who is the General Manager of the Textile Mill has been employed by the Government Owned Business Undertaking on secondment from "Lakshmi" and his salary is paid by Government. As regards the Petitioner, it is stated that he was an employee of the government for all purposes up to the termination of his services.

According to the long title to the Government Quarters (Recovery of Possession) Act, its provisions are intended for the recovery of possession of quarters provided by or on behalf of the government or a Public Corporation for the occupation of persons. Section 3 of the Act empowers a competent authority to serve a notice to quit on the occupier of any government quarters. The "government quarters" is defined in section 9 of the Act as follows :

"Government quarters" means any building or room or other accommodation occupied or used for the purposes of residence 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."

According to this definition two requirements should be satisfied for a premises to be considered as Government quarters, viz :

- (i) that the building, room or other accommodation be occupied or used for the purpose of residence.
- (ii) that it is provided by or on behalf of the Government or a public corporation to any person.

Quarters provided by public corporations was brought within the scope of the Act by the amendment No. 8 of 1981. Therefore, at the time of the acquisition in October 1979, the quarters occupied by the Petitioner were not Government quarters as defined in the Act. The question is whether these quarters became Government quarters after the acquisition.

An examination of the provisions of the Business Undertakings (Acquisition) Act shows that a vesting order made in terms of the Act produces the following legal consequences that are relevant to the above question, viz :

- (i) that the movable and immovable property of the National Textile Corporation (including the quarters) vests in the Government free from all encumbrances — (Section 2 (2) read with Section 17).
- (ii) that the rights and liabilities under subsisting contracts of the National Textile Corporation (including the contract of employment of the Petitioner) vests in the Government.

The combined effect of these consequences is that upon the vesting, the Petitioner became an employee of the Government occupying quarters owned by the Government. Since the Petitioner continued to occupy the quarters for the purpose of employment it has to be inferred that the quarters were provided to him by or on behalf of the Government. Thus the quarters referred in the notice to quit marked " B " were Government quarters as defined in the Act after the acquisition in October 1979.

The next question is whether the quarters ceased to be Government quarters upon the Joint Venture Agreement marked " A1 " being entered into on 22-6-1980. The legal basis on which the premises became Government quarters is relevant to this question. It has to be examined whether the Agreement " A1 " altered the legal consequences based on the provisions of the Business Undertakings (Acquisition) Act to such extent that the premises ceased to be Government quarters.

The Agreement has been entered into by the Competent Authority (appointed in terms of the Regulations for the management and administration of the affairs of the undertaking) and "Lakshmi". Parties have not produced the Regulation by which the competent authority was appointed. In the absence of a submission to the contrary by the Respondent I have assumed that the Agreement was validly entered into by the competent authority.

Clause "E" of the Agreement (page 9) describes the status of the parties as follows :

- i. The Joint Venture shall consist of the Government Undertaking which shall be the Investing Partner and the said Lakshmi which shall be the Managing Partner ;
- ii. the said Lakshmi as the Managing Partner shall be solely responsible for the management and running of the Mill ;

Sub clauses (pages 10 to 14) bind "Lakshmi" to provide specific management and technical services.

Clause L (V1) specifically provides that "Lakshmi" shall not be liable for any loss that may result from the working of the Mill. Sub clauses (V11) and (V111) however, provide for the payment of 15% and 20% of the profit to "Lakshmi" for Management services and Technical services in addition to a sum of U.S. \$ 45,000 also payable under the Agreement.

Thus it is clear that under the Agreement "Lakshmi" does not contribute any capital to the business but provides only technical and managerial services and receives 35% of the profit (in addition to other payments). Therefore it can never be contended that "Lakshmi" provided the quarters to the Petitioner. It cannot provide what it does not have.

Clause 'P' (page 22) which states that "Lakshmi" shall continue to employ the existing staff of the Mill and permit them to continue with existing facilities, has to be construed within

the framework of the Agreement. It does not mean, as contended by Counsel for the Petitioner that "Lakshmi" becomes the employer of the staff. It means only that "Lakshmi" as Manager cannot insist on the staff being discontinued or the facilities of the staff being withdrawn. Facilities, would include the quarters provided by the Government as the employer. This clause in fact cuts across the argument of Counsel. Therefore the answer to the question is that as a result of the agreement marked 'A' entered into in June, 1980, the quarters provided to the Petitioner did not cease to be Government quarters as defined in the Act. Admittedly, the Respondent is the competent authority in terms of the Act and I hold that he acted within his power in serving notice marked 'B' on the Petitioner.

Accordingly I dismiss the application but I would make no order as to costs.

*Application dismissed*

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