

PODI NONA

v.

URBAN COUNCIL, HORANA

COURT OF APPEAL.
RATWATTE, P. AND SENEVIRATNE, J.
C. A. APPLICATION 200/800.
DECEMBER 9, 1980.

Writ of Certiorari—Application to quash decision of local authority cancelling lease of stall in public market—Violation of conditions of lease by lessee—Cancellation on this ground—Relationship between lessee and Council contractual—Whether writ lies.

Where the petitioner sought a Writ of Certiorari to quash a decision of the local authority cancelling a lease in her favour of a stall at the public market, Horana,—

Held

(1) On the material before Court the petitioner had acted in violation of clause 4 of her lease bond and clause VI of a circular issued by the Commissioner of Local Government which had been communicated to her and had sublet the said stall. The Council had accordingly terminated her lease.

(2) Inasmuch as the relationship between the parties was contractual the petitioner was not entitled to the remedy by way of certiorari. Another remedy was open to her.

APPLICATION for a Writ of Certiorari and/or Mandamus and Prohibition.

W. P. Gunatilleke, for the petitioner.

R. C. Gooneratne, for the respondent.

Cur. adv. vult.

January 16, 1981.

RATWATTE, P.

This is an application for a writ of certiorari to quash the decision of the respondent-council cancelling the lease in favour of the petitioner of a stall in the Public Market at Horana. The petitioner has also asked for writs of mandamus and prohibition.

According to the original application filed in this Court on 21.02.1980, the petitioner's case is as follows: The petitioner took on lease from the respondent, stall No. 10 of the Public Market, Horana, for a period of one year from January 1979 on Lease Bond No. 1001 dated 16.01.1979, which has been produced, marked A. During the course of the year 1979 a person called Gunawathie Weerasinghe, who had been the lessee of stall No. 10 for the year 1978, sought employment under the petitioner and the petitioner engaged her in terms of Clause 5 of the said Bond A. The respondent informed the petitioner and the other lessees of the other stalls that, in terms of a circular issued by the Commissioner of Local Government, the persons who were lessees of stalls in 1979 may continue as lessees for the year 1980. The letter sent to the petitioner has been marked B. Accordingly the petitioner deposited with the respondent the monies called for by the letter B, and Lease Bond No. 85 dated 01.02.1980 marked C, was executed. The petitioner in September 1979 gave three months notice of termination of employment to Gunawathie Weerasinghe. As the said Gunawathie continued to remain in the premises the petitioner's husband, Podisingho, made a complaint to the Police. At the inquiry Gunawathie is stated to have agreed to vacate the premises within a month's time. As Gunawathie did not leave the premises on 01.02.1980, the petitioner's husband, Podisingho made another complaint to the Police. On the advice of the Police the petitioner informed the respondent and consequent to that information, officials of the respondent council inspected the premises and are said to have caused Gunawathie to vacate the

stall. Gunawathie thereafter petitioned the respondent. The petitioner received a letter dated 13.02.1980, produced marked *D*, from the respondent stating that on investigations carried out by the respondent and on representations made by Gunawathie Weerasinghe, it has been proved that the petitioner had permitted Gunawathie Weerasinghe to conduct business in the stall leased to the petitioner. The petitioner further was informed that as this amounted to a violation of Clause No. 4 of the lease bond, the respondent was terminating the lease given in favour of the petitioner. The respondent had thereafter called for tenders for the lease of stall No. 10, operative from 01.03.1980. The petitioner pleaded that the termination of the lease bond in his favour and the calling for new tenders for stall No. 10 were in excess of the powers of the respondent-council.

The respondent in its statement of objections admitted that the petitioner was the lessee of stall No. 10 for the year 1979. The respondent went on to state that Gunawathie Weerasinghe was the lessee of stall No. 10 for the year 1977 and her son Anura was the lessee for the year 1978. The respondent pleaded that in breach of the condition of the lease bond, the petitioner had sub-let stall No. 10 to Gunawathie Weerasinghe. In proof of the sub-letting, Gunawathie had handed over to the respondent the rent receipts and electricity bills for the year 1979, which were in Gunawathie's custody. These documents have been produced marked R1 to R10. According to Gunawathie, she had paid the rents and the electricity bills in the name of the petitioner. As the respondent was satisfied on investigations made by it that Gunawathie had carried on business in these premises for a long period of time, the respondent had terminated the lease, as the petitioner had violated Clause 4 of the Lease Bond.

When this application came up for argument in this Court on 26.11.1980 counsel for the petitioner moved to file an amended petition and affidavit. This was allowed and she was granted time till 03.12.1980 to file amended papers. Counsel for the respondent moved that he be permitted to produce at the hearing a certified copy of the statement made to the Police by the petitioner's husband, Podisingho. Counsel for the petitioner did not object, and this application too was allowed. The amended petition and affidavit were filed on 03.12.1980. In the amended petition the circular of the Commissioner of Local Government referred to in the letter *B* produced with the original petition, has been

produced marked *B1*. In paragraph 8 of the amended petition the petitioner states that in January 1980 a dispute arose between Gunawathie Weerasinghe "who carried on business belonging to the petitioner temporarily in Room No. 10", with regard to the said premises and the said Gunawathie on 03.01.1980 gave an undertaking to the Horana, Police to vacate premises on 01.02.1980. Gunawathie's statement has been produced marked *P6*. The petitioner complains that the respondent's decision to terminate the lease was taken without any inquiry from the petitioner and without granting the petitioner any opportunity to be heard on the matter.

The contention of learned counsel for the petitioner was that it was in terms of the letter *B* and the Circular *B1* that the petitioner was granted the lease for the year 1980. He argued that in terms of *B1*, if the rents are paid in due time and no other conditions are violated the petitioner was entitled to continue as the lessee of stall No. 10. He submitted that before the letter *D* dated 13.02.1980 terminating the lease was sent to the petitioner, there was a duty cast on the respondent to hold an inquiry and give the petitioner an opportunity to show cause. Learned counsel further contended that the respondent merely acted on representations made by Gunawathie. There was no proof that the petitioner had sub-let the stall to Gunawathie. Counsel argued that the mere fact that Gunawathie occupied the premises was not sufficient to establish a sub-letting. The allegation against the petitioner was that she had violated Clause 4 of the Lease Bond *C* by sub-letting the stall to Gunawathie. In my view the averments in paragraph 8 of the amended petition do not support the contention of learned counsel for the petitioner. In this paragraph the petitioner, states that Gunawathie carried on the business belonging to the petitioner, temporarily in stall No. 10. The position taken up by the petitioner in paragraph 8 of the amended petition is contradictory to the position taken up by the petitioner in paragraph 2 of the original petition, in which the petitioner stated that Gunawathie was employed by her in term of Clause 5 of the Lease Bond. Learned counsel for the respondent submitted that this change of front was due to the fact that he had moved on 26.11.1980 to produce a copy of the complaint made by Podisingho to the Police. In this complaint dated 02.01.1980 the petitioner's husband had stated to the Police that stall No. 10 had been given by him to Gunawathie Weerasinghe for the purpose of carrying on

therein the business on the undertaking that Gunawathie would vacate it on being requested to do so. Podisingho had further stated that the stall had been given to Gunawathie about an year prior to his making the complaint. Podisingho went on to state that he had requested Gunawathie about two months earlier to vacate the stall by 01.01.1980, but that she had not done so. Podisingho stated in his complaint that he had charged no rent from Gunawathie. As a result of this complaint, the Police had recorded a statement from Gunawathie which has been produced by the petitioner marked P6. In P6 Gunawathie states that she took stall No. 10 from the petitioner and carried on business therein. She paid to the Urban Council the rent and the electricity bills in respect of stall No. 10 in the petitioner's name.

Though the petitioner denied that Gunawathie paid the rents, Gunawathie's statement in P6 is supported by the fact that the receipts R1 to R10 were in her custody and handed over by her to the respondent as stated in paragraph 3 of the statement of objections.

Apart from Clause 4 of the lease bond, Clause VI of the Circular B also strictly prohibits sub-letting by a lessee of a stall in the market and states that if such a stall is sub-let the lease will be cancelled. The petitioner has not explained why she allowed Gunawathie to occupy the stall and carry on the business even though temporarily. I am of the view that there is substance in the submission of learned counsel for the respondent that there had been a clear violation of Clause 4 of the lease bond and Clause VI of the Circular B1.

In any event learned counsel for the respondent submitted that the respondent was not exercising a quasi judicial function and that there was no necessity to hear the petitioner before the respondent took the decision to cancel the lease bond. He submitted that this was purely a contract between the parties. The respondent was the owner of the public market and was entitled to lease out the stalls in the market by calling for tenders. If the petitioner felt that there was a breach of the contract, she had a remedy in the proper forum for breach of agreement. Counsel further relied on Clause 9 of the lease bond which states that the Chairman of the Urban Council has the right to terminate the lease after giving 7 days notice if the lessee fails to fulfil the conditions of the lease. I am of the view that the relationship

between the parties was contractual and accordingly that the petitioner is not entitled to obtain a writ of certiorari. Another remedy was open to her.

For these reasons I am of opinion that the petitioner has not made out a case for the relief asked for by her. The application is dismissed with costs fixed at Rs. 210.

SENEVIRATNE, J.—I agree.

Application dismissed.