

**NIRMAL PAPER CONVERTERS (PVT) LTD.  
v.  
SRI LANKA PORTS AUTHORITY AND ANOTHER**

COURT OF APPEAL.  
WIJEYARATNE, J.  
CA APPLICATION NO. 767/92.  
MARCH 24, 1993.

*Certiorari – Landlord and tenant – Recovery of Possession of State Land – State Lands (Recovery of Possession) Act No. 9 of 1979 – Stay Order – Court of Appeal (Appellate Procedure) Rules 1990.*

A stay order issued *ex parte* must be limited for a period not exceeding two weeks to enable notice of the application to be given and the opposite party heard in opposition thereto on a date to be then fixed (Rule 2 (1) of the Court of Appeal (Appellate Procedure) Rules 1990).

Where the petitioner is not a lawful tenant but only a licensee making payments for use and occupation, the owning authority is entitled to avail itself of the provisions of the State Lands (Recovery of Possession) Act. The only ground

on which the petitioner is entitled to remain on the land is upon a valid permit or other written authority of the State as laid down in section 9 (1) of the State Lands (Recovery of Possession) Act and the petitioner did not have the semblance of such a permit or authority.

A stay order should not be given unless a very strong case is made out ; otherwise injustice will be caused to the other side. When a stay order is given, every effort is taken unreasonably to prolong proceedings.

APPLICATION for Writ of Certiorari and extension of stay order.

*Faiz Mustapha, P.C. with Mahanama de Silva and H. Withanachchi for the petitioner.*

*K. C. Kamalabayson, D.S.G., for the respondents.*

*Cur. adv. vult.*

March 24, 1993.

**WIJEYARATNE, J.**

The petitioner has filed this application on 19.10.92 for a Writ of Certiorari to quash the notice dated 26.8.92 (marked x) issued by the 2nd respondent asking the petitioner to quit the premises presently occupied by the petitioner's business. This notice has been issued under the State Lands (Recovery of Possession) Act, No. 9 of 1979.

The petitioner has averred that M. B. Wenceslaus was a tenant of these premises under the 1st respondent and its predecessor and that he had instituted action No. 3624/ZL for a permanent and interim injunction restraining the 1st respondent from ejecting him unlawfully and illegally.

On 20.7.87 the learned District Judge of Colombo, after trial, dismissed the action and thereafter he has filed an appeal to this court in case No. 560/84 (F) and the said appeal is pending.

Thereafter the petitioner-company was established at the instance of the said Wenceslaus and business that was carried out by him in his private capacity was transferred and carried on by the petitioner-company and the petitioner-company paid rents amounting to Rs. 3,745 per month to the 1st respondent. The said Wenceslaus was the Managing Director of the petitioner-company and he had tried to negotiate a long lease but was unsuccessful.

The petitioner averred that the 1st respondent demanded an exorbitant rent and the petitioner had appealed, but the Rent Review Committee of the 1st respondent rejected the petitioner's appeal against the increased rental.

The 2nd respondent who is the Premises Officer of the 1st respondent has issued this notice under section 3 of the State Lands (Recovery of Possession) Act and the petitioner avers that this notice is illegal and null and void as the petitioner claims to be a lawful tenant and maintains he can only be ejected by an order of the civil Court. The petitioner alleges that it is not in unauthorised possession or occupation of these premises and therefore the notice is *ultra vires*.

The petitioner has also asked for an order restraining the 1st and 2nd respondents from taking steps to eject the petitioner in pursuance of the said notice (x) until the final determination of the application.

This matter came up on 22.10.92 before two Judges of this Court and order was made to issue notice for 17.11.92. A stay order was issued in terms of paragraph (b) of the prayer of the petition till 18.11.92.

The Court of Appeal (Appellate Procedure) Rules 1990, which were published in the Government Gazette (Extraordinary) No. 645/4 of 15.1.1991, in Rule 2 (1) states that every application for a stay order shall be made with notice to the adverse party provided that interim relief may be granted although such notice has not been given if the Court is satisfied that there has been no unreasonable delay on the part of the applicant and that the matter is of such urgency that the applicant could not reasonably have given such notice and in such event the order for interim relief shall be for a *limited period not exceeding two weeks* sufficient to enable the respondent to be given notice of the application and to be heard in opposition thereto on a date to be then fixed.

In the first instance the stay order was given for more than 14 days, namely from 22.10.92 to 18.11.92, which is 26 days and exceeds the 14 day limit. Thereafter this stay order was extended on various dates till 22.3.93.

When it came up on 22.3.93 the learned Deputy Solicitor-General appeared for the respondents and I had to consider the question whether this stay order should be extended.

Mr. Withanachchi, junior counsel for the petitioner, strongly contended that this stay order had been issued by two Judges and it should not be interfered with. However this stay order was issued *ex parte* without hearing the other side on 22.10.92 for a period of 26 days, which was in excess of the 14 day limit.

After that it had escaped the attention of everyone that the respondent should be given an opportunity to be heard in opposition as laid down in Rule 2 (1)(b). Therefore I heard the submissions from both sides.

Mr. Withanachchi, junior counsel for the petitioner, made submissions on behalf of the petitioner while Mr. Kamalabayson made submissions on behalf of the respondents.

Mr. Withanachchi strongly urged that the petitioner was a tenant under the 1st respondent and hence the normal procedure in the civil courts should be followed to eject the petitioner. Mr. Kamalabayson said that the payments were accepted for use and occupation and not as rent.

It is clear on the averments of the petition itself that the Chairman of the 1st respondent had required Wenceslaus to vacate the premises on or before 31.12.80 on the ground that the premises were required for development purposes. Thereafter Wenceslaus filed case No. 3624/ZL in the District Court of Colombo in January 1981, in which he was unsuccessful. That case is in appeal now.

On a reading of the averments in the petition it is clear that these are business premises not governed by the Rent Act and that the petitioner had refused to pay an enhanced rent as demanded by the 1st respondent, which the 1st respondent was entitled to demand.

In these circumstances if the 1st respondent had to go to the District Court and file a civil action for ejectment, such an action will take at least 5 or 6 years in the District Court. It is notorious that amendments of pleadings are made and postponements are sought and obtained on personal and other grounds and it would take 5

or 6 years for a judgment to be given in the District Court. Thereafter an appeal will be filed and it will take another 5 or 6 years to dispose of the appeal. Is the 1st respondent expected to take all these delays when the 1st respondent can avail itself of the provisions of the State Lands (Recovery of Possession) Act?

On the material before me it is clear that the petitioner is not a lawful tenant. At the most he is a licensee who has been making payments for use and occupation, which payments have been accepted by the 1st respondent. Even if he is an overholding tenant the 1st respondent is entitled to avail itself of the provisions of the State Lands (Recovery of Possession) Act for ejectment.

This Act was specifically passed for this purpose, namely to enable State agencies to obtain speedy possession of lands and buildings belonging to them without recourse to civil courts. The Government Quarters (Recovery of Possession) Act No. 7 of 1969, was also enacted for this purpose. The provisions of either of these Acts can be utilised.

The Managing Director of the 1st respondent has filed an affidavit. In paragraph 19 of this affidavit he states that the petitioner's occupation of these premises has hindered and is preventing the 1st respondent from proceeding its work programme and causing *irreparable loss and harm to the national economy*.

The only ground on which the petitioner is entitled to remain on this land is upon *a valid permit or other written authority of the State* as laid down in section 9 (1) of the State Lands (Recovery of Possession) Act. He cannot contest any of the other matters. The petitioner has not been able to produce any valid permit or other written authority. Moreover, irreparable loss and harm is caused to the national economy. Therefore I am removing the stay order forthwith.

Before concluding this order I wish to state that on 20.1.93 a date was given till 18.2.93 to file a counter-affidavit. This was not done on 18.2.93. Thereafter time was given till 3.3.93 to file this counter-affidavit. Then the stay order was extended till 4.3.93 and time was given for the counter-affidavit till 20.3.93. The counter-affidavit did not appear to have been filed even on 20.3.93. After the stay order was

obtained there has been an unreasonable delay on the part of the petitioner in filing the counter-affidavit. This is a very good example of what happens when a stay order is given. Every effort is taken unreasonably to prolong the proceedings when a stay order is given. For these reasons a stay order should not be given unless a very strong case is made out ; otherwise injustice will be caused to the other side. Here in this case the petitioner has no semblance of a valid permit or authority from the State.

I have a discretion in the matter whether to extend the stay order or not. The stay order in this case is removed forthwith.

*Stay order removed.*

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