

ARAVINDAKUMAR
v
ALWIS AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
SISIRA DE ABREW, J.
CA1818/2001
JANUARY 10, 2007

Writ of Certiorari – State Lands (Recovery of Possessions) Act 7 of 1979 – Section 3, section 9 – Failure to follow guidelines laid down in Circular – Is there a legal duty to follow the guidelines? – Valid permit or written authority under section 9?

Held:

- (1) The Circular which is claimed to have been issued by the 1st respondent Competent Authority has not been signed.
- (2) The Circular does not prescribe any duty having statutory potential.
- (3) The Circular has not been issued in accordance with any of the provisions of the State Lands (Recovery of Possession) Act; as

such there is no legal duty on the part of the 1st respondent to follow guidelines laid down in the Circular before issuing the quit notice.

Held further

- (4) Any person served with a quit notice under section 3 can continue to be in possession/occupation of the land only upon a valid permit or other written authority of the State described in section 9.

APPLICATION for a *Writ of Certiorari*.

Cases referred to:

1. *Piyasiri v People's Bank* – 1989 – 2 Sri LR 48
2. *Weligama Multipurpose Co-operative Society v Daluwatte* – 1984 – 1 Sri LR 195

P. Sivaloganathan with *S. Rajakulendran* for petitioner.

A.L.S. Devapura for respondent.

Cur.adv.vult

February 9, 2007

SISIRA DE ABREW, J.

The petitioner, invoking the writ jurisdiction of this Court, filed this application for the grant of *writ of certiorari* to quash the quit notice marked P10 issued by the 1st respondent, the Competent Authority. The 1st respondent, by the said quit notice, required the petitioner to vacate the land and the premises described in the said quit notice, in terms of the State Lands (Recovery of Possession) Act No. 7 of 1979. The petitioner, by this application, further seeks a writ of prohibition restraining the 1st, 2nd and 3rd respondents from proceeding to eject the petitioner and his dependants from the land and the premises described in the said quit notice.

The only point raised by the learned counsel for the petitioner was that the 1st respondent before issuing the quit notice P10, had failed to follow the guide lines laid down in circular marked P7 issued by him (1st respondent). The petitioner claims that in view of the said circular, the 1st respondent could not have issued a quit notice on him as a case was pending against him (the petitioner) in Labour Tribunal. The Labour Tribunal dismissed the petitioner's application and the petitioner has appealed against the order of the Labour Tribunal. Learned Counsel for the petitioner, however

conceded that the respondents had not violated any of the provisions of the State Lands (Recovery of Possession) Act in issuing the quit notice P10. It is, therefore, conceded that the respondents have acted in terms of the provisions contained in the State Lands (Recovery of Possession) Act in issuing the quit notice P10.

In order to appreciate the contention of learned Counsel for the petitioner, it is necessary to consider whether the circular P7 has any statutory force. In this regard I would like to consider certain judicial decisions. In *Piyasiri v People's Bank*⁽¹⁾ Wijerathne, J. discussing the facts stated thus: "The Minister of Finance, under section 42A of the People's Bank Act, gave directions to the Board of Directors to implement the recommendations of a one man commission relating to promotion of Bank clerks and in consequence the Board issued a circular 186/82 formulated to implement the said recommendations."

Wijerathne, J. observed thus: "Mandamus did not lie to compel the Board to call the petitioner, a Bank clerk, for an interview with a view to promotion in terms of the circular as the said circular 186/82 does not have statutory force."

In *Weligama Multi Purpose Co-operative Society v Daluwatta*⁽²⁾ a bench of five judges of the Supreme Court considered the question whether a provision in a circular issued by the Co-operative Employees Commission for the payment of salary to interdicted employees of the Co-operative Societies could be enforced by a writ of mandamus. Sharvananda, J. (as he then was) delivering the judgment observed thus: "A circular is not referable to the exercise of any delegated legislative power. It does not prescribe any duty having any statutory potential."

The circular P7, in this case, claims to have been issued by the 1st respondent but no one has signed it. Further, this circular does not prescribe any duty having statutory potential. Has this circular been issued in accordance with any of the provisions of the State Lands (Recovery of Possession) Act? The answer is 'no.' Learned Counsel for the petitioner admitted before us that the respondents have not violated the provisions of the said Act in issuing the quit notice P10. Having considered these matters, I am of the opinion

that there is no legal duty on the part of the 1st respondent to follow the guide lines laid down in the circular P7 before issuing the said quit notice. Considering all these matters, I hold the view that there is no legal basis to issue *writs of certiorari* and prohibition as prayed for by the petitioner. The petitioner's application should fail on this ground alone.

The next question that should be considered is whether the petitioner has any valid permit or written authority to occupy the land described in the quit notice. According to the scheme provided in the Act a person who is in possession or occupation of any state land and has been served with quit notice under Section 3 of the Act can continue to be in possession or occupation of the land only upon a valid permit or other written authority of the State described in Section 9 of the Act. In the instant case the petitioner does not have any valid permit or written authority of the State. This was admitted by learned Counsel for the petitioner, at the hearing of this application. Therefore, the petitioner is not entitled to be in possession or occupation of the land described in the quit notice. The petition should fail on this ground as well.

For the reasons set out in my judgment, I dismiss this application with costs fixed at Rs. 5000/-.

SRIPAVAN, J. – I agree.

Application dismissed.