

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an Application for under and
in terms of Article 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

1. Don Piyasena Karunaratne,
No. 01, Stadium Road, Anuradhapura.

SC/FR Application No. 356/2014

2. Thamara Gunatunge,
No.05, Stadium Cross Road,
Anuradhapura.

3. Magilin Nona Hapangama,
No.03, Stadium Cross Road,
Anuradhapura.

Petitioners

Vs.

1. Anuradhapura Municipal Council,
Anuradhapura.

2. H. P Somadasa,
Mayor,
Anuradhapura Municipal Council,
Anuradhapura.

3. S.S.M Sampath Rohana Dharmadasa,
Municipal Commissioner,
Anuradhapura Municipal Council,
Anuradhapura.

4. Honourable Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: Jayantha Jayasuriya, PC, CJ.
L.T. B Dehideniya, J.
Yasantha Kodagoda, PC, J.

Counsels: Senany Dayaratne with Nishadi Wickramasinghe for the Petitioners
Darshana Kuruppu with Ms. Sajini Elvitigala for the 1st- 3rd Respondents

Argued on: 22.09.2020

Decided on: 08.11.2022

L.T B. Dehideniya, J.

The Petitioners invoke the jurisdiction of this court alleging the infringement of Fundamental Rights guaranteed under the Article 12(1) of the Constitution by the Respondents.

The Petitioners who were former employees of Anuradhapura Municipal Council (hereinafter sometime referred to as the 1st Respondent) have filed the present application seeking an order directing the 1st and/or, 2nd and/or, 3rd Respondents to transfer the

absolute ownership of the houses belonging to the 1st Respondent, which the Petitioners occupy on tenancies. The Petitioners submit that the Petitioners (and/or their spouses) were allocated these residencies on a rent purchase basis, pursuant to the direction of the then Minister of Local Government dated 09.10.1979, under Section 3(1) of the Local Authorities Housing Act No. 14 of 1964 (as amended) marked as **P-3**.

Petitioners state that being aware of the continuing practice of departments to transfer of houses on such tenancy agreements on completion of 20 years, the Petitioners made various requests to the 3rd Respondent to transfer absolute ownership of the houses to the Petitioners, but it was of no avail. It was further submitted that the said requests were made on the basis that, when the direction of the then Minister marked as **P-3** read together with the tenancy agreements, it establishes a Legitimate Expectation on Petitioners and place confidence in Petitioners that they are entitled to purchase the houses.

The Respondent's contention is that the Petitioners are not entitled to absolute ownership of the said houses on the ground that the houses in question are not low cost houses but they are official quarters within the meaning of Local Authority Quarters (Recovery of Possession) Act No. 42 of 1978, in which absolute ownership cannot be granted to tenants. It was submitted that according to Section 5(A) of the Local Authorities Housing Act as amended the Local Authority has the power to transfer houses if the monthly rental of such house did not exceed twenty five rupees and the Advisory Board is satisfied that the other statutory conditions are fulfilled. Therefore, the Respondents argue that even assuming the said houses are low-cost houses, since the monthly rental mentioned in the rent agreements are forty-five rupees, the Respondents have no authority to transfer

absolute ownership of the houses to the Petitioners. It is the view of the Respondents that the Petitioners have not come to Courts with clean hands.

As per the submissions tendered by the parties, it is essential for this Court to examine the scope of the definition of a low-cost house in the context of existing law and the tenancy agreement signed by the Petitioners. The 1st Respondent has presented three categories of houses to consider in a matter similar to the present application. The said categories are as follows;

1. Slum clearance houses
2. Low-cost houses
3. Staff quarters

The Respondents' submission is that though absolute ownership of the slum clearance houses and low-cost houses can be transferred to the occupants, absolute ownership of staff quarters/official quarters cannot be transferred under the law. It was further submitted that if the Authority is providing low-cost houses or slum clearance houses, it has to be stated clearly in the relevant letters or agreements and the words used in the tenancy agreements of the Petitioners are 'මාණ්ඩලික නිවාස අංක සල්ගාදු හෝටලය ඉදිරිපිට', in which the words 'මාණ්ඩලික නිවාස' should be identified as official/ staff quarters. Therefore, the Respondents contend that the absolute ownership of the houses given to Petitioners cannot be transferred to Petitioners and the Petitioners are bound to handover their houses when they were transferred and/or retired from the service.

When considering whether the Petitioners are entitled to claim ownership of the houses in question, it is important for this Court to delve into the background of the Petitioners case and the nature of the tenancy agreement. 1st Petitioner had been allocated a house

(vide document marked **P-2(a)**) with effect from 18.12.1963. 2nd Petitioner had been allocated a house (vide document marked **P-2(b)**) with effect from 23.09.1972 and the 3rd Petitioner with effect from 12.02.1965 (vide document marked **P-2(c)**). All three Petitioners submit that they occupied the said houses throughout and even at the time the present application was filed. Further, when considering the factual matrix of the instant application, it appears that the Petitioners had continued to occupy the houses allocated to them even after their retirement from service from the Municipal Council.

The Petitioners submit that in or around 1981, the Petitioners received notice of quit in terms of Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978. The Petitioners seek to claim the absolute ownership of the houses in question on the ground that the Petitioners are occupying houses built under the ‘low-cost housing scheme’ of the Municipal Council. In terms of **Section 5(A)** of the Local Authorities Housing Act, as amended, the Local Authority is vested with the power to transfer the absolute ownership of houses let under Section 3(1) of the Act, if the Advisory Board constituted for the Local Authority is satisfied that the statutory conditions are fulfilled.

The Petitioners with the belief that their houses belong to the low-cost houses category, argued that when reading **Section 5(A)** of the Local Authorities Housing (Amendment) Act No. 63 of 1979 in conjunction with the direction of the Minister of Local Government dated 09.10.1979 made under **Section 3(1)** of the Local Authorities Housing Act No. 14 of 1964 (as amended) marked as **P-3** that they are entitled to claim absolute ownership of the houses they received as former employees of the Municipal Council. However, **Section 5(A)** of the Local Authorities Housing (Amendment) Act No. 63 of 1979 clearly

states that advisory board has power to transfer houses if the monthly rental of such house immediately prior to such letting did not exceed ‘twenty-five rupees’.

Section 3(1)

(1) Subject as hereinafter provided, a local authority may, either upon a resolution passed in that behalf at a duly constituted meeting of that local authority or upon the direction of the Minister, let to any person any house-

(a) which has vested in that local authority under section 2; or

(b) which has been, or may be, constructed by that local authority within the administrative limits of that local authority for the purpose of residence, on such terms as will enable that person to become the owner of that house and the land appertaining thereto after making certain number of monthly payments as rent.

Section 5(A)

(1) Where prior to the date of coming into force of this section a house to which this Act applies has been let to any person under the provisions of section 3(1) and the monthly rental of such house immediately prior to such letting did not exceed twenty- five rupees, the local authority within the administrative limits of which that house Is situated shall, by an instrument of disposition, transfer, free of charge, that house to that person. [emphasis added]

The Respondents’ position is that there is no evidence that the houses in question were let to the Petitioners on the basis that they are “low cost houses” even though Section 3(1) of

the Local Authorities Housing Act, as amended, enables local authorities to let houses on a rent purchase basis. The approval granted by the Secretary to Ministry of Local Government, Housing and Construction dated 09 October 1979 marked **P-3** is limited to the letting “low cost houses”. Respondents contend that the houses in question are not such houses but are official quarters. However, in or around 1989, Urban Council of Anuradhapura had filed a *rent and ejectment case* (Case No.12715/RE) in the District Court of Anuradhapura to recover default rent payments related to the houses in question. The said case being a rent and ejectment case shows that the Urban Council of Anuradhapura had not considered the houses as official quarters, but had relied upon the tenancy agreement to file the case. If the local authority considered the said houses as official quarters, the local authority should have initiated proceedings under the Local Authority Quarters (Recover of Possession) Law. Therefore, it is the view of this Court that the Petitioners have received the houses in question on rent basis. This view had been accepted in the decisions of the applications bearing Nos. HC Anuradhapura Certiorari 19/96, CA (PHC) 108/98, HC Anuradhapura Certiorari 13/94, CA (PHC) 01/96, HC Anuradhapura Certiorari 23/96 and CA (PHC) 109/98 (marked as **P-7 (a)**, **P-7 (b)**, **P-7 (c)**, **P-7 (d)**, **P-7 (e)** and **P-7 (f)**, respectively) filed by the Petitioners to seek relief to quash notices of quit issued by the Respondents.

It was further argued on behalf of the Respondents that the provisions in **Section 5(A)** of the Act have no relevance to the present application since the houses in question do not fulfil the requirements set out in the said Section. Section 5(A) of the Act clearly sets out that only houses that are required to pay a monthly rent less than twenty-five rupees (Rs. 25/-) could be considered for transferring the absolute ownership. However, according to

the documents marked **P-2(a)**, **P-2(b)** and **P-2(c)** when the houses were allocated to the Petitioners, the monthly rent the Petitioners were required to pay was forty-five rupees (Rs. 45/-).

As discussed above, Section 3(1) of the Local Authorities Housing Act, as amended, enables authorities to let houses on a rent purchase basis and the Section 5(A) of the said Act empowers the local authorities to transfer the absolute ownership of houses let under Section 3(1) if the Advisory Board constituted for the Local Authority is satisfied that the statutory conditions are fulfilled. When considering the documents marked as **P-2(a)**, **P-2(b)** and **P-2(c)**, it appears that none of the said documents are rent purchase agreements, but, rent agreements. The rent agreements marked as P-2(a), P-2(b) and P-2(c) consist of certain conditions to be fulfilled by the tenants throughout the rent period, such as; no permanent fixers, improvements or repairs shall be made without the written permission of the special commissioner, no trade shall be done within the premises, tenants shall keep the premises clean and sanitary etc. From the nature of the said conditions, it is clear that the houses in question were given to the Petitioners on rent basis and not on rent purchase basis. Therefore, it is evident that none of the agreements on which the relevant houses were let to the Petitioners' have been made under section 3(1) of the Local Authorities Housing Act and there is no condition on any of the agreements to the effect that the Petitioners are entitled to have the absolute ownership of houses transferred upon payment of rent for a specified period.

Further, none of the said rent agreements indicate a promise made by the local authority to transfer the absolute ownership of the houses in question. Further, the phrase “කවද, ඉන් අනතුරුව මෙම නිවස ඔබට කුලියට සිත්ත වීමේ පදනම මත දීම ගැනද යථා කාලයේදී

සලකා බලනු ලැබේ.” in the document marked **P-4(f)** exhibits a mere consideration by the local authority. Therefore, it is clear that the local authority has retained the discretion to transfer the absolute ownership of the houses in question.

Respondents have tendered the supplementary tenement list for the Petitioners’ houses (documents marked as **R-20** and **R-21**). In terms of the said supplementary tenement list all the premises that the Petitioners claim absolute ownership are ‘staff quarters’ vested with the Municipal Council of Anuradhapura. Therefore, according to evidence produced by the Respondents, the Petitioners have failed to substantiate that the houses under consideration are classified as ‘low cost’ houses.

The Respondents have drawn the Court's attention to the case *C.W Jayasekera v. Municipal Council of Anuradhapura and Others* (SC/FR Application No.63/2013, SC minutes dated 26.07.2017) where considerably similar circumstances have been discussed. Petitioner in the said application had been issued with a notice of quit in terms of the Local Government Official Quarters (Recovery of Possession) Act, similar to the Petitioners in the present application. However, in clear contrast to the present situation, the Petitioner failed both in High Court and the Court of Appeal to quash the said quit notice, and there are no judicial pronouncements that the said house occupied by the Petitioner is not official quarters, but received in a rent basis. Therefore, it is apparent that the decision of the case *C.W Jayasekera v. Municipal Council of Anuradhapura and Others* cannot be considered in the present application.

As per the aforementioned discussion of the factual matrix and the existing law relating to the present application, it is the view of this Court that the Petitioner do not have a right to claim for a transfer the absolute ownership of the houses. Further, it is clear that the

Respondent local authority has not given any legitimate expectation to Petitioners to make such a claim.

By concluding the judgement, this Court adopts the view that no violation of the Fundamental Right guaranteed to the Petitioners under Article 12 (1) of the constitution has taken place.

Petition dismissed.

Judge of the Supreme Court

Jayantha Jayasuriya, PC, CJ

I agree

Chief Justice

Yasantha Kodagoda, PC, J

I agree

Judge of the Supreme Court

