

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

***In the matter of an application under and in
terms of Article 126 read with Article 17 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.***

Dr. Pradeep Kariyawasam,
No. 57/2, Sir Ernest de Silva Mawatha
Colombo 07.

SC (FR) Application No. 08/2019

PETITIONER

Vs.

1. Colombo Municipal Council
Town Hall,
Colombo 07.
2. V. K. A. Anura
Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 07.
- 2A. Roshanie Dissanayaka
Municipal Commissioner,
Colombo Municipal Council,

Town Hall,
Colombo 07.

3. G. B. M. M. Moragolla,
Deputy Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 07.

- 3A. K. G. Illusha S Gallage
Deputy Municipal Commissioner
Colombo Municipal Council,
Town Hall,
Colombo 07.

4. Dr. Ruwan Wijayamuni
Chief Medical Officer of Health,
Public Health Department,
Colombo Municipal Council,
Town Hall,
Colombo 07.

5. Sunil Galagama
Municipal Secretary,
Colombo Municipal Council,
Town Hall,
Colombo 07.

- 5A. D. M. S. A. Niroshana
Municipal Secretary,
Colombo Municipal Council,
Town Hall,
Colombo 07.
6. Hon. Rosy Senanayake
Mayor of Colombo,
Colombo Municipal Council,
Town Hall,
Colombo 07.
7. Commissioner
Department of Local Government,
(Western Province)
No. 2 Cambridge Terrace,
Colombo 07.
8. Director of Pensions
Department of Pensions,
Maligawatte Secretariat,
Maligawatte,
Colombo 10.
9. Hon. Attorney-General
Attorney-General's Department,
Colombo 12.

RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**
A.L. SHIRAN GOONERATNE, J. AND
K. PRIYANTHA FERNANDO, J

COUNSEL: Upul Jayasuriya, PC with Hasala Sameer for the Petitioner instructed
by Sanjeewa Kaluarachchi.

Ranil Samarasooriya with Shashiranga Sooriya Patabandi for the 1st-
6th Respondents.

Ms. Sureka Ahmed, SC for the Hon. Attorney-General

WRITTEN Petitioner on 07th November 2021 and on 22nd January 2024

SUBMISSIONS: 1st - 6th Respondents on 23rd May 2022 and
7th-9th Respondents on 26th October 2023 and 16th January 2024
1st, 3A, 4th & 5A Respondents on 17th January 2024

ARGUED ON: 14th December 2023

DECIDED ON: 12th September 2024

THURAIRAJA, PC, J.

1. The Petitioner, namely, Dr. Pradeep Kariyawasam (hereinafter sometimes referred to as “the Petitioner”) filed this application on 10th January 2019 against the Respondents above named seeking relief in respect of the alleged infringement of his fundamental rights guaranteed by and under the Constitution of the Democratic Socialist Republic of Sri Lanka. Accordingly, on 27th May 2019, when the case was called for support, and having heard both Counsel on their respective cases, the Court granted leave to proceed

for the alleged violation of Article 12(1) of the Constitution in the manner and circumstances hereinafter described.

FACTUAL BACKGROUND

2. The narration of the events by the Petitioner and the Respondents leading up to the instant fundamental rights application is as follow.
3. In accordance with the agreement executed on or about July 1991, the Petitioner was assigned quarters bearing No. 2 ½ (upstairs), Park Lane, Off-Park Road, Colombo 05, with a floor area of 1100 sq. feet as designated official housing for a Public Health Department Medical Officer employed by the Colombo Municipal Council (hereinafter referred to as the "1st Respondent Council"). This is documented in '**R1**', appended to the Statement of Objections filed by the 1st, 3rd to 6th Respondents on 15th July 2019 (hereinafter referred to as "the Agreement").
4. Similarly, on or about 27th October 1992, the premises directly below the Petitioner's aforementioned quarters were designated as official housing for another qualified officer appointed as a Medical Officer in the 1st Respondent Council's Public Health Department. This allocation pertains to quarters bearing No. 4, Park Lane, Off-Park Road, Colombo 05.¹
5. Effective 23rd March 2000, the Petitioner was promoted to Chief Medical Officer. Following the Petitioner's appointment and the subsequent vacancy of quarters bearing No. 4, Park Lane, Off-Park Road, Colombo 05, a formal request was submitted by the Petitioner on 28th February 2003, addressed to the Municipal Commissioner of the 1st Respondent Council, seeking temporary consolidation of the Petitioner's existing

¹ vide Exhibit 'R2', appended to the Statement of Objections dated 15 July 2019

residence (quarters bearing No. 2 ½, upstairs) with the vacant quarters bearing No. 4 extending the floor area.

6. For such consolidation, structural modifications were undertaken, including the construction of a staircase to physically connect the two units. The Petitioner states that, as this structural change was temporary in nature, it was never sent to the Mayor or Council for approval. Moreover, there had been an audit query by the Government Audit Superintendent of the Auditor General's Department of Sri Lanka regarding the Petitioner utilizing two quarters with an aggregate floor area of 2200 sq. ft. However, the Council had replied favourably towards the Petitioner stating, *inter alia*, that he was holding an important position and that he was entitled to a larger floor area than what was originally assigned to him.
7. These combined quarters (henceforth referred to as the "official living quarters") had subsequently served as the duly approved residence for the Chief Medical Officer from 1st July 2003, for a period of eleven years. Notably, recognition of these quarters as the "scheduled quarters" for the Chief Medical Officer position was established under Clause 1.1 of Chapter XIX of the Establishments Code.
8. On 02nd May 2014, a formal request for the allocation of the subject premises as official living quarters was submitted by Dr. (Mrs.) A. Kariyawasam, the then Deputy Chief Medical Officer of Health (Laboratory Services) and the wife of the Petitioner (henceforth referred to as "Petitioner's wife"). This request, addressed to the Chief Medical Officer (at the time, the Petitioner), sought occupancy effective from 15th May 2014, with salary deductions for related rentals.²

² vide document 'R4', appended to the Statement of Objections of the 1st, 3rd to 6th Respondents dated 15 July 2019

9. A review of this letter reveals a subsequent Minute, dated 5th May 2014, penned by the Petitioner, instructing the Assistant Secretary and First Clerk ("AS/FC") to "*take necessary action to transfer*" the premises as requested by his wife. This instruction was duly implemented.
10. Upon retirement on 20th May 2014, the Petitioner was obligated to vacate the official living quarters as per the agreement with the 1st Respondent Council. However, the Petitioner did not vacate the said premises.
11. Meanwhile, the Respondents had initiated the Petitioner's pension process with the Department of Pensions, forwarding necessary documents and requesting a pension number in November 2014. The Petitioner states that he completed the forms in respect of his pension around this time, following which a commuted pension of Rs. 1,250,971.06 was deposited into his People's Bank account in January 2015. Petitioner contended these actions of requiring him to fill out fresh forms be a calculated move to delay the payment of his pension.³
12. Moreover, the Petitioner's wife's request to transfer the official living quarters to her name was ultimately denied by the Standing Committee on Pensions, Gratuities, E.P.F., Pension Allowance, and Employees Welfare Activities of the 1st Respondent Council. This decision, reached on 16th February 2015, was duly communicated to both the Petitioner and his wife. Despite being informed of this formal rejection, the Petitioner and his wife continued to occupy the aforementioned official living quarters.
13. The Respondents submitted in their Written Submissions dated 17th January 2024 that a policy decision was made at the Council's 27th June 2013 General Meeting (Item No. 960) to withhold pension and gratuity payments until occupants vacate official quarters. This policy, of which the Petitioner (Chief Medical Officer of the 1st Respondent Council's

³ Petition of the Petitioner dated 10 January 2019, para 59

Public Health Department) was allegedly aware, aimed to incentivize timely relinquishment of housing. Furthermore, the Respondents cited a letter dated 29th April 2016 from the Auditor General criticizing the 1st Respondent Council's inaction. The letter refers to **Clauses 7.1 and 7.2 of Chapter XIX, Establishments Code**, which empower the Council to evict occupants and deduct "penal rent" from salaries and pensions for unauthorized occupancy.

14. In response to the aforementioned audit query and in accordance with the provisions of the Establishment Code, the Respondents calculate a "penal rent" of Rs. 8,018,751.27 for the Petitioner's unauthorized occupancy of the Chief Medical Officer's quarters from 20th November 2014, to 11th September 2018. This sum reflects deductions from the Petitioner's salary at an 8% rate. To legally pursue the recovery of possession, the 1st Respondent Council, acting in accordance with Section 3 of the *Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978*, issued a "Notice to Quit" dated 05th February 2015 to the Petitioner.⁴
15. The Petitioner states in paragraph 33 of his Petition that he preferred an appeal dated 29th August 2016 to the Minister of Provincial Council and Local Government, Mr. Faizer Mustapha, in terms of "Section 4 of the *Local Authorities Recovery of Quarters Act*" [sic]⁵ with the view of getting the quarters transferred to his wife.⁶ The Petitioner further states that the honourable Minister then informed the Petitioner that his wife could stay until retirement and that the Secretary to the Ministry of Local Government and Provincial Councils assured that no action would be taken by the Municipal Commissioner. However, no proof of these purported statements of assurances has been adduced before this Court.

⁴ Document produced marked 'R7' appended to the Respondents' Statement of Objections

⁵ Presumably a reference to the *Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978*

⁶ The Appeal produced marked 'P31' appended to the Petition of the Petitioner.

16. Despite receiving the "Notice to Quit," the Petitioner refused to vacate the premises. Consequently, the 2nd Respondent, in accordance with Section 6 of the *Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978*, initiated legal proceedings in the Colombo Magistrate's Court.⁷ On 18th January 2017, the court ordered the Petitioner's eviction. While the 2nd Respondent attempted to execute this order, the Petitioner and his wife resisted by locking the quarters. The Petitioner states that he then obtained an interim order from the Court of Appeal staying the operation of the order of the learned Magistrate.⁸ Thereafter, the Petitioner and his family continued their occupancy until 11th September 2018, even after his wife's retirement on 06th July 2018.
17. Despite continuous inquiries from the 1st Respondent Council regarding vacating the official quarters for pension processing, the Petitioner persisted in occupancy for nearly four years. Finally, on 11th September 2018, the Petitioner communicated his readiness to surrender the premises and handed over vacant possession of the same. It is after this handover the Petitioner inquired about his pension via a letter dated 03rd October 2018. Notably, prior inquiries regarding pension payments were made in September and October 2015, followed by a period of silence until the premises were vacated.
18. In his petition, the Petitioner asserted that an amount of Rs. 3,075,000 is due for the failure to disburse pension payments since the Petitioner's retirement date for a period of four and a half years.
19. The position of the Petitioner was that Petitioner's pension cannot be reduced or withheld in terms of the *Minutes on Pensions No. 12(1)* before the conclusion of a disciplinary inquiry. In light of these submissions, the Counsel for the Petitioner in their

⁷ Case No. D 65810/05

⁸ Order dated 04 April 2017 of Case bearing No. CA 119/2017 Writ produced marked 'P33' appended to the Petition of the Petitioner. This Case bearing No. CA 119/2017 Writ was subsequently withdrawn on 10 September 2018.

written submissions dated 17th November 2021 alleged that Petitioner's fundamental rights guaranteed under Articles 12(1) and 14(1)(g) have been violated. However, I must point out that, when the matter was supported on 27th May 2019, leave was granted only on Article 12(1).

ANALYSIS

20. The Petitioner's breach of contractual obligations regarding the relinquishment of his official quarters upon retirement is evident through a series of actions spanning several years. Having initially been allocated the quarters located at No. 2 ½, Park Lane, Off Park Road, Colombo 05, on 01st July 1991, the Petitioner, upon assuming the role of 'Chief Medical Officer of Health' on 23rd March 2000, subsequently expressed the need for a more suitable official residence, leading to the approval to combine quarters No. 2 ½ with No. 4, Park Lane. Structural modifications were enacted to facilitate this arrangement, effectively designating the combined premises as the official quarters for the Chief Medical Officer of Health from 01st July 2003.
21. The provisions of the aforesaid Agreement entered into between the Petitioner and the 1st Respondent Council states as follows:

“එකී නිලධාරියා කොළඹ මහ නගර සභා සේවයේ විශ්‍රාම ලැබීම, ඉල්ලා අස්වීම, තනතුරෙන් අස් කරනු ලැබීම, වෙනත් රාජ්‍ය ආයතනයක හෝ පළාත් පාලන ආයතනයකට මාරු කරනු ලැබීම, මෙම නගර සභාව අතුලත වෙනත් තනතුරකට මාරු කරනු ලැබීම හෝ දැනට මෙම දුරන තනතුර නො දරන්නකු බවට පත්වන වෙනත් මොහයමී හේතුවක් සිදු වුවහොත් එලෙස සිදු වූ වහාම ගත් නිවාසය ආපසු භාර දෙන ලෙස දැනුම්දීමකින් එකී නාගරික කොමසාරිස්වරයා විසින් කරනු ලැබූ විටකදී එහි දැන්වීමෙහි දක්වා ඇති කාලසීමාව තුළම එකී නිල නිවාසයෙහි නිරවුල් සහ හිස් සන්නකය කොළඹ මහ නගර සභාවට ආපසු භාර දිය යුතුය.”

*[In the event of the said official's retirement, or resignation from Colombo Municipal Council, or dismissal from the position, or transfer to another government agency or local government agency, or, in the event of being transferred to another position within this municipal council or for any other reason should the current holder of this title no longer hold this position, the municipal commissioner shall give notice to return the house taken immediately after such occurrence, within the period specified in the said notice to hand over clear and vacant possession of the house to the Colombo Municipal Council]*⁹

22. Furthermore, the Agreement stipulates that if the Petitioner neglects to vacate the official living quarters located on the premises and fails to relinquish possession of the aforementioned living quarters to the Respondent Council, the Petitioner shall be subject to legal action under the provisions of the *Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978*.¹⁰
23. However, upon the Petitioner's retirement on 20th May 2014, instead of vacating the premises as stipulated in the agreement, both he and his wife, despite the latter's ineligibility for such designated quarters, continued to occupy the premises for a duration spanning until 11th September 2018. Despite legal action initiated by the Council, including the issuance of a "Notice to Quit" and subsequent court proceedings, the petitioner persisted in resisting eviction efforts, even going so far as to lock the premises to impede the execution of court orders.
24. From the facts before us, it is amply clear the Petitioner's occupation of the said premises following his retirement was unlawful. This unlawful occupation not only incurred legal

⁹ Clause 1

¹⁰ Clause 9

expenses for the Council but also disrupted the rightful occupancy of the Chief Medical Officer of Health's scheduled quarters.

25. Additionally, the attempts made to improperly transfer the premises to the Petitioner's wife, which were rightfully rebuffed, further underscore the gross disregard the Petitioner has had towards his contractual duties as well as the regulatory authority of the Council. This protracted episode of non-compliance, coupled with the collusion between the Petitioner and his wife to prolong their occupancy, necessitated decisive legal intervention and exemplifies a flagrant breach of contractual obligations, causing undue financial strain on the taxpayer and administrative disruption.
26. In this context, the Petitioner contended that the premises were transferred to his wife, who, at the time, held the position of Deputy Chief Medical Officer (Laboratory Services), for the purpose of serving as her official residential accommodation. However, the Respondents refuted the same on two grounds. First, the Petitioner's wife does not meet the criteria outlined in Clause 4.2 of Chapter XIX of the Establishments Code to qualify as an eligible official entitled to official residential accommodation. Second, the Petitioner had no authority whatsoever to allocate or transfer and/or to issue any officer instructions to allocate or transfer such accommodation among officials.
27. Furthermore, the ineligibility of the Petitioner's wife to be allocated official quarters was duly acknowledged, with the Auditor General further validating this observation through an Audit Query and in a report submitted to the Committee on Public Accounts (COPA) of the Parliament. This information is documented in the submission marked '**R6**' and included in the Statement of Objections on behalf of the 1st, 3rd to 6th Respondents dated 15th July 2019.
28. The Petitioner alleged that the then Minister, upon an appeal under Section 4 of the *Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978*, stated that

Petitioner's wife may remain at the quarters until her retirement,¹¹ the Petitioner has not adduced any proof of the same. Even if such an informal statement was made, as the Petitioner contended, such a promise would be of no avail in law as Section 4 requires a formal decision to be made by the Minister.

29. In concluding the examination of these facts, it becomes evident that the failure of the Petitioner to surrender possession of the official residential quarters was unlawful and this failure provided ample justification for the 1st Respondent Council to pursue necessary legal measures to regain control of the premises.
30. The provision outlined in Clause 9 of the Agreement establishes a condition wherein it requires the Petitioner to surrender the official living quarters to the 1st Respondent Council. This condition serves as a basis for legal recourse under the Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978 in the event of non-compliance. The issuance of a Notice to Quit, pursuant to section 3 of this statute, signifies the initiation of legal proceedings against the Petitioner. Section 5 of the Law imposes an obligation on the Petitioner to adhere to such notices. Failure to comply may lead to action before a Magistrate's court in accordance with section 6 of the Law, as outlined in section 6(1).
31. While the extended occupation of the premises by the Petitioner was no doubt unlawful and unauthorized, it was the contention of the Counsel for the Petitioner that the Respondents, in withholding the Petitioner's pension, have acted in a manner unlawful, indefensible, unreasonable, arbitrary, capricious in violation of principles of legitimate expectation, natural justice and reasonableness.
32. In the present case, despite the issuance of the Notice to Quit, the Petitioner had failed to surrender vacant possession of the designated quarters. Consequently, the 2nd

¹¹ Petition of the Petitioner, para 33

Respondent had obtained an eviction order from the Magistrate's Court of Colombo on 18th January 2017, which the Petitioner resisted.

33. The provisions for deducting rental fees for official living quarters from salaries are outlined in Clauses 5.4 and 5.4.1 of Chapter XIX of the Establishments Code, and according to these provisions, deductions for the designated official living quarters were appropriately made from both the Petitioner and his wife.
34. Additionally, due to the Petitioner's refusal to surrender vacant possession of the aforementioned quarters following his retirement, the Audit Superintendent of the Auditor General's Department, through a letter dated 29th April 2016, emphasized the Council's failure to adhere to Clause 7.1 and Clause 7.2 of Chapter XIX of the Establishments Code. These clauses authorize the Council to evict the Petitioner from the premises and impose a penal rent for overstaying.
35. Accordingly, there is no doubt that the Respondent Council is to take all lawful steps to recover the premises as well as rent payment when officials such as the Petitioner happen to occupy their quarters beyond the period of entitlement.
36. However, it was contended on behalf of the Petitioner, relying on Section 12(1) of the Minutes on Pensions, that a person's pension can only be withheld or deducted if; (a) disciplinary proceedings were pending or contemplated at the time of the retirement from public service of the said person or, (b) an inquiry is pending at the time of retirement. In support of this position Counsel for the Petitioner relied on the cases of ***Upali Sarath Kumara v. Anura Sathurasinghe and Others***,¹² ***Wilson Godawela v. Chandradasa and Others***¹³ and ***Jayarathne v. Wickremaratne and Others***.¹⁴

¹² SCFR 384/2016, SC Minutes of 03 December 2018

¹³ [1995] 2 Sri LR 338

¹⁴ [2003] 2 Sri LR 276

37. I see it pertinent to be cognizant of some other elements of the case of **Jayarathne v. Wickremaratne and Others**¹⁵ which the Petitioner did not highlight in his submissions. The said case also provides, citing **Gunawardane v. Attorney-General**¹⁶ that,

"... minutes of pension does not confer upon a retired government servant any legal right in respect of pension... minutes of pension merely regulates the administration of pensions by those in whose hand that duty is placed."

38. Section 12(1) of the Minutes on Pension provides as follows:

*"Where the explanation tendered by a public servant against whom, **at the time of his retirement from public service**, disciplinary proceedings were pending or contemplated in respect of his negligence, irregularity or misconduct is considered to be unsatisfactory by the competent authority, the Permanent Secretary, Ministry of Public Administration, Local Government and Home Affairs May either withhold or reduce any pension, gratuity or other allowance payable to such public servant under these Minutes.*

39. It is clear that any withholding of pension benefits under Section 12(1) of the Minutes on Pensions has to be done in the manner provided in the aforementioned cases: to this extent, I am in complete agreement with the Petitioner. However, the above cases are readily distinguishable from the case at hand. The Respondents could not have contemplated a disciplinary inquiry with regard to the Petitioner's unlawful occupation of his official quarters at the time of retirement as the said occupation only became unlawful after his retirement. Furthermore, Section 12(1) of the Minutes on Pensions is concerned with disciplinary matters of officers and the instant case is not of that

¹⁵ ibid at 280

¹⁶ 49 NLR 359

character. Therefore, Section 12(1) of the Minutes on Pensions has no bearing on the instant case.

40. As apparent from the material before us, which I have adverted to earlier, the Respondent Council had initiated court proceedings before the Colombo Magistrate's Court under Section 6 of the Local Authority Quarters (Recovery of Possession) Law No. 42 of 1978. Moreover, the Auditor General Department, by letter marked '**R6**', dated 29th April 2016, has recommended that action may be taken as appropriate under Clauses 7.1 and 7.2 of Chapter XIX of the Establishment Code.
41. It is very clear that, based on the finding of the Magistrate's Court as well as the Auditor General, the Petitioner is liable to pay penal rent for the unauthorized period of occupation in the premises previously assigned to him as official quarters. In line with Section 43A of the Minutes on Pensions and Clause 4: 2: 5 of Chapter XXIV of the Establishment Code, the Respondents may take necessary steps to recover the total sum owed by the Petitioner for this unauthorized occupation, as penal rent or otherwise, by deducting the same from his pension payments.

Violation of Article 12(1) of the Constitution

42. Article 12(1) of the Constitution provides that "*[a]ll persons are equal before the law and are entitled to the equal protection of the law.*"
43. Article 12(1) of the Constitution provides for the fundamental right to equal treatment and equal protection before the law and is accepted as not only a rule against discriminatory treatment but also as a right antithetical to arbitrariness, *mala fides* and such other injustices known to law, encapsulating the Rule of Law itself.
44. The Petitioner suggested that he has been the subject of arbitrary, *mala fide*, *ad hoc* and *ad hominem* policies and treatments. According to the written submissions on behalf of the 1st, 3A, 4th and 5A Respondents, a policy decision not to process the pension and

pension gratuity until occupants hand over possession of their official quarters was taken under Item No. 960 at a General Meeting of the Council held on 27th June 2013. And the Petitioner, being a Head of a Department of the Council at that time, ought to have been aware of this decision.

45. The said Respondents further submitted that the Petitioner was, in fact, aware of this policy decision and submitted documents marked '**R15**' and '**R16**'¹⁷ as proof of the same. Following the said policy decision, the Municipal Treasurer had circulated a Circular dated 02nd September 2013, among the heads of departments including the Petitioner. The Respondent submitted that the Petitioner upon receipt of the same had made a minute in his own handwriting instructing the Assistant Secretary and the Accountant to take necessary action. Perusal of the document marked '**R16**' clearly indicates that the Municipal Treasurer had informed the Petitioner of this policy decision by the said Circular. As such, there is no doubt that the Petitioner had, in fact, been well aware of the said policy decision at the time of his retirement. While being so aware, there is no indication that he has ever sought to challenge the validity of the same before any court of law. As such, it cannot be said that this particular policy is *ad hoc* or that it was implemented as against the Petitioner in bad faith.
46. Moreover, once the Petitioner ceased to occupy the premises in question, the Respondents have set in motion the process to continue the payment of his pension. After vacant possession of the quarters in question was handed over to the 1st Respondent Council, the Petitioner claimed to have inquired regarding the payment of his pension by communication dated 03rd October 2018 to the Municipal Commissioner. According to the Petitioner, following this inquiry, he had received a letter dated 15th October 2018 from the Deputy Commissioner along with a new set of application forms

¹⁷ Appended to the Statement of Objections of the 1st, 3A, 4th and 5A Respondents dated 15 July 2019

to be filled and submitted.¹⁸ However, the Petitioner has not submitted this new set of forms as he had already submitted some forms as far back as 2014.¹⁹ The Petitioner further contended that new forms are not applicable to the Petitioner, as he had already retired by the time the new forms were introduced by Pension Circular No. 03/2015 dated 24th April 2015. The Petitioner argued that these new application forms were *"introduced into the mix by the Respondents to find an avenue to frustrate the rights of the Petitioner with regard to his pension"*.

47. It is true that the Petitioner is not strictly required to file the new set of applications forms. However, that, on its own, is insufficient to establish a violation of fundamental rights guaranteed under Article 12(1) of the Constitution. It is trite law that not every wrongful act amounts to a violations fundamental rights and missteps of this nature can very well result from various factors other than administrative wrongs recognized by law. Whether there is a violation of fundamental rights by any wrongful act or missteps, so to speak, is largely dependent upon the circumstances of each individual case.
48. As apparent from the record, once the Petitioner handed over possession of the premises and preferred a communication dated 03rd October 2018 to the Municipal Commissioner concerning the non-payment of his pensions, he had received a reply 12 days later indicating that new forms needed to be filled. It is clear appears that, after recovering possession of the official quarters in question, the 1st Respondent Council had attempted to address the grievances of the Petitioner by requiring him to fill out the new set of forms, which the Petitioner had resisted. While the mistaken request to submit a new set of forms may have caused an inconvenience to the Petitioner, there are no indications that it was so done in bad faith.

¹⁸ Written Submissions of the Petitioner dated 17 November 2021, para 11

¹⁹ Marked **'8R1'**

49. No doubt there are some procedural oversights surrounding the processing of Petitioner's pension application. The clearest of which relates to the issuance of the Petitioner's commuted pension in January 2015 overlooking his unlawful occupancy of the quarters and the subsequent failure of the Council to act under the provisions of the Establishments Code as observed in Auditor General Department letter dated 29th April 2016, marked '**R6**'. Very clearly, the Petitioner has only benefitted from these oversights.
50. From the circumstances of the instant case, especially the continued willingness of the Respondents to process the Petitioner's pension, I am of the view that Petitioner has failed to establish any unreasonableness, *mala fides* or any such other wrong known to law on the part of the Respondents which affected him adversely. As such, I am of the view that there is no violation of fundamental rights of the Petitioner guaranteed under Article 12(1) of the Constitution. The Municipal Council and the Department of Pensions shall take necessary steps under the Establishment Code and the Minutes on Pensions to dispense the Petitioner's pension.

Application Dismissed.

JUDGE OF THE SUPREME COURT

A.L. SHIRAN GOONERATNE, J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT