

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

In the matter of an application under and
in terms of Articles 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

C. W. Jayasekera
No.4, Stadium Cross Road
Anuradhapura

PETITIONER

Supreme Court (FR)
Application No.63/2013

-Vs-

1. Municipal Council
Anuradhapura
2. H. P. Somadasa
Mayor
Municipal Council
Anuradhapura
3. S. R. Dharmadasa
Municipal Commissioner
Municipal Council
Anuradhapura
4. The Honourable Attorney General
The Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE: B.P.ALUWIHARE, PC., J
UPALY ABEYRATHNE, J &
ANIL GOONARATNE, J

COUNSEL: Senany Dayaratne for the Petitioner
Dharmasiri Karunaratne for the 1st to 3rd Respondents
Rajitha Perera, SSC for the 4th Respondent.

ARGUED ON: 27.11.2015

DECIDED ON: 26.07.2017

ALUWIHARE, PC, J:

The Petitioner had been an employee of the Municipal Council of Anuradhapura (1st Respondent) and had served as a Store Keeper from 1981 to 2001, the year in which he retired from service.

The Petitioner had been allocated a house as evidenced by P5 with effect from 15th February, 1982, which the Petitioner alleges he and his family occupied right throughout and even at the time the present application was filed which was in 2013. Thus, it appears that even after his retirement from service from the Municipal Council the Petitioner had continued to occupy the premises provided to him by his employer.

In April 2002, the Municipal Council in writing requested the Petitioner to hand over the residence to an official nominated by the Director Works of the 1st Respondent Council (P10).

The Petitioner in the same month responded to the said letter referred to above and requested the mayor of the 1st Respondent Municipal Council to grant him permission to continue occupying the premises on a rental basis as he had been in occupation of the house for a period over 20 years and that he had no other house. In the said letter, he had referred to the fact that some occupants of the same housing complex where his house is, had been successful in obtaining the houses they occupy on a rental basis [P11 (a)].

A few days subsequent to letter 11 (a), the Petitioner wrote again to the Mayor of the 1st Respondent Municipal Council and in the said letter, he intimated to the Mayor that he has no intention of handing over the house and reiterated his request to provide the residence he is occupying on a rental basis.

The Municipal Council, however, had issued a formal “notice of quit” to the Petitioner in May, 2002, in terms of Local Government Official Quarters (Recovery of Possession) Act.

Aggrieved by this decision the Petitioner had challenged this decision, unsuccessfully though, by filing a writ application before the High Court of Anuradhapura, seeking a writ to quash the decision of the Municipal Council to evict him. It is the position of the Petitioner that he had appealed against the order made by the High Court and the matter is pending before the Court of Appeal.

The main grievance complained of by the Petitioner in these proceedings is that the Petitioner is occupying a house built by the State under the “Low cost housing scheme” which is now vested with the Municipal Council. The Municipal Council had let these houses on rent to officers and employees of the Municipal Council, and he had been allocated one such house. The Petitioner asserts that in terms of Section 5A read with Section 3 of the Local Authorities Housing Act No.14 of 1964 as amended, where a house that had been let to any person under the provisions of the said Act, of which 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 the house is situated shall, by an instrument of disposition, transfer, free of charge, that house to that person.

The Petitioner had asserted further that some of the houses under the scheme had been handed over to the occupants as stipulated by the Act.

In support of this position the Petitioner had marked and produced documents P1 to P4, some of which I shall advert to later in this judgment.

The Petitioner complains, however, that several requests made by him had gone unheeded (P6 to P9), and the Petitioner had a legitimate expectation that he too would become the owner of the house that he is in occupation, in terms of the provisions of the Act aforesaid.

It is in this backdrop that the Petitioner asserts that, somewhere in 2002, officials of the Municipal Council had called over at his residence to collect the keys to the house, requesting that the possession of the house be handed over to the Municipal Council.

While the Petitioner was battling out his case before the Court of Appeal, in 2012, he had come to know that two other employees of the Municipal Council who were less qualified than he and who had been given houses on rent to be

used as alternative official quarters had been granted absolute ownership to the occupants.

The Petitioner asserts that granting absolute ownership of houses to the two employees who had joined the Municipal Council after him and is less entitled than him, is *ex facie* discriminatory against the Petitioner.

It was contended on behalf of the Petitioner that the act of granting absolute ownership to then two employees, K. B. Dharmadasa and Ranjith Silva demonstrates that persons similarly circumstanced are entitled to be granted absolute ownership of the houses they occupy.

It is on this premise that it was argued on behalf of the Petitioner that the failure or the refusal of the 1st to 3rd Respondents to grant the Petitioner absolute ownership of the house that he is in occupation is arbitrary, discriminatory and violative of Petitioner's fundamental right to equality before the law enshrined in Article 12 (1) of the Constitution.

The position taken up on behalf of the 1st and 2nd Respondents was that the premises at No. 4, Stadium Cross Road, Anuradhapura allocated to the Petitioner, is an Executive staff quarters and is not one of the "Low cost Housing Scheme" houses as referred to by the Petitioner; that in terms of Section 11A of the Act, provisions of the Act have no application to any house which is given as official quarters.

It was also pointed out that these houses had been built on fairly large extent of land ranging from 15 perches to 30 perches. It was the contention of the said Respondents that some employees of the Municipal Council did occupy houses in the Low-Cost Housing Scheme along with others who were not employees of the Municipal Council; that Dharmadasa and Ranjith Silva belonged to the latter category, hence Petitioner does not fall into the same category and he is not similarly circumstanced.

It was argued on behalf of the Respondents that the provisions of the Act have no application to the premises at issue on the ground that the premises at issue is not a "Low Cost House".

It is evident from the document P5 that the premises in issue had been allocated to the Petitioner as an “Official Quarters” and there is nothing to indicate that house is a Low- cost house. P5 lays down a number of conditions and one of them is that, if the house is in need of repairs, the petitioner was required to give a month’s notice to the Special Commissioner, Anuradhapura.

The same stipulates a further condition that the Petitioner cannot accommodate outsiders without the permission of the Special Commissioner, if accommodation is to be provided for a period of more than 3 days.

Some of the Rent receipts issued to the Petitioner even after his retirement refers to the premises as “Official quarters” (P14, P15 and P16).

The Petitioner has also filed along with his Petition the document marked P4 (b) to demonstrate that that steps were taken to convey outright, the houses given on rent to the workers of the Municipal Council [P4 (a)]

The document P4 (b) clearly sets out that, as required by the Act, only houses that attract a rent that is less than Rs.25/- could be considered for outright conveyance.

In terms of the document P5, when the house was allocated to the Petitioner the monthly rent the Petitioner was required to pay was Rs.45/-. Further, the document P4 (b) reflects that the conveying of 35 houses to the tenants was under consideration by the 1st Respondent Council, but none of those houses is from “Stadium Cross Road” where the premises given to the Petitioner is situated. In this context, the assertion of the 1st and 3rd Respondents that the house occupied by the Petitioner is an executive staff quarters and not one of the Low-Cost Housing Scheme seems credible.

If the 1st Respondent Municipal Council requires the house given to the Petitioner to be used continuously as official quarters, the refusal of the request by the Petitioner, to have the premises concerned conveyed outright to the Petitioner, cannot be said arbitrary or capricious and as such I hold that the Respondents have not infringed the fundamental right enshrined in Article 12 (1) of the Constitution.

Accordingly, I make order dismissing the application of the Petitioner.

In the circumstances of the case I make no order as to costs.

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J

I agree.

JUDGE OF THE SUPREME COURT

ANIL GOONARATNE, J

I agree.

JUDGE OF THE SUPREME COURT