

**LEKH RAM VAYESHNOI v PUBLIC SERVICE COMMISSION and 2 Ors**

HIGH COURT — CIVIL JURISDICTION

5 SCOTT J

21 May 2002

[2002] FJHC 54

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**Constitutional law — government — amended statement of claim — notices to quit — Auditor General erred — arrears of rent.**

15 Plaintiff's claim and reliefs sought were based on his asserted right as an Assistant Minister in the People's Coalition Government to occupy government quarters no 108 in the domain.

20 **Held** — The Auditor General erred in reporting to Parliament that Plaintiff was not at the time entitled to occupy government quarters. No useful purpose would be served by examining the validity of the notices to quit. There was no longer any dispute to be resolved.

Application allowed.

**Case referred to***Ainsbury v Millington* [1987] 1 All ER 929; [1987] 1 WLR 379, cited.25 *V. Kapadia* for the Plaintiff*Y. Singh* for the Defendants**Decision**

30 **Scott J.** These proceedings were begun by writ in April 2001. The Plaintiff's claim and the reliefs sought were based on his asserted right as an Assistant Minister in the People's Coalition Government to occupy Government Quarters No 108 in the Domain.

35 On 10 August 2001 the Plaintiff sought leave to file an amended Statement of Claim and the Deputy Registrar granted him leave on 19 September 2001. The Amended Statement of Claim was filed on the next day. In addition to the 5 prayers for relief originally sought the Plaintiff added the additional prayer seeking Judgment in the sum of \$242,050.24 which he claimed represented loss of salary, allowances and emoluments for the period 15 March 2001 to 30 April  
40 2004.

On 7 February 2002 the present summons to strike out the Plaintiff's claim under the provisions of RHC O 18 r 18(1)(a) and (d) was taken out by the Defendants. An affidavit in support of the application by Ajay Singh was filed. The Plaintiff filed an affidavit in opposition on 21 March.

45 On 2 May 2002 when the application came on for hearing Mr Kapadia told me that the Plaintiff had vacated the quarters and had accepted a sum of \$27,284.13 in full and final settlement of any claim that he might have "against loss of salary, allowance and any other benefit against the state" (see Ex B "indemnity agreement" to Ajay Singh's affidavit). Mr Kapadia did however point out that the  
50 indemnity agreement had been endorsed by the Plaintiff with the words "payment accepted without prejudice and under duress circumstances". Mr Kapadia

advised me that following these developments the Plaintiff was no longer proceeding with prayers 2, 3, 4 and 6 of the Claim.

Of the remaining prayers the first concerns notices to quit dated July 2000, August 2000, October 2000 and March 2001.

5 In support of the declaration sought para 11 of the amended Statement of Claim reads:

*The first, second, third and fourth notices are unlawful and not valid and proper notices and do not effectively terminate the Plaintiff's occupancy of the said quarters number 108 as the Plaintiff continues to remain an Assistant Minister under S 105 (2) of the 1997 Constitution.*

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It is not disputed that the Plaintiff's stood in the 2001 general election and that he is not an assistant minister in the present government. He has vacated quarters 108.

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The only material purpose which Mr Kapadia could advance for maintaining this prayer was the possibility that the Public Service Commission might make a claim against the Plaintiff for arrears of rent which might amount to \$1000. In view of the Indemnity Agreement and Mr Singh's assurance that it was his understanding that there was no intention to make any claim for arrears of rent I do not think that the first prayer arises from a still live issue.

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Prayer (v) sought a declaration that the Auditor General was wrong to report to Parliament that the Plaintiff was not entitled to occupy government quarters. Mr Singh told me that the Auditor General now conceded that he had erred in this report and that concession appears to me to resolve that matter.

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Of the remaining prayers (vii) seeks "further orders and declarations as may seem just" while (viii) seeks costs. Mr Kapadia did not seek any other orders or declarations and none suggest themselves to me. An action seeking no more than costs does not seem to me to be maintainable.

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Taking note of Mr Singh's concessions I declare that the Auditor General erred in reporting to Parliament that the Plaintiff was not at the time entitled to occupy Government Quarters. In my opinion no useful purpose would be served by examining the validity of the notices to quit. Since there is now no longer any dispute to be resolved (see *Ainsbury v Millington* [1987] 1 All ER 929; [1987] 1 WLR 379) the application succeeds. The action is struck out. In the circumstances there will be no order for costs.

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*Application allowed.*

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