

IN THE SUPREME COURT OF SEYCHELLES

GOVERNMENT OF SEYCHELLES

Vs

PHILIP ALBERT

Civil Side No: 1 of 2012

Mr. Khalian for the plaintiff

Mr. Georges for the defendant

RULING

Renaud, J.

Application for Writ Habere Facias Possessionem

This is an application for a writ *Habere Facias Possessionem* to issue to order the Respondent forthwith to quit, leave and vacate the property of the Applicant at Pointe Larue, Mahe and should he fail to do so to issue a writ *habere facias possessionem*.

The Supreme Court of Seychelles derives its powers, to determine in a summary manner, application for a writ *habere facias possessionem* to issue, under articles 806 – 811 of the French Code of Civil Procedure. The practice of the Court generally, is to determine application for such writ on affidavit of the Applicant and the Respondent's affidavit-in-reply. The Court may proceed on the basis of the affidavits only and issue or refuse to issue the writ.

Issue of a writ *habere facias possessionem* is a special remedy available to anyone who is dispossessed otherwise than by a process of law and it is available to a party whose need is of an urgent nature and who has no other equivalent legal remedy at his disposal.

The Court may issue such writ, upon an application by the owner or the lessor of property. If the Court is satisfied that the Respondent has raised substantial grounds indicating that he/she has a bona fide, genuine, serious and valid defence, the application shall be refused and the Petitioner may pursue a regular action to obtain an alternative remedy.

In the instant case the Applicant which is the Government of Seychelles is represented by the then Principal Secretary of the Ministry of Land Use and Housing, Mr. Christian Lionnet. Mr. Lionnet sworn to an Affidavit on 9th January, 2012 deponing that:

- “2. *The parcel S8225 (previously S2570) is the property of the Government of Seychelles and the Respondent namely Philip Albert has been occupying the land without Government approval to put his ten containers.*

3. *That as per letter dated 15th March, 2000 written by the Respondent the containers contain his furniture and house hold appliances.*

4. *That the Respondent has been given ample opportunity to remove the containers since 2000 and he has not done so until now.*
5. *That the Government requires the property urgently for a development project and despite repeated request and persuasion the Respondent has not given up possession of the said property.*
6. *That the Respondent is a trespasser and I ask that he gives up possession of the said property and, in default, I apply for the Writ of Habere Facias Possessionem.*

The Respondent denied and opposed the application and in his Affidavit in Reply dated 15th October, 2012, stated that:

1. *“I admit occupying parcel S8225, as alleged in paragraph 2 of the Affidavit, to store his containers but deny that I have been doing so without government approval. I state that I have been occupying the parcel to store containers since it belonged to my family and that the Applicant has since compulsorily acquired the parcel.*
2. *I admit the contents of paragraph 3 of the Affidavit, but verily believe that the letter (copy attached PJA 1) also indicates that some of the containers are used to store vehicle spares and, more importantly, that I have been waiting since 1994 for a plot of land from government to move his containers to.*

3. *I deny the contents of paragraph 4 of the Affidavit and attach correspondences herewith, marked as 'PJA2', 'PJA3' and 'PJA4', wherein the Applicant has promised him a plot of land to move the containers to, but has never delivered on its promise.*
4. *I deny the contents of paragraphs 5 and 6 of the Affidavit and verily believe that the Applicant, for the reasons stated hereinbefore, is not coming to the court with clean hands to seek a discretionary remedy.*
5. *I am informed by my legal advisers that I have a right to remain on the said parcel until the Applicant can allocate him a parcel to accommodate the containers.*
6. *Further and in the alternative I am informed by my legal advisors and verily believe that the Applicant is, by reason of the promises made to me, estopped from asking me to vacate the said parcel prior to allocating me a plot elsewhere to accommodate the containers.*
7. *I am informed by my legal advisors and verily believe that for the reasons stated hereinbefore I have a bona fide defence to the application”.*

Learned Counsel for the respective parties assisted this Court by their written submissions which have been carefully considered in the light of the Applicant's affidavit and the answer of the Respondent.

I also reviewed all the correspondences between the parties exhibits PJA1; PJA2; PJA3 and PJA4.

I note that the Respondent has been in occupation of that site since 1994 and this Application was entered only 9th January, 2012.

I gave thoughtful consideration to the contents of both Affidavits, that of the Applicant as well as that of the Respondent, and in the circumstances, I am satisfied that the Respondent has raised a bona-fide and valid defence to the application. The Applicant obviously has alternative remedy by entering a proper course of action.

Accordingly, an order for a writ *habere facias possessionem* to issue is denied.

I award costs to the Respondent.

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B. RENAUD
JUDGE

Dated this 3 April, 2013