

1966 *Present* : H. N. G. Fernando, S.P.J., T. S. Fernando, J., and Sri Skanda Rajah, J.

M. S. M. MADANI, Petitioner, and S. M. P. JOSEPH and 9 others.
Respondents

S. C. 456/64— Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance.

Landlord and tenant—Rent Control Board—Jurisdiction to order amenities for benefit of tenant—Constitutional validity of appointment of Board—Rent Restriction Act (Cap. 274), s. 11.

The jurisdiction of a Rent Control Board to order a landlord to provide amenities for the benefit of his tenant in terms of Section 11 of the Rent Restriction Act cannot be questioned on the ground that the power conferred by the Section is a judicial power and cannot lawfully be exercised except by some authority appointed by the Judicial Service Commission. Section 11 empowers the Board to make orders with regard to specified amenities irrespective of the question whether such matters are governed by the tenant's pre-existing legal rights or by the terms of his contract of tenancy.

APPPLICATION for a writ of *certiorari*.

H. Mohideen, with *K. Jayasekera* and *M. K. N. Nalliah*, for the Petitioner.

S. W. B. Wadugodapitiya, for the 1st Respondent.

H. L. de Silva, Crown Counsel, with *C. Sivarasa*, Crown Counsel, for the 8th and 9th Respondents.

Cur. adv. vult.

October 2, 1966. H. N. G. FERNANDO, S.P.J.—

Section 11 of the Rent Restriction Act (Cap. 274) empowers a Rent Control Board to order a landlord to provide specified amenities for the benefit of his tenant. Such an order may be made if the Board is satisfied that the amenities had been previously provided, but had been discontinued or withheld without reasonable cause. A Board may also order a landlord to effect repairs or re-decoration.

In the present case, premises had been let to the Respondent tenant about 1943. From that time (according to the tenant) a roadway running by the side of the premises had been used as means of access for the entry of vehicles into the premises. Alleging that this roadway had been closed by means of a gate which prevented the tenant from using the roadway, the tenant applied to the Board for relief under

Section 11. The Board after inquiry made order directing the landlord to restore the amenity of the use of the roadway ; on appeal to the Board of Review constituted under the Rent Restriction Act this order was affirmed. The landlord thereupon applied to this Court for a Writ of Certiorari to quash the orders of both Boards. This application we dismissed after hearing the landlord's counsel. I now state our reasons.

The principal matter argued was that the power conferred by Section 11 of the Act is a judicial power and cannot lawfully be exercised except by some authority appointed by the Judicial Service Commission.

The primary objects of the Act are—(a) to limit the amount of the rent of certain premises, and (b) to limit the rights of a landlord to eject the tenant of controlled premises. Again the principal powers conferred on a Rent Control Board are to grant authority in its discretion for the institution of actions for ejection, and in certain circumstances to fix the authorised rent of premises. The powers conferred on the Board by Section 11 are additional to these.

Matters such as repairs, re-decoration and the provision of amenities may or may not be the subject of a contract of tenancy, and Section 11 empowers the Board to make orders with regard to such matters irrespective of the question whether such matters are governed by contracts of tenancy. The Board in the present case has determined a question of fact, namely that the amenity had previously been provided to the tenant. But the decision to restore the amenity did not depend on the tenant's pre-existing legal rights or upon the terms of his contract of tenancy. The decision is thus one of policy.

Prior to the enactment of the Rent Restriction Act, matters dealt with under Section 11 would not ordinarily have been the subject of civil actions. If a landlord discontinued amenities previously available to a tenant, or if he unreasonably refused to effect repairs or re-decoration, a tenant would not have been able to compel a landlord to restore the amenities unless his contract specially protected him against such default. Under normal conditions, however, a landlord would not ordinarily commit such defaults involving the natural consequences that the tenants would on that score terminate their tenancies.

Section 11 is clearly designed to provide for contingencies connected with the conditions which rendered it necessary for the Act to restrict the right of ejection. But for Section 11, that restriction could be evaded and tenants could be forced to vacate premises, through deliberate action or inaction on the part of landlords resulting in conditions which render premises unfit or unsuitable for habitation. Section 11 is thus only ancillary to a legislative plan having the primary objects which I have earlier specified. The orders which may be made under Section 11 are not different in substance from those which may be made by a local authority for the provision of such facilities and amenities

as water service, drainage, or light and air. Orders of the latter nature have not been regarded in our law as being made in the exercise of judicial power, nor should the new but similar orders under Section 11 be so regarded.

I hold that the Boards were validly authorised by law to make the orders challenged in this case. The other grounds urged in this application are quite without substance.

T. S. FERNANDO, J.—I agree.

SRI SKANDA RAJAH J.—I agree.

Application dismissed.
