

**NALINI ELLEGALA**  
**v.**  
**PODDALAGODA AND OTHERS**

SUPREME COURT  
DHEERARATNE, J.,  
WIJETUNGA, J. AND  
BANDARANAYAKE, J.  
S.C. APPEAL NO. 51/97  
C.A. APPLICATION NO. 142/96  
RENT BOARD OF REVIEW APPEAL NO. 5036  
RENT BOARD KANDY APPLICATION NO. 29/92  
JUNE 1, 1998.

*Writ of Certiorari – Decision of the Rent Board – Appeal to the Board of Review – Rent Act, No. 7 of 1972 – Sections 40 (4) and 40 (11) of the Act.*

On an application made by the appellant landlord the Rent Board established under the Rent Act held that the premises in dispute were "excepted" premises in terms of S. 2 (4) (c) of the Rent Act. The tenant appealed to the Board of Review under S. 40 (4) of the Act which provides for an appeal upon a matter of law. The Board of Review found that the Rent Board had failed to properly evaluate evidence and on that basis set aside the order of the Rent Board and decided that the premises were governed by the Rent Act and not "excepted" premises.

**Held:**

1. The Rent Board had failed to properly evaluate the evidence and such failure was a question of law upon which the Board of Review was entitled to exercise powers under S. 40 of the Act.
2. The decision of the Board of Review is "final and conclusive" under S. 40 (11) of the Rent Act and there being no grounds recognised by S. 22 of the Interpretation Ordinance, the appellant could not have succeeded in the application before the Court of Appeal for a writ of certiorari to quash the decision of the Board of Review.

**Case referred to:**

1. *Hasseen v. Gunasekera* and others CA Application No. 128/86 CA. Minutes 2 October, 1995.

APPEAL from the judgment of the Court of Appeal.

A. K. Premadasa, PC with C. E. de Silva for appellant.

P. A. D. Samarasekera, PC with G. L. Geethananda and Keerthi Sri Gunawardena for the 1st respondent.

*Cur. adv. vult.*

July 24, 1998.

**WIJETUNGA, J.**

This is an appeal from the order of the Court of Appeal dated 2. 7. 96 dismissing the application of the respondent-petitioner-petitioner (landlord) for a Writ of Certiorari, seeking to quash the order of the Rent Board of Review. The respondents are the petitioner-appellant-respondent-respondent (tenant) and the Chairman and members of the Rent Board of Review.

Special leave to appeal has been granted only in respect of the following matters mentioned in paragraph 12 of the petition filed in this Court :

"12 (b). Under section 40 (4) of the Rent Act an appeal lies to the Rent Board (*sic*) (of Review) only on a matter of law.

(c) The Rent Board heard and saw witness Paramalingam. His evidence was accepted by the Rent Board. The Rent Board of Review erred in rejecting the evidence of Paramalingam."

The tenant made an application dated 1. 4. 92 to the Rent Board of Kandy against the landlord, seeking *inter alia* the determination of the authorized rent of premises No. 16, Lady Gordon's Road, Kandy (X1). At the commencement of the inquiry before the Rent Board, the landlord objected to the jurisdiction of the Board to hear and determine the said application on the basis that the provisions of the Rent Act do not apply to the said premises, in terms of section 2 (4) (c).

The inquiry commenced with the landlord leading evidence to establish that the premises were not subject to the provisions of the Rent Act, under section 2 (4) (c).

The Rent Board delivered its order (X6) on 31. 5. 93, holding that "the premises are 'excepted' premises in terms of section 2 (4) (c) of the Rent Act" and "the Board therefore has no jurisdiction".

The tenant appealed to the Rent Board of Review which delivered its order on 22. 1. 96 (X10) setting aside the order of the Rent Board dated 31. 5. 93 and holding that "the said premises are governed by the provisions of the Rent Act and cannot be considered as "excepted" premises under section 2 (4) (c) of the Rent Act". It further directed the Rent Board of Kandy to hold an inquiry with regard to the relief prayed for in the application.

The landlord then made an application to the Court of Appeal for a Writ of Certiorari to have the said order quashed. The Court of Appeal by its judgment dated 2. 7. 96 (X14) dismissed the application of the landlord.

The present appeal is from the said judgment.

Section 40 (4) provides that *"any person who is aggrieved by any order made by any Rent Board under this Act may, before the expiry of a period of twenty-one days after the date of the receipt by him of a copy of the order, appeal against the order to the Board of Review:*

*Provided, however, that no appeal shall lie except upon a matter of law".*

It is necessary, therefore, to consider whether there was a matter of law upon which the party aggrieved by the order, viz the tenant, could have appealed to the Board of Review. This question was taken up as a preliminary objection at the hearing before the Board of Review which held that "the evaluation of evidence adduced before the Rent Board is itself a question of law to be determined by the Board" and rejected the said preliminary objection.

It had been submitted to the Board of Review that the evidence of one Paramalingam, who had at one time been a tenant of the premises, had not been properly evaluated by the Rent Board in coming to the conclusion that the premises came within the provisions of section 2 (4) (c) of the Act.

Paramalingam who gave evidence on behalf of the landlord stated that he became a tenant of a portion of premises No. 14 in 1964, under the mother of the present landlord. When his wife died in 1975, the character of his occupation changed from tenant to that of boarder, where the then landlord even looked after his two children. Though he continued to occupy the same portion of the premises, the rest of the house too was thrown open to him and his children, and he started paying for their meals as well. That part of the house which he was occupying was renumbered as No. 16, while the rest of the premises remained as No. 14. In 1984 he left the premises on being given official quarters.

*According to the present landlord, Paramalingam became a boarder under her in 1976 when she became the owner of the premises by inheritance from her father. After her brother came into occupation of a portion of the premises in 1978, and as Paramalingam had by then become a boarder, she got back one room used by them, of which she and her mother went into occupation. Although in 1980 she was working in Colombo, she came home every week-end to Kandy.*

The tenant gave evidence on her own behalf and stated that when she came into occupation of No. 16, there was no access to any other part of the building and produced the Assessment Extracts in respect of No. 16 which showed that No. 16 had earlier been a part of No. 14. It was her position that Paramalingam had even admitted to her in a telephone conversation that he had been a tenant until 1984; which however Paramalingam denied in cross-examination.

It had been submitted before the Board of Review that the then landlord had furnished a declaration dated 19. 1. 73 (E2) under section 37 of the Rent Act, according to which Paramalingam was the tenant of the said premises.

Section 37 (7) requires that *"where a change occurs in any of the particulars aforementioned, such change shall be notified to the board, by the person who has furnished such particulars, within six weeks of the occurrence of such change"*. Among the particulars so required to be furnished are (i) the name of the tenant, (ii) the date of commencement of tenancy, and (iii) any other particulars pertaining to the tenancy of the said premises.

It was thus incumbent on the present landlord's mother, who was then the landlord, to notify the Rent Board of any change that occurred in any of the particulars so furnished. But, in this instance, the landlord had made no such intimation to the Board. If the character of Paramalingam's occupation of the premises had changed from that of tenant to boarder, it was imperative that the landlord should so inform the Board within six weeks of such occurrence, to enable the Board to amend and update its Rent Register in respect of such premises, as by the declaration dated 19. 4. 73 Paramalingam's name had been furnished as the tenant.

The Board of Review also noted that the Rent Board had failed to take into account the fact that Paramalingam was not an impartial or unbiased witness in that, on his own admission, after the death of his wife, the then landlord had looked after his children and even supplied him and the children with meals and played the role of a foster mother to his children. It was in these circumstances that the Board of Review came to the conclusion that the Rent Board had failed to properly evaluate the evidence and therefore set aside the order of the Rent Board dated 31. 5. 93.

The credibility of Paramalingam's evidence, as well as the landlord's failure to notify the Rent Board of the alleged change of status of Paramalingam from that of tenant to boarder are vital factors in determining the question whether the premises in question were *"residential premises occupied by the owner on January 1, 1980, and let on or after that date"*.

Other than the *ipse dixit* of Paramalingam and the landlord as regards the change of character of Paramalingam's occupation of the

premises, there was no other material to indicate that Paramalingam and his children had become boarders after the death of Paramalingam's wife. There was on the other hand the absence of any notification under section 37 (7) of such change by the landlord as required by law. It is common ground that Paramalingam was an occupant of the premises in suit from 1964 to 1984, until he left on being given official quarters.

The main ground adduced before the Court of Appeal was that the *Rent Board of Review* was in error in entertaining the appeal which was not founded on a question of law. The Court of Appeal observed that "if the true and only reasonable conclusion contradicts the determination reached by the tribunal, the conclusion may be set aside on the ground that there has been an error of law, which was responsible for the determination", and proceeded to hold that the "*Board of Review has not acted outside its jurisdiction in entertaining the appeal and making its decision on a matter of law*".

The Court of Appeal in dealing with the application before it also referred to section 40 (11) of the Rent Act under which the decision of the Board of Review on any appeal shall be final and conclusive. It went on to state that "section 22 of the Interpretation Ordinance permits an application to this Court to be made to quash the decision of the Rent Board of Review only if it *ex facie* had no authority to make the decision or if it had acted contrary to the principles of natural justice or a mandatory rule of law; none of which, save the question of evaluation of evidence by the Board of Review has been alleged in the petition. Since the Board of Review was correct in treating the defective evaluation of evidence by the Rent Board as a question of law, the petitioner cannot therefore succeed in this application".

In *Hasseen v. Gunasekera and others*<sup>(1)</sup>, the Court of Appeal dealt with an order of the Board of Review, affirming an order of the Rent Board which had been "arrived at without an adequate evaluation of the evidence and by failing to take into consideration relevant items of evidence which could have influenced the finding" and held the Rent Board as well as the Board of Review had "erred in law by failing to take into account relevant items of evidence in arriving at

the finding" and therefore quashed the orders of the Rent Board as well as of the Board of Review.

Wade & Forsyth, Administrative Law, 7th edition at page 312 dealing with the 'no evidence' rule states that 'no evidence' does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding, or where, in other words, no tribunal could reasonably reach that conclusion on that evidence". It goes on to state at page 316 that "It seems clear that this ground of judicial review ought now to be regarded as established on a general basis", and forecasts that 'no evidence' seems destined to take its place as yet a further branch of the principle of *ultra vires*, so that Acts giving powers of determination will be taken to imply that the determination must be based on some acceptable evidence. If it is not, it will be treated as 'arbitrary, capricious and obviously unauthorised'.

Applying these principles to the matter before us, and having regard to the facts aforementioned, I am of the view that the Rent Board had failed to properly evaluate the evidence and such failure was a question of law upon which the Board of Review was entitled to exercise its powers under section 40 of the Act.

Equally, the Court of Appeal was right when it held that the decision of the Board of Review being *'final and conclusive'* under section 40 (11) of the Rent Act, and there being no grounds recognized by section 22 of the Interpretation Ordinance (save the question of defective evaluation of evidence by the Rent Board which had been correctly treated by the Board of Review as a question of law), the petitioner could not have succeeded in the application before that Courts, viz for a Writ of Certiorari to quash the decision of the Board of Review.

For the reasons aforesaid, the appeal is dismissed, but in all the circumstances, without costs.

**DHEERARATNE, J.** – I agree.

**BANDARANAYAKE, J.** – I agree.

*Appeal dismissed.*