

ISSADEEN
v
THE COMMISSIONER OF NATIONAL HOUSING
AND OTHERS

SUPREME COURT
S.N. SILVA, CJ.
BANDARANAYAKE, J. AND
J.A.N. DE SILVA, J.
SC APPEAL NO. 110/96(A)
C.A. NO. 755/92
17TH SEPTEMBER, 2002

Writ of certiorari – Laches – Writ will not issue where petitioner fails to explain delay and it causes prejudice to respondent – Application to quash a decision to vest a house which had been sold to the tenant – Ceiling on Housing Property Law, No. 01 of 1973, section 13.

The appellant claiming to be the owner of the premises in suit sought to quash a recommendation of the Commissioner of National Housing to vest the said premises. The application was filed on 12.10.1992. It was common ground that the appellant had been aware of the impugned decision from April, 1992.

The impugned vesting was effected pursuant to an application made in 1973 under section 13 of the Ceiling on Housing Property Law, No. 01 1973 by the deceased 2nd respondent (“the deceased”) in whose place the 2nd respondent was appointed. The deceased had been the tenant of the premises from 1959. Since then, there had been four sales of the premises over the head of the deceased and the owner of the premises in 1973 who was the respondent

to the section 13 application was one Andradi to whom the notice of the decision to vest was given in 1984.

However, in 1979 the appellant's father had purchased the premises from Andradi and transferred it to the appellant on 14.10.1988.

Consequent to the Commissioner's decision to vest the premises the Minister made an Order under section 17 of the Law in or about 1989 which order was duly gazetted. Thereafter the premises were sold by the Commissioner to the deceased tenant on 19.10.1992 and the deceased transferred the same to the substituted 2nd respondent and his sister on 17.08.1994. The aforesaid private transfers were notarially executed.

The previous litigation and the correspondence in respect of the premises showed that the appellant had been aware of the decision to vest the premises at least by 1991.

Held:

1. The appellant was guilty of laches. He had failed to adduce any acceptable reason to excuse the delay. The delay had caused prejudice to the deceased (the tenant).
2. In the aforesaid circumstances the court will generally not issue the writ in the exercise of its discretion.

Cases referred to :

1. *Biso Menike v Cyril de Alwis and Another* (1982) 1 Sri LR 368
2. *Rajakaruna v Minister of Finance* (1985) 1 Sri LR 391

APPEAL from the judgment of the Court of Appeal.

L.C.Seneviratne, P.C. with *V.K. Choksy* for appellant.

Romesh de Silva, P.C. with *H. Amarasekera* and *I. Munaweera* for 2nd substituted respondent.

Cur.adv.vult

April 04, 2003

BANDARANAYAKE, J.

This is an appeal from the judgment of the Court of Appeal dated 05.02.1996. By that judgment, the Court of Appeal dismissed the application of the petitioner-appellant (hereinafter referred to as

the appellant) for *writ of certiorari* quashing the order of the Commissioner of National Housing vesting premises No.14, Collingwood Place, Colombo 6 (hereinafter referred to as "the premises") as stated in letter dated 27.08.1992 (X2) on the basis that the appellant was guilty of laches. On an application made to this court, special leave to appeal was granted only on the question as to whether the finding of the Court of Appeal that the petitioner was guilty of laches was correct. 10

The facts of this case, *albeit* brief, are as follows :

The appellant became the owner of the premises under and by virtue of Deed No. 434 dated 14.10.1988 attested by G.G. Arulpragasam, Notary Public (X1). The original 2nd deceased respondent-respondent (hereinafter referred to as the deceased 2nd respondent) was the occupant of the premises and purported to claim that he was the tenant of the premises. The appellant submitted that she received a letter dated 27.08.1992 (X2) from the 1st respondent-respondent (hereinafter referred to as the 1st respondent) informing her that this premises had been vested in the Commissioner of National Housing in terms of the provisions of the Ceiling on Housing Property Law, No.1 of 1973 and requesting the appellant to submit a written claim to the whole or any part of the price payable in respect of such house under section 2 of the said law. The appellant thereafter received a further letter dated 02.09.1992 requesting the appellant to appear before the Valuation Board appointed in terms of section 22 of the Ceiling on Housing Property Law (X4). The appellant contended that she did not receive any notice of any application made by the deceased 2nd respondent for the vesting of the premises nor did she receive any form of intimation as to the provisions of law under which the premises had been purportedly vested in the Commissioner of National Housing. She further contended that she was not afforded any intimation or notice of a proposed intention on the part of the 1st respondent to secure the vesting of the premises. The appellant in her application to this Court submitted that even at the time of filing her application to the Court of Appeal, she was not aware and had not been apprised of the nature and the character of the purported vesting. 20 30 40

It is common ground that the only question that has to be decided by this Court is whether the appellant is guilty of laches in filing the application in the Court of Appeal.

Learned President's Counsel for the appellant contended that in considering the question of laches it is the knowledge of the material facts on the part of the appellant that would be operative and effective in considering redress from Court. The appellant's position is that she became aware of the vesting order that was made in respect of the premises only after receiving the letter from the 1st respondent dated 27.08.1992 (X2). Subsequently she had received a letter dated 02.09.1992 requesting her to appear before the Valuation Board. Therefore, the appellant contended that she was not given any intimation of the notice to vest the said premises in the Commissioner of National Housing or of any inquiry in respect of such vesting. Learned President's Counsel for the appellant contended that, if such notice was given to the appellant, she could have applied to the Board of Review. Furthermore, learned President's Counsel submitted that the failure in informing the appellant of any intention or inquiry relating to the said vesting by the Commissioner of National Housing constituted a breach of natural justice. In support of his submission, learned President's Counsel for the appellant relied on *Biso Menike v Cyril de Alwis and another* ⁽¹⁾ and *Rajakaruna v Minister of Finance* ⁽²⁾. Learned President's Counsel for the appellant's submission is that since the time the appellant became the owner of the property and the time she filed her application in the Court of Appeal, there had been no delay.

Learned President's Counsel for the respondent was emphatic that the appellant is guilty of laches. In support of this position, learned President's Counsel took up the following submissions:

1. The appellant's predecessor in title was well aware of the application before the Commissioner of National Housing;
2. The lawyers who originally appeared for the 2nd respondent in the present case are the same lawyers who appeared for one Andradi, in 2362/RE (Andradi was the owner of the premises from whom the appellant's father purchased it in 1979);

3. Appellant filed action No. 1/22/91 in the District Court of Mount Lavinia and the answer of the original 2nd respondent was filed on 03.04.1992. In the said answer, it was disclosed that the premises had been vested in the Commissioner of National Housing. 80

It is relevant and imperative to refer to some of the related facts of this case at this juncture. The deceased 2nd respondent was a tenant of the premises since 1959. Originally he was the tenant of one Peter de Silva and after four transfers over his head one Andradi became the owner of the premises in question by Deed No.156 dated 13.09.1970, attested by A.I.M. Kaleel, Notary Public. The deceased 2nd respondent, by application dated 02.02.1973 applied to the Commissioner of National Housing for the purchase of the premises in terms of section 13 of the Ceiling on Housing Property Law, No.1 of 1973. By its order, the Commissioner of National Housing, allowed the appellant's application and recommended vesting of the premises. This was communicated to Andradi by letter dated 19.11.1984 with a copy to the deceased 2nd respondent. The premises was vested and the vesting order was gazetted on 08.02.1990. Thereafter the Commissioner of National Housing transferred the premises to the deceased 2nd respondent by Deed No. 14983 dated 19.10.1992. The deceased 2nd respondent transferred the premises to the substituted 2nd respondent and his sister by Deed No. 1466, dated 17.08.1994 attested by E.M.P.N. Arthenayake. 90 100

The appellant filed action (L/22/91) in the District Court of Mount Lavinia and the answer of the deceased 2nd respondent was filed on 03.04.1992. In the said answer, *inter alia*, the deceased 2nd respondent had pleaded as follows :

"The defendant further pleads that in the exercise of his lawful rights he had made application to the Commissioner of National Housing under the provisions of the Ceiling on Housing Property Law for the purchase of the premises in suit and on December 27th 1989 an order was made for the vesting of the said premises in the Commissioner of National Housing with the approval of the Honourable the Minister of Housing and Construction and the said vesting 110

order was duly Gazetted under the provisions of the Ceiling on Housing Property Law in the Government Gazette.”

It is therefore common ground that notwithstanding the fact that the appellant became aware of the vesting order in April 1992, she had waited for 6 months to file her application seeking for a writ of *certiorari* in the Court of Appeal. 120

Learned Judge of the Court of Appeal, after considering the material before Court, held that the appellant and her father were aware of the application made by the deceased 2nd respondent by the time the action No. 2362/RE, filed by the Andradi's against the deceased 2nd respondent in the District Court of Mount Lavinia for ejectment was finally decided by the Court of Appeal in case No. 95/79(F) on 25.08.1989. It was further held that the appellant should also have been aware of the vesting order published in 1990. 130

As referred to earlier, the deceased 2nd respondent was the tenant of the premises, who came into occupation in 1959. The appellant's father purchased the premises from Andradi, while the deceased 2nd respondent remained as the tenant, in 1979. Learned President's Counsel relied on *Biso Menike v Cyril de Alwis and another (supra)*, pp.379-380 in support of his contention that the writ of *certiorari* will not be refused when such denial of the writ is likely to cause grave injustice. In this case Sharvananda, J. (as he then was) stated that, 140

“unlike in English Law in our Law there is no statutory time limit within which a petition for the issue of writ must be filed. But a rule of practice has grown which insists upon such petition being made without undue delay. When no time limit is specified for seeking such remedy, the Court has ample power to condone delays...”

This passage was cited with approval by G.P.S. de Silva, J. (as he then was) in the Court of Appeal judgment in *Rajakaruna v Minister of Finance (supra)*.

It is however to be noted that delay could defeat equity. Although there is no statutory provision in this country restricting the time limit in filing an application for judicial review and the 150

case law of this country is indicative of the inclination of the Court to be generous in finding 'a good and a valid reason' for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy. Prof. G.L. Peiris, in his book on *Essays on Administrative Law in Sri Lanka* (Lake House Investments Ltd., pg. 13 and 15) stated that, 160

"Where a discretion is available to the Court in regard to the grant or refusal of certiorari, the writ will generally not issue if there has been unjustifiable delay on the part of the applicant in seeking relief ... The relevant principle is that relief by way of certiorari must be sought punctually."

The appellant's contention that she became aware of the vesting order in regard to the premises only in April_1992 in my view cannot be accepted for the following reasons. The attorney-at-law for the deceased 2nd respondent wrote to the attorney-at-law for the appellant on 06.06.1991 replying the latter's letter dated 06.05.1991 regarding the premises in issue. In the reply, the said attorney-at-law had informed the attorney-at-law for the appellant in the following terms: 170

"My client, Mr. Edward Fernando, was a lawful tenant, entitled to the statutory protection of the Rent Act in respect of the aforesaid premises. Your attention is drawn to the pleadings, proceedings and judgment in the District Court of Mount Lavinia Case No.2362/RE (A5)."

In his reply dated 28.06.1991 (A6), the attorney-at-law for the appellant informed the attorney-at-law for the deceased 2nd respondent in the following terms : 180

"Action has already been instituted in the District Court of Mount Lavinia bearing the above number for recovery of possession of the premises bearing assessment No.14, Collingwood Place, Wellawatte from your client."

The appellant's petition to the Court of Appeal, although it is dated 30.09.1992, was filed only on 12.10.1992. The appellant

has not given any reason for the delay in filing the application, but stated that she has not received any notice either from the 1st or the 2nd respondent to this application. Taking into consideration the totality of the circumstances, it is improbable that the appellant was not aware of the vesting order made by the Commissioner of National Housing, at the least by June 1991. 190

In fact a consideration of the entirety of the circumstances in this case, reveal that the appellant would have known about the vesting order well before her attorney-at-law received the letter dated 06.06.1991, referred to above. In the instant case, in my view, the delay on the part of the appellant has caused prejudice to the deceased 2nd respondent since he has taken all necessary steps on the basis that the premises was vested in the Commissioner of National Housing. The appellant has failed to adduce any acceptable reason to excuse the delay. 200

I accordingly hold that the appellant was guilty of laches and answer the question on which special leave to appeal was granted by this Court in the affirmative. This appeal is accordingly dismissed, but in all the circumstances of this case I make no order for costs.

S. N. SILVA, C.J. - I agree.

DE SILVA, J. - I agree.

Appeal dismissed.