ARTHUR
V.
MOOSAJEES LIMITED AND OTHERS

SUPREME COURT
G.P.S DE SILVA, C.J.
DR. AMERASINGHE, J.
RAMANATHAN, J.
S.C. 109/95
C.A. 1222/86
JUNE 20, 1996.

Ceiling on Housing Property Law 1 of 1973 - S. 13, 39, Application to purchase- Application rejected- Appeal to Board of Review under S. 39 of Law 1 of 1973 - can the Petition of appeal be signed by an Attorney-at-Law. - Judicature Act 2 of 1978 - S.41 (1).- Evidence Ordinance-S.114.

The Appellant, the Tenant of the premises made an application to the 2nd Respondent Commissioner of National Housing, under S.13 of Law 1 of 1973 to purchase the premises. This application was rejected. Thereafter the Tenant lodged an appeal under S.39 of the said law signed by his Attorney-at-Law to the Board of Review, this appeal was rejected on the ground that the Petition of appeal should be signed by the Appellant himself. The Court of Appeal upheld the decision of the Board of Review, and dismissed the application of the Tenant. On appeal:

Held:

(1) There is no prescribed form for lodging an appeal nor is there a prohibition in the CHP Law against an Attorney-at-Law signing a Petition of appeal.

(2) S.41 (1) of the Judicature Act, states that every Attorney-at-Law shall be entitled to assist and advise clients and to appear plead or Act in every Court or other institution. These words are clearly wide enough to enable an Attorney-at-Law to sign a Petition of appeal lodged in terms of S.39 (1) of the CHP Law.

(3) The burden is on the 1st Respondent to establish that there was no such authority for the Attorney-at-Law to sign the Petition of appeal.

***Per* G.P.S. de Silva, C.J.**

"A party is not bound by a concession made by counsel on a matter which relates directly to the construction of a statute".

(4) The Board of Review has misconstrued S. 39 (1) and rejected the appeal, the decision to reject the appeal is ultra vires the statute. The principle is "..... no estoppel can legitimate action which is Ultra Vires."

AN APPEAL from the judgment of the Court of Appeal.

Rohan Sahabandu for Appellant.

P.A.D. Samarasekara, P.C., with *J.A.de Almeida* for the 1st Respondent.

Cur. adv. vult.

July 05, 1996.
G. P. S. DE SILVA, C .J.

The Appellant is the tenant of the premises in suit owned by the 1st Respondent. He made an application to the Commissioner of National Housing under section 13 of the Ceiling on Housing Property Law to purchase the premises. After inquiry, the Commissioner of National Housing rejected the application. Against this order the Appellant preferred an appeal to the Board of Review (section 39 (1) of the Ceiling on Housing Property Law).

At the hearing of the appeal before the Board of Review, Counsel for the 1st Respondent raised a preliminary objection, namely, that there was no valid appeal inasmuch as the petition of appeal has been signed by an Attorney-at-Law and not by the person "aggrieved by the decision." The Board of Review upheld the objection and dismissed the appeal. Thereupon the Appellant moved the Court of Appeal by way of an application for a Writ of Certiorari to have the order dismissing his appeal quashed. The Court of Appeal refused his application and hence the present appeal to this court.

It seems to me that the preliminary objection taken before the Board of Review is of a highly technical nature and is devoid of merit. In the first place, there is no prescribed form for lodging an appeal nor is there a prohibition in the Ceiling on Housing Property Law against an Attorney-at-Law signing a petition of appeal. It is not denied that the appeal has been filed within time; the grounds of appeal have been indicated in the petition. Thus the essential requirements of section 39 (1) have been complied with.

In affirming the order of the Board of Review, the Court of Appeal has overlooked a very relevant provision of the law, viz. section 41 (1) of the Judicature Act. In terms of that provision "every Attorney-at-Law shall be entitled to assist and advise clients and to appear, plead or act in every court or other institution established by law for the administration of justice ...." It seems to me that these words are clearly wide enough to enable an Attorney-at-Law to sign a petition of appeal lodged in terms of section 39 (1) of the Ceiling on Housing Property Law. The first step taken by a "person aggrieved" is to file a petition of appeal. More often than not, a party would seek legal advice at this stage. It would not be in accord with either reason or logic to take the view that a petition of appeal signed by an Attorney-at-Law is invalid unless there is a specific provision in the Ceiling on Housing Property Law to the contrary.

The Board of Review made the observation that there was no evidence that the Attorney-at-Law who signed the petition of appeal had the authority of the "person aggrieved." Here, the Board of Review has misdirected itself. The presumptions set out in section 114 of the Evidence Ordinance applies and the burden is on the 1st Respond-

ent to establish that there was no such authority. This the 1st Respondent failed to do.

In the written submissions filed on behalf of the 1st Respondent it has been pointed out to us that at the hearing before the Board of Review, counsel who appeared for the Appellant has **conceded** that there is no valid appeal before the Board. It is urged that this is an important fact which has been **suppressed** in the application for a Writ of Certiorari filed before the Court of Appeal and that this amounts to a lack of uberrima fides. It seems to me that this submission is not well founded. A party is not bound by a concession made by Counsel on a matter which relates directly to the construction of a statute. The failure to refer to the concession made by Counsel in the application for a Writ of Certiorari has no relevance to the maintainability of the application.

The next point urged in the written submissions filed by the 1st Respondent is that the Appellant is **estopped** from raising the question of the validity of the appeal since his counsel has "conceded the point in the lower tribunal." The Board of Review has misconstrued section 39 (1) of the Ceiling on Housing Property Law and rejected the appeal. The decision to reject the appeal is ultra vires the statute. The principle is "..... no estoppel can legitimate action which is ultra vires" (H.W.R.Wade, Administrative Law, 6th Edn. page 262). Thus this submission is not acceptable.

For these reasons, the appeal is allowed with costs, and the judgment of the Court of Appeal is set aside. I direct that a mandate in the nature of a Writ of Certiorari do issue to quash the decision of the Board of Review dated 23.8,86 (P4).

The appeal is remitted to the Board of Review for decision on the merits.

DR. AMERSINGHE, J. – I agree.

RAMANATHAN, J. – I agree.

Appeal Allowed.