

SIRIWARDENA

v.

HON. CHELLIAH KUMARASURIAR, MINISTER OF
NATIONAL HOUSING AND CONSTRUCTION AND OTHERS

COURT OF APPEAL.

ISMAIL, J.

C.A. APPLICATION NO. 169/77

SEPTEMBER 08, OCTOBER 17 AND NOVEMBER 03, 1994.

Landlord and Tenant – Application to purchase house under Ceiling on Housing Property Law No. 1 of 1973 – Vesting order – Sections 13 and 17 of Ceiling on Housing Property Law.

The tenant was sued for ejection on the ground of subletting and judgment for the eviction of the tenant was entered. An appeal was preferred and is pending. Thereafter the tenant made an application to purchase the premises under Section 13 of the Ceiling on Housing Property Law No. 1 of 1973. The Commissioner had laid by the inquiry until the appeal was decided.

Held:

There was no material to show that the Commissioner had at any stage acted upon the application by the "tenant" to purchase the house or that he had notified the Minister of his decision in respect of the matters specified in Section 17(1)(a), (b) and (c) of the Ceiling on Housing Property Law. Assuming he had done so, the parties do not appear to have been informed of the determination or decision.

Evidently the Minister has proceeded to make the vesting order under Section 17(1) before the Commissioner could have decided on the precedent conditions set out in Section 13 in relation to the application and before he could have complied with the procedural requirements specified in Section 17 of the Ceiling on Housing Property Law. The Minister has therefore acted *ultra vires* and in excess of his jurisdiction in making the vesting order under Section 17(1) of the said Law. The vesting order is therefore a nullity and all subsequent steps taken by the Commissioner on the basis of the said vesting order are void in law.

Cases referred to:

1. *Mariam Teyabally v. Minister of Local Government, Housing and Construction* – SC 69/92 – SC Minutes of 5.11.93.
2. *Caderamanpulle v. Keuneman and Others* S.C. No. 15/79 – S.C. Minutes of 19.09.80.

APPLICATION for a writ of certiorari to quash vesting order made by the Minister of National Housing and Construction.

H. L. de Silva, P.C. with *Gomin Dayasiri* for petitioner.

Faisz Mustapha P.C. with *Sanjeewa Jayawardena* for substituted 3rd respondent.

Cur. adv. vult.

January 10, 1995.

ISMAIL, J.

The petitioner in this application dated 10.03.1977 has sought a writ of certiorari to quash the order vesting the premises bearing No. 105, Piyadasa Sirisena Mawatha, Colombo 10, with effect from 30th June 1976 by then Minister under section 17(1) of the Ceiling on Housing Property Law, No. 1 of 1973. The vesting order was published in the Government Gazette Extraordinary No. 233/10 dated 8/10/76 (P6).

The petitioner purchased premises bearing No. 105 Piyadasa Sirisena Mawatha of Colombo 10 in about February 1967 and the 3rd respondent who was occupying the premises since September 1942

as a tenant then attorned to him as his landlord. The petitioner terminated his tenancy at the end of February 1971 and instituted an action, No. 2391/ED, against him in the Court of Requests for ejectment on the ground of subletting. One H. P. D. Gnanawathie to whom the petitioner had sublet a portion of the premises was added as a defendant to this action. The trial in this case was finally concluded in the District Court and judgment was entered on 22nd September 1975 in favour of the petitioner for the ejectment of the 3rd respondent and for damages at Rs. 62/75 per month from 1.9.73 until the petitioner was restored to possession (P5).

The 3rd respondent has preferred an appeal, No. CA 452/75, against the said judgment and this appeal is still pending.

During the pendency of the action in the Court of Requests/District Court the 3rd respondent made an application on 5.2.73 to the Commissioner for National Housing to purchase the said premises under section 13 of the Ceiling on Housing Property Law. An inquiry into this application was held on 14.12.75. The petitioner produced a certified copy of the judgment dated 22.9.75 in case No. 2391/ED and objected to the premises being vested in the Commissioner as the 3rd respondent had in terms of the said judgment ceased to be his tenant and was not qualified to maintain the application to purchase the premises. The petitioner has stated that the 2nd respondent who held the inquiry made an order laying by the application until the disposal of the appeal No. 452/75 (F). However, the Minister has by his order dated 30.6.76 proceeded to vest the premises and the said vesting order was published in the Gazette No. 233/10 dated 8.10.76 (P6).

The 3rd respondent has thereafter on 17.2.1977 signed an agreement in connection with the purchase of the house with Commissioner for National Housing in terms of section 17(1) of the Ceiling on Housing Property Law.

When the present application was taken up for hearing before this court on 16.3.87 and 17.3.87, a preliminary objection to it was taken by the 3rd respondent that the Minister who made the vesting order was not a party to this application. The Court of Appeal upheld the preliminary objection and on 28.4.77 the application was dismissed. This order was set aside by the Supreme Court in SC No. 39/87 on

26.3.91, and an order was made that this case be remitted back to the Court of Appeal for a determination of the application for the issue of a writ of certiorari.

The original 3rd respondent to this application died on 13.2.82 and his widow Beatrice Hewage who was substituted in his place also died on 31.8.86. One of her daughters named M. Nandakanthie Hewage has now been added as a Respondent.

Learned Counsel for the petitioner has submitted that the aforesaid vesting order (p.6) has been made in excess or without jurisdiction as the 3rd respondent had ceased to be tenant at the relevant time, judgment having been entered against him for ejection in the meanwhile, and consequently that his application for the purchase of the said premises could not have been thereafter maintained. He has relied on the following observation made by His Lordship the Chief Justice in *Mariam Teyabally v. Minister of Local Government, Housing and Construction*.⁽¹⁾

"The relevant point of time at which the validity of the claim has to be determined is the stage at which the Commissioner of National Housing holds the inquiry, "notifies" the Minister and the Minister makes the "vesting order" under section 17 of Law No. 1 of 1973. This is the decisive point of time at which the right of the parties are affected ... if on the other hand, at that point of time, the applicant has ceased to be "tenant" or if the premises in respect of which the application was made is no longer a "house" within the meaning of the Law, then the application cannot be entertained."

The Commissioner for National Housing at the time has in his affidavit filed dated 10.10.80 stated that his predecessor in office held an inquiry on 14.12.75 into the application of the tenant for the purchase of the house. He has however not denied the fact that the petitioner who was the owner had produced before him the judgment of the District Court dated 22.9.75 entered in his favour for the ejection of the tenant. It has also not been denied that the Commissioner then made an order laying by the inquiry until the appeal taken by the tenant against this judgment was decided in appeal. The inquiry purported to have been held by the Commissioner into the application of the 3rd respondent for the purchase of the house has not been concluded. He has not determined whether the 3rd respondent had the status as a tenant on

14.12.75 to maintain his application for the purchase of the house in view of the said judgment having been entered against him for ejectment in the meanwhile. The Commissioner has refrained from deciding this question. He appears to have postponed taking a decision until the appeal from this judgment was decided.

There is also no material to show that the Commissioner has at any stage acted upon the application made by the 3rd respondent to purchase the house under section 13 of the Ceiling on Housing Property Law and that he has notified the Minister of his decision in respect of the matters specified in section 17(1) (a),(b), and (c) of the said Law. Assuming that he has done so it does not appear that the parties have been informed of his determination or decision. "Before going into the questions raised at a, b, and c of section 17 he must decide whether he is going to accept an application under section 13 and notify the Minister that an application has been made under this Law ... There is a duty cast on the commissioner to act fairly. The failure therefore to inform the landlord of the Commissioner's decision or determination under section 17 before the order of vesting was made deprives the landlord of his right under section 39 to appeal to the Board of Review." *Caderamanpulle v. Keuneman and Others*⁽²⁾.

Evidently the Minister has proceeded to make the vesting order under section 17(1) before the Commissioner could have decided on the precedent conditions set out in section 13 in relation to the application and before he could have complied with the procedural requirements specified in section 17 of the Ceiling on Housing Property law. There has thus been a procedural failing and the Minister has therefore acted *ultra vires* and in excess of his jurisdiction in making the vesting order under section 17(1) of the said Law. The vesting order is a therefore a nullity and all subsequent steps taken by the Commissioner on the basis of the said vesting order are void in law.

I therefore direct the issue of a writ of certiorari to quash the vesting order made by the 1st respondent and published in the Government Gazette Extraordinary No. 233/10 dated 8.10.76 (p.6).

The application is allowed with costs.

Writ of Certiorari issued.