MANUEL

v.

WIJEWARDENA

COURT OF APPEAL.
ATUKORALE, J. (PRESIDENT) AND MOONAMALLE, J.
C. A. 46/80.-D. C. NEGOMBO–2168/L.
JUNE 6, AND NOVEMBER 16, 1983.

Rent Act, No. 7 of 1972–Application by tenant to Rent Board for certificate of tenancy – Whether Rent Board has jurisdiction to inquire into a disputed question of tenancy before grant of certificate – Whether certificate given is final and conclusive – Appeal to Board of Review – When available – Legality of order made by Board of Review on an appeal involving question of fact.

The plaintiff filed action in the District Court to have the defendant ejected from the premises in suit on the ground that she was a trespasser and was in wrongful occupation thereof. The defendant had earlier applied to the Rent Board for a certificate of tenancy which application had been refused. The Board of Review had dismissed her appeal from this Order. The question as to whether, in view of the orders of the Rent Board and the Board of Review the defendant was entitled to an order that she is the tenant of the premises, was tried as a preliminary issue. The District Judge answered the issue in the negative and the defendant appealed.

Held–

(1) Where, upon the refusal of a landlord to give a tenant a certificate of tenancy an application is made under section 35(2) of the Rent Act to the Rent Board for such a certificate, the Board has the power to inquire into the disputed question of tenancy before the grant of the certificate or otherwise.

(2) The contents of a certificate of tenancy given by the Rent Board are not final and conclusive and can be challenged in a Court of Law when reliance is sought to be placed on the certificate since such a certificate is admissible in evidence and is prima facie evidence of the facts stated therein.

(3) Since the appeal of the defendant to the Board of Review was not on a question of law as is required to be in terms of section 40(4) of the Rent Act, the decision of the Board of Review is devoid of any legal force and does not preclude the defendant from seeking to establish in this action that he is the lawful tenant.

Cases referred to

(1) *Ponniah Rathnam Nadar v. D. M. Appuhamy–S. C. 242/76(F) ; S. C. Minutes of 14.6.77.*
(2) *Ranasinghe v. Jayatillake (1970) 72 N.L.R. 126*

APPEAL from an order of the District Court of Negombo.

J. W. Subasinghe, S. A. with *Bimal Rajapakse* for the defendant-appellant.

P. A. D. Samarasekera with *G. L. Geethananda* for the plaintiff-respondent.

Cur. adv. vult.

February 2, 1984.

ATUKORALE, J. (President)

The premises in suit in this case admittedly belonged to the plaintiff who instituted this action to have the defendant ejected on the basis that she was a trespasser and in wrongful occupation thereof. The defendant maintained that she was the monthly tenant under the plaintiff. At the hearing it was admitted that the premises were rent-controlled and that the defendant had made an application (P1) to the appropriate Rent Board for a certificate of tenancy ; that this application was refused by the Rent Board (P3) ; that the defendant appealed to the Board of Review and that the Board of Review dismissed her appeal (P4). Based on these admissions issue No.6 was raised on behalf of the plaintiff as to whether in view of the orders of the Rent Board and of the Board of Review the defendant is entitled to obtain an order from court that she is the tenant of the premises. This issue was tried as a preliminary issue. The learned District Judge answered this issue in the negative and entered judgement in the plaintiff's favour. The present appeal is from this judgement. At the hearing no oral evidence was led by either party. Certain documents were marked. P1 is the application of the defendant to the Rent Board in which one of the reliefs asked for by her is a certificate of tenancy. She states therein that the landlord (the plaintiff) is seeking to have her ejected from the premises in the instant action without disclosing the tenancy. P2 consists of the proceedings before the Rent Board. P3 is the order of the Rent Board. It shows that the Board after a consideration of the evidence before it reached the finding that the defendant was not the lawful tenant of the premises and refused her application. P4 is the order of the Board of Review dismissing the defendant's appeal.

Learned Senior Attorney for the defendant submitted to us that a Rent Board constituted under the provisions of the Rent Act, No.7 of 1972, had no jurisdiction to inquire into and make an order

relating to a disputed question of tenancy on an application made to it by a person claiming to be the tenant for a certificate of tenancy. He contended that the Act conferred no power, either express or by implication, on a Rent Board to hold an inquiry for the purpose of determining whether the applicant was a tenant or not. He maintained that S. 37(1) of the Act makes it obligatory on the Rent Board to prepare and maintain an up-to-date Rent Register relating to each premises situated within its area of jurisdiction. For this purpose the Board is empowered to require the landlord or the tenant of the premises to furnish to it such information and particulars as it may deem necessary. The particulars so furnished by the landlord or the tenant are required to be entered by the Board in the Rent Register. If in the course of the preparation and the maintenance of the Register any dispute arises between the landlord and the tenant in relation to any of the particulars required to be furnished, the Board is obliged to inquire into and make a decision on any such dispute, which decision is declared to be final and conclusive–S. 37(5) of the Act. It was also submitted that S. 37(6) empowers a tenant to make application to the Rent Board to have his name entered in the Rent Register as the tenant of the premises. On such application the Board, after notice to the landlord and after due inquiry, must, if it is so satisfied, enter his name in the Register as the tenant of the premises. Such a decision of the Board is also declared to be final and conclusive. The provisions of S. 37 of the Act, it was contended, were very comprehensive requiring the Rent Board to prepare and maintain an up-to-date Rent Register containing all the necessary particulars pertaining to the tenancy of each premises in its area of jurisdiction. They were mandatory requirements which had to be complied with by every Rent Board. Learned Senior Attorney urged that when an application is made by a tenant for a certificate of tenancy all that the Board could do is to ascertain from the Register whether the applicant is the tenant. If his name has been entered as the tenant the Board will give the certificate. If his name does not appear in the Register as the tenant no certificate could be given by the Board to him. He thus maintained that the Board in giving a certificate of tenancy performs a purely administrative function. Learned Senior Attorney also stressed the fact that S. 35(2) of the Rent Act, which makes provision for the giving of a certificate of tenancy by the Board, makes no reference to and does not contemplate the

holding of an inquiry or the making of any order by the Board. By way of contrast he drew our attention to several sections in the Act which specifically provided for an inquiry and the making of an order by the Board, such as, for instance, sections 13(1), 13(4), 14(2), 20 (1), 25 (1) 34 and 36 (4). He therefore contended that the scheme of the Rent Act revealed that in giving a certificate of tenancy the Board is called upon to perform not a quasi-judicial but a purely administrative function. In holding an inquiry into the defendant's application P 1 and in deciding that the defendant was not the tenant, the Board, it was thus contended, had acted without jurisdiction and the order P 3 of the Board and the order P 4 of the Board of Review were accordingly of no force or effect in law.

On a careful consideration of the provisions of the Rent Act, I am of the opinion that a Rent Board has the power to inquire into and decide on a disputed question of tenancy arising out of an application made by a tenant for the grant of a certificate of tenancy to him. S. 35(1) of the Act enacts that a landlord shall, upon being requested to do so by the tenant, give to him a certificate of tenancy relating to the premises in the prescribed form. S. 35(2) provides for a case where the landlord refuses to give the tenant such a certificate. In such a case the Rent Board is required, upon application made to it by the tenant, to give to him a certificate. S. 39(1) stipulates that every application to the Rent Board under the Act must be made in such a manner as is prescribed. It is not in dispute that the application made by the defendant is in the prescribed form. S. 39(3) of the Act stipulates that before making 'any order upon any application under this Act, the Board shall give to all interested parties an opportunity of being heard and of producing such evidence, oral or documentary, as may be relevant in the opinion of the Board. The language used in this subsection is plain, clear and unambiguous. It is of the widest possible import and includes every application authorised to be made under the Act. It would include an application made by the tenant under S. 35(2) of the Act for a certificate of tenancy. It also empowers the Board to make any order upon the application made to it. A logical consequence of the submission, if accepted, of learned Senior Attorney would be to curb the power of the Rent Board to give certificates only to tenants whose names are entered as such in the Rent Register maintained under S. 37(1). As pointed out by

learned counsel for the plaintiff there is nothing either in S. 35 or in S. 37 to indicate that they should be read together. They are two distinct and separate sections independent of each other. There is no reason to give a narrow construction to S. 35(2) as urged by learned Senior Attorney. Moreover the form prescribed by regulation 44 of the regulations framed under the Rent Act – Form B set out in Schedule D – shows that the date of the 'decision' of the Rent Board to give the certificate must be inserted in the certificate. The form of the certificate also provides for a statement to the effect that the Board 'after due inquiry' was 'satisfied that the tenant is entitled to a certificate of tenancy'. S. 43(5) of the Act stipulates that any regulation made by the Minister shall when approved by the House of Representatives be as valid and effectual as if it were enacted in the Act itself. The form prescribed by regulation 44 thus has the force of law as fully as if it had been enacted in the Act – vide S. 17(1)(*c*) of the Interpretation Ordinance, (Chap. 2). The form therefore fortifies the view that the Rent Board has the power to inquire into and to decide to give a certificate of tenancy to the tenant, in a case where the landlord has refused to give one. The submission of learned Senior Attorney therefore fails.

The next question that arises for our consideration is the legal effect of the two orders, P3 and P4, made by the Rent Board and the Board of Review respectively. Learned counsel for the defendant submitted to us that the decision of the Board of Review was final and conlusive – S. 40(11) of the Rent Act – and that it could not be challenged collaterally in the present action. In support of this submission he relied on the decision of the former Supreme Court in *Ponniah Rathnam Nadar v. D. M. Appuhamy (1)* Where Ismail, J. (with Wimalaratne, J. and Ratwatte, J. agreeing) held that where a Rent Board, under S. 16A of the Rent Restriction Act as amended by Act No.10 of 1961, has determined the amount of the authorised rent of the premises from which no appeal is taken to the Board of Review, it is not open to the tenant to canvass the validity of the order of the Rent Board in the course of proceedings in a court for his ejectment from the premises on the ground of arrears of rent. Ismail, J. expressed the view that the proper remedy of the tenant was to have appealed against the order of the Rent Board and that, not having done so, the tenant is precluded

from challenging the correctness of the order of the Rent Board determining the amount of the authorised rent in the course of the action. The section corresponding to S. 16A of the Rent Restriction Act is S. 34 of the present Rent Act, No.7 of 1972, as amended by Act No.55 of 1980. The provisions relating to the grant of a certificate of tenancy are contained in S. 16B of the Rent Restriction Act, as amended, and in S. 35 of the present Rent Act and are identical. According to these provisions a certificate of tenancy given by the landlord to a tenant is admissible in evidence and is prima facie evidence of the facts stated therein. They further stipulate that where the Rent Board on a refusal of the landlord to give the tenant a certificate of tenancy gives to the tenant a certificate, such a certificate of tenancy given by the Rent Board is deemed to be a certificate of tenancy given by the landlord to the tenant. The legal consequence of this provision is that the certificate given by the Rent Board must also be taken to be admissible in evidence and to be prima facie evidence of the facts stated therein. If this be so, a landlord or tenant will not be precluded from challenging the correctness of the facts stated in the certificate given by the Rent Board when in proceedings in a court of law reliance is sought to be placed on the certificate. Hence it seems to me that the contents of a certificate of tenancy given by the Rent Board are not final and conclusive. There is no specific legal provision relating to the effect of a refusal by the Rent Board to give a certificate of tenancy. But considering the fact that the Rent Board is required to inquire into and arrive at a decision in proceedings which are of a judicial nature, a refusal by the Rent Board to give a certificate may reasonably be taken to be prima facie evidence of the fact that the applicant is not the lawful tenant of the premises where the ground of refusal is for the same reason.

In the instant case the defendant appealed to the Board of Review from the order of the Rent Board. S. 40(4) of the Rent Act by its proviso permits an appeal to the Board of Review only upon a matter of law. In this respect there is a departure from the corresponding provision contained in S. 21(4) of the Rent Restriction Act which gives an aggrieved person a right of appeal from any order of the Rent Board. It becomes clear from a perusal of the order of the Board of Review (P4) that the appeal of the defendant was not on a matter of law. It involved only questions of

fact. The Board of Review was therefore not competent to entertain this appeal. The decision of the Board of Review on such an appeal is, in my view, devoid of any legal force. It cannot attract for itself the character of finality and conclusiveness which only a decision on a proper appeal upon a matter of law is vested with. The opinion I have formed is therefore that the order of the Board of Review (P4) is of no legal effect and does not preclude the defendant from seeking to establish in this action that he is the lawful tenant of the premises in suit. I also hold that in view of the special statutory provisions contained in the Rent Act relating to the grant of a certificate of tenancy the decision of the Supreme Court in *Ponniah Rathnam Nadar v. D. M. Appuhamy* is clearly distinguishable and the principle enunciated therein has no application to the facts of this case. I might also add that in *Ranasinghe v. Jayatillake (2)* Fernando, C. J. (with Weeramantry, J. agreeing) made certain observations which seem to suggest that a determination of the amount of the authorised rent under S. 16A of the Rent Restriction Act by the Rent Board may be contested in a court of law.

For the above reasons the appeal is allowed. The judgement of the learned District Judge is set aside. Issue No. 6 is answered in the affirmative and the case is remitted to the District Court for trial on the other issue. The defendant will be entitled to a sum of Rs. 1050/– as costs of the abortive trial and of this appeal.

MOONAMALLE, J.–I agree.

Appeal allowed.