

A. L. M. MUZAMIL AND OTHERS
v.
REHABILITATION OF PROPERTY AND
INDUSTRIES AUTHORITY (REPIA) AND OTHERS

COURT OF APPEAL.

TAMBIAH, J. AND T. D. G. DE ALWIS, J.

C. A. APPLICATION No. 1368/83 AND 1373/83.

MARCH 14, 15, 19, 20, 21, 22 AND 23, 1984.

Writs of Prohibition and Certiorari – Landlord and Tenant – Destruction of premises – Rehabilitation of Property and Industries Authority (REPIA) – Regulations 4, 5, 9, 13, 14 and 19 made under section 5 of the Public Security Ordinance published in Government Gazette (Extraordinary) No. 257/3 dated 7.8.1983 – Jurisdiction to make demolition order – Failure to hear parties before order for demolition – Bona fides – Locus Standi – Necessary parties.

Abdeen Building owned by M. S. M. Faleel the 2nd respondent (in both applications) and two others was situated at the intersection of Prince Street and 2nd Cross Street in Pettah. The building consisted of a ground floor comprising 8 assessment units and an upper floor comprising 7 assessment units. Each unit had a separate tenant carrying on business. The petitioners in application No. 1368/83 were tenants of premises No. 128, Prince Street on the ground floor where they conducted a business under the name and style of "City Industrial Enterprises" while the petitioners in Application No. 1373/83 were tenants of premises No. 126, Prince Street also on the ground floor where they traded under the name and style of "Abdul Kaiyoom and Company"

Abdeen building was set on fire during the communal riots of July 1983 and, while it is not disputed that the roof of the building was completely burnt the parties were at variance on the extent of the damage to the divided portions of the upper floor, the concrete slab and the ground floor walls.

On 15.8.83 the 2nd respondent made an application to the 1st respondent (REPIA) stating that the existing building which was 50 years old was gutted by fire during the riots and was beyond repair and in danger of collapsing making physical occupation hazardous to the occupiers, to the neighbours and to passers – by. He therefore proposed to demolish the building and re-construct a new four-storeyed building in conformity with the Urban Development Authority's New Master Plan within six months and to provide new shops to all his erstwhile tenants of the old building who were interested. On 16.8.83 the 1st petitioner in application No. 1368/83 wrote to the Chairman of REPIA stating that the only damage to premises No. 128 (ground floor) was to the wooden doors while the rest of the shop was not affected except for some plaster falling off the walls. The petitioners in application No. 1373/83 stated that premises No. 126 were not affected or damaged in any way.

An engineer commissioned by the 2nd respondent however confirmed that the building was unstable and structurally unsound and a threat to the safety of the users and neighbours. A certain amount of correspondence ensued among REPIA, U.D.A. and the parties. Finally the Chairman of REPIA (1st respondent) by his letter of 10.11.1983 wrote to the petitioners in the two cases wherein he stated that Abdeen Building "damaged/destroyed during the July 1983 disturbances is to be developed, for which purpose, the premises will be demolished".

The petitioners in the two cases now seek a writ of certiorari to quash the decision set down in the letters of 10.11.1983 sent to them by the Chairman of REPIA.

The 2nd respondent in his affidavit filed stated that during the communal disturbances of July 1983 Abdeen Building (including premises No. 128) was extensively damaged – the first floor being completely gutted and destroyed by fire and the concrete slab over the ground floor cracked at several points making physical occupation of the building including the ground floor extremely dangerous. Further the building was a threat to the safety of the people and the property around the building and needed to be demolished.

The Chairman of REPIA (1st respondent) deposed that the roof of the building was completely gutted, the dividing walls of the upper floor severely damaged and unusable and the upper floor no longer tenanted, the concrete slab separating the upper floor from the ground floor damaged with cracks over a wide area and out of alignment and a potential danger to the occupants of the ground floor and liable to collapse despite temporary supports and the dividing walls of the ground floor extensively cracked. The Chairman of REPIA had reported to the Urban Development Authority (U.D.A.) on 4.10.83 that premises 126 to 138 had cracks on the walls and slab and the building was not safe.

The petitioners took up the position that premises bearing assessment numbers 126 and 128 if viewed as separate units are not affected property. (The position of the respondents was that as Emergency Regulation 19 speaks of "property" and not "premises" Abdeen Building must be viewed as a single entity, a single item of immovable property. Looked at in this way it is clear that the whole building must be regarded as damaged and therefore becomes "affected property")

Secondly the petitioners were not heard before the Order to demolish was made. Thirdly the decisions were not bona fide.

Against the petitioners it was contended that they had no locus standi and that the other tenants also were necessary parties.

Held –

(1) It was conceded that Abdeen Building stands roofless. The respondents claim that the upper floor which serves as the roof of the ground floor is cracked and supported with temporary posts. The dividing walls on both floors are extensively damaged. This is supported with photographs and reports of engineers as against the bare denials and

assertions of the petitioners. In view of this, the contention that premises No. 128 was only slightly damaged and premises No. 126 not at all cannot be accepted. Even if premises No. 126 and No. 128 are considered distinct properties, they are affected properties within the meaning of Regulation 19. The jurisdiction of REPIA to order demolition of the building depends upon whether or not the property can be regarded as "affected property". The 1st respondent therefore had jurisdiction to make the orders contained in the impugned letters of 10.11.83. The decision to demolish the building is *intra vires* Regulation 4(a). Regulation 5(a) permits REPIA to perform the functions of demolition and construction through an agent. REPIA has authorised the 2nd respondent as its agent to perform these functions.

(2) There was evidence that the future of the building was discussed with the parties and their lawyers at various meetings and there was correspondence to that effect. It cannot therefore be said that the petitioners were not given a hearing before the decision to demolish was made.

(3) There is no basis for the allegations that 1st respondent (REPIA) had given undue weightage to the landlord's representations and safeguarded his interests only and not given consideration to the rights and interests of the tenants. Therefore the allegation that the orders were not made bona fide is untenable.

(4) The petitioners made this application to Court on the footing that the premises occupied by them are not affected properties and therefore not vested in the State. They claimed to be tenants under the 2nd respondent and to be protected by the Rent Act. They are before Court as aggrieved parties who say that the demolition order will affect their rights and interests. They have therefore a *locus standi* to make this application

(5) The upper floor tenants were necessary parties to the proceedings because if the Court granted the relief the petitioners prayed for the tenants of the upper floor would be adversely affected as Abdeen Building would continue to have a roofless upper floor

APPLICATION for writs of Prohibition and Certiorari

Eric Amerasinghe, P.C. with N. S. A. Goonetilleke, R. Manickavasagar, Sarath Ratnayake, and (Miss) D. Guniyangoda for the petitioners in both applications.

J. W. Subasinghe, P.C. with Lakshman Perera and (Miss) E. M. S. Edirisinghe for the 1st respondent.

K. N. Choksy, P.C. with M. Zuhair and Kumar Nadesan for the 2nd respondent.

K. M. M. B. Kulatunga, P.C. Solicitor-General with K. C. Kamalabeyesan, Senior State Counsel, for the 3rd respondent.

June 11, 1984.

TAMBIAH, J.

The building called "Abdeen Building" is situated at the intersection of Prince Street and 2nd Cross Street, Pettah, Colombo 11. The building consists of a ground floor and an upper floor. Under s. 233 (1) of the Municipal Councils Ordinance, the Municipal Council has, for the purpose of assessment, divided the said building and assessed each divided portion separately, in respect of rates leviable under the said Ordinance. The numbers assigned to each separate portion are :-

Ground Floor – No. 63, 2nd Cross Street. Nos. 126, 128, 130, 132, 134, 136 and 138, Prince Street.

Upper Floor – Nos. 126 1/1, 126 1/2, 126 1/3, 126 1/4, 126 1/5, 126 1/6, 126 1/7, Prince Street.

There are three co-owners of the building, one of whom is the 2nd respondent. Each of the portions separately assessed were in the occupation of various tenants under the co-owners. There were eight tenants on the ground floor and seven tenants on the upper floor. They were all carrying on business in their respective premises. The petitioners in *Application No. 1368/83* are tenants of premises No. 128 (ground floor) and are carrying on business under the name of "City Industrial Enterprise". The petitioners in *Application No. 1373/83* are tenants of premises No. 126 (ground floor) and are carrying on business under the name of "Abdul Kaiyoom & Company".

According to the petitioners in *Application No. 1368/83* during the communal disturbances which commenced on or about 25.7.83, although parts of "Abdeen Building" were damaged, other parts of the building were not affected substantially. The 1st petitioner, in his letter dated 16.8.83 to the Chairman, Rehabilitation of Property and Industries Authority (annexure 'B') stated – "The only damage was to the wooden doors. The rest of our shop was not affected except for some plaster falling off the walls". The petitioners in *Application No. 1373/83* state that premises No. 126 "were not affected or damaged in any way".

The 2nd respondent's position is very different. He states in his affidavit – "Abdeen Building including No. 128, was extensively damaged and set on fire during the communal disturbances. The roof

and the 1st floor of the building were completely gutted and destroyed by fire while the ground floor was extensively damaged making physical occupation of the ground floor not possible and extremely dangerous inasmuch as the concrete slab had cracked at several points. Presently, there is no 1st floor and the condition of what remains of the ground floor is such that the concrete slab and such portions could suddenly collapse, gravely endangering both occupants and users of the busy appurtenant roads”.

The building was examined by the 2nd respondent's building engineer on 20.9.83 and in his Report (annexure 2 R1) dated 22.9.83, the engineer states that he carried out a complete inspection of the upper floor, and that as regards the ground floor, inspection was possible only in respect of two premises, as the others were closed up and hence inaccessible. In regard to the damage he states – “The brick work in the walls have been set in lime/sand mortar and portions of the walls are completely destroyed at several places, especially at the upper floor level. In those areas where the wall remains, cracks have appeared and joints opened up, making them unstable by themselves. The entire roof has been burnt and the remains consist of a few pieces of partly burnt roof timber, hanging from the walls. The doors and windows at the upper floor level are completely burnt and non-existent. Reinforced concrete lintels over the doors and windows are completely burnt and non-existent. The floor slab is badly cracked and distorted, arising out of damage to the supporting structure. The walls of the two ground floor premises inspected, showed damaged plaster work, cracks in the brick work, and cracks in the soffit of the upper floor slab, with evidence of water leaking through. Perhaps, similar conditions prevail in the other ground floor premises as well. Based on the observations and the general condition of the premises, I am of opinion that the remains of the building are structurally unsound, and is extremely unsuitable for occupation in any manner. Furthermore, it is a threat to the safety of the people and the property around the building, and hence fit for demolition as soon as possible”

The Chairman of the 1st respondent, whose decision, which is contained in his letter dated 10.11.83, (annexure “E”) is sought to be quashed on certiorari, has filed his affidavit. According to him, by reason of the riot or civil commotion which took place on or after 24.7.83, the roof of the building was completely burnt or destroyed

the divided portions of the upper floor were extensively damaged, they no longer can be utilised for any purpose whatsoever, and the tenants of these portions are not in occupation thereof ; in proof of the extent of the damage to the upstairs floor, he has annexed photographs 1R1 (A) to 1R1(I) ; the concrete slab separating the upper floor and the ground floor, is extensively cracked and damaged and is out of alignment owing to the damage sustained by the supporting walls of the ground floor ; the slab constitutes a potential danger to the occupants of the divided portions on the ground floor as it may collapse notwithstanding temporary supports ; that the walls of the divided portions on the ground floor are also extensively cracked.

The Chairman of the 1st respondent has also annexed the Report (1R3F (1)) dated 4.10.83 sent to him by the Urban Development Authority. The Report relates to damaged buildings in Pettah and is by the U.D.A. Engineer. According to this Report, premises Nos. 126 to 138 "had cracks on the walls and slab. Hence the building is not safe"

The 1st petitioner in *Application No. 1368/83* filed his counter-affidavit in reply to the affidavits of 1st and 2nd respondents on 12.3.84. This was after the application was fixed for hearing for 2.2.84 and re-fixed for 13.3.84. He admitted that the roof of the building was completely burnt or destroyed but, however, denied the 1st respondent's assertions that the divided portions of the upper floor were extensively damaged and are no longer usable and that the tenants have left ; he also denied the damage to the concrete slab and to the ground floor walls spoken to by the Chairman of REPIA. He also denied the assertions of the 2nd respondent as regards the damage to the 1st floor, the ground floor and the concrete slab.

The Rehabilitation of Property and Industries Authority ("REPIA") is a body corporate established under Regulations made under s. 5 of the Public Security Ordinance and published in the Government Gazette (Extraordinary) No. 257/3 dated 7.8.83. The Regulations pertinent to the matters we have to decide are –

Reg. 4

"The functions of REPIA shall be–

- (a) the repair and restoration of affected properties ;
- (b) the rehabilitation of affected industries and businesses"

Reg. 5

"For the purpose of discharging its functions REPIA may exercise all or any of the following powers :—

- (a) to acquire in any manner, and hold, take, or give or lease or hire, mortgage, pledge, sell or otherwise dispose of, any movable or immovable property ;
- (b) to clear and re-develop affected property vested in the State under these regulations ;
- (c) to enter into and perform directly or through Government departments, public corporations, or any agent authorized in that behalf all such contracts as it may consider necessary for the discharge of its functions ;
- (d) to accept gifts, grants, donations or subsidies whether in cash or otherwise, and to apply them in the discharge of its functions."

Reg. 9

- "(1) Every affected property, industry or business shall, with effect from the date these regulations come into force, vest absolutely in the State free from all encumbrances.
- (2) Where any question arises as to whether any property, industry or business is an affected property, industry or business, such question shall be decided by REPIA by a declaration in writing and such declaration shall be final and conclusive and shall not be called in question in any Court in any proceedings whatsoever."

Reg. 13

- "(1) No person shall unless he has been authorized in writing by REPIA enter, remain in, or occupy any affected property.
- (2) Any person who contravenes the provisions of this regulation shall be guilty of an offence under these regulations."

Reg. 14

"(1). Notwithstanding that any affected property, or industry or business has vested in the State by reason of the operation of these regulations REPIA may at any time by Order published in the Gazette divest such property, industry or business.

(2) The following provisions shall apply to a divesting Order made under paragraph (1) :-

(a) the property, industry or business shall be deemed never to have vested in the State by reason of the operation of these regulations and any question which may arise as to any right, title or interest in or over such property, industry or business shall be determined accordingly.

(b) the divesting Order shall have the effect of reviving any arrangement, agreement or other notarially executed instrument in and over that property, industry or business subsisting on the date on which such property, industry or business vested in the State."

Reg. 19

"In these regulations-

'affected property' means any immovable property damaged or destroyed on or after July 24, 1983, by riot or civil commotion and includes any immovable property used for the purposes of an affected business or industry.

'affected business' or industry" means any undertaking of a commercial or industrial nature damaged or destroyed on or after July 24, 1983, and includes subject to the provisions of these regulations, all rights, powers, privileges and interests arising in or out of such undertaking."

Let me set out the sequence of events that results in the writing of the letters "B" (Application No. 1368/83) and "C" (Application No. 13/3/83) which are sought to be quashed in these proceedings.

On 15.8.83 the 2nd respondent made an application to the 1st respondent in the prescribed form (2 R 4(b)). He stated that the existing building which is nearly 50 years old was gutted by fire during the recent riots, is beyond repair and in a dangerous state of collapsing with the first heavy rainfall ; that he proposes to re-construct a new 4 storeyed building in place of the present 2 storeyed one, in conformity with the U.D.A. New Master Plan ; that he would complete construction of the new building within six months with his own funds ; that the tenants in the upper floor cannot be provided with shops unless a new building is constructed ; that he agrees to provide new shops to all tenants who are interested. He sought permission to demolish the remains of the gutted building and to construct the new one. He stated that the property could be divested after the existing tenants are given possession of the respective shops in the ground and upper floor.

On 16.8.83, the 1st petitioner (in Application No. 1368/83) wrote the letter (B) to the Chairman of REPIA. He stated that business was not affected during the recent disturbances and is not covered by the definition of "affected business or industry", and that the only damage was to the wooden doors at premises No. 128 and that some plaster was falling off the walls. He asked for a ruling in regard to the condition of the business in so far as the Emergency Regulations are concerned. He annexed a declaration (B 1) to the prescribed form. In answer to the query- "Do you propose to re-condition/repair/re-establish the affected property, business or industry out of your own resources", his answer was "Yes".

The 2nd respondent says that he sent through his Attorney letters dated 18.8.83 to all tenants indicating his decision to construct a new four-storeyed building after obtaining permission from the REPIA and the U.D.A., and of his willingness to rent out the new shops to his tenants. A letter sent to one such tenant, one Senaratne, has been annexed (2R2). According to him, all the tenants have agreed to his suggestion except the petitioners in both applications. The petitioners, however, have denied this.

The Chairman of REPIA wrote to the 1st petitioner on 5.9.83 (C) that in terms of the Regulations, he declares that M/s. City Industrial Enterprise is not an affected business for the purpose of the Regulations and to obtain the prior approval of the Urban Development Authority and or the local authority before commencing any development activities or repairs.

On 13.9.83, the Chairman of REPIA, wrote to all tenants, including the petitioners, to attend an inquiry on 21.9.83 in regard to divesting of the premises/business. (1R4A).

On 14.9.83, the Chairman of REPIA wrote to the 1st petitioner (B) as follows— "The above business has been divested on 5.9.83. If the owner is not attending to the repairs you may plaster the inside walls at your expense."

On the same date (1R3A of 14.9.83) the Chairman of REPIA wrote to the Chairman, U.D.A., stating that as the U.D.A. had other plans for the land covered by "Abdeen Building", the premises have not been divested to the 2nd respondent ; that he understands from the 2nd respondent that U.D.A.'s original decision to use the land for other purposes has since been altered and that it is possible for the owner to undertake rebuilding activities , he requested the U.D.A. to grant to the 2nd respondent permission to reconstruct his property, that it is intended to divest the property once agreements are reached between the former owner/tenants.

On 15.9.83, the Chairman of REPIA wrote to the O.I.C, Pettah Police Station, (1R2), informing him that the various premises in "Abdeen Building" are "affected properties", that certain tenants, including tenants of premises No. 126 and 128 were given authority to resume business only without any further rights to enable them to collect dues from previous customers : that the 2nd respondent has made representations that five tenants, including M/s. City Industrial Enterprise are in the process of doing repair to some parts of the premises for which they have received no authority and requesting Police action to prevent these tenants from exceeding the authority given to them until REPIA takes action to divest the properties.

On 20.9.83, the 2nd respondent's engineer inspected the property and on 22.9.83 gave his report (2R1) referred to above.

The Chairman, REPIA, states that as only the tenant of premises No. 138 turned up at the inquiry on 21.9.83, the inquiry was held on 26.9.83, on which date the petitioners and some tenants were represented by Attorneys-at-Law and matters relating to the demolition of "Abdeen Building", the construction of a new building and letting of portions to previous tenants were discussed. The Note made by the Chairman at this inquiry has been annexed (1R4B) to his

affidavit. According to this Note, the petitioners in both applications have been represented by lawyers. The Note states that except for Senaratne, other tenants have not indicated anything to the landlord : the lawyer for Abdul Kayoom & Co. stated that premises No. 126 was not affected and no application was made for divesting of premises. The lawyer appearing for M/s. City Industrial Enterprise and for some of the other tenants had stated that all ground floor premises need very minor repairs : this was not allowed. The Note concludes that a decision will be taken after U.D.A. approval is forthcoming on the future of the building.

On 27.9.83, U.D.A. replied to the letter of the Chairman of REPIA dated 14.9.83 (1R3B). In the said letter 1R3B, U.D.A. inquires whether REPIA will permit the owner to reconstruct the buildings on the understanding that the properties will remain vested in the State till such time an agreement between the landlord and tenants is reached subsequently.

In continuation of the letter (1R3A), the Chairman wrote to the U.D.A. (1R3C of 3.10.83) stating that the 2nd respondent and the other co-owners wish to re-develop the property, and that REPIA has no objection to this ; that demolition of the property will be permitted once the building plans are approved by the U.D.A. : that the property will continue to be vested in the State until completion of construction and that the co-owners have agreed to this.

The Chairman of REPIA was sent a letter by the U.D.A dated 8.11.83 forwarding a report dated 4.10.83 (1R3F (1)) relating to damaged buildings in Pettah, referred to above.

On 7.11.83, U.D.A. informed the 2nd respondent (1R3D) that his building plans conform to U.D.A. building and planning requirements and that the permit will be issued on payment of a service charge of Rs. 360,000/- in lieu of the three parking spaces which he is not able to provide within the premises. A copy of this letter was sent to REPIA.

The Chairman of REPIA on 10.11.83 wrote to the 2nd respondent (1R3E) authorising him to commence demolition operations, and requesting the latter to grant 14 days for the tenants to vacate the premises, before commencing demolition work.

On the same date (10.11.83), the Chairman of REPIA wrote two letters dated 10.11.83, the letter 'C' to the Manager, M/s. Abdul Kayoom & Co., and the letter 'E' to the Manager, M/s. City Industrial Enterprise stating that "Abdeen Building" that was "damaged/destroyed during the July 1983 disturbances are to be developed, for which purpose these premises will be demolished."

The petitioners in *Application No. 1368/83*, have annexed the letter 'P' dated 11.10.83 written by their attorney-at-law to the Chairman of REPIA to their counter affidavit dated 12.3.84. The postal receipt also has been annexed (P 1). The letter states :

"You will recall that my clients both wrote to you and at an interview pointed out that neither the above premises nor their business had come under the definition of an affected business or industry or affected property as set out in your regulations. You will also recall that our clients requested you to inspect their premises and confirm this, which you duly did. Thereafter by letter dated 14.9.83, you informed my clients that their business 'has been divested on 5.9.83'. Further you informed them that they could attend to any repairs if the owner was not doing so.

The question of whether the above premises of which my clients are tenants was an 'affected property' was never considered by you nor any decision taken in regard to this question. However, the landlord of my clients Mr. M. S. M. Faleel of Beruwela has repeatedly visited his various tenants in this building and informed them that he was in constant touch with REPIA and would see that they took over this building and put out all the tenants. My clients nevertheless did not think that you would act unfairly towards them or fail to give them a hearing if the question of whether this was an 'affected property' arose. Nor did they think that you would join hands with the landlord in his attempts to oust them from these premises.

However, my clients were astonished to find that their aforesaid landlord came and handed to them a letter signed by you and addressed to my clients which said letter was dated 10.11.83 and purported to inform my clients that the entire building including the premises occupied by my clients would be demolished. It is clear now that this conduct on your part is lacking in bona fides and is completely outside the scope of the regulations governing and

bringing into existence REPIA. The very fact that this letter was delivered to my clients through their landlord confirms what he has been saying all along and my clients have no alternative but to conclude that the issue of such a letter without giving them a hearing or even going into the question of whether they are "affected premises" is something that has been procured by their landlord mala fide and without even a consideration of the purposes for which REPIA was created and the powers and authorities conferred on it.

It is the position of my clients that REPIA has no power, authority or jurisdiction to demolish the premises in which my clients are carrying on business or indeed do anything in respect of the entire building which will affect the business carried on by my clients on the premises occupied by them as tenants."

The letter concluded by requesting the Chairman of REPIA to refrain from taking action as contemplated in the letter of 10.11.83 failing which, his clients will have to have recourse to Courts for relief.

It is the position of the Chairman of REPIA that the letters 'C' and 'E' were sent to the petitioners by post and copies thereof were handed to the 2nd respondent for his information and the copies appear to have been handed over by 2nd respondent to the petitioners. It is also his position that at the inquiry held on 26.9.83, matters relating to "Abdeen Building", including the demolition thereof, the construction of a new building and the letting of portions therein to previous tenants were discussed and that he disclosed the contents of the document dated 15.8.83 (2R4B) tendered to the 1st respondent by the 2nd respondent.

All learned Counsel agreed that the two Applications be consolidated and heard together, and that the arguments advanced apply to both Applications.

The jurisdiction of the 1st respondent to order the demolition of "Abdeen Building" depends upon the existence of a particular fact, namely, the property must be "affected property". While Mr. Eric Amerasinghe submitted that premises Nos. 126 and 128 are not affected properties within the meaning of Regulation 19 and therefore the 1st respondent had no jurisdiction to order demolition. Mr. Subasinghe, Mr. Choksy and Mr. Kulatunga submitted that the

term used in the said Regulation is "property" and not "premises" : that "Abdeen Building" must be viewed as a single entity, as a single item of immovable property ; if so considered, they submitted, where a part of the building is damaged, the whole building is damaged and therefore becomes "affected property".

It is not in dispute that "Abdeen Building" stands roofless. The parties are at variance as regards the condition of the upper and lower floors. While the Chairman of REPIA, whose inspection of the premises has been admitted by the petitioners (annexure P1), and the second respondent maintain that the divided portions on the upper floor have received extensive damage and cannot be used, and support their position with photographs and reports from engineers, there is only the bare denial of the petitioners. There is overwhelming evidence that the upper floor portions are badly damaged. So, 50 per cent of the property is gone.

Let us assume that Mr. Amerasinghe is right in his submission that each portion separately assessed is an independent entity and is property within the meaning of Regulation 19. What is the evidence in regard to the condition of premises Nos. 126 and 128 ? The petitioners in *Application No. 1373/83* say that premises No. 126 are not damaged in any way. The petitioners in *Application No. 1368/83* say that the only damage to premises No. 128 is to the wooden doors and that some plaster has fallen off the walls. There are no contra reports by their engineers ; not even photographs have been produced. The 1st petitioner denies any damage to the concrete slab which separates the two floors and serves as a roof for the ground floor.

On the other hand, as regards the damage to the concrete slab, the Chairman of REPIA says that it is extensively cracked, is out of alignment and is propped up by temporary supports. According to him, the walls of the divided portions on the ground floor are also extensively cracked. The U.D.A. engineer's report states that premises Nos. 126 and 128 had cracks on the walls and the slab and the report supports the Chairman's position.

There is also the 2nd respondent's affidavit, according to which, the slab is cracked at several points and he too supports his statement by an engineer's report to the effect that the slab is badly cracked and distorted.

In this state of the evidence, I cannot accept the 1st petitioner's denial of the damage to the concrete slab, nor the position of the petitioners that premises No. 128 was only slightly damaged, nor their position that there was no damage at all to premises No. 126.

It is to be noted that to the query in document 'B', whether the petitioners proposed to recondition/repair/re-establish the affected property, business or industry out of their own resources, their answer was in the affirmative. It is also to be noted that the petitioners in their letter 'B', asked for a ruling in regard to the position of their business only, and received the letter 'C' declaring the business as not an "affected business". It is not unreasonable to conclude that they refrained from asking for a ruling in regard to premises No. 128, because they considered "Abdeen Building", inclusive of premises No. 128, an "affected property" within the meaning of Regulation 19.

Even if premises Nos. 126 and 128 are considered separate distinct properties, I hold, on the material before court that they are damaged properties and therefore affected properties within the meaning of Regulation 19. The 1st respondent, therefore, had jurisdiction to make the decision contained in letters 'C' and 'E', dated 10.11.1983.

The 2nd ground of attack is that the petitioners were not heard before the decision for demolition was made. It is Mr. Amerasinghe's position that in the letter 'B' dated 16.8.83 written by the 1st petitioner to the Chairman of REPIA, he stated that the only damage was to the wooden doors and that except for some plaster peeling off the walls, the rest of the shop was not affected. By his letter 'D' dated 14.9.83, the Chairman of REPIA permitted him to plaster the inside walls at his expense. The very next day, the Chairman writes the letter (1R2) to the Officer-in-Charge of the Pettah Police Station stating that representations have been made by the owners of the building that M/s. City Industrial Enterprises were effecting repairs for which no authority was given; that M/s. Abdul Kayoom & Co. and M/s. City Industrial Enterprises were allowed to resume business only to enable them to collect dues from their customers. On 8.11.83, the Chairman of REPIA receives the report of the U. D. A. engineer regarding the condition of the premises. On 10.11.83 the letters 'C' and 'B' were written stating that the building will be demolished. Surely, submits Mr. Amerasinghe, the petitioners should have been heard before the decision to demolish was taken.

The petitioners do not deny that they received the letter dated 13.9.83 (1R4A) written by the Chairman of REPIA asking them to attend an inquiry on 21.9.83 relating to the divesting of premises Nos. 126 and 128. The inquiry was postponed for 26.9.83. As to what happened at the inquiry, the Chairman of REPIA has given his version. He says that the petitioners were represented by lawyers and a number of matters relating to Abdeen Building – including its demolition, construction of a new building and letting of portions to previous tenants were discussed ; that the contents of the 2nd respondent's affidavit (1R4C) particularly the proposal to reconstruct a new 4 storeyed building and to let out the new shops to previous tenants, were disclosed to the lawyers and the parties. The note (1R4B) made by the Chairman of REPIA at this inquiry concludes "decision will be taken after the U.D.A. approval is forthcoming on the future of the building". Do not these concluding words indicate that the demolition of the building was discussed ?

The note (1R4B) confirms the presence of the petitioners and their lawyers at the inquiry. In the counter affidavit filed by the 1st petitioner (*Application No. 1368/83*) there is no specific denial of the version given by the Chairman of REPIA ; nor does he give his version of what transpired at the same meeting.

This being the evidence before Court, I cannot hold that the petitioners were not given a hearing before the decision to demolish was made.

The 3rd ground of attack is that the decision contained in documents "C" and "E" has not been made bona fide. Mr. Amerasinghe contended that the petitioners have been tenants for years and are protected by the provisions of the Rent Act ; that REPIA was established to protect persons affected by and victims of the July violence and disturbances ; that the purpose of the Regulations, inter alia, was the protection of tenancy rights. The petitioners maintained that their business was not affected ('B') and this was confirmed by the Chairman's letter "C", the petitioners maintained that the premises were only slightly damaged and the Chairman confirmed this by permitting the petitioners to plaster the walls ("D"). REPIA in permitting demolition of the building acted in contradiction of the facts which it accepted in its letters "C" and "D". The change in the attitude of REPIA was due to intervention of the owners of the building who influenced REPIA's decision. It was Mr.

Amerasinghe's submission that REPIA had given undue weightage to the landlords and has safeguarded their interests only, and has not considered the rights and interests of the tenants. The power to order demolition was not exercised bona fide, he said.

There is nothing objectionable to the owners of the building representing matters to REPIA ; surely, they were more affected than the petitioners and are more concerned about the future of their building. Does the documentary evidence in the case bear out the petitioners' allegation that there was a shift or a change in the thinking and attitude of REPIA and that 'REPIA was only safeguarding the interests of the owners at the expense of the interests of the tenants ? It does not.

By letter 'B' the petitioners only asked for a ruling in regard to their business. In the letter 'C', the Chairman confined his ruling to the business only ; the words "property" and "industry" were deleted. In letter 'D', the Chairman granted permission for the plastering of the walls ; this can only be on the footing that the building is "affected property" and therefore vested in the State. Neither of the letters 'C' nor 'D' state that the building was not vested in the State. I cannot see how the decision to demolish in the impugned letters is inconsistent with the position taken up in "C" and "D" by the Chairman of REPIA.

The Chairman's concern for the tenants is evidenced by the documents 1R3A, 1R3B, 1R3C and 1R3D. The Chairman of REPIA informed the U. D. A. that the property will be divested once agreements are reached between the owners and the tenants (1R3A). To the query by U.D.A. whether reconstruction will be permitted on the understanding that the property will remain vested in the State until agreements are reached between the landlords and the tenants (1R3B), the Chairman's reply was that the co-owners have agreed that the properties will continue to be vested in the State until construction work is completed (1R3C). The Chairman also requests the owners to give the tenants 14 days to vacate before commencing demolition (1R3B).

There is no basis for the petitioners' allegation that the decision to demolish was not made bona fide.

Undoubtedly, and it is a matter that a Court can take judicial notice of, in July 1983, houses and possessions, boutiques and shops, factories, industries and business premises were damaged or

destroyed. It is against this background that REPIA was established. Mr. Amerasinghe, therefore, finally submitted that even if premises Nos. 126 and 128 are considered 'affected properties', REPIA could only repair and restore and that the decision that the entire building would be demolished is one made ultra vires the Regulation 4(a); to demolish is outside the scope of REPIA's functions; that assuming REPIA had the right to demolish the property with a view to re-develop it, REPIA cannot hand over the performance of these operations to the owner of the building.

Regulation 4 specifies REPIA's functions. Regulation 5 specifies the powers given to REPIA to fulfil its functions. The functions are, inter alia, to "repair and restore" affected properties, (Reg. 4 (a)) but, REPIA is empowered to "clear and re-develop" affected property (Reg. 5 (b)). The definition of affected property in Regulation 19 speaks of "property damaged or destroyed". What then is the meaning to be given to the expression "to repair and restore"? The ordinary meaning would be to effect repairs and bring back to original state. The words to "clear and re-develop" connote construction of a new building.

"It is one of the cardinal principles of the interpretation of statutes that, where the language is plain and unambiguous and admits of but one meaning, the Courts must give effect to it according to its plain meaning. It is however, equally well settled that the meaning of the words used in any portion of the statute must depend upon the context in which they are placed. Moreover, in interpreting an enactment all its parts must be construed together as forming one whole and it is not in accordance with sound principles of construction to consider one section, or group of sections alone, divested from the rest of the statute. Further, so far as possible, that construction must be placed upon words used in any part of the statute which makes them consistent with the remaining provisions and with the intention of the legislature to be derived from a consideration of the enactment. . . . Every effort should be made to find such a meaning as will give operation and effect to every part and provision of the enactment. The Court should endeavour, so far as practicable, to reconcile the different provisions so as to make them harmonious and sensible. As far as possible, each provision must be constructed so as to harmonise with all others."— (*Bindra's Interpretation of Statutes, 6th Edn. pgs. 240, 244*).

The Regulations themselves contemplate damaged as well as destroyed properties. It seems to me that Regulation 4 (a) and 5 (b) are complementary, Regulation 4 (a) must be read in conjunction with Regulation 5 (b) and a meaning be given to the words "repair and restore" that is consonant with the words "clear and re-develop". If the function of REPIA is only to repair and restore, then, why empower it to "clear and re-develop" ? A statute is designed to be workable and it must be construed so as to make it workable (Bindra, p. 304). So, in the context of a damaged building which could be repaired, REPIA's function is to repair and restore to its original condition ; in the context of a damaged building beyond repair or where it is completely destroyed, a wider meaning should be given to the words "repair and restore"— to clear and re-construct a new building. Where repair is appropriate, REPIA can restore by repairing ; where repair is inappropriate, REPIA can restore by clearing and re-constructing a new building. On the report of the engineer that "the remains of the building are structurally unsound and extremely unsuitable for occupation. . . . and a threat to the safety of people and property around the building" the only decision REPIA could have made, was to demolish and re-build.

I hold that the decision of REPIA to demolish the building is *intra vires* Regulation 4(a).

In regard to the submission that REPIA cannot hand over the demolition and construction to the 2nd respondent, Regulation 5(c) permits REPIA to perform these functions through its agent. REPIA has authorised its agent, the 2nd respondent to carry out these operations. This submission also fails.

Both Mr. Subasinghe and Mr. Choksy argued that the petitioners cannot maintain their applications as the tenants of the other portions of "Abdeen Building" would be adversely affected, if this Court issued the Writs asked for. Mr. Subasinghe went further and contended that the U. D. A. is also a necessary party ; he also contended that it will be futile to issue the Writs asked for, as any order made by this Court will not bind the U. D. A. as it has power to acquire and demolish "Abdeen Building" under the Urban Development Authority Law, No. 41 of 1978, as amended by Act, No. 4 of 1982. He also submitted that it is in the public interest to demolish and rebuild "Abdeen Building" and

Writs will not issue if the result of award of the remedy is adverse to the public interest. Mr. Choksy further submitted that the petitioners have no status in law to maintain their applications.

I propose to deal with only two of the matters that have been raised—whether the petitioners have locus standi and whether the other tenants are necessary parties.

Regulation 9 (1) vests every affected property absolutely in the State free from all encumbrances. So, Mr. Choksy argued that the 2nd respondent's title is extinguished ; a lease is terminated, inter alia, by the extinction of the lessor's title to the property. Tenancies are also wiped out. Regulation 13 (1) prohibits any person from entering, remaining in or occupying any affected property. The petitioners, therefore, have no more interests in "Abdeen Building".

I cannot agree with this submission. The petitioners have a locus standi to apply to this Court for relief. They have come to Court on the footing that premises Nos. 126 and 128 are not affected properties and have not vested in the State, that the 2nd respondent is still the owner thereof and they are still the tenants of the premises and protected by the Rent Act. They are aggrieved parties who say that the demolition order will affect their rights and interests.

It is common ground that the ground floor was occupied by eight tenants and the upper floor by seven tenants. I will leave out the ground floor tenants for the moment, though it is significant that only two tenants have applied for Writs. Take the upper floor. The roof of "Abdeen Building" was completely burnt or destroyed, and the photographs clearly show that what remains of the upper floor is only the shell. If "Abdeen Building" stands, the upper floor seven tenants can never get back their divided portions. If the Writs prayed for were to issue from this Court, the net result would be that the ground floor stands for ever with an upper floor that is roofless and is so extensively damaged that it cannot be utilised by the previous seven tenants. Surely, they will be adversely affected by any orders made by this Court. They ought to have been parties to these applications and heard before any orders are made by this Court.

I hold that, at least, the seven tenants of the upper floor of "Abdeen Building" are necessary parties and the failure to make them respondents is fatal to the petitioners' applications.

I dismiss both Applications (Nos. 1368/83 and 1373/83), but having regard to all the circumstances, I make no order for costs.

The order directing the 1st respondent to stay all further action or proceedings in regard to the demolition of "Abdeen Building" will cease to operate.

T. D. G. DE ALWIS, J.—I agree.

Applications dismissed.
