MAGINONA
v.
COMMISSIONER FOR NATIONAL HOUSING AND OTHERS

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
RAMANATHAN, J AND
DR. SHIRANI A. BANDARANAYAKE, J.
S.C. APPEAL 60/96.
C.A. NO. 1081/87
CHP BOARD OF REVIEW NO. 1285
JULY 7, 1997.

Writ of Certiorari – Ceiling on Housing Property Law – Sections 8(4), 39(3) and 47 of the Law – Finality of the Decision of the Board of Review – Locus Standi – Pre-requisites of a vesting order under Section 8(4).

On an allegation made by the original appellant (the tenant) that the house occupied by him was an excess house, the Commissioner for National Housing held an inquiry and decided to vest the house. On an appeal by the owner of the house, the Board of Review under the Ceiling on Housing Property Law decided that it was not a "house" within the meaning of Section 47 of the Law and set aside the Commissioner's decision.

Held:

1. The evidence led before the Commissioner and the Board of Review showed that the premises in question fell clearly within the definition of "house"; the decision of the Board of Review was plainly invalid, and one which no tribunal could possibly have reached. The decision therefore is not protected by section 39(3) of the Ceiling on Housing Property Law.

2. The original appellant who admittedly was in occupation of the premises with his family since 1958 had "sufficient interest" to apply for certiorari.

3. A prosecution for an offence under Section 8(4) of the Ceiling on Housing Property Law is not a condition precedent to a penal vesting under that section.

Cases referred to:

1. *Sitamparanathan v. Premaratne and Others* (1996) 2 SLR 202 at 208.
2. *Perera v. Karunaratne* 1997 – 1 SLR 148.

APPEAL from the judgment of the Court of Appeal.

E. D. Wickremanayake for the substituted petitioners-appellants.
A. Kodikara for 5th and 6th respondents.

Cur. adv. vult.

July 22, 1997
G. P. S. DE SILVA, C.J.

The original appellant moved the Court of Appeal by way of a writ of certiorari to quash the determination of the Board of Review (P5) established under the provisions of the Ceiling on Housing Property Law. He resided at premises No. 21 Norris Canal Road, Colombo 10 and he claimed that he was a tenant under the 5th respondent. He addressed a letter dated 21.3.97(P1) to the Commissioner of National Housing (1st respondent) stating that the 5th respondent owned other houses; that the premises occupied by him was a house in excess of the "permitted number of houses" and requested the 1st respondent to take steps to "vest" the premises. Thereupon the 1st respondent held an inquiry. The original appellant and the 5th respondent gave evidence before the 1st respondent. The 5th respondent admitted that he was the owner of houses in excess of the "permitted number" but he did not "declare" the premises occupied by the appellant as it was not separately assessed and was a part of the main house bearing assessment No. 104, Sri Vipulasena Mawatha. In other words the contention of the 5th respondent was that the appellant was in occupation of the "out house " which was a part of the premises No. 104 Sri Vipulasena Mawatha and not a "house" within the definition in the Ceiling on Housing Property Law. On the other hand, the appellant in his evidence stated that he was in occupation of the premises since 1958 and it consisted of a verandah, a sitting room and one bed room; that there was a separate latrine and a bath room; that he paid rent for his occupation; that there was no access to any other premises; that it is a building separate from premises No. 104, Sri Vipulasena Mawatha.

At the conclusion of the Inquiry the 1st respondent informed the 5th respondent of his decision to "vest" the premises which were the subject matter of the proceedings. The 5th respondent preferred an appeal to the Board of Review. The Board of Review permitted evidence to be led before it. On a consideration of the evidence the Board took the view that the premises occupied by the appellant "had been originally a part of the main house bearing assessment No. 104 Sri Vipulasena Mawatha and had been occupied as one unit of residence." The Board was of the opinion that the appellant is in

occupation of a 'out house' and that "any sub division made subsequently cannot bring this 'out house' within the meaning of the word 'house' in section 47 of the Ceiling on Housing Property Law" – The Board accordingly set aside the decision of the 1st respondent "to vest the out house of premises No. 104, Sri Vipulasena Mawatha, Colombo." The appellant's application for certiorari to quash the decision of the Board was refused by the Court of Appeal and hence the present appeal to this court.

The original appellant died and his widow and children were "substituted" and they are presently in occupation of the premises. The principal question which arises for decision in this appeal is whether the premises constitute a "house" as defined in section 47 of the Ceiling on Housing Property Law.

The definition reads thus:

"house means an independent living unit, whether assessed or not for the purpose of levying rates, constructed mainly or solely for residential purposes, and having a separate access, and through which unit access cannot be had to any other living accommodation, and includes a flat or tenement, but shall not include –

(1) sub-divisions of, or extensions to, a house which was first occupied as a single unit of residence; and

(2) a house used mainly or solely for a purpose other than a residential purpose for an uninterrupted period of ten years prior to March 1, 1972."

The contention advanced before us on behalf of the substituted appellants is that the finding of the Board of Review that the premises in question are an "out house" of the main house bearing assessment No. 104 Sri Vipulasena Mawatha, Colombo 10, is wholly unsupported by the evidence. Our attention has been drawn to the documents X1, X1(a), X2, X3, X4 and X5. X1 is a "building application" dated 23.11.61 forwarded to the Municipal Council, Colombo, by the 5th respondent. It is an application "for the alteration of a out house at 104 Stafford Place (now Sri Vipulasena Mawatha) Colombo 10, in the property No. 21 Norris Canal Road." X1 (a) is a document entitled "Specifications" which states that the application is for "internal

alteration" for a "dwelling". It is also dated 23.11.61. X2 is the report of the inspector on the application X1. Items 3 and 4 in X2 read as follows:

Item 3: "Description of existing building: An out house."
Item 4: "Description of **proposed building: Dwelling house.**"
X3 is the building permit granted in respect of the application X1. X4 is the Certificate of Conformity issued to the 5th respondent. X5 is the approved plan which shows that premises No. 104, Stafford Place (now Sri Vipulasena Mawatha) is entirely separate from the premises in suit.

A perusal of the decision of the Board of Review shows that there has been no consideration of the contents of the documents X1 to X5 – According to the Board of Review these documents show that ". . . . . No. 104 Stafford Place (Sri Vipulasena Mawatha) has been sub divided on an application made in 1961." This finding is contradictory of, and inconsistent with, the documentary evidence on record. X1 to X5 very clearly establish the all-important fact that the "out house at No. 104 Stafford Place has been converted to a **"dwelling house"** and this took place as far back as 1961. The finding of the Board of Review that there was a "sub division" of the premises is in the teeth of the documentary evidence. Mr. Kodikara for the respondents strongly urged in his written submissions that X1 to X5 refer to an alteration made "to another structure situated within No. 21 Norris Canal Road, Colombo 10, and not to the portion of the out house in issue." I am afraid I cannot agree, for the evidence is to the contrary.

It is seems to me that the oral and the documentary evidence led before the 1st respondent and the Board of Review shows that the premises in question fall **clearly** within the definition of "house" in the Ceiling on Housing Property Law.

I hold that the decision of the Board of Review (delivered over 2 1/2 years after the conclusion of the inquiry) is plainly invalid, and one which no tribunal could possibly have reached. The decision therefore is not protected by section 39(3) of the Ceiling on Housing Property Law. Vide *Sitamparanathan v. Premaratne and Others*[1] at 208.

The next matter is the question of *locus standi* of the appellant.

Relying on the decision in *Perera v. Karunaratne*[2], the Court of Appeal held that the appellant had no locus standi to make the application for a writ of certiorari. That was a case where, among other matters, Bandaranayake, J. considered the question of the point of time "when an application for purchase should be made by the tenant" and whether section 8 overrides section 9 of the Ceiling on Housing Property Law. The issue of *locus standi* was neither raised nor considered. Moreover, as stated by Wade "The prerogative remedies, being of a 'public' character ... have always had more liberal rules about standing than the remedies of private law ... The broad principle which almost eliminates the requirement of standing for these remedies shows how far the law has gone in the direction of admitting an element of actio popularis on grounds of public interest ... By such means, therefore, a remedy may be found for the citizen who is genuinely aggrieved but who has no grievance in the eye of the law." (Administrative Law by Wade sixth edition pages 694 and 696). I hold that the original appellant who admittedly was in occupation of the premises with his family **since 1958** had "sufficient interest" to apply for certiorari.

Finally, the Court of Appeal has held that the application for a writ of certiorari cannot succeed because there is "no evidence that the 1st respondent has sought to prosecute either the 5th or 6th respondents in terms of section B(4). The 1st respondent could not have decided to vest the out house under the circumstances."

It seems to me, however, that Section B(4) contemplates two distinct matters, namely a prosecution for an offence and a penal vesting. It would be wrong to so construe the section as to make a prosecution mandatory; a prosecution is not a condition precedent to a "vesting".

For these reasons the appeal is allowed, the judgment of the Court of appeal is set aside and we direct that a Writ of certiorari do issue

to quash the determination of the Board of Review (P5). There will be no costs.

RAMANATHAN, J. – I agree.

DR. SHIRANI A. BANDARANAYAKE, J. – I agree.

Appeal allowed
Writ of certiorari issued.