LEELAWATHIE AND ANOTHER
v
COMMISSIONER OF NATIONAL HOUSING

COURT OF APPEAL
SRIPAVAN, J.
CA 360/2000
JULY 29, 2003.
AUGUST 8, 2003.

Ceiling on Housing Property Law, No. 1 of 1973, section 2A(1), 2A(3), 11, 12, 16 and 39 –Excess House vested in the Commissioner – House to be sold to the tenant – Two applicants – No opportunity given to meet adverse evidence – Decision a nullity ? – Decision not communicated – Deprived the right of appeal ? – Decision making process flawed?

The petitioners (wife and husband) who were in occupation of a house vested in the 1st respondent decided to offer the premises for sale to the tenant of the premises. The petitioner and the 3rd respondent applied to purchase the house. The 1st respondent decided to execute a deed in favour of the 3rd respondent, the petitioners were neither given a copy of the statement made by the 3rd respondent nor an opportunity to cross examine the 3rd respondent with a view to contradict any relevant material prejudicial to him. The decision to execute the deed in favour of the 3rd respondent was not communicated to the petitioners. The petitioners sought to quash the decision to execute the deed in favour of the 3rd respondent.

Held:

(1) The 1st respondent in arriving at a decision acted merely on statements of the 2nd petitioner and the 3rd respondent recorded on two different dates. The execution of the deed in favour of the 3rd respondent has no legal consequences.

(2) No person can incur loss of property by judicial / quasi judicial proceedings unless and until he has had a fair opportunity of answering the complaint made against him.

(3) The decision making process in the instant application is totally flawed.

(4) Non communication of the decision to execute the deed in favour of the 3rd respondent to the 2nd petitioner deprived the 2nd petitioner his right under section 39 to appeal to the Board of Review.

APPLICATION for a Writ of *Certiorari.*

Cases referred to:

1. *Errington v Minister of Health (1935) 2 KB 249*
2. *Fairmount Investments v Secretary of State for the Environment* (1976)1 WLR 2255
3. *Jayawardane v Cadiramanpulle,* SC 15/79 – SCM 19.9.1980
4. *Julian* v *Sirisena Cooray*, Minister of National Housing 1993 1 Sri LR 238
5. *Sirisena and Others* v *Kobbekaduwa*, Minister of Agriculture and Lands 80 NLR 182
6. *Mcfoy* v *United Africa Company Ltd* (1961) at 1172
7. *Razik* v *Pussadeniya and four others* Vol II 6 Sri Kanthas Law Reports 84

Dr. J. Almeida Gunaratne for petitioner.

Ms. M. Fernando, Senior State Counsel for 1st and 2nd respondents.

Ms. Thushani Machado for 5th, 6th and 7th respondents.

Cur.adv.vult.

August 29, 2003.

SRIPAVAN, J.

M/s L.J. Peiris & Co made an application on 27th December 01
1974 to the first respondent under section 2A(1) of the Ceiling on Housing Property Law, No. 1 of 1974 for a determination under section 2A(3) of the maximum number of houses which may be owned by the said company. The first respondent determined that the permitted number of houses that may be owned by the company was three and therefore the said company owned thirteen

houses in excess of the permitted number. This determination was communicated to the company on 3rd October 1975 by the first respondent. Thereafter, the first respondent by letter dated 12th July 1977 informed the company that thirteen houses referred to in the said letter vested in him with effect from 9th June 1977 in terms of sections 11 and 16 of the said Law.

The petitioners are wife and husband respectively in occupation of the premises in question, namely No. 50 (formerly No. 34) Galle Road, Alutgama. The said premises together with twelve other premises belonged to M/s L.J.Peiris & Co. vested in the first respondent in terms of sections 11 and 16 of the said Law as stated above. The departmental file bearing No. CH/OC/1366 produced by the learned Senior State Counsel shows that the vesting took place on 9th June 1977 (vide folio 10).

It would appear that the first respondent acting in terms of section 12 of the said Law decided to offer the premises in question for sale to the tenant of the said premises. As both the first petitioner and the third respondent made their applications on 6th February 1995 and 29th November 1994 respectively for the purchase of the said premises, the first respondent summoned both parties for an inquiry. According to folio 212 of the departmental file a letter dated 14th December 1998 was sent to both the second petitioner and the third respondent requesting them to be present for an inquiry to be held on 5th January 1999. The second petitioner was present on 5th January 1999 and his statement marked 1R1 was recorded. However, the third respondent was absent on 5th January 1999 and another undated letter was sent to the third respondent only, in January 1999 (folio 215) requesting him to be present for an inquiry to be held on 20th January 1999. The third respondent was present and his statement marked 1R2 was recorded. It is observed that the petitioners were neither given a copy of the statement made by the third respondent nor an opportunity to cross examine the third respondent with a view to contradict any relevant material prejudicial to them. The departmental file shows that a decision was taken by the first respondent on 11th August 1999 that the third respondent was the tenant of the said premises and to execute a deed in his favour.

Thus, it would appear that the first respondent in arriving at a decision acted merely on statements of the second petitioner and the third respondent, recorded on two different dates.

No person can incur loss of property by judicial or quasi-judicial proceedings unless and until he has had a fair opportunity of answering the complaint made against him. Accordingly, objectors at public inquiries must be given a fair opportunity to meet adverse evidence, even though the statutory provisions do not cover the case expressly. (Vide *Errington* v *Minister of Health* (1). The House of Lords in *Fairmount Investments* v *Secretary of State for the Environment* (2) held that it was a breach of natural justice for an inspector to make recommendations on the strength of considerations which the objector had not known, were in the inspector's mind and had no chance to deal with. The decision making process in the instant application is fatally flawed. The court would consider any decision as having grave consequences if it affects the proprietary rights of the petitioners. In the circumstances, I hold that the first respondent has failed to act fairly and reasonably in the interest of administrative justice.

Further, as rightly conceded by the learned Senior State Counsel, the departmental file did not indicate that the first respondent communicated his decision to execute the deed in favour of the third respondent to the second petitioner, which deprived the second petitioner his right under section 39 of the said Law to appeal to the Board of Review. (Vide *Jayawardena* v *Cadiramanpulle* (3) *Julian* v *Sirisena Cooray, Minister of National Housing*(4). Upon consideration of all the material, I am satisfied that the decision to execute a deed in favour of the third respondent is a nullity as the petitioners have been deprived of their statutory right of appealing to the Board of Review prior to the execution of the deed. Thus, the execution of the deed in favour of the third respondent has no legal consequences.

As observed by Sharvananda, J. (as he then was) in the case of *Sirisena and Others* v *Kobbekaduwa, Minister of Agriculture and Lands*(5) "there are no degrees of nullity. If an act is a nullity, it is automatically null and void and there is no need for an order of the court to set aside, though it is sometimes convenient or prudent to have the court declare it to be so."

"You cannot put something on nothing and expect it to stay there, it will collapse"- Lord Denning in *Mcfoy* v *United Africa Company Limited*(6). For the reason stated, I set aside all the proceedings before the first respondent. This order, however. does not prevent the first respondent from initiating an inquiry afresh with a view to offer the house in question for sale to the tenant, in terms of the law.

Following the judgment in *Razik* v *Pussadeniya and Four Others* (7). I direct the first respondent to refund to the legal 110
heirs of the third respondent whatever monies that have been paid by the third respondent to the first respondent towards the execution of the deed in favour of the third respondent. The petitioners have been subjected to much hardship and expense by the ill considered actions on the part of the first respondent. I therefore direct the first respondent to pay each of the petitioners costs in a sum of Rupees 1250. Accordingly, the petitioners would be entitled to a total sum of Rupees 2500 as costs.

Application allowed.