

ABOBUCKER
V.
WIJESINGHE AND OTHERS

COURT OF APPEAL,
WIJETUNGA, J. AND WIJAYARATNE, J.,
C. A. APPLICATION No. 1455/83,
MARCH 13, 1990.

Cartiorari—Landlord and tenant—Demolition of rented premises ordered by The Commissioner of National Housing – Section 18A of the Rent Act No. 7 of 1972 – Compensation in lieu of alternative accommodation – Natural Justice – Mala fide.

The 1st respondent had applied to the Commissioner of National Housing under Section 18A of the Rent Act for a demolition order of the premises occupied by the petitioner on rent. The premises were alleged to be over 50 years old. The Commissioner caused an inquiry by the Legal Officer at which both parties participated. The Commissioner acting on the findings of the Legal Officer ordered the demolition of the house subject *inter alia* to payment of compensation (five years rent) to the petitioner.

Held :

- (1) There is no breach of natural justice if the deciding authority appoints another to investigate and report (and the investigating official does so giving a fair hearing) and makes the decision himself.
- (2) Under Section 18A(2)(b) compensation can be ordered in lieu of alternative accommodation.
- (3) When the legislature enacted Section 18A in the terms "if the Commissioner is satisfied" the evident intention of the legislature was to make the Commissioner the sole judge of whether conditions existed to warrant demolition.
- (4) Under Section 18A(6) the order of the Commissioner cannot be called in question or examined by the Court in any proceedings. The Court will not interfere with the exercise of such administrative authority unless it is satisfied that the administrative tribunal has acted *mala fide* or on no evidence or unreasonably or has failed to follow the principles of natural justice or has gone wrong in law.

Cases referred to :

- (1) *Edirisinghe v. The Commissioner of National Housing* 78 NLR 268
- (2) *Jeffer v. New Zealand Dairy Production and Marketing Board* (1967 - 1 A.C. 551)
- (3) *Ceylon Co-operative Employees' Federation v. Co-operative Employees Commission* 78 N.L.R 518.

APPLICATION for Writ of Certiorari

Faiz Mustapha, P.C. with *A. Panditaratne* for the Petitioner
H. L. de Silva, P.C., with *Upali Almeida* and *N. Ratnewardene* for the 1st Respondent
Ananda Kastunarachchi, S.C., for the 2nd Respondent

May 30, 1990

WIJEYARATNE, J.

The petitioner has filed this application on 30.11.1983 on the basis that he is the tenant of residential premises No. 119, Katugastota Road, Kandy, from June 1978 and that the 1st respondent is the Landlord and owner. The 1st respondent had made an application on 15.2.1982 to the 2nd respondent (The Commissioner of National Housing) under Section 18A of the Rent Act, No. 7 of 1972, seeking an order authorising the demolition of the said house, alleging that the house was over 50 years old and that it was necessary for its demolition to construct a new two storeyed building on the said land.

The said application was recommended by Mr. L. A. Pathiravitana, a Legal Officer of the Department of the 2nd respondent.

After inquiry the 2nd respondent by letter dated 28.10.1983 informed the petitioner that he had ordered the demolition under Section 18 of the Rent Act subject to the following conditions : -

- (a) Compensation in a sum of Rs. 3,000 should be paid to the petitioner ;
- (b) The 1st respondent should construct a two storeyed building consisting of two residential units within two years from the date of vacation by the petitioner ;
- (c) The 1st respondent should comply with the requirements of Section 18A of the Rent Act.

The petitioner avers that the said order of the 2nd respondent is illegal, null and void and of no force or avail in law, as –

- (a) there is no determination by the 2nd respondent that the said premises had been constructed at least 50 years prior to the date of the application by the 1st respondent, which is a necessary pre-condition.
- (b) there was no material to establish that the house had been constructed over 50 years prior to the making of the said application and hence the order has been made without jurisdiction.
- (c) the said order has been made in violation of the principles of natural justice. The 2nd respondent who made the order did not hear and determine the application as the inquiry was held by the legal officer and the petitioner was not given an opportunity of controverting the recommendation made by the legal officer.
- (d) the said order is unreasonable and has been made without a proper consideration of the relevant circumstances.
- (e) the 2nd respondent failed to consider the equities of the situation in exercising his discretion.
- (f) the 2nd respondent failed to consider that the 1st respondent should be required to provide the petitioner with alternative accommodation in the proposed new building, and hence there has been an error of law.
- (g) the said order is bad as the 2nd respondent has given no reasons.

Therefore the petitioner has prayed for a writ of certiorari to quash the said order of the 2nd respondent dated 28. 10. 1988 and to make order restraining the 1st respondent from enforcing the said order until the final determination of this application.

It should be mentioned that the 1st respondent died subsequently and 1A respondent has been substituted in his room.

Also the holder of the office of the Commissioner of National Housing is now Mr. G. Karunaratne and has been added as the 3A respondent.

The 1st respondent has filed an affidavit dated 1.3.1984 in which he has challenged the evidence led on behalf of the petitioner at the inquiry and in particular the evidence of Surveyor Direckze. The 1st respondent also has taken up the position that the sole ground relied on by the petitioner was that the building in question was not 50 years old but on the evidence it was manifestly clear that the building was well over 50 years old.

The 2nd respondent has filed an affidavit dated 24.2.1984 wherein he states that Legal Officer Pathiravithana recorded the evidence and that the petitioner participated at the inquiry, that he was represented by counsel and he was given an opportunity to cross-examine the witnesses called by the 1st respondent and that written submissions were also filed on his behalf. The said Pathiravithana had forwarded the proceedings, written submissions and the documents produced together with his recommendation and after perusing all these material the 2nd respondent states that he was satisfied that the building was at least 50 years old and that the re-development of the land was necessary for the more efficient utilization of the land. Therefore he made an order authorising the 1st respondent to demolish the building but before doing so he took into consideration all the relevant material and also equities of the case.

The 2nd respondent further states that Pathiravithana was acting on powers delegated to him and that the said order is lawful and made in accordance with the provisions of Section 18A of the Rent Act.

At the hearing Mr. Mustapha for the petitioner urged the following points :

- (1) There was no evidence to establish that the house was over 50 years old.

On this point the 1st respondent has sufficiently adduced evidence about the age of the house. On the contrary the evidence of Surveyor Direckze who was called by the petitioner was unsatisfactory and therefore rejected.

- (2) It was urged that the Commissioner of National Housing had no authority to delegate his powers to the Legal Officer Pathiravithana and Mr. Mustapha relied on the decision of *Edirisinghe v. The Commissioner of National Housing*⁽¹⁾.

However the facts in this reported case can be distinguished from the facts of this present case. There is no breach of natural justice if the deciding authority appoints another person who investigates, and reports, and gives him a fair hearing and makes a decision himself. The Privy Council in *Jefferies v. New Zealand Dairy Production and Marketing Board*⁽²⁾ held that a Dairy Board making zoning orders affecting milk producers may appoint persons to receive evidence and submissions from interested parties and that if before making a decision the Board is fully informed of the evidence and submissions, there will be no breach of natural justice.

- (3) The learned counsel for the petitioner also submitted that the petitioner was not given a fair hearing. He cited the decision of *Ceylon Co-operative Employees' Federation v. Co-operative Employees Commission*⁽³⁾.

On that point it is in evidence that there were several dates of inquiry and that the petitioner was present and he was represented by counsel and evidence was adduced on behalf of the petitioner. Therefore there is no merit in this submission.

- (4) It was submitted that no alternative accommodation was provided for the petitioner.

A perusal of Section 18A (2)(b) shows that alternative accommodation is an alternative to payment of compensation. In this case an order has been made that the 1st respondent should pay the petitioner a sum of Rs. 3,000 being five years rent as compensation. Further, Section 18A (6) says that a decision of the Commissioner under Section 18A (2)(b) shall not be called in question or examined by the court in any proceedings. Therefore it is doubtful whether this court has the power to go into this question in view of the stringent provisions of Section 18A (6). In any event the petitioner has been awarded compensation in lieu of alternative accommodation and this is sufficient to satisfy the legal requirement.

- (5) Finally it was submitted that the Commissioner has acted arbitrarily.

When the Legislature enacted Section 18A in the terms "if the Commissioner is satisfied" the evident intention of the Legislature was to make the Commissioner the sole judge of whether conditions existed

to warrant demolition. Courts no doubt have jealously guarded its rights to review administrative action, but it has now been well established that courts will not interfere with the exercise of such administrative authority unless they are satisfied that the administrative tribunal has acted *mala fide* or on no evidence or unreasonably or has failed to follow the principle of natural justice or has gone wrong in law. There is no material for this court to interfere with the order of the Commissioner.

I therefore dismiss the application with costs in Rs. 1,050 payable to the 1st respondent and Rs. 525 payable to the 3A respondent.

WIJETUNGE, J. – I agree.

Application dismissed.
