B.C. PERERA
v.
GUNASEKERA AND OTHERS

COURT OF APPEAL
VIKNARAJAH, J. & A. DE Z. GUNAWARDENA, J.
C.A. 1472/76
JUNE 01 & 06, 1989

Writs of certiorari and mandamus – Landlord and tenant – Determination of standard rent – Determination of authorised rent – Earlier order determining authorised rent and appeal therefrom – Can second application be made when there is already a determination of authorised rent? – Rent Act, section 34.

On an earlier application between the same parties, the Rent Board by Order of 04.06.82 determined the authorised rent. An appeal from this Order was rejected on 26.01.85 as it was out of time. Before the order of rejection was delivered the petitioner made a second application to the Rent Board on 02.03.84. The Board of Review held firstly that where section 4(1) and 4(2) apply, the Board has no jurisdiction to determine or fix the standard rent only and secondly the determination of the authorised rent on the first application was final and conclusive.

Held:

(1) Section 34 of the Rent Act empowers the Rent Control Board to determine the authorised rent on the application of the landlord or tenant.

(2) Standard rent is different from the authorised rent and in fact it is only a component of the authorised rent. Section standard 4(1) and 4(2) set out the manner in which the standand rent is determined. In the case of premises to which sections 4(1) and 4(2) do not apply the standard rent per annum means such rent as may be fixed by the Board on the application of the landlord or tenant for the time being of the premises.

(3) Where sections 4(1) and 4(2) apply to any premises the Board has no jurisdiction to entertain an application to determine or fix the standard rent only.

(4) The determination of the Rent Board of the authorised rent on the first application was final and conclusive.

(5) A person aggrieved by an Order of the Rent Board must appeal therefrom in 21 days after receipt of the decision that is, receipt of the copy of the Order (s. 40(4)); and the decision of the Board is final and conclusive (s. 40 (II)). Final and conclusive means there is no appeal from the decision.

(6) An Order even if not made in good faith, is an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of Orders. This, must be equally true even where the brand of validity is plainly visible.

APPEAL from the Order of the Board of Review

N.R.M. Daluwatte, P.C. with *P. Keerthisinghe* for petitioner

H.L. de Silva, P.C. with *P.A.D. Samarasekera, P.C.* and *G.L. Geetananda* for 7th respondent

Cur.adv.vult.

August 03, 1989

VIKNARAJAH, J.

This is an application by the petitioner for a Writ of Certiorari to quash the order of the Board of Review dated 10th October 1986 (P25) in Appeal No.3920 and a Writ of Mandamus directing the said Board of Review to hear and determine the appeal of the 7th respondent according to law.

The petitioner is the tenant of premises No. 90 Galkissa Road, Dehiwela as from July 1968. The 7th respondent is the landlord of the said premises.

The petitioner made an application to the Rent Board dated 2.3.84 numbered 17/84 (P14) for determination of the standard rent. At the inquiry on 23rd April 1984 into this application the 7th respondent was not present and the Board determined the authorised rent of the said premises and the determination of the Board is marked P15. In the application P14 in column 9 the petitioner has stated that earlier the Rent Board had made an order regarding authorised rent. From this order of the Rent Board P15 the 7th respondent appealed to the Board of Review which appeal is numbered 3920. The Board of Review made its decision on 10th October 1986 (P25) allowing the appeal and holding that the petitioner cannot make a second application to the Rent Board when there has already been a determination made by a Rent Board earlier in respect of the same matter. The present application is to quash this decision (P25). Learned Counsel for petitioner submitted that there were two errors of law in this order viz:

(i) As section 4(1) applied to the premises in suit the Board has no jurisdiction to determine and fix the standard rent.

(ii) The order of the first Rent Board dated 4.6.82 determining the authorised rent is final and conclusive.

At this stage it would be appropriate to refer to the first application made by the petitioner to determine the authorised rent.

The petitioner filed an application in the Rent Board of Mt. Lavinia dated 2.2.77 numbered RB/15/DN/77 against the 7th respondent (P1). As there was no relief claimed in this application (P1) an amended application P2 was filed for determination of the authorised rent. According to the proceedings the case of the 7th respondent was that he had made several additions and improvements in pursuance of a building application made in 1966 numbered 129/61. The inquiry commenced on 17.6.77 and was postponed from time to time and ultimately on 11.5.82 there was a settlement (P3a) before the Rent Board. The petitioner was not present but she was represented by her attorney-at-law. The 7th respondent was present and was represented by an attorney-at-law. The lawyers representing the petitioner and 7th respondent agreed that the year 1966 should be taken as the relevant year for the determination of the standard rent as a fresh assessment for the year 1966 was made taking into consideration the building plan No. 129/61. The new assessment for 1966 is Rs. 1016.00. In terms of this settlement the Rent Board by order dated 4.6.82 (P4) determined the authorised rent as Rs. 110/69 taking the annual value of 1966 as the first year of assessment. The petitioner appealed from this order to the Board of Review. The Board of Review by order dated 26.1.85 (P6) rejected the appeal as it was out of time. Before the order P6 was delivered the petitioner made the second application to the Rent Board (P14) on 2.3.84 which I have referred to at the commencement of this judgment.

I shall now refer to the submission of learned Counsel for the petitioner regarding the two alleged errors of law in the order P25.

Section 34 of the Rent Act empowers the Rent Control Board to determine the authorised rent of the premises upon an application made in that behalf by the landlord or the tenant of the premises. Standard rent is different from authorised rent and in fact it is only a component of the authorised rent.

Sections 4(1) and (2) set out the manner in which standard rent is determined. In the case of premises to which the provisions of sections 4(1) and (2) do not apply, the standard rent per annum means such rent as may be fixed by the Board on application made either by the landlord or the tenant for the time being of such premises. The Board of Review in its order P25 has stated that "where sections 4(1) and (2) apply to any premises the Board has no jurisdiction to entertain an application to determine or fix the standard rent only and such an application must be rejected". The Board of

Review has further stated that "it would appear that section 4(1) applied to the premises in suit".

I am of the view that the Board of Review has correctly set out the legal position. The application that was made by the petitioner was to determine the standard rent and not the authorised rent although the Rent Control Board by its order P15 has proceeded to determine the authorised rent. I hold that there is no error of law in this part of the order of the Board of Review.

I shall now deal with the second alleged error of law.

Counsel for petitioner submitted that the Board of Review erred in law in treating the determination of the Rent Board (P4) on the first application as final and conclusive. The first Rent Board determination of the authorised rent was made on 4.6.1982 (P4). The petitioner appealed from this order to the Board of Review but the appeal was rejected as it was out of time. The Board of Review did not hear the appeal and thus there was no decision on the appeal.

Under section 40(4) any person who is aggrieved by any order made by any Rent Board may before the expiry of a period of twenty one days after the date of the receipt by him of a copy of the order appeal against the order to the Board of Review. Provided however that no appeal shall lie except upon a matter of law.

Under section 40(11) the decision of the Board of Review on an appeal shall be final and conclusive.

Learned Counsel for respondent submitted that as the appeal was rejected the Rent Control Board decision was final and conclusive.

The word final and conclusive means that there is no appeal from that decision.

In Wade's Administrative Law (15th Edn) p.598 this is stated as follows: –

> "If a statute says that the decision 'shall be final' or shall be 'final and conclusive to all intents and purposes' this is held to mean merely that there is no appeal: judicial control of legality is unimpaired"

It is not stated in the Rent Act that the decision of the Rent Board is final because there is an appeal to the Board of Review. Where no appeal is provided or where a party does not appeal to the Board of Review the finality attaches to the decision of the Rent Board.

Counsel for petitioner submitted that the decision of the first Rent Board (P4) is a nullity because the standard rent has not been determined taking the 1960 annual value as the first year of assessment but has been determined taking the annual value of 1966 as the first year of assessment.

If the petitioner was dissatisfied with the order P4 the petitioner should have applied to this Court by way of writ of certiorari to quash the decision of the Rent Board P4 on the ground that the order is a nullity. The petitioner cannot in the present application seek a determination from this Court that the first Rent Board decision is a nullity.

Wade-Administrative Law (15th Edn) at page 313 states as follows:–

> "In a well known passage Lord Radcliffe said:
> 'An order even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders'.
>
> This must be equally true even where the 'brand of invalidity' is plainly visible for there also the order can effectively be resisted in law only by obtaining the decision of the Court. The necessity of recourse to the Court has been pointed out repeatedly in the House of Lords and Privy Council without distinction between patent and latent defects".

At page 314 Wade states:

> "The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights or for some other legal reason, In any such case the void order remains 'effective and is in reality valid".

I hold that there is no error of law in the decision of the Board of Review P25 and therefore no writ lies.

On the facts of this case which I have set out earlier the order of the first Rent Board P4 is not tainted with any illegality and is a valid order. I hold that the said order P4 is final and conclusive.

I therefore dismiss the application with costs fixed at Rs. 210/-.

A. DE Z. GUNAWARDENA, J. – I agree.

Application dismissed.