

VAIDYANATHAN
v.
BOARD OF REVIEW CEILING ON HOUSING PROPERTY LAW
AND OTHERS

SUPREME COURT
AMERASINGHE, J.,
DHEERARATNE, J. AND
ANANDACOOMARASWAMY, J.
S.C. APPEAL NO. 164/96
C.A. NO. 328/92
CHP APPEAL NO. 2080
17TH, DECEMBER 1997.

Writ of certiorari – Application by the tenant for purchase of house let to him – Section 13 of the Ceiling on Housing Property Law, No. 1 of 1973 – Definition of "house" – Section 47 of the Law.

Late Mohanam, the tenant of the premises in suit and the appellant her husband who succeeded her as tenant sought to purchase the house occupied by them on an application made under section 13 of the Ceiling on Housing Property Law, No. 1 of 1973.

Held:

The premises in suit was used mainly for a purpose other than a residential purpose during the relevant period and the occupation of the appellant and Mohanam of the premises as a residence was incidental. Consequently, the premises in suit was not a "house" within the meaning of Section 47 of the Ceiling on Housing Property Law which the tenant could apply to purchase in terms of section 13 of the Law.

APPEAL from the judgment of the Court of Appeal.

P. Nagendran, PC with *N. Singarawela* for appellant.

S. Mahenthiran for 9th respondent.

M. S. Indika Demuni de Silva, SC for 8th respondent.

Cur. adv. vult.

February 16, 1998.

DHEERARATNE, J.

On 26.6.75, the late Mohanam Vaidianathan (Mohanam) the tenant of premises No. 252, Sea Street, Colombo 11, made an application in terms of section 13 of the Ceiling on Housing Property Law, No. 1 of 1973 (CHP Law), to purchase the premises. The 9th respondent, the landlord of the premises, resisted the application to purchase, on the basis that the premises was not a "house" within the meaning of the CHP Law. Mohanam died on 27.6.83 and the appellant, who claimed to have succeeded to the tenancy as deceased person's husband, participated at the inquiry before the 8th respondent Commissioner of National Housing. The 8th respondent held that the premises was not a "house"; and an appeal made to the Board of Review on that question too failed. The appellant then moved the Court of Appeal by way of a Writ to quash the order of Board of Review. The appellant was unsuccessful there too and has now appealed from the judgement of the Court of Appeal to this Court, having obtained leave on the following questions:

(1) Was there a failure to comply with Rule 3A (1) (a) of the Supreme Court Rules? (2) Did the petitioner (appellant) have no locus standii and (3) Were the premises business premises to which section 13 of the Ceiling on Housing Property Law did not apply?

I shall consider the pivotal last question first, because, if the appellants fail on that, it will be unnecessary for us to determine the rest. Section 47 of the CHP Law gives the following definition of a "house" :

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-division 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 to March 1, 1972.

The precise matter for determination in this case is whether or not the premises in question fall within the exclusionary provision (2) of the section mentioned above. The decision of the matter could not have been free from difficulty if it was not compounded by the fact that the appellants and his wife Mohanam on the one hand and the contesting 9th respondent on the other, have taken somewhat different stances from what they now take, in certain other proceedings. Some of those proceedings were related to the repealed Rent Restriction Act, No. 29 of 1948, where (like in the Act, No. 7 of 1972) the term "business premises" was defined as meaning any premises other than residential premises; and the term "residential premises" was defined as meaning any premises for the time being occupied wholly or mainly for the purpose of residence. One can hardly discern any difference between the two terms "mainly or solely" and "wholly or mainly" and it would be correct to say that both expressions mean "predominantly".

Let me endeavour to find the evidence tending to show the predominant purpose for which the premises were used for an uninterrupted period of ten years prior to March 1, 1972, which period for the sake of convenience, I shall refer to as "the relevant period". The premises in suit are situated in Sea Street which is admittedly a commercial area; but that fact by itself is of little value to determine the nature of the predominant user the premises were engaged for.

The assessment register maintained at the Municipal Council, Colombo, described the premises for the relevant period, as a house, except for the year of assessment 1966 when it was described as a store. Therefore it is no wonder that in the case No. DC Colombo 53744/M filed by the 9th respondent against Mohanam, seeking recovery of arrears of rent and her ejection under the former Rent Restriction Act, the premises were described as a residential premises and that is not a decisive factor in determining the predominant purpose to which the premises were used. That action was pending when the Rent Act, No. 7 of 1972 came into operation and by virtue of section 47 of that Act (except for the recovery of arrears of rent) the proceedings for ejection became null and void.

Mohanam as the tenant of the premises made an application to the Rent Board to determine the authorized rent, probably in 1962, on the basis that the premises were not residential premises. That application was made because in 1961 and 1962, the annual value of the premises was assessed at Rs. 2,385 and if they were residential premises, the annual value being over Rs. 2,000 for the time being, they became excepted premises, as the law stood at that time; and the tenant could not have sought the protection of the Rent Restriction Act from the jeopardy of being evicted under the common law. The decision of the Rent Board of Review 9R10 dated 17.6.63 clearly indicates that it was contended for Mohanam that the premises were business premises while it was contended on behalf of the 9th respondent that they were excepted premises and therefore inferentially residential premises. In my view those proceedings too are not decisive of the question in hand. The tenant was manoeuvring to seek cover under the Rent Act inasmuch as the landlord was manoeuvring to get her out of that protection.

There is no doubt that part of the premises were used for the running of money lending business in the name of "Lakshmi Nilayam" continuously from the year 1949. The evidence reveals that appellant and his wife were not destitute tenants but between them were owners of several residential premises. In the year 1965, apparently, the 9th respondent wrote to Mohanam that she was violating the contract of tenancy by using the premises for the money lending business. Although that letter was not produced, the letter dated 1st March, 1965 sent by Mohanam in reply was produced marked 9R4. Relevant parts of that letter read as follows: "It is absurd to suggest to me that

there was any agreement regarding the purpose for which these premises to be used when they were let to me by the Trustee of the new Kathiresan Temple or at any subsequent stage. I emphatically deny that the premises were or are residential premises within the meaning of the Rent Restriction Act. The premises are protected premises and I am entitled to the protection of the Rent Restriction Act. It is idle for you to state that I am endeavouring to use the said premises for the purposes of business. A money lending business has been carried on in the said premises from 1947 to your knowledge. Messrs. Sankara Iyer were also using the said premises for business . . . These premises are situated in a commercial area and are business premises and have always been assessed to your knowledge as such. The municipality and its witnesses admitted this fact in Court".

That reference to the admission made by witnesses in Court in that letter pertains to the proceedings in the action No. DC Colombo 57107/M. That action was filed by Mohanam against the Municipal Council, Colombo, complaining that the assessment of the annual value of the premises for the year 1962 was excessive and unreasonable. The proceedings of that case to my mind, unequivocally suggests to what predominant purpose to which the premises were used.

According to the Licensed Surveyor who gave evidence in those proceedings, the ground floor area of the premises was 1,864 square feet while the area upstairs was 605 square feet. The present appellant gave evidence on behalf of his wife in those proceedings. He stated that the premises in question which is situated in the commercial zone has been designed for business purposes and not for habitation. The entire premises had one tap and one water closet. It was his testimony that the premises were chiefly used as business premises and that it was necessary for business purposes for him to remain in that area. The money lending section and the office room occupy the entire downstairs area except the kitchen and the water closet. He categorically stated that two-thirds of the premises was used for business purposes. The surveyor's evidence too corroborated that fact.

The case No. DC Colombo 57107/M was settled as evidenced by the document marked 9R2 in January, 1965 and the first two points of settlement read as follows:

- (1) It is agreed between the plaintiff and the defendant that the premises in question are situated in an area used mainly for commercial purposes.
- (2) From and before 1941 the defendant found that the said premises was (*sic*) used as a money lending business place and residence and the premises in question have been assessed on the footing that it was a house used for business purposes.

For the above reasons I hold that there was ample evidence to justify that the premises in suit was used mainly for a purpose other than a residential purpose during the relevant period and the occupation of the appellant and Mohanam of the premises as a residence was incidental. In view of this finding that the premises in suit is not a house within the meaning of the CHP Law, it would be futile to decide the other two matters on which leave to appeal was granted. The appeal is dismissed with costs fixed at Rs. 10,000.

AMERASINGHE, J. – I agree.

ANANDACOOMARASWAMY, J. – I agree.

Appeal dismissed.