NELIA SILVA
v.
COMMISSIONER FOR NATIONAL HOUSING AND ANOTHER

SUPREME COURT
G. P. S. DE SILVA, CJ.,
WADUGODAPITIYA, J. AND
WEERASEKERA, J.
S.C. APPEAL NO. 105/97
C.A. NO. 362/90
NOVEMBER 14 AND DECEMBER 4, 1998

Writ of certiorari – Tenant's application to purchase a house – Sections 13 and 17 (1) of the Ceiling on Housing Property Law – Requirements of a valid vesting order under section 17 (1) of the Law.

In 1976 the respondent who was the tenant of a house owned by the appellant made an application under section 13 of the Ceiling on Housing Property Law to purchase the house let to him. The parties were not properly heard. However, on 20.10.1976 the Minister had made a minute in the file which was regarded as a "vesting" of the house under section 17 (1) of the Law. The purported "vesting" was communicated to the parties on 07.02.1977. Thereafter in 1982 the Commissioner for National Housing held a proper inquiry and refused the tenant's application. That decision was communicated to the tenant. On an appeal by the tenant the Board of Review reversed the Commissioner's decision on the ground that the Commissioner had no jurisdiction to have held an inquiry in 1982 in view of the "vesting order" made in 1976.

Held:

1. There was no valid vesting of the house in 1976, in that firstly there was no vesting order published in the *Gazette* at that point of time, as required by section 17 (1) of the Ceiling on Housing Property Law; secondly the Commissioner's decision under section 17 had not been communicated to the owner of the house prior to the "vesting".

2. A publication of the purported "vesting order" in the *Gazette* in 1996 after the owner had applied to the Court of Appeal for a writ of certiorari was of no force or avail in law in that the said publication was founded on an illegal decision "to vest" the premises.

Case referred to:

Caderamanpulle v. Pieter Keuneman and Others – SC Appeal No. 15/79 SC Minutes 19th September, 1980.

APPEAL from the judgment of the Court of Appeal.

P. A. D. Samarasekera, PC with *Upali de Almeida* for the petitioner-appellant.

Faiz Musthapha, PC with *Ananda Kasturiarachchi* for the 2nd respondent-respondent.

Cur. adv. vult.

December 10, 1998.

G. P. S. DE SILVA, CJ.

The petitioner-appellant (petitioner) is the owner of premises bearing assessment No. 279 Mutuwella Mawatha, Colombo 15. The 2nd respondent's husband was the tenant of the premises at the time the Ceiling on Housing Property Law (the Law) came into force. The tenant made an application in terms of section 13 of the Law to purchase the premises. The 1st respondent (The Commissioner of National Housing) held an inquiry some time in 1976. The Court of Appeal has described this inquiry as "an abortive inquiry"; it appears to have been a perfunctory inquiry where the parties were not properly heard. (The notes of this inquiry have not been produced).

The 1st respondent thereafter proceeded to hold a second inquiry in 1982. The notes of this inquiry have been produced marked P1. A perusal of P1 shows that both the owner and the tenant had been fully heard by the 1st respondent. At the conclusion of the inquiry, the 1st respondent on the grounds of "equities" refused the application of the tenant to purchase the premises. This decision was communicated to the tenant by P2 dated 25.9.84.

The tenant (ie the 2nd respondent's husband) thereupon preferred an appeal to the Board of Review. The Board of Review by its order

P4 dated 8.9.98 allowed the appeal. The petitioner unsuccessfully moved the Court of Appeal by way of a writ of certiorari to quash the order P4. Having failed before the Court of Appeal, the petitioner has now preferred the present appeal to this Court.

The principal ground upon which the Board of Review allowed the appeal of the tenant was that as far back as *28th October,1976,* the premises had "vested" in the 1st respondent and the 1st respondent had no jurisdiction to hold the second inquiry and "override or cancel" the "vesting order". However, what needs to be stressed is that the Board of Review held that the premises had "vested" in the 1st respondent solely on the basis of a *letter* at folio 12 of the Commissioner's file. Furthermore, the Board of Review proceeded to hold that the "decision or determination of the Commissioner had been communicated" to both the owner and the tenant by the letter dated *7th February, 1977.*

Now, in the first place a "vesting" of the premises could not be effected by the Minister making a minute in the departmental file or by writing a letter which is placed in the departmental file. This finding of the Board of Review is in the teeth of the express provisions of section 17 (1) of the Law. Admittedly, there was no "vesting order" published in the *Gazette* at that point of time.

More importantly, on the undisputed facts as set out by the Board of Review in its order P4, the petitioner was informed of the purported "vesting" more than three months later. The purported "vesting" was on *28.10.76* while the communication of the "vesting" to the petitioner was as late as *7th February, 1977.* This procedure is manifestly contrary to the ruling in *Caderamanpulle v. Pieter Keuneman* and others,[1] wherein Thamotheram, J. held. "There is a duty cast on the Commissioner to act fairly. The failure therefore to inform the landlord of the Commissioner's decision or determination under section 17 before the Order of vesting was made deprived the landlord of his right under section 39 to appeal to the Board of Review". Thus, it is clear that the Board of Review was in grave error in making the order P4.

The Court of Appeal too agreed with the reasoning and conclusion of the Board of Review. Said the Court of Appeal, "The Commissioner was in error in holding the second inquiry whilst the order of vesting

by the Minister stood without being quashed. In other words *upon the vesting by the Minister* title to the property passed to the 1st respondent under section 15 (2) of the Law. The 1st respondent therefore could not have held a fresh inquiry into the vesting on an application under section 13 in respect of property which had already vested in him. Thus, it follows he could not have made order refusing to vest a house which had already vested in him under section 17 (1) . . . "The judgment of the Court of Appeal is vitiated by the fact that it has failed to appreciate that there was no valid "vesting" in terms of section 17 (1) of the Law.

The 2nd respondent, however, now relies on a *Gazette* notification published as late as 23rd February, 1996, in support of his submission that the premises in suit are lawfully vested in the 1st respondent. It is to be noted that the petitioner's application for a writ of certiorari to quash the order of the Board of Review (P4) was filed as far back as *20th April, 1990.* While the matter was pending before the Court of Appeal, the Minister had proceeded to publish the *Gazette* notification which has been produced *for the first time before this Court.*

In any event, I am of the view that this *Gazette* notification is of no avail to the 2nd respondent as it follows upon an invalid decision or determination to "vest" the premises made on 28.10.76. In other words, the "vesting order" published in the *Gazette* on 23.2.96 is founded on an illegal decision "to vest" the premises. It, therefore, has no force or avail in law.

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 order of the Board of Review (P4). In all the circumstances, I make no order for costs of appeal.

WADUGODAPITIYA, J. – I agree.

WEERASEKERA, J. – I agree.

Appeal allowed.

Writ of Certiorari issued to quash the Order of the Board of Review.