

**MUZAMIL AND OTHERS**  
v.  
**REHABILITATION OF PROPERTY AND INDUSTRIES  
AUTHORITY (REPIA) AND OTHERS**

SUPREME COURT.

SHARVANANDA, C. J., COLIN-THOMÉ, J. AND RANASINGHE, J.

S.C. No. 35/84 – C.A. APPLICATION No. 1368/83.

JUNE 16, 24, 25 AND 26, 1985.

*REPIA – Affected property – Demolition orders – Regulations 9 and 19 of the Emergency (Rehabilitation of Affected Property, Business and Industries) – Regulations enacted under s. 5 of Public Security Ordinance.*

Abdeen building co-owned by three co-owners (one of whom is the 2nd respondent) stood at the intersection of Prince Street and 2nd Cross Street. It is structurally one building consisting of a ground floor and upper floor but the Municipal Council had for the purpose of assessment for rates treated the ground floor as divided into eight portions and upper floor as divided into seven portions and to each of these portions it assigned a separate assessment number. The separately assessed portions were occupied by various tenants. The petitioners for about 25 years had been tenants of the portion bearing assessment No. 128, Prince Street on the ground floor where they carried on the business of City Industrial Enterprises. Abdeen building was badly damaged during the 1983 riots. The Rehabilitation of Property and Industries Authority (REPIA) decided the building was affected property within the meaning of Regulations 9 (1) and 19 of the Emergency (Rehabilitation of Affected Property, Business and Industries) Regulations enacted by the President under the Public Security Ordinance and vested in REPIA. It accordingly decided to demolish the building for the purpose of development.

The petitioner having unsuccessfully sought relief in the Court of Appeal by way of certiorari to quash the decision of REPIA appealed to the Supreme Court.

The main question was whether the premises were affected property vested in the State. The 2nd respondent contended that the building including premises No. 128 was in a dangerous state as a result of riot damage while the petitioner maintained that premises No. 128 were only slightly damaged. It was clear however that if Abdeen Building was to be restored premises No. 128 would have to be demolished.

The jurisdiction of REPIA to rule on demolition rested on whether the entire Abdeen Building with all its component parts had to be treated as one unit for the purpose of it being stamped "affected property" or whether each component part as separately assessed for rating constituted immovable property for the application of the test of affected property.

**Held –**

(1) Although the building has been divided and assessed for the purposes of rates leviable under the Municipal Councils Ordinance and each divided portion bearing a separate assessment number may be treated as a separate immovable property, physically the entire structure constitutes one building and a single immovable property of which the building bearing assessment No. 128 is an integral part, which has been damaged or destroyed by the riots and the building cannot be repaired without affecting the petitioners' portion. For the purposes of the relevant regulations Abdeen Building must be considered a single entity and if any part of it is substantially damaged the whole building is thereby affected and becomes affected property and under Regulation 9 it vests absolutely in the State free from all encumbrances.

(2) The petitioners have accordingly lost their tenancy. Their present status is that of licensees only.

(3) Even if premises No. 128 are considered separate immovable property the damage to it coupled with the damage to the rest of the building makes it affected property.

*Ranasinghe, J.* dissenting :

(4) If the owner was prepared to help REPIA to reconstruct the building it is legal for REPIA to utilise such an arrangement. No divesting order is necessary. The 2nd respondent could be authorised by REPIA to demolish the building and erect a new one.

**Cases referred to :**

(1) *Sinamond v. British Airport Authority* [1980] 2 All E.R. 368.

APPEAL from judgment of the Court of Appeal reported at [1984] 2 Sri LR 197.

*Eric Amarasinghe, P. C.* with *N. S. A. Gunatillake, S. S. Ratnayake* and *Miss. D. Guniyangoda*, for petitioners.

*J. W. Subasinghe, P. C.* with *Lakshman Perera*, and *Miss. E. M. S. Edirisinghe*, for 1st respondent.

*K. N. Chosky, P. C.* with *M. Zuhair, Nihal Fernando, Miss I. R. Rajepakse* and *Miss T. Rodrigo*, for 2nd respondent.

*K. M. M. B. Kulatunga, P.C., Solicitor-General* with *K. C. Kamalabayyan, S.S.C.* for 3rd respondent.

September 5, 1985.

**SHARVANANDA, C.J.**

The building called "Abdeen Building" is situated at the Intersection of Prince Street and 2nd Cross Street, Pettah, Colombo 11. The building consists of ground floor and upper floor. Though physically it is one building or structure, the Municipal Council has, under section 233 (1) of the Municipal Councils Ordinance for the purpose of assessment, divided this building and assessed each divided portion separately in respect of rates leviable under the said Ordinance. Numbers assigned to each separate portion for this purpose are -

- |              |   |   |
|--------------|---|---|
| Ground Floor | - | No. 63, 2nd Cross Street ;<br>Nos. 126, 128, 130, 132, 134, 136<br>and 138, Prince Street.  |
| Upper Floor  | - | Nos. 126 1/1, 126 1/2, 126 1/3, 126 1/4,<br>125 1/5, 126 1/6 and 126 1/7, Prince<br>Street. |

There are three co-owners of the building, one of whom is the 2nd respondent-respondent. Each of the portions separately assessed had been occupied by various tenants under the co-owners of "Abdeen Building". The petitioners-petitioners had for about twenty-five years been the tenants of the portion bearing assessment No. 128 (on the ground floor) and been using it to carry on the business of "City Industrial Enterprises."

According to the petitioners, during the communal disturbances which commenced on 25.7.83, although parts of the "Abdeen Building" were badly damaged some parts of the said building including the portion bearing No. 128, occupied by the petitioners were not affected substantially save for some trivial and negligible damage. According to them, their business and the premises of which they were tenants were not affected. The petitioners have, after the disturbances, continued to carry on business in the said premises after doing some minor repairs.

According to the Chairman of the 1st respondent Authority, "Abdeen Building" was one entity and was an item of immovable property damaged on or after 24.7.83 by the riot or civil commotion and thus became "affected property", as defined by Regulation 19 of the Emergency (Rehabilitation of Affected Property, Business or Industries) Regulations. He states in his affidavit that, by reason of the

riot the roof of the said building was completely burnt or destroyed ; divided portions of the upper floor were so extensively damaged that they cannot now be utilised, for any purpose whatsoever and that the previous tenants are not in occupation thereof. In support of the extent of the damage to the upper floor, he has attached photographs 1R1A to 1R1 I. He further states that the concrete slab separating the upper floor and ground floor is extensively cracked, damaged and is out of alignment owing to the damage sustained by the supporting walls of the ground floor. The slab thus constitutes a potential danger to the occupants of the divided portion of the ground floor as it may collapse notwithstanding temporary support ; that the walls of the divided portion of the ground floor are extensively cracked. He has also annexed a report 1R3F (1) dated 4.10.83 sent to him by the Urban Development Authority. The report relates to damaged buildings in Pettah, prepared by the U.D.A. Engineer. According to the report, premises Nos. 126 to 138 had cracks on the walls and the slab and the building is not safe.

The 2nd respondent in his affidavit states :

“Abdeen Building” including No. 128 was extensively damaged and set fire during the communal disturbances. The roof and the 1st floor of the building were completely gutted and destroyed by the fire while the ground floor was extensively damaged making physical occupation of the ground floor not possible and extremely dangerous in as much as the concrete slab had cracked at several points. Presently, there is no 1st floor and the condition of what remains of the ground floor is such that the concrete slab and such portions could suddenly collapse, gravely endangering both occupants and users of the busy appurtenant roads.”

The building was examined by the 2nd respondent's Building Engineer on 20.9.83 and in his report (annexure 2R1) dated 22.9.83, the Engineer states that he carried out a complete inspection of the upper floor, and that as regards the ground floor, inspection was possible only in respect of two premises, as the others were closed up and hence inaccessible. In regard to the damage he states :

“The brick work in the walls have been set in lime/sand mortar and portions of the walls are completely destroyed at several places, especially at the upper floor level. In those areas where the wall remains, cracks have appeared and joints opened up, making them

unstable by themselves. The entire roof has been burnt and the remains consist of a few pieces of partly burnt roof timber, hanging from the walls. The doors and windows at the upper floor level are completely burnt and non-existent. Reinforced concrete lintels over the doors and windows are completely burnt and non-existent. The floor slab is badly cracked and distorted, arising out of damages to the supporting structure. The walls of the two ground floor premises inspected, showed damaged plaster work, cracks in the brick work, and cracks in the soffit of the upper floor slab, with evidence of water leaking through. Perhaps, similar conditions prevail in the other ground floor premises as well. Based on the observations and the general condition of the premises, I am of opinion that the remains of the buildings are structurally unsound and is extremely unsuitable for occupation in any manner. Furthermore, it is a threat to the safety of the people and the property around the building, and hence fit for demolition as soon as possible."

In his counter affidavits the 1st petitioner states, with reference to paragraph 4 of the affidavit of the 1st respondent, Chairman:

"I deny that the said premises (namely premises 128) in which the petitioner is carrying on business is an "affected property" within the intent and meaning of the said Emergency Regulations."

By letter dated 10.11.85 (annexure 'E') the Chairman of the 1st respondent Authority wrote to the petitioners as follows:

"Manager,  
M/s. City Industrial Enterprises,  
Prince Street,  
Colombo 12.

Dear Sir,

"Abdeen Building" Prince Street  
Pettah, Colombo 11

The aforementioned premises that were damaged/destroyed during the July 1983 disturbances are to be developed, for which purpose these premises will be demolished

Yours faithfully,

Sgd. RADM A. W. S. Perera, VSV.

Chairman/REPIA

The petitioners have by application dated 15th November, 1983, moved the Court of Appeal, for the issue of a Writ of Certiorari quashing the decision or determination of the 1st respondent that premises No. 128 is "affected property" and that it is to be demolished. The grounds urged in support of the application are :-

- (a) that the decision conveyed by "E" that the premises No. 128 and/or the petitioners business "is affected" is one made ultra vires, outside the regulations and/or one made without any power, authority or jurisdiction ;
- (b) that the 1st respondent had not considered or decided the question of whether the said premises No. 128, of which the petitioners are tenants or the business "City Industrial Enterprises" carried on by them is an "affected property or business" nor has any such declaration been made or conveyed by the 1st respondent to the petitioners nor were the petitioners given a hearing before the 1st respondent purported to decide that premises No. 128 was 'affected property'".

The main burden of petitioners challenge of the authority of the 1st respondent is that premises No. 128 is not "affected property", within the meaning of Regulation 9 (1) and therefore had not vested in the State and hence the 1st respondent had no power or authority in or over the said premises No. 128 and hence had no authority to demolish the said premises No. 128. The petitioners' application was argued for a number of days, before the Court of Appeal and by its judgment dated 11th June 1984, the Court of Appeal dismissed the application without costs. Petitioners have preferred this appeal from the said decision.

The Emergency (Rehabilitation of Affected Property Business of Industries) Regulations were enacted by the President under section 5 of the Public Security Ordinance, to meet the situation created by the communal riots. The Regulations established a body called the "Rehabilitation of Affected Property, Business or Industries Authority" (in the regulations referred to as "REPIA"). It is a body corporate. The functions of REPIA are :-

- (a) the repair and restoration of affected properties.
- (b) the rehabilitation of affected industries and businesses.

Regulation 9 provides –

- “(1) Every affected property, industry or business shall, with effect from the date these regulations come into force, vest absolutely in the State free from all encumbrances.
- (2) If any question arises as to whether any property, industry or business is affected property, such question shall be decided by REPIA by a declaration in writing and such declaration shall be final and conclusive and shall not be called in question in any court in any proceeding whatsoever.”

Regulation 14 –

- “(1) Notwithstanding that any affected property, or industry or business has vested in the State by reason of the operation of these regulations REPIA may at any time by Order published in the Gazette divest such property, industry or business.
- (2) The following provisions shall apply to a divesting order made under paragraph (1) . . . .
- (a) the property, industry or business shall be deemed never to have vested in the State by reason of the operation of these regulations and any question which may arise as to any right, title or interest in or over such property, industry or business shall be determined accordingly.
- (b) the divesting order shall have the effect of reviving any arrangement, agreement or other notarially executed instrument in and over that property, industry or business subsisting on the date on which such property, industry or business vested in the State.”

Regulation 19 –

“In these regulations –

‘affected property’ means any immovable property damaged or destroyed on or after July 24, 1983, by riot or civil commotion and includes any immovable property used for the purposes of an affected business or industry.

‘affected business or industry’ means any undertaking of a commercial or industrial nature damaged or destroyed on or after July 24, 1983, and includes subject to the provisions of these regulations, all rights, powers, privileges and interests arising in or out of such undertaking.”

The judgment of the Court of Appeal sets out the sequence of events leading to the issue of the impugned letter "E" by REPIA, and I gratefully adopt the narration :

"On 15.8.83 the 2nd respondent made an application to the 1st respondent in the prescribed form (2R4(b)). He stated that the existing building which is nearly 50 years old was gutted by fire during the recent riots, is beyond repair and in a dangerous state of collapsing with the first heavy rainfall ; that he proposes to re-construct a new 4 storeyed Building in place of the present 2 storeyed one, in conformity with the U.D.A. New Master Plan ; that he would complete construction of the new building within six months with his own funds ; that the tenants in the upper floor cannot be provided with shops unless a new building is constructed ; that he agrees to provide new shops to all tenants who are interested. He sought permission to demolish the remains of the gutted building and to construct the new one. He stated that the property could be divested after the existing tenants are given possession of the respective shops in the ground and upper floor.

On 16.8.83, the 1st petitioner wrote the letter ('B') to the Chairman of REPIA. He stated that the business was not affected during the recent disturbances and is not covered by the definition of 'affected business or industry', and that the only damage was to the wooden doors at premises No. 128 and that some plaster was falling off the walls. He asked for a ruling in regard to the condition of the business in so far as the Emergency Regulations are concerned. He annexed a declaration (B 1) to the prescribed form. In answer to the query - 'Do you propose to re-condition/repair/re-establish the affected property, business or industry out of your own resources?' his answer was 'Yes'."

The 2nd respondent says that he sent through his Attorney letters dated 18.8.83 to all tenants indicating his decision to construct a new four-storeyed building after obtaining permission from REPIA and the U.D.A. and of his willingness to rent out the new shops to his tenants. A letter sent to one such tenant, one Senaratne, has been annexed (2R2). According to him, all the tenants have agreed to his suggestion except the petitioners. The petitioners, however, have denied this.

The Chairman of REPIA wrote to the 1st petitioner on 5.9.83 ("C") that in terms of the Regulations, he declares that M/s. City Industrial Enterprise is not an "affected business" for the purpose of the Regulations and to obtain the prior approval of the Urban Development Authority and/or the local authority before commencing any development activities or repairs.

On 13.9.83, the Chairman of REPIA, wrote to all tenants, including the petitioners, to attend an inquiry on 21.9.83 in regard to divesting of the premises/business (1R4A).

On 14.9.83, the Chairman of REPIA wrote to the 1st petitioner (D) as follows :

"The above business has been divested on 5.9.83. If the owner is not attending to the repairs you may plaster the inside walls at your expense."

On the same date (1R3A of 14.9.83) the Chairman of REPIA wrote to the Chairman, U.D.A., stating that as the U.D.A. had other plans for the land covered by "Abdeen Building", the premises have not been divested to the 2nd respondent ; that he understands from the 2nd respondent that U.D.A.'s original decision to use the land for other purposes has since been altered and that it is possible for the owner to undertake re-building activities ; he requested the U.D.A. to grant to the 2nd respondent permission to reconstruct his property ; that it is intended to divest the property once agreements are reached between the former owner/tenants.

On 15.9.83, the Chairman of REPIA wrote to the O.I.C., Pettah Police Station (1R2), informing him that the various premises in "Abdeen Building" are "affected properties"; that certain tenants, including tenants of premises No. 126 and 128 were given authority to resume business only, without any further rights, to enable them to collect dues from previous customers ; that the 2nd respondent has made representations that five tenants, including M/s. City Industrial Enterprise are in the process of doing repairs to some parts of the premises for which they have received no authority and requesting Police action to prevent these tenants from exceeding the authority given to them until REPIA takes action to divest the properties.

On 20.9.83, the 2nd respondent's Engineer inspected the property and on 22.9.83 gave his report (2R1) referred to above.

The Chairman, REPIA, states that as only the tenant of premises No. 138 turned up at the inquiry on 21.9.83, the inquiry was held on 26.9.83, on which date the petitioners and some tenants were represented by Attorneys-at-Law and matters relating to the demolition of "Abdeen Building", the construction of a new building and letting of portions to previous tenants were discussed. The note made by the Chairman at this inquiry has been annexed (1R4B) to his affidavit. According to this note, the petitioners have been represented by lawyers. The note states that except for Senaratne, other tenants have not indicated anything to the landlord; the lawyer for Abdul Kayoom & Co., stated that premises No. 126 was not affected and no application was made for divesting of business. The lawyer appearing for M/s. City Industrial Enterprise and for some of the other tenants had stated that all ground floor premises need very minor repairs; this was not allowed. The note concludes that a decision will be taken after U.D.A. approval is forthcoming on the future of the building.

On 27.9.83, U.D.A. replied to the letter of the Chairman of REPIA dated 14.9.83 (1R3B). In the said letter 1R3B, U.D.A. inquires whether REPIA will permit the owner to reconstruct the buildings on the understanding that the properties will remain vested in the State till such time an agreement between the landlord and tenants is reached subsequently.

In continuation of the letter (1R3A), the Chairman wrote to the U.D.A. (1R3C of 3.10.83) stating that the 2nd respondent and the other co-owners wish to re-develop the property, and that REPIA has no objection to this; that demolition of the property will be permitted once the building plans are approved by the U.D.A., that the property will continue to be vested in the State until completion of construction and that the co-owners have agreed to this.

The Chairman of REPIA was sent a letter by the U.D.A. dated 8.11.83 forwarding a report dated 4.10.83 (1R3F (1)) relating to damaged buildings in Pettah referred to above.

On 7.11.83, U.D.A. informed the 2nd respondent (1R3D) that his building plans conform to U.D.A. building and planning requirements and that the permit will be issued on payment of a service charge of Rs. 360,000 in lieu of the three parking spaces which he is not able to provide within the premises. A copy of this letter was sent to REPIA.

The Chairman of REPIA on 10.11.83 wrote to the 2nd respondent (1R3E) authorising him to commence demolition operations, and requesting the latter to grant 14 days for the tenants to vacate the premises, before commencing demolition work.

On the same date (10.11.83) the Chairman of REPIA wrote two letters dated 10.11.1983, the letter 'C' to the Manager, M/s. Abdul Kayoom and Co., and the letter 'E' to the Manager, M/s. City Industrial Enterprise, stating that "Abdeen Building" that was "damaged/destroyed during the July 1983 disturbances are to be developed, for which purpose, these premises will be demolished."

The petitioners by their Attorney-at-Law's letter dated 11.10.83 protested to the 1st respondent that "REPIA has no power, authority or jurisdiction to demolish the premises, in which my clients are carrying on business or indeed to do anything in respect of the entire building which will affect the business carried on by my clients on the premises occupied by them as tenants."

The jurisdiction of REPIA to order the demolition of "Abdeen Building" referred to in his letter "E", turns on the question whether "Abdeen Building" is an "affected property", within the meaning of Regulation 19. It is the position of the petitioners that, as far as they are concerned, the relevant question is whether the premises No. 128, of which they are tenants is an "affected property" or not. The petitioners stated that their premises No. 128, is a defined and separate part of "Abdeen Building" and has an identity of its own and is a distinct immovable property, which has neither been damaged or destroyed by the riot.

It cannot be gainsaid on the facts of the case that "Abdeen Building" was damaged or destroyed by communal riots. It is quite manifest on the material on record that - "Abdeen Building" has suffered substantial damages, as a result of the riots. There is evidence of the Chairman, 1st respondent supported by the Engineer's report of the U.D.A. and again there is a report of the 2nd respondent's Building Engineer. The petitioners have not, as against the reports of these Engineers, filed any Report of any competent Engineer contradicting their conclusion that the "Abdeen Building" should be demolished as soon as possible. Certainly the petitioners do not specifically deny that substantial damage has been caused to "Abdeen Building" by riot. But what the 1st petitioner states is that the building like the curate's egg,

is good in parts and that the portion of the "Abdeen Building" represented by premises No. 128 has not suffered any major damage. It may appear from the facts disclosed that the petitioners' premises No. 128 considered in isolation quite irrespective of what has happened to the rest of the building, are intact and that business can be carried on therein without that part of the building being demolished. But that state of affairs can exist only if the rest of the building is allowed to continue in the damaged state: but, no restructuring or restoration of the building can be effected with premises No. 128 being allowed to continue to be there, in the present state. The petitioners in their Attorney-at-Law's letter "F" have relevantly apprehended that anything done by REPIA in respect of the entire building will affect the business carried on by them on the premises occupied by them as tenants. Further it is quite evident that the U.D.A. will not pass any plan to reconstruct the "Abdeen Building" with premises No. 128 remaining intact. On the facts, it cannot seriously be refuted that if "Abdeen Building" is to be restored or rehabilitated it is necessary that premises No. 128 should be demolished.

The Chairman of REPIA has quite unequivocally stated in his affidavit that "Abdeen Building" cannot be demolished for the construction of a new building, in such a manner, as to allow premises No. 128 to stand.

The jurisdiction of REPIA to rule on demolition rests on the answer to the question whether the entire "Abdeen Building" with all its component parts have to be treated as one unit for purposes of it being stamped "affected property" or does each component part, as represented as premises for purposes of rating, constitute "immovable property" for the application of the test of "affected property". In my view the building might have been divided and assessed in respect of rates leviable under the Municipal Councils Ordinance and thereby in a legal sense each divided portion bearing a separate assessment number may be treated as a separate immovable property, but physically the entire structure, though divided into various parts for the purpose of assessment, constitutes one building and a single immovable property and the portion of the building bearing assessment No. 128 is an integral part of the building which has been damaged or destroyed by the riots and the building cannot be repaired without affecting the petitioners' portion. Any major repair or

reconstruction of the building is bound to affect all parts of the building ; hence for the purpose of the relevant regulations, "Abdeen Building" must be considered as a single entity and if any part of the building is substantially damaged the whole building is thereby affected and therefore becomes "affected property," within the definition of "affected property" in the Regulation. In this perspective, premises No. 128 cannot be treated independently as immovable property, not constituting "affected property".

On the facts of the case one cannot resist the conclusion that if the entire building is the relevant unit of consideration in the construction of "affected property" in the Regulations, "Abdeen Building" is affected property within the pale of the Regulation, even though the part of the property represented by No. 128, may appear to be intact and can be patched up without any major repair. REPIA was established to repair and restore affected properties. It cannot perform this function in respect of "Abdeen Building" without demolishing premises No. 128. Once "Abdeen Building" is identified as "affected property" under Regulation 9 it vested absolutely in the State free from all encumbrances. It is not disputed that if "Abdeen Building" is "affected property" the petitioners' tenancy ceased to be operative by virtue of Regulation 9. The petitioners have lost their tenancy. Their present status is that of a licensee only. Their business may not be affected but the premises in which they are carrying on business is part of the "affected property", subject to the authority of REPIA. On this view of the matter the petitioners' objection that REPIA had no authority to decide on the fate of premises No. 128 fails. Since in my view the entire "Abdeen Building" is "affected property", it is not necessary to consider the validity of the argument of counsel for the petitioners that if premises No. 128 is an independent entity and is immovable property within the meaning of Regulation 19 REPIA exceeded its powers in ordering demolition of the premises. However, I agree with the judgment of the Court of Appeal that even on the application of the criterion that premises No. 128, is a separate immovable property in the backdrop of the damage caused to premises No. 128 coupled with the damage to the main building, premises No. 128 also constitute "affected property". The Chairman of REPIA says that the concrete slab separating the upper floor and ground floor is extensively cracked and damaged and is out of alignment and is propped up by temporary support. He states that the slab thus constitutes potential damages (i.e. danger) to any occupants of the

divided portions of the ground floor as it may collapse notwithstanding temporary support. According to him the walls of the divided portion of the ground floor are also extensively cracked. As stated earlier the status of the petitioners in relation to the premises No. 128, today, is that of licensees only and not that of tenants and their interests in the property is only contingent on a divestment order in terms of Regulation 14, when tenancy of premises No. 128 would revive. But it should however be noted that under Regulation 14, a divesting order can only be made of the entire "Abdeen Building" in its damaged state and not of its undamaged parts. To that extent only the petitioners can be interested in having the "Abdeen Building" kept in the damaged state without premises No. 128 being demolished.

It is to be noted that the contention of the petitioner is that their premises No. 128 is not "affected property". They do not question that, if the unit to be considered is the entire building and not any part thereof then "Abdeen Building" is "affected property". This contention poses the wrong question to identify "affected property". A declaration by REPIA under Regulation 9 (2) is not relevant to determine and in fact REPIA had no jurisdiction to determine that a part of "affected property" is not "affected property". REPIA could not, in law have decided that petitioners' premises No. 128 were not affected property. Abdeen Building of which premises No. 128 were a part became stamped in law as "affected property". The petitioners complain that they were not heard on the question whether premises No. 128 is a "affected property", within the meaning of the Regulation. In my view a hearing on that irrelevant issue would have served no purpose in law. As was stated by Brandon, L.J., in *Sinamond v. British Airport Authority (1)*:

"No one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

On the question of demolition of the entire building referred to in letter "E" I agree with the finding of the Court of Appeal that the demolition of the building was considered at the inquiry held on 26.9.83 at which the petitioners were represented by Attorney-at-Law.

The third ground of attack is that the decision contained in document 'E' was not made bona fide. There is no substance in this ground. "Abdeen Building" has been substantially damaged, cannot be rebuilt with parts of the said building being allowed to remain intact

REPIA is charged with the function of repairing and restoring. Since "Abdeen Building" has been extensively damaged there is no question of effecting piecemeal repairs. The debris has to be demolished and cleared and a new building, satisfying the requirements of the U.D.A. has to be constructed. Hence REPIA reached the decision that the remnants of the building including premises No. 128, should be demolished, as preliminary to a new building being erected. In my view, that is the only reasonable decision that could have been reached by REPIA in the performance of its function of restoration of the "affected property". Restoration of the affected property does not mean that the substituted property should be of the same specifications as the old. The requirements of U.D.A. would render such restoration impossible. In my view, restoration will catch up a new building erected in terms of the building plans approved by the U.D.A. In this context, it is significant that the REPIA has power to clear and redevelop "affected property". The purpose of the power has to be borne in mind in appreciating the decisions of REPIA.

The petitioners complain of the fact that REPIA was not going to construct any new building with its moneys but has arranged with the 2nd respondent to construct a four-storeyed building at his expense and according to his approved plan. Petitioners state that this arrangement with the 2nd respondent is beyond the powers of REPIA. They contend that if REPIA is unable to clear and develop the property on its own with its own funds, it cannot permit the 2nd respondent to construct a new building on its behalf but will have to make a divesting order in terms of Regulation 14 (1). This contention postulates disregard by REPIA of its functions and of the social purposes for which it has been established. A divesting order may benefit the petitioners at the expense of the owners of the building, but REPIA will not, in the proper exercise of its powers, be justified in making such an order if no request for such order is made by the owners of the "affected property". A divesting order will render sterile a valuable piece of land with vast potentialities in the commercial area of Fort. REPIA should exercise its discretion to promote the policy and object of the Regulation rather than thwart it. It has been vested with the power to clear and develop damaged buildings and if the owner of the building is ready and willing to help REPIA, the latter should welcome the gesture.

I cannot agree with the submission that REPIA cannot come to any arrangement with the 2nd respondent regarding the construction of a new building in place of the damaged "Abdeen Building". Regulation 5 vests the REPIA with power, inter alia, to give or lease or hire, mortgage, pledge, sell or otherwise dispose of any movable or immovable property and to clear and redevelop "affected property" vested in the State for the purpose of discharging its functions. In my view this power is wide enough to render legal the proposed arrangement between the REPIA and 2nd respondent. Be that as it may the immediate question is whether the decision to demolish as set out in document "E" is justifiable in law. Demolition represents the first stage in restoration. Development comes in subsequently.

For the reasons set out above I hold that the decision of REPIA ordering the demolition is a valid decision in law. The demolition of the building cannot be avoided in any scheme of restoration or redevelopment of the affected property and how REPIA will find the necessary funds to perform this function in respect of "Abdeen Building" is not a matter of concern to the petitioners. The argument of the petitioners will frustrate the beneficent scheme of REPIA and the U.D.A. for the development of the locale.

I dismiss the appeal with costs and vacate the order of this court dated 18.7.84 prohibiting the 1st respondent demolishing the premises No. 128, Prince Street.

**COLIN-THOME, J.** – I agree.

**RANASINGHE, J.**

In the forenoon of the 25th July, 1983 violence on a large and wide spread scale broke out in the city of Colombo. Marauding gangs attacked innocent people, damaged and destroyed properties set fire to buildings, both private and public, as well as residential and business. Pettah was an area in which considerable damage was caused to property by fire. Abdeen Building, situate along Prince Street in the Pettah, and owned by the 2nd respondent, was a building which was set on fire. Abdeen Building stood at the intersection of Prince Street and 2nd Cross Street. It comprised a ground floor and an upper floor, separated by a concrete slab which served as the roof of the ground floor. Both floors were divided into separate

portions each of which had been assessed by the Colombo Municipality, as a separate unit and assigned a distinction number. The upper floor had seven such units, numbered 126 1/1 to 126 1/7 all of which faced Prince Street. The ground floor had eight such units. One of these faced 2nd Cross Street and was numbered 63. The other seven all of which faced Prince Street, were numbered 126, 128, 130, 132, 134, 136 and 138 respectively. The 1st, 2nd and 3rd petitioners-appellants were, on that date admittedly, in occupation, as tenants, of the ground floor portion numbered 128, Prince Street in which they carried on a business called "City Industrial Enterprise".

It is common ground that the roof and the entirety of the upper floor of this building, consisting of the several portions, numbered as set out earlier on that floor, were all completely destroyed by fire. It is also agreed that the concrete slab separating the two floors, and several of the walls of the ground floor were damaged. The parties are, however, at variance in regard to the nature and the extent of the damage, caused to the portion numbered 128, which was in the occupation of the 1st to 3rd petitioners-appellants.

The Government, in order to meet the situation brought about by the unfortunate incidents referred to earlier, brought into operation, on 6.8.83, a set of Emergency Regulations known as the Emergency (Rehabilitation of Affected Property, Business of Industries) Regulations No. 1 of 1983. These Regulations have thereafter been renewed monthly, and are still in operation.

Regulation 2 of the said Regulations established a body called the Rehabilitation of Property, Business and Industries Authority which was referred to as "REPIA", and which said body is the 1st respondent in these proceedings. REPIA is a body corporate with perpetual succession. Whilst Regulation 4 sets out REPIA's functions to be:

- (a) the repair and restoration of affected properties;
- (b) the rehabilitation of affected industries and business;

Regulation 5 spells out the powers, which REPIA may exercise for the purpose of discharging its functions, to be, *inter alia*, "to clear and re-develop affected property vested in the State under these regulations". Regulation 9 (1) provides that "every affected property, industry business shall with effect from the date these regulations come into force, vest absolutely in the State free from

encumbrances" ; and paragraph (2) of Regulation 9 states that "where any question arises as to whether any property, industry or business is an affected property, industry or business such question shall be decided by REPIA by a declaration in writing and such declaration shall be final and conclusive and shall not be called in question in any court in any proceedings whatever". Regulation 12 prohibits the alienation of affected property.; and Regulation 13 provides that only persons authorized in writing by REPIA could enter, remain in or occupy any affected property. Divesting of affected property by REPIA is provided for by Regulation 14.

The term "affected property" used in the said Regulations has been defined by Regulation 19 to mean "any immovable property damaged or destroyed on or after July 24, 1983, by riot or civil commotion and includes any immovable property used for the purpose of an affected business or industry" ; and an "affected business" has been defined to mean "any undertaking of a commercial. . . . nature damaged or destroyed on or after July 24, 1983. . . .".

The three petitioners-appellants, who had been carrying on their business in the aforesaid portion numbered 128 for a considerable period of time prior to the 24th July 83 and who have also continued to do so even after the said date, addressed to the 1st respondent the letter dated 16.8.83, a copy of which has been marked "B" in these proceedings. In this letter the petitioners stated: that none of the shops on the ground floor has even been damaged to an extent which would prevent any business being carried on in it: that the only damage caused to their premises No. 128 was that, whilst some wooden doors were affected by the fire, some plaster fell off the walls: that the damage so caused to their premises have since been repaired by them with the permission of the Police, and they are continuing to carry on their business in the said premises: that they are addressing this letter in order to protect their interests as tenants of the said premises in view of the attempts made by the landlord to utilize the situation, which has arisen, to interfere with the rights which the petitioners are entitled to as tenants, and to request the 1st respondent to inspect the said building and give a ruling in terms of the said emergency regulations in regard to their business.

The 1st respondent, by his letter dated 5.9.83 to the 1st Petitioner a copy of which has been marked "C", declared, in terms of the aforesaid Emergency Regulations, that the business in premises No. 128, Prince

Street, Pettah, "is not an affected business for the purposes of these regulations". The 1st petitioner was also informed that he should obtain the prior approval of the Urban Development Authority and/or the Local Authority before commencing any development activities or repairs.

Thereafter, on 14.9.83, the 1st respondent informed, by his letter, a copy of which is the document "D", the 1st petitioner: that the business in premises No. 128, Prince Street, Colombo 11, "has been divested on 5.9.83": that, as it has been reported that the 1st petitioner is already in occupation of the premises and carrying on business, that he, the 1st petitioner, may plaster the inside walls at his expense if the owner does not attend to the repairs.

The 1st petitioner states that thereafter, at an interview held on 21.9.83 at the office of the 1st respondent, the petitioners were "explained that neither their business nor the premises occupied by them as tenants were 'affected property' or 'affected business'". This interview according to the 1st respondent, however, was actually held on 26.9.83, and at such interview a number of matters relating to Abdeen Building, including the proposal of the 2nd respondent to demolish the entirety of Abdeen Building and the construction of a new building and the letting out of portions of such new building to the previous tenants, were discussed.

Thereafter, according to the petitioners, without any notice to them, the 1st respondent addressed to the petitioners the letter "E", dated 10.11.83, which the petitioners maintain was handed over to them by the 2nd respondent himself, on 10.11.83, and in which the 1st respondent states that Abdeen Building, which was "damaged/destroyed during the July 1983 disturbances, are to be developed for which purpose these premises will be demolished".

On receipt of the said letter "E", the petitioners forwarded to the 1st respondent the letter "F" on the very next day, 11.11.83 in which they expressed astonishment, in view of the 1st respondent's own earlier communications "C" and "D" - referred to above - to them, at the direction issued to demolish the premises, No. 128, occupied by them, as well. They charged the 1st respondent with lack of bona fides, and of unfairly helping the 2nd respondent to evict them, an act which the 2nd respondent could not otherwise have been able to achieve legally. They also challenged the legality of this course of action on the part of the 1st respondent.

Thereupon, on 15.11.83, the petitioners instituted these proceedings before the Court of Appeal praying for a writ of certiorari to quash the said purported decision or determination of the 1st respondent that premises No. 128, Prince Street, Colombo 11 is an 'affected property' and that it is to be demolished", and also for an order directing the 1st respondent to stay all action or proceedings in regard to the demolition of the said premises.

The Court of Appeal by its judgment delivered on 11.6.84, has held : that, even if premises 128 (and 126) is considered a separate and distinct property, it is damaged property and therefore an "affected property" within the meaning of Regulation 19 ; that it cannot be held that the petitioners were not given a hearing before the decision to demolish was made ; that there is no basis for the petitioners' allegation that the said decision to demolish was not made bona fide ; that the decision of the 1st respondent to demolish is *intra vires* Regulation 4 (a) ; that the petitioners have *locus standi* ; that the tenants of the upper floor of Abdeen Building were necessary parties to these proceedings. On the basis of such findings, the Court of Appeal dismissed the petitioners' application.

The 1st respondent's affidavit filed in the Court of Appeal discloses that on 15.9.83, the day after the 1st respondent had sent the petitioners the aforesaid letter "D" confirming that the petitioners' premises No. 128 had been divested on 5.9.83 and authorising the petitioners to carry out the necessary repairs to the said premises, the 1st respondent had sent out the letter 1R2 to the Officer-in-charge of the Police Station, Pettah, requesting him to take necessary action to prevent, *inter alia*, the petitioners from exceeding the authority - which the letter itself sets out as being only "to resume business only without any further rights in view of the fact that they would otherwise not even be able to collect dues from previous customers" - given to them until such time as action is taken by REPIA to divest the properties. The letters 1R3A dated 14.9.83, 1R3B dated 27.9.83, 1R3C dated 3.10.83, 1R3D dated 7.11.83, 1R3F dated 8.11.83 constitute correspondence between the 1st respondent and the Urban Development Authority regarding the grant of permission to demolish and re-develop the entirety of Abdeen Building. The petitioners themselves do not appear to have been aware of the said correspondence. 1R3E, dated 10.11.83, is a letter from the 1st respondent to the 2nd respondent authorizing the 2nd

respondent to commence the demolition of Abdeen Building. On the same day the 1st respondent sent his letter "E", referred to earlier, to the petitioners to which the petitioners promptly replied with their aforesaid letter "F" on the following day, 11.11.83.

The principal submission made to this Court by learned Counsel was in regard to whether or not that portion of the Abdeen Building, which was occupied by the petitioners as tenants of the 2nd respondent and numbered 128, Prince Street, Colombo 11, also became "affected property" within the meaning of the aforesaid Emergency Regulations. Learned President's Counsel for the petitioners contended that it did not. Learned President's Counsel appearing for the several respondents, on the other hand, all argued that it did.

That the term used in the said Emergency Regulations is "property" and not "premises"; that the term used in the Rent Restriction laws is "premises" which has been given a special meaning; that, sec. 5 (2) of the Public Security Ordinance (Chap 40), under the provisions of which the said Emergency Regulations have been promulgated, draw a distinction between "property" and premises, that, in regard to a building such as the said Abdeen Building, which comprises several parts or portions, it is the Abdeen Building in its entirety as one unit which would fall within the term "property" contemplated by the said Regulations, and not each of such parts or portions separately; that, unless the said Abdeen Building itself, in its entirety, is so treated, it will not be possible to demolish the entirety of the building, the greater part of which has been damaged and destroyed, and construct in its place an entirely new building in which the other occupants of the old building, whose portions had also been so destroyed, could be accommodated; that, if no such new building is constructed, the other tenants so displaced would suffer for want of accommodation, are arguments put forward in support of the contention advanced on behalf of the respondents that the "affected property", in the circumstances of this case, is the entirety of the building known as the Abdeen Building.

Learned President's Counsel for the petitioners maintains that the portion numbered 128 and occupied by the petitioners also constitutes immovable property, and this portion not having been damaged or destroyed as contemplated by Regulation 19 – in respect of either the area covered by the said portion or the business carried

on within that portion – such portion was not “affected property” within the meaning of the said Regulation 19, and did not, therefore, vest in REPIA.

Having regard to the background in which the said Emergency Regulations come to be promulgated, the object of these Regulations, as is indicated by the Citation itself, has been to repair, restore and rehabilitate not only immovable property, which were damaged and destroyed on or after July 24 1983, but also all undertakings of a commercial or industrial nature similarly damaged or destroyed. For the purpose of giving effect to these objects such properties and businesses and industries were sought to be vested immediately in the State in order to prevent unscrupulous elements from exploiting the situation and capitalising on the helpless position in which owners and occupants found themselves as a result of the unfortunate incidents. Not only was property, whether immovable, such as buildings, or movables, such as businesses and industries, in need of the protection of the State, persons too – whether they were owners of buildings, businesses or industries, or were only occupants, such as tenants, of property – were in dire need of State protection. The whole aim and object of such emergency legislation had been the preservation of the status quo. The preservation of the position, of both persons and property, as it existed on the 24th July 1983. The Regulations, which by their very nature were to be of only a temporary nature and were thought to be essential to meet an emergency situation, were to protect, preserve and provide for the welfare and well-being of both persons and property affected by such incidents. Such regulations could not have been meant to make the position of any person, whether affected by such incidents or not, any the worse or even less beneficial than what it was immediately prior to the 24th July 1983.

According to the definition of the term “affected property” in Regulation 19 as set out above, such property should all be immovable. The very first requirement is that such property should be immovable. The word “premises” is a term defined by the Rent Laws. It has been defined in the Rent Act of 1972 as : “any building or part of a building together with the land appertaining thereto”. This definition would, therefore, bring both premises No. 128, and the Abdeen Building itself within the category of immovable property.

Premises No. 128 along with the other portions – seven on the ground floor, and seven on the upper floor – each of which has also been separately assessed and separately occupied together constitute one composite building known as the Abdeen Building. These fifteen portions, even though each of them would fall within the category of premises for the purposes of the Rent laws, nevertheless constitute, structurally, integral parts of one large building.

It has been contended that : in the case of a large composite building such as the Abdeen Building, the entirety of the building should, for the purposes of the said Regulations, be considered as one single unit, even though it comprises several sections which have been treated separately for the purposes of the Rent laws ; that, if substantial damage has been caused to the building considered as one unit, then the entirety of the Abdeen Building, including any parts which may not be damaged, should be considered "affected property" for the purposes of the said Regulations. Such an approach would be fair and acceptable in regard to a property which is not only in fact one independent unit, but has also been treated and occupied as such. Should such an approach be adopted, in such an inflexible form, always even in respect of a building comprising several integral parts which, though structurally connected to, or dependent on one another, yet, function as if each is independent of the other ? If, for instance, only one such constituent portion, or a business which was being carried on in such constituent part, is damaged or destroyed, should such constituent part – on the basis of either the damage caused to such part itself or to the business carried on therein – be not considered "affected property" merely because the parts not so damaged represent the larger portion of the entirety of the building. Should the benefits accruing upon it being considered "affected property" be denied to it on such ground. Similarly, where the greater majority of such constituent parts are damaged or destroyed, but effective repairs or restoration work cannot be safely and satisfactorily carried out without interfering with those that remain undamaged, then should such damaged parts also be deprived of the protection and the benefits of the said Regulation ? It seems to me that no invariable test could or should be adopted. It should be made to depend upon the circumstances of each case. For instance, even if one constituent part, undestroyed and undamaged, could be singled out from the other units, the greater majority of which have been destroyed or damaged, yet, on a more realistic and a more practical

overall view, it would be more just and equitable, for the sake of the greater good of the greater number, to regard the entirety of the building as the unit of immovable property for the purposes of the said Emergency Regulations. Such an approach would tend to advance the aim and the object of the said Regulations, more than a rather narrow and technical approach.

Although I am inclined to the view that, in the case of a building such as the Abdeen Building, if there has been considerable damage caused to several of the separate portions which together comprise such building, it is the entirety of the building itself that should, for the purposes of the said Regulations, be regarded as the unit of immovable property, yet, it becomes unnecessary, in the circumstances of this case, to express a definite finding in view of the opinion, as set out below, I take that the finding of the Court of Appeal, – that, even if the aforesaid premises No. 128 is considered to be a separate and distinct property, it is nevertheless a damaged property and therefore an affected property, – should be affirmed.

As set out earlier the 1st petitioner maintained that the only damage caused to premises No. 128 was to some of its wooden doors and to the plaster on the walls. The petitioners had so informed the 1st respondent as early as 16th August 1983 in their letter "B", referred to earlier, and had requested the 1st respondent to inspect the building. There is no direct evidence of any such inspection by the 1st respondent himself. Even so, the 1st respondent had, as set out earlier, on 5.9.83 by his letter "C", declared the petitioners' business, which was carried on in premises No. 128 as not being an "affected business" and advised the petitioners that they should obtain the prior approval of the authorities set out therein before commencing any development activities or repairs. The 1st respondent did also, by the letter "D", authorize the petitioners to carry out the repairs set out therein at their own expense if the owner does not attend to such repairs. No limitations have been imposed by this letter. According to 1R4B, at the inquiry held by the 1st respondent on 26.9.83, the repairs needed by the ground floor have been described by the representatives of the petitioners as being "very minor". Thereafter the 1st petitioner did once again in his letter "F", sent out to the 1st respondent the day after he received the 1st respondent's letter "E", reiterate the nature and the extent of the damage caused to premises No. 128.

As against the petitioners' version of the damage sustained by their premises No. 128, was the 1st respondent's description of the damage caused to the said premises : that the concrete slab separating the upper floor and ground floor is extensively cracked and damaged and is out of alignment owing to the damage sustained by the supporting walls on the ground floor : that the said slab constitutes a potential danger to the occupants of the ground floor as it may collapse notwithstanding temporary supports : that the walls of the divided portions on the ground floor are also extensively cracked. As set out earlier it is not clear whether this description is of something the 1st respondent had himself observed at an inspection of the scene or whether it is only derivative knowledge, gathered for instance from the report 1R3F1 dated 11.10.83, which had been submitted to the Director-General of the Urban Development Authority by an engineer of the said Authority after an inspection on 4.10.83 and a copy of which had been received by the 1st respondent from the said Authority on 8.11.83.

It was contended that the Court of Appeal should not have taken into consideration either the report 1R3F1 tendered on behalf of the 1st respondent or the document 2R1 submitted on behalf of the 2nd respondent, for the reason that the petitioner has not been informed of the contents of these documents and has not been given an opportunity of replying to them before the impugned Order "E", referred to earlier, was made. 1R3F1 had been considered by the 1st respondent, according to his affidavit, on 8.11.83, only two days before the said Order "E" was made. The petitioners had not been made aware of its contents, until these proceedings began. 2R1 is a report made by the 2nd respondent's engineer on 22.9.83 after an inspection on 20.9.83. 1st respondent has not stated that he had seen the said report before he made the Order "E". Nor have the petitioners been aware of it until the 2nd respondent filed it in the Court of Appeal on 11.1.84 along with his affidavit dated 9.1.84. The petitioners it is submitted were not aware until the document "E" reached them on 10.11.83 in the circumstances set out by them that the 1st respondent had taken the view that their premises No. 128 was also an "affected property", and that the moment they became aware of the view so taken by the 1st respondent they protested on 11.11.83 to the 1st respondent by their letter "F", and that at least on that date, if not earlier, the 1st respondent should have known that a dispute had arisen at least as to whether or not premises

No. 128 was "affected property" and that such question had to be decided by him in terms of Regulation 9(2) before he could proceed to do anything further under the said Regulations.

The declaration contemplated under Regulation 9(2) is not, in my opinion, a condition precedent to the exercise by REPIA of the powers vested under the said Regulations in REPIA even where a dispute has arisen as to whether a particular property is "affected property" or not. In view of the provisions of paragraph (1) of Regulation 9, the moment the said Regulations came into operation on 7.8.83 any property, which at that time came within the definition set out in Regulation 19, vested immediately in the State. Such vesting was immediate and automatic. No further act or acts on the part of any one, the 1st respondent or any other official, was required to render such property an "affected property". A declaration under 9(2) is not required – even though the matter is in dispute – to impress the property with the character of an "affected property". Such a declaration merely declares, in view of the existence of a dispute, the true character of the property which the law has, by virtue of the said Regulations, already invested it with. Such a declaration cannot confer upon the property a character which it has not acquired already. If at the time the said Regulations came into operation the property concerned had been damaged or destroyed in the manner set out in Regulation 19 then such property would have acquired to itself with immediate effect the character of an "affected property", and REPIA would have been promptly invested with the power to exercise all powers it could, under and by virtue of the said Regulation, in and over the affected premises. What the provisions of Regulation 9(1) do is merely to invest REPIA with the power to make such a declaration. This does not constitute the vesting of a power coupled with a duty to do that act. The authority of REPIA does not depend even when there is a dispute, upon its making such a declaration. Where the property has in fact been damaged or destroyed, as described in Regulation 19, then REPIA's authority has, by operation of law, come into existence. Thus if premises No. 128 had in fact been damaged or destroyed at any time on or after 24th July and before the 8th August 1983 – there is no allegation of any damage being caused after 8.8.83 – then such premises would from and after 8.8.83 have been "affected premises" whether or not a declaration under Regulation 9(2) was made by the 1st respondent. No such declaration was needed for such premises to become and be termed "affected premises", and to confer power

upon the 1st respondent in and over it. The only consequence of such a declaration is that it gave to such a declaration the final and conclusive effect set out therein. The absence of such a declaration would not render any act done by the 1st respondent in and over or in respect of premises No. 128 void if, in fact and in law, it was "affected property" within the meaning of the said Regulation 19.

Although 1R4B shows the representatives of the petitioners stating that the ground floor needs "very minor repairs" and the 1st respondent not "allowing" it and postponing the "decision" until the "U.D.A. approval is forthcoming on the future of the locality", there is no reference made therein to the question, referred to in Regulation 9 (2), having arisen. The letter "F", as set out earlier, is dated 10.11.83. If, therefore, the question envisaged by the said Regulation 9 (2) surfaced itself – as it certainly did – only upon the said letter "F", then the 1st respondent would not have had sufficient time to decide such question; for, the petitioners instituted these proceedings before the Court of Appeal within a few days, on 15.11.83. In the absence, therefore, of a declaration under Regulation 9(2), this question was open to be considered by the Court of Appeal.

The only reports which were placed before the Court of Appeal were the reports 1R3F1 and 2R1. They were produced on behalf of the 1st and 2nd respondents respectively. There is in them material which, in my opinion, justifies the finding of the Court of Appeal on this point.

The said impugned Order for demolition has been challenged by the petitioners on several grounds: that they were not heard before it was made; that the demolition of a building was beyond the powers of REPIA; that it has been made upon considerations which should not have weighed with REPIA; that REPIA has no power to authorise the 2nd respondent himself, even though he is the owner of the said building, to demolish the building and construct in its place at his own expense a new building according to his own plan, even if such plan has been approved by the Urban Development Authority.

The 1st respondent, by his letter 1R4A, dated 13.9.83, summoned the petitioners for an interview "in regard to the divesting of the above premises/business". Premises so referred to was premises No. 128. This interview was ultimately held on 26.9.83; and, according to 1R4B, which is a record of the proceedings of the said interview, the

representatives of the petitioners, and also of several other interested parties, who had informed the 1st respondent that "all ground floor premises need very minor repairs" and who evidently asked for permission to carry out such repairs, had not been allowed to do so and had been informed that : "decision will be taken after U.D.A. approval is forthcoming on the future of the building". Although the 1st respondent in his affidavit states that he disclosed the contents of the 2nd respondent's affidavit 1R4C, particularly the provisions of paragraphs 13 and 14, to the lawyers and the parties, yet, 1R4B does not bear out this averment. The impugned Order 1R3E (or E) was made by the 1st respondent on 10.11.83, after he received 1R3F(1) from the Urban Development Authority on 8.11.83, and 1R3D, dated 7.11.83, which is a copy of a letter sent by the Urban Development Authority to the 2nd respondent that the permit to build according to the 2nd respondent's plan would be issued to the 2nd respondent upon the 2nd respondent making the payment referred to in the said letter. The petitioners had not been made aware of these communications, and had not been heard after the interview held on 29.6.83 and before the impugned order was made on 10.11.83. The moment any property vests in the State under and by virtue of Regulation 9(1), such property vests "absolutely in the State free from all encumbrances" the effect of which, it was common ground at the hearing before this Court, was to wipe out, inter alia, any subsisting contracts of tenancy. An order made under Regulation 14(1) divesting any property, which has vested in the State under these Regulations, would, in terms of paragraph 2(b) of the said Regulation 14, have the effect of reviving such contracts of tenancy as were earlier wiped out by the operation of Regulation 9(1). As was set out earlier, the interview, which had been summoned by the 1st respondent by his letter 1RA and held on 26.9.83 (1R4B), was expressly an inquiry "in regard to the divesting" of, inter alia, premises No. 128. The business, which was being carried on in premises No. 128 by the petitioners, had, it must be noted, already been divested by the 1st respondent on 14.9.83 by his letter "D" referred to earlier. Where premises which are rented out, ceases to exist, the contract of tenancy relating to such premises also comes to an end. It appears to me that, even though the premises were vested in REPIA, yet, having regard to the matters set out above, fairness demanded that the petitioners be given an opportunity to be heard against the proposed order for demolition.

The functions of REPIA, as set out earlier, in respect of "affected properties" (Reg. 4(a)) are the repair and restoration of such properties. For the purpose of discharging its functions REPIA had the power, *inter alia*, "to clear and re-develop such affected premises" (Regulation 5(b)). The petitioners contend that the demolition of a building does not fall within these powers. Having regard to the provisions of Regulations 4(a) and 5(b), however, I am inclined to agree with the view taken by the Court of Appeal on this point.

Regulation 5 (c) empowers REPIA "to enter into and perform directly or through Government departments . . . . . or any agent authorized in that behalf all such contracts as it may consider necessary for the discharge of its functions". Contracts which REPIA is given the power to enter into and perform by this Regulation are only such contracts as REPIA "may consider necessary for the discharge of its functions". These contracts are, therefore, clearly REPIA's own contracts. They may be entered into and performed either directly, by REPIA itself, or through one of the agencies expressly referred to in Regulation 5(c). Whatever be the mode – directly or through an agent – in which such contracts are entered into and performed, they are and must be REPIA's own contracts. They cannot and must not be those of another – not even of the owner of such premises. The power conferred on REPIA is concise and clear. It must be exercised strictly in accordance with such powers. If, for some reason or other, REPIA finds itself unable to do so, then the remedy is also set out clearly in the Regulations. In such a situation the duty of REPIA is clearly to make an order, in terms of (Regulation 14 (1)), divesting such property. Thereupon the owner is free to do what he may legitimately do. REPIA cannot and must not seek to extend the weight of its authority to enable anyone, not even the owner of such premises, to do something which he would not otherwise have been able to do under the ordinary law.

Contracts which REPIA may in terms of these Regulations perform can be carried out by REPIA either directly by itself or through any one of the agencies set out therein. One such agency is "an agent authorised" in that behalf. The prime purpose for which REPIA can enter into such contracts, and REPIA's main concern in entering into such contracts was only the discharge of its own functions and no other. Once REPIA considered it necessary to perform such a contract for the purpose of discharging its functions then such contract had to

be done only in one of two ways : either directly by REPIA itself, or else through a Government department, a public corporation or through an agent authorised in that behalf. Any expenditure incurred by REPIA in the exercise and discharge of its powers and functions is to come out of a Fund which REPIA is empowered by Regulation 6(1) to have and maintain.

The agents through whom REPIA could perform its contracts are referred to in the said Regulations. They are persons appointed by REPIA, in terms of Regulation 15(1), subject to such conditions of service as REPIA may determine in order to discharge its functions efficiently and are to be remunerated in such manner and at rates to be determined by REPIA. These agents are protected against any suit or prosecution for any act done or purported to be done by them in good faith under the said Regulations or on the directions of REPIA. It is only such a person as has been appointed as an agent in conformity with the aforesaid Regulations whom REPIA could engage to perform, as authorised by Regulation 5(c), a contract which REPIA has entered into (either by itself or through such an authorised agent) for the discharge of REPIA's functions. On the material placed before Court, the 2nd respondent cannot be termed as agent of REPIA as contemplated by the said Regulations.

As has been already set out, in the first week of September 1983 the 1st respondent divested the petitioners' business which was being carried on in premises No. 128 and even authorised the repairs which were said to be necessary. Then, about the middle of September, the 1st respondent had been considering the divesting of the premises itself. The decision to authorize the demolition of the entire building, inclusive of premises No. 128 occupied by the petitioners, has been taken by the 1st respondent only on or about the 10th November 1983. The correspondence - 1R3A dated 14.9.83, 1R3B dated 27.9.83, 1R3C dated 3.10.83, and 1R3D dated 7.11.83 - between the 1st respondent and the Urban Development Authority seems to account for this change in the position of the 1st respondent. A consideration of these documents makes it clear that, although, at the beginning, the 1st respondent had contemplated a divesting of the property so that the owner, the 2nd respondent, who had earlier, on 15.8.83, in his declaration 2R4(b) indicated to the 1st respondent the plans he had to develop the property in question, could go ahead with such plans as he, the 2nd respondent, himself had, yet, later on, the

1st respondent decided against an immediate divesting, and let the property continue to be vested in the State so that the 2nd respondent could be allowed to demolish the entirety of the building and construct in its place a new building according to the 2nd respondent's plan, which had also by then been found to be acceptable to the Urban Development Authority. In this course of action, which had been decided on, the first step was to continue with the vesting and permit the 1st respondent to demolish the building. Such a demolition could be possible only if the entirety of the building continued to be vested in the State. If the property were divested, then the 2nd respondent would have had to evict, at any rate, the petitioners, who were protected tenants in occupation of premises No. 128. Such an eviction would have been possible, in the event of opposition from the petitioners, only through a decree of a competent court. The building sought to be so constructed was not one to be constructed by the 2nd respondent for REPIA in pursuance of a contract REPIA had entered into with the 2nd respondent. The 2nd respondent was not to be paid for such construction by REPIA from and out of REPIA's own funds. Though the plan was approved by the Urban Development Authority, the building to be constructed was the 2nd respondent's own, to be executed and financed entirely by the 2nd respondent. The position then was this. The 2nd respondent had a plan to redevelop the entire property. This plan was approved by the Urban Development Authority. The 2nd respondent was prepared to commence building operations. He had the funds necessary to commence and complete the construction. There was, however, a snag. The petitioners were in occupation. This is where REPIA's assistance was needed. The part REPIA was to play in the proposed scheme was merely to pave the way for the 2nd respondent to do acts which the 2nd respondent would not otherwise have been able to do. REPIA could not and should not allow itself to be so made use of. If REPIA found itself unable to clear and redevelop the property on its own with its own funds, as required by the said Regulations, then all that REPIA had to do and could have done, in accordance with the Regulations in terms of which alone REPIA itself had come into existence, was to make an order, under the provisions of Regulation 14(1), divesting the said property. Such a divesting order would, in terms of paragraph (2) of the said Regulation 14, have revived the tenancy agreement which the petitioner had with the 2nd respondent in respect of premises No. 128 at the time the said Emergency Regulations came into operation on 7.8.83.

On a consideration of the foregoing it seems to me that the submission made on behalf of the petitioner, that REPIA has so conducted itself in order to confer upon the 2nd respondent, at the expense of the petitioner, a benefit which the 2nd respondent would not otherwise have been able to obtain and which it was not within REPIA's power to bestow, is worthy of acceptance.

In this view of the matter I am of opinion that the aforesaid impugned order 1R3E (or E), dated 10.11.1983, granting the 2nd respondent authority to demolish premises No. 128, Prince Street, Colombo 11 is ultra vires.

I, therefore, make order allowing the appeal of the petitioners. The judgment of the Court of Appeal, dated 11.6.84, is accordingly set aside. A Mandate in the nature of a Writ of Certiorari, quashing the aforesaid Order 183 E (or E), dated 10.11.83, made by the 1st respondent, is directed to be issued forthwith.

The 1st and 2nd respondents are directed to pay, a sum of Rs. 787.50 each, to the petitioners as costs of appeal.

*Appeal dismissed.*

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