SURIYARATCHI

v.

SENEVIRATNE AND OTHERS

COURT OF APPEAL
GUNAWARDENA, J.
C.A. 14/99
RBR 5330
R.B. MATALE 2524/93
NOVEMBER 17, 25, 1999

Writ of Certiorari - Decision of Rent Board of Review overturned the decision of Rent Board - Jurisdiction - Primary facts - Jurisdictional fact and non jurisdictional fact - Difference - Question of law - Can the Board of Review substitute its own view?

The Petitioner sought to quash the decision of the Rent Board of Review, setting aside the order of the Rent Board, whereby the Rent Board had held that the Petitioner is the tenant and granted a certificate of tenancy.

It was contended that the Board of Review had no jurisdiction to interfere with or set aside the order of the Rent Board holding the Petitioner to be a tenant.

Held :

(i) The question as to whether or not the Petitioner was in fact, a tenant was a jurisdictional fact, i. e. the existence of the jurisdiction of the Rent Board itself depended upon that fact.

(ii) Jurisdictional facts are matters which must exist as a condition precedent, so to say before a Court/Tribunal can properly take jurisdiction or cognizance of the particular matter or case. Non jurisdictional facts are those which do not affect the power of a Tribunal to adjuciate concerning the subject matter in a given case.

(iii) A court dealing with an application for certiorari is ill adapted to deal with or consider and choose between disputed question of fact.

(iv) Since the decision of the Rent Board granting a certificate of tenancy implies not only that a contract of tenancy subsists but also a decision that the Rent Board has jurisdiction to grant the relevant certificate or the decision granting the certificate of tenancy become a decision on a question of law.

(v) The Board of Review has appellate powers in respect of the decision of the Rent Board, and as such can substituted its own findings or views for that of the Rent Board.

(vi) The Board of Review had overturned the decision of the Rent Board on the paucity or inadequacy of evidence to maintain the finding. By misdirecting itself on the facts and consequently holding that landlord - tenant relationship exist between the Petitioner and the Respondent the Rent Board has gone wrong on the law assuming or rather *usurping* jurisdiction which it does not possess in terms of the law.

APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Terry v. Huntinglon*
2. *R v. Fulham* - Rent Tribunal - ex P. Phillipe - (1950) 2 ALL ER 211
3. *Woodhouse v. Peter Brotherhood* - (1972) 2 All ER 520

A. K. Premadasa, P.C., with *Ms. Nilani Somadasa* for Petitioner.

P. A. D. Samarasekera P.C., with *Keerthi Sri Gunawardena* for 1st Respondent.

Cur. adv. vult.

September 07, 2000.

U. DE Z. GUNAWARDENA, J.

The petitioner has made this application for a writ of certiorari to quash the decision of the Rent Board of Review setting aside the order of the Rent Board, Matale, whereby the said Rent Board had held the petitioner to be the tenant and on that basis granted a certificate of tenancy to the petitioner in respect of the premises bearing No. 10/3, Malwatta Road, Matale.

The only point raised by the Learned President's Counsel for the petitioner - tenant was that the Rent Board of Review had no jurisdiction to interfere with or set aside the order of the Rent Board holding or declaring the petitioner to be the tenant and on that basis granting a certificate of tenancy to the petitioner. Of course, no Court of law can review the decision of the Rent Board on this question as to whether or not a certificate of

tenancy ought to be granted, if it was validly made within its jurisdiction. Such a decision or declaration of the Rent Board, that is granting a certificate of tenancy to the petitioner was based, in the argument of the learned President's counsel for the petitioner, on a factual finding to the effect that the petitioner was the tenant of the 1st respondent in respect of the relevant premises. The decision granting the certificate of tenancy, being based on that factual finding, it was further argued, that decision was not appealable. It has to be recognized that in terms of section 40(4) of the Rent Act No. 7 of 1972, as the Learned President's Counsel for the petitioner - tenant had pointed out, an appeal to the Board of Review from a decision of Rent Board, would lie only on a question of law. In other words, the argument meant that the power of the Rent Board, to decide whether or not the petitioner was a tenant - that being, in the submission of the learned President's counsel, a question of fact, was exclusive.

But that argument is not tenable since the question as to whether or not the petitioner was, in fact, a tenant was a jurisdictional fact i. e. the existence of the jurisdiction of the Rent Board itself depended upon that fact. In this regard Sir William Wade had made the singularly pertinent comment that " as to these jurisdictional facts, tribunal's decision cannot be conclusive, for otherwise it could by its own error give itself powers which were never conferred by Parliament."

A distinction of course has to be drawn between jurisdictional and non - jurisdictional facts which is clear in principle and fundamental in importance. Jurisdictional facts are matters which must exist, as a condition precedent, so to say, before a Court or tribunal can properly take jurisdiction or cognizance of the particular matter or case. On the other hand, facts which do not affect the power of a tribunal to adjudicate concerning the subject matter in a given case are non - jurisdictional facts.

As Hale C. B. had said in *Terry v. Huntington*[1]: "if they should commit a mistake in a thing that were within their power,

that would not be examinable here." Application of this concept of non - jurisdictional facts has been explained in "Administrative Law" by Wade and Forsyth, in relation to a rent tribunal itself, as follows:- " A rent tribunal's findings as to the state of repair of the property, the terms of tenancy and the defaults of landlord or tenant will probably not affect its jurisdiction in any way and will therefore be immune from jurisdictional challenge."

In *R. v. Fulham*[2] an order made by the Rent Tribunal reducing the rent was quashed as the tribunal had, it was held, made a mistake of law by erroneously treating payment made by the tenant as a premium when, in fact, such payment had been made in respect of some work done by the landlord. The Rent Tribunal would have had the power to reduce the rent only if a premium had in fact, been paid. A premium had to be paid in order to find the jurisdiction of the Rent Tribunal. Since the payment that had been made was not, in fact, a premium, the tribunal had acted in excess of its powers in making an order for reduction of rent. In that instance, the question whether or not a premium had been paid being a jurisdictional or collateral fact, the Court had to inquire into the fact whether or not that fact existed, for the inferior tribunal i. e. Rent Tribunal (Fulham) couldn't have given itself jurisdiction by a wrong decision upon the question whether or not the payment was a premium.

The written submissions made on behalf of the petitioner herself sets out the correct legal position although such submissions had stultified and subverted the petitioner's own case. The relevant excerpt from Wade cited by the Learned President's Counsel for the petitioner was as follows:- "Findings of fact are the domain where a deciding authority or a tribunal can fairly expect to be master in his own house, provided only that the facts are not collateral or jurisdictional".

What has to be understood from the above excerpt, cited strangely enough, by the Learned President's Counsel for the petitioner - tenant, is this: that there is a distinction between the central or the main question that the tribunal has the power

to decide by itself conclusively, and other questions, which are known as jurisdictional or collateral, upon which the jurisdiction itself of the tribunal depends.

A Court dealing with an application for certiorari is ill - adapted to deal with or consider and choose between disputed questions of fact. In proceeding for judicial review the Court cannot undertake such an exercise as such, where there is a conflict of evidence in regard to a fact upon which a point of law arises. Although the Court will, in the generality of cases, refrain from interfering in cases of conflict of evidence, yet the court will seek to ascertain whether "there was evidence before the tribunal which would justify a reasonable tribunal reaching the same conclusion."

In the case in hand, the Rent Board of Review had overturned the decision of the Rent Board of Matale on the paucity or inadequacy of evidence to sustain the finding of the Rent Board i. e. that the petitioner was a tenant of the respondent in respect of the premises in question referred to above and as such was entitled to be granted a certificate of tenancy. The main question, before the Rent Board, in this matter was whether or not the certificate of tenancy ought to be granted to the petitioner. But the jurisdictional fact, that is, the fact upon which the jurisdiction of the Rent Board depended, to decide the main matter, was as to whether the petitioner was entitled to tenancy rights in relation to the relevant building or to put in another way whether there was a contract of tenancy between the petitioner and the 1st respondent in respect of the aforesaid premises.

Since the decision of the Rent Board granting a certificate of tenancy to the petitioner implies not only that a contract of tenancy subsists between the petitioner and the 1st respondent but also a decision that the Rent Board has jurisdiction to grant the relevant certificate - the decision granting the certificate of tenancy becomes a decision on a question of law. As explained above, granting a certificate of tenancy could not have been challenged in the Board of Review, if the order granting the

certificate had been validly made within the jurisdiction of the Rent Board and the Rent Board, could have had the jurisdiction to grant the certificate only if there was the relationship of landlord and tenant, between the petitioner and the 1st respondent. By misdirecting itself on the facts, and consequently holding that landlord - tenant - relationship exists between the petitioner and the respondent, the Rent Board has gone wrong on the law by assuming or rather usurping a jurisdiction which it does not possess in terms of the Law. It is to be remembered that in *R. v. Fulham Rent Tribunal ex. P. Philippe (Supra)*, referred to above, it was held that the tribunal had made a mistake of law and acted in excess of its jurisdiction by treating a payment as a premium when, in fact, that payment had been made in respect of some work done by the landlord. The order made by the Rent Tribunal reducing the rent was quashed since the payment was not, in law, a premium.

In *Woodhouse v. Peter Brotherhood*[3] which is persuasive in this regard, it was held that the question in issue, i. e. the right conclusion to be drawn from primary facts involved the interpretation of the Contracts of Employment Act 1963 and, therefore was one of Law.

Once the primary facts are ascertained, the decision as to whether or not a landlord - tenant relationship exists between the parties is a matter of legal inference. The tribunal has to consider, on the ascertained facts, whether the facts satisfy the legal definition of the relationship of landlord and tenant or of a contract of tenancy.

It is significant to note that the one and only point that was raised in this case by the petitioner was that the decision of the Rent Board, Matale, to grant a certificate of tenancy to the petitioner being one based on a finding of fact viz. that the petitioner was the tenant in respect of the relevant premises - no appeal could have been preferred therefrom to the rent Board of Review. It is to be observed that in the case of R. v. Fulham referred to above it was held that the Rent Tribunal, by erroneously treating as a premium a payment that had, in fact, been made

by the tenant as a premium (and so assuming the power to reduce the rent) had made a mistake of law and acted in excess of its powers. Likewise, the Rent Board of Matale had, by mistakenly treating the petitioner as the tenant in respect of the premises in question and so granting a certificate of tenancy to the petitioner, had made a mistake of law. As explained above, by its own error, that is by treating the petitioner as the tenant, when, in fact, the facts did not warrant such a finding, the Rent Board of Matale had assumed or exercised powers or functions which were never conferred upon it by law (Parliament). It is also to be remembered that the Board of Review has appellate powers in respect of the decisions of the Rent Board of Matale and as such, (unlike a Court exercising powers under the judicial review procedure) can substitute its own finding or view for that of the Rent Board Under the judicial review procedure it is inconvenient and almost impossible decide questions of facts.

Of course, on the question, as to whether or not the petitioner was a tenant, the facts were disputed but I need not say anything more than that the facts before the Rent Board of Review were such as to "justify a reasonable tribunal reaching the same conclusion" as the one that the Rent of Board of Review did, i. e. the evidence did not warrant a finding that the petitioner was a tenant in respect of the premises in question. It is worth repeating that the only point that demanded consideration, on the submissions made by the learned President's counsel for the petitioner, was as to whether or not the appeal from the decision of the Rent Board, Matale granting a certificate of tenancy to the petitioner was on a question of law. In other words the decision of the Board of Review refusing a certificate of tenancy to the petitioner was not challenged as being unwarranted on the totality of evidence.

For the reasons set out above I refuse the application made by the petitioner and it is hereby refused.

U. DE Z. GUNAWARDENA, J.

Application dismissed.