1947 *Present :* **Windham J.**

ZACKERIYA *et al.*, Petitioners, *and* CROOS RAJ CHANDRA *et al.*, Respondents.

S. C. 122—Application for a Writ of Prohibition or a Writ of Certiorari.

Writ of Certiorari—*Rent Restriction Ordinance—Authority of Board to bring an action—Person claiming to be landlord—Jurisdiction of Board—Section 8.*

Under section 8 of the Rent Restriction Ordinance the Board can give authority to sue to any person who claims to be the landlord. The question whether he is in fact that landlord is beyond the jurisdiction of the Board and is a matter for the court of trial.

H. W. Jayewardene (with him *M. Rafeek*), for the petitioner.

C. V. Ranawake, for first to fourth respondents.

M. I. M. Haniffa, for fifth respondent.

Cur. adv. vult.

[1] *(1947) 48 N. L. R. 110.*
[2] *(1946) 47 N. L. R. 395.*
[3] *(1935) 37 N. L. R. 44.*
[4] *(1942) 43 N. L. R. 370.*

August 25, 1947. WINDHAM J.—

This is an application for a Writ of *Certiorari* for quashing an order of the Colombo Rent Assessment Board whereby the fifth respondent was authorised under section 8 of the Rent Restriction Ordinance, No. 60 of 1942, to institute eviction proceedings against the applicant. Section 8 provides that, subject to certain exceptions, no such proceedings shall be instituted in any court unless the Board "on the application of the landlord" has in writing authorised them. The objection of the applicant to the Board's order in the present case is that the fifth respondent was not his landlord, and that accordingly the Board was not empowered to make it, since it was not made "on the application of the landlord". The Board, after considering the legal position, came to the conclusion that the fifth respondent was the landlord. This question will be in issue in the pending proceedings. For this reason I do not think it proper to enter into the question whether the Board was right in its conclusion.

It is argued for the applicant that the Board exceeded its jurisdiction in making an order in favour of one who was not a landlord. But that is not, in my view, the proper construction to place upon section 8 of the Ordinance. It cannot be held that, by authorising a person claiming to be landlord to institute an action, the Board is making a judicial decision that such person is in fact the landlord, and that such decision will be binding upon the court before which that issue is to be determined in the pending action. To hold that would be to enable the Board to predetermine what in many cases may be, and in the present case is, a vital issue in the pending proceedings. In the present case, it would appear, the question whether the fifth respondent is the landlord will depend upon whether the phrase "the person for the time being entitled to receive the rent of such premises", which constitutes the definition of "landlord" under section 16 (1) of the Ordinance, is to be restricted to the person entitled to receive an agreed rent, or can be construed to extend to a person entitled to receive an estimated or reasonable rent. And that is a point of law and construction which, in my view, the Board is not required or empowered to determine under section 8. I consider that the proper and reasonable construction of the phrase "on the application of the landlord" in section 8 is "on the application of the person claiming to be landlord". The powers of the Board are specifically set out elsewhere in the Ordinance, and such a subordinate clause as "on the application of the landlord" cannot be held to confer on the Board additional power to determine judicially such an issue.

It follows that in making their order the Board were not acting beyond their powers. It also follows that, not withstanding that order, it is still open to the court of trial to decide as a fact (with such legal results as may follow therefrom) that the fifth respondent is not the landlord of the applicant.

I have been referred to the judgment of this Court in *W. E. de Finto v. Rent Assessment Board, Dehiwala-Mount Lavinia*[1], wherein a Writ of *Certiorari* was granted quashing a decision of the Board on the

[1] *(1945) 46 N. L. R. 396.*

ground that it had usurped jurisdiction which the provisions of section 6 (*b*) of the Ordinance did not allow it. There, however, the position was quite different, for the Board was purporting to exercise a power specifically conferred upon it by section 6, namely, the power to direct that the standard rent should not be increased. Its decision on that point, had it been made *intra vires*, would therefore admittedly have been conclusive by virtue of section 12 (12). Not so, however, in the present case, for the reasons I have given.

The application is accordingly dismissed with costs.

Application dismissed.