

RASANAYAGAM
v
SURAWEERA AND OTHERS

COURT OF APPEAL
UDALAGAMA, J.
SRIPAVAN, J.
C.A. 929/2000
MAY 9, 2003

Ceiling on Housing Property Law No. 1 of 1973 – S.23(a) – Maximum number of Houses - Public Corporations – Associated Newspapers of Ceylon Ltd., (Sp.Pro) Law 28 of 1973 – S.2(f), 29, 11(a), S.47 – Constitution, Article 44(1)(a) – Is the Associated Newspapers of Ceylon Ltd., a company or a corporation.

The Board of Review held that The Associated Newspapers Ltd. (ANCL) is a Public Corporation.

Held :

1. There is nothing in Law 28 of 1973 to show that the capital of the sixth respondent (ANCL) was wholly or partly provided by the State by way of a grant, loan or other form.
2. Duty of Court is to interpret strictly the words the Parliament has used, if the words properly construed "admit only one meaning the Court is not entitled to deny to the words that meaning."
3. The sixth respondent – Associated Newspapers of Ceylon Ltd., fails to satisfy the definition of "Public Corporation" within the meaning of S. 47 of the said Law, and it is a company and not a Government Department or a Public Corporation.

APPLICATION for a Writ of Certiorari.

M.A. Sumanthiran for petitioner.

D.S. Wijesinghe P.C., with Ms. Wickremasinghe for 6th respondent.

P.A. Ratnayake D.S.G., for 5th respondent

June 9, 2003

SRIPAVAN, J.

The petitioner being a tenant of premises No. 136/1, George R. de Silva Mawatha, Colombo -13 made an application to the fifth respondent in terms of Section 13 of the Ceiling on Housing Property Law No. 1 of 1973 as amended, to purchase the said house belonging to the sixth respondent. At the inquiry before the fifth respondent, Counsel for the sixth respondent challenged the jurisdiction of the fifth respondent on the basis that the sixth respondent was a "public corporation" within the meaning of Section 2(3) of the said law and as such the provisions relating to the maximum number of houses that may be owned should not apply to the sixth respondent. The fifth respondent overruled the objection of the sixth respondent and made order on 22nd April 1999 holding that the sixth respondent was neither a Government Department nor a Public Corporation and the petitioner was legally entitled to make an application to purchase the said house. The sixth respondent appealed from the said order to the first to the fourth respondents who constituted the Board of Review. The Board of Review on 14.06.2000 reversed the decision of the fifth respondent holding that the sixth respondent was in fact a "public corporation" in terms of the said Law. Thus, the only point to be decided by this Court is whether the sixth respondent is a "**Public Corporation**" within the meaning of the said law.

Learned President's Counsel appearing for the sixth respondent submitted that the Associated Newspapers of Ceylon Ltd. (Special Provisions) Law No. 28 of 1973 (hereinafter referred to as the 'SPL') changed the status of the sixth respondent company into a Corporation, drastically altering its fundamental structure and composition. I do not agree with this submission. The preamble to SPL provides for the redistribution of the shares of the company; Section 2(f) & 2(g) provide that the memorandum and articles of association of the company "cease to be in force" and a new memorandum and articles of association of the company shall be prescribed; Section 11(a) states that the memorandum and articles of association of the Company shall not be revoked or amended except with the prior consent of the Public Trustee, by the holders of shares of the company by special resolution at any meeting of

the company; - All these indicate that the sixth respondent remains as a company.

Section 47 of the said law defines "public corporation" as follows

"Public corporation means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance with capital wholly or partly provided by the Government by way of grant, loan or other form"

In any event, there is nothing in the SPL to show that the capital of the sixth respondent was wholly or partly provided by the Government by way of grant, loan or other form. I think the duty of the court is to interpret strictly the words the Parliament has used. One has to only see what Parliament intended by defining the word "public corporation". If the words properly construed admit only one meaning, the court is not entitled to deny to the words that meaning. Accordingly, the sixth respondent fails to satisfy the definition of "public corporation" within the meaning of Section 47 of the said law.

It is relevant to note that the Board of Review has failed to consider A15 dated 18.11.1993 issued by the Registrar of Companies which would show that the sixth respondent is in fact a company registered under the Companies Ordinance. The return sent to the Registrar of Companies giving the particulars of the first Directors of the Company is marked A14. I subscribe to the view advanced by the learned Counsel for the petitioner that the fundamental feature of a company is that it owns shares whereas a corporation does not. (vide Public Corporations in Ceylon by A.R.B. Amarasinghe at page 4) Mr. L.H. Jayaratne, Secretary to the sixth respondent at page 2 of the proceedings of 28.10.1998 admitted that the sixth respondent was incorporated as a company under Companies Act and still continues to be a company.

Learned President's Counsel for the sixth respondent further urged that the President under Article 44(1) (a) of the Constitution specified the sixth respondent company under the category of "Department and Statutory Institution" and assigned it to a particular Minister. This in my view does not change the fundamental nature or character of the sixth respondent. In the circumstances, I hold that the sixth respondent is a company and not a government

department or a public corporation within the meaning of Section 2(3)(a) of the said Law. Accordingly I issue a Writ of Certiorari quashing the decision of the first to fourth respondents dated 14th June, 2000 marked "X13".

I make no order as to costs.

UDALAGAMA, J. - I agree

Application allowed