MOWJOOD
v.
PUSSADENIYA AND ANOTHER

SUPREME COURT.
SHARVANANDA, C. J., ATUKORALE, J. AND SENEVIRATNE J.
S.C. NOS. 57/86, 58/86, 59/86, 62/86, 72/86.
C.A. NOS. 73/86, 77/86, 127/86, 81/86, and 48/86.
D.C. MT. LAVINIA NOS. 1008/RE, 1286/RE, 1513/RE, 616/RE, 1368/RE.
AUGUST 25, 26 and 27, 1987

Writs of certiorari, mandamus, prohibition–Abuse of power– Unreasonable use of discretion–Right–Legitimate expectation.

Landlord and tenant–Premises whose standard rent does not exceed Rs. 100/--Ejectment on ground of reasonable requirement–Execution–Notice–S. 347 CPC–Alternative accommodation–Notification by Commissioner of National Housing–Requisites to which alternative accommodations offered by Commissioner of National Housing should conform–Alternative accomodation on hire-purchase–alternative accommodation not belonging to Commissioner of National Housing–Interpretation–Section 22(1), 22(1) (bb), (22(1A), 22(1C), 22(1E) of Rent Act No. 7 of 1972 (amended by Act No. 10 of 1977 and Act No. 55 of 1980)–Restoration to possession of evicted tenant.

The Legislature has made it its special concern to protect tenants in occupation of premises whose standard rent does not exceed Rs. 100/-. Hence a purposive interpretation of the statute to give effect to the intention of the legislature should be adopted.

Where judgment for ejectment of the tenant had been entered in respect of premises whose standard rent did not exceed Rs. 100/- on the ground that the premises are reasonably required for occupation as a residence of the landlord or a member of his family writ to issue only after the Commissioner of National Housing has notified the Court that he is able to provide alternative aqccommodation to the tenant, the alternative accommodation should, in view of the social objective of the Act, have some relevance to the needs and circumstances of the tenant so as not to render the offer of alternative accommodation illusory and unmeaningful: the accommodation offered must be habitable and appropriate to the tenant and the members of his family. It must be roughly comparable with the existing accommodation in basic amenities, rental and suited to the mode of life he is leading in the premises from which he is to be rejected. The alternative accommodation must not be located in a far off area where because of his religion, race or caste etc. it is unsafe for the tenant to dwell. The nature of the environment is a relevant consideration.

The tenant cannot expect a better house than the one being occupied by him.

The Commissioner need not be the owner of the alternative accommodation but in such case his statutory obligation is fulfilled only if he arranges the alternative accommodation on terms finalised by him and upon his obligation and responsibility to ensure the tenure of the accommodation.

The alternative accommodation should be on a tenancy basis only and not on a rent purchase basis. It is not in keeping with the statute to oblige the tenant to purchase the alternative accommodation. The alternative accommodation provided must be for occupation in the character of a tenant.

In all the appeals the Commissioner of National Housing has provided alternative accommodation on the basis of hire purchase with attendant risk of cancellation of such agreements and forfeiture of instalments paid in case of default. The Commissioner in doing so has not exercised his discretion reasonably but in abuse of his powers. The notification is not in terms of the Section. What he has offered is not in law alternative accommodation. Although Section 22(1E) bars the Court from inquiring into the adequacy or the suitability of the alternative accommodation it does not bar the Court from inquiring or ascertaining whether what is offered is alternative accommodation in terms of the law.

Hence certiorari must go but not mandamus. Mandamus will not issue where it would be futile or not possible to obey.

Before execution was issued the Court should have issued notice on the tenant judgment debtor as provided for by section 347 of the Civil Procedure Code. In two cases the tenants have been already evicted. The Court has acted without jurisdiction in issuing these writs of execution and hence the evicted tenants should be restored to possession.

Cases referred to:

(1) *Associated Provincial Picture House Ltd. v. Wednesbury Corporation [1947] 2 All ER 680; 1948 1 KB 223.*

(2) *Sirinivasa Thero v. Suddasi Thero [1960] 63 NLR 31.*

APPEALS from the judgment of the Court of Appeal reported at [1987] 1 Sri LR 63

Faiz Mustapha with *M. M. Saheed, M. S. M. Suhaid* and *M. Withanachi* for appellants in *S. C. 57/86, S. C. 58/86.*

Faiz Musthapha with *M. S. Yogendra, M. M. Saheed, M. S. M. Suhaid* and *M. Withanachi* for appellant in *S. C. 59/86.*

S. Mahenthiran for appellant in *S. C. No. 62/86.*

H. D. A. de Andrado for substituted defendant petitioner in *S. C. No. 72/86.*

A. S. M. Perera for 1st respondent in S. C. 57/86 S. C. 57/86 and S. C. 62/86 and for 2nd respondent in S. C. 59/86.

N. R. M. Daluwatte P. C. with Rohan Sahabandu, for 2nd respondent in S. C. 57/86

Ikram Mohamed for 2nd respondent in S. C. 58/86.

H. L. de Silva P. C. with P. A. D. Samarasekera P. C. and A. L. M. de Silva and Miss L. N. A. de Silva for 1st respondent S. C. 59/86.

N. R. M. Daluwatte P. C. with Nimal Kuruwita Bandara for respondent in S. C. 72/86.

Cur. adv. vult

September 30, 1987.

SHARVANANDA, C.J.

Appeals S. C. Nos. 57/86, 58/86, 59/86, 62/86 and 72/86 were taken up together for hearing as the question of law involved in the appeals was common to all. These appeals originated as applications for the issue of writs in the nature of certiorari and/or mandamus and/or prohibition on the Commissioner of National Housing (hereinafter referred to as Commissioner) to quash the notifications made by him under section 22(1C) of the Rent Act No. 7 of 1972 as amended by Act No. 10 of 1977 and 55 of 1980, to the District Court, that he "is able to provide alternative accommodation" for the tenant in each case. The notifications were impugned on the ground that the premises, offered in each case by the Commissioner, did not constitute "alternative accommodation" within the meaning of the said term in section 22(1C) of the Rent Act and that the Commissioner had by misdirecting himself in law misconceived the nature of alternative accommodation and acted unreasonably in the *Wednesbury* sense *(Associated Provincial Picture Houses Ltd., v. Wednesbury Corporation (1).)*

The Rent Restriction Ordinance No. 60 of 1942 and its successor the Rent Restriction Act No. 29 of 1948 (Cap. 274) countenanced the right of the landlord to institute proceedings for ejectment of his tenant from premises governed by the Ordinance or Act, on the ground that the premnises were in the opinion of the court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord, or for the purpose of the trade or business of the landlord. The Amending Act No. 12 of 1966, however took away this right of the landlord "to institute proceedings for ejectment of the tenant on the ground that he reasonably required the said premises for his occupation as a residence or for business, in the case of premises, the standard rent of which for a month did not exceed one hundred rupees." This amendment thus differentiated between premises, the standard rent of which did not exceed one hundred rupees and premises the standard rent of which exceeded that amount. Consequent to the amendment the landlord of premises whose standard rent did not exceed one hundred rupees could no longer institute an action for ejectment of the tenant on the ground that he or his family reasonably required the premises for occupation as residence or for his business. The distinction is referable to the imperatives of social justice–greater concern for the protection of

tenants of premises whose standard rent per month did not exceed one hundred rupees than for the tenants of premises whose standard rent exceeded one hundred rupees began to be exhibited on the assumption that tenants of the former category were economically disadvantaged and would find it almost impossible to secure alternative accommodation if they were ejected. Provided they fulfilled their contractual obligations and did not default in payment of their rents or sublet the premises etc., they were secured in possession and could not be evicted from the premises even though their landlords reasonably required the premises for their own occupation. They thus acquired a status of irremovability. This policy of preferential treatment to that category of tenants was, in a certain measure, continued by the Rent Act No. 7 of 1972. If the tenancy commenced prior to the coming into operation of the Act viz: 1st March 1972, the landlord could not institute action for ejectment of the tenant of that class on the ground of his reasonable requirement for occupation as a residence or for business. Section 22(1) of the Rent Act which provided for the ejectment of the tenant of premises whose standard rent did not exceed one hundred rupees, was applicable only to cases where the tenancy commenced on or after the date of commencement of the Act. This legal position continued until September 1977 when the new Government by Act No. 10 of 1977 amended section 22 of the Rent Act, by adding the following provisions–

"Section 22(1)

Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises the standard rent. . . . .of which for a month does not exceed one hundred rupees, shall be instituted in or entertained by any court, unless where–

Section 22(1) (bb)

Such premises, being premises which have been let to the tenant prior to the date of commencement of this Act, are, in the opinion of the court, resonably required for occupation as a residence for the landlord or any member of the family of the landlord;

Section 22(1A)

Notwithstanding anything in section (1), the landlord of any premises referred to in paragraph (bb) of that subsection shall not be entitled to institute any action or proceedings for the ejectment

of the tenant of such premises on the ground that such premises are required for occupation as a residence for himself or any member of his family, if such landlord is the owner of more than one residential premises and unless such landlord has caused notice of such action or proceedings to be served on the Commissioner of National Housing.

Section 22(1B) .....

Section 22(1C)

Where a decree for the ejectment of the tenant of any premises referred to in paragraph (*bb*) of subsection (1) is entered by any court on the ground that such premises are reasonably required for occupation as a residence for the landlord or any member of the family of such landlord, no writ in execution of such decree shall be issued by such court until after the *Commissioner of National Housing has notified to such court that he is able to provide alternative accommodation for such tenant.*

Section 22(1D) . . . . . "

This section was further amended by Act No. 55 of 1980 by the addition of the following sub-section numbered as S. 22(1E):–

"In any proceeding under sub-section (1C) the court shall not inquire into the adequacy or suitability of the alternative accommodation offered by the Commissioner of National Housing."

It is against the above backdrop of legislative history that one has to view the question that arises for determination in these appeals.

Except in Appeal No. 58/86 where judgment was given by the court after a contest in favour of the landlord–in all the other appeals–judgment was entered in favour of the landlord of consent. In all cases order was made that writ of execution should not issue until the Commissioner notified the court in terms of section 22(1C) that alternative accommodation had been found for the tenant. In all the cases the Commissioner has notified the court and the tenant that alternate accommodation has been found. It is these notifications, the validity of which is being called in question.

The alternative accommodation that has been found by the Commissioner in each of the cases is a house belonging to the National Housing Development Authority (hereinafter referred to as the Authority). In every case the landlord had deposited large sums of money with the Authority in order to reserve premises for the tenant. The Authority has reserved premises at the Ranpokunawatte Housing Scheme in Nittambuwa upon a deposit of Rs. 20,000 being made by the landlord and at the Mattegoda Housing Scheme upon a deposit of Rs. 32,000 being made by the landlord. The Authority has informed the Commissioner, with copies to the landlord and tenant, of the reservation so made. The Commissioner had thereupon requested the appellants (tenants) in writing to attend and finalise matters with the Authority and also notified the court that he is able to provide "alternative accommodation" in the shape of the house served by the Authority at the Mattegoda Housing Scheme/Ranpokunawatta Housing Scheme to the tenants.

The appellants then applied to the Court of Appeal for a writ of certiorari to quash the aforesaid notification made by the Commissioner. The Court of Appeal has refused their application. The appellants have preferred these appeals to this Court against the judgment of the Court of Appeal.

The appellants object to the notification in issue on the following grounds:

(*a*) that the Commissioner of National Housing is not offering a house from his housing stock. The alternative accommodation is not offered by him, but by the National Housing Development Authority who is an independent statutory authority and not a delegate or agent of the Commissioner; the premises belong to the Authority; ex facie, the Commissioner is not able to provide alternative accommodation;

(*b*) that what has been offered has been offered not on a contractual tenancy basis, but upon a rent-purchase agreement. The alternative accommodation should be on a rental basis and not on a Hire Purchase basis, attended with the risk of cancellation of the agreement and forfeiture of all instalments paid in default of regular payment of any instalment;

(c) that the offer by the National Housing Development Authority is contingent and conditional. Unless the tenant entered into the hire-purchase agreement the alternative accommodation will not be available to him.

(d) while the standard rent for the premises from which the appellants are to be ejected does not exceed one hundred rupees, the monthly instalments of the rent-purchase scheme of the National Housing Development Authority is very much in excess;

(e) the alternative accommodation that is offered does not take account of the circumstances of the tenant and is not appropriate accommodation to the tenant. Accommodation, miles from the present location, in areas which are not safe for the defendants to reside does not constitute alternative accommodation;

(f) the Commissioner's determination that the accommodation, referred to in his notification, constituted "alternative accommodation" in terms of section 22(1C) was unreasonable, arbitrary and capricious.

There is nothing in section 22(1C) which defines "alternative accommodation". There is nothing in that section which relate to the quality or suitability of the accommodation. Counsel for the landlord submitted that the court should not add any qualification such as 'suitable' or 'adequate' to the words 'alternative accommodation'. According to his submission, so long as there is a roof over the head of the tenant and his family, and no doubt four walls to support that roof, it does not matter how unsuitable that accommodation is; the Commissioner of National Housing discharges his duty under section 22(1C) by making available by himself or by a third party accommodation, no matter what the terms are; it would be an alternative accommodation to the tenant if what is offered is accommodation even in a far off area with which the tenant has no connection; beggars cannot be choosers; the requirements and circumstances of the tenant need not be given any consideration in determining the appropriateness of the alternative accommodation: that was the tenor of his contention.

To treat the words 'alternative accommodation' as being totally unqualified does not, in my view give effect to the intention of the legislature. The solicitude shown by Parliament to tenants of premises whose standard rent does not exceed one hundred rupees is manifest. In the case of a tenant of premises whose standard rent exceeds one hundred rupees, the landlord may institute action for the ejectment of the tenant on the ground of his reasonable requirement and on obtaining a decree for ejectment can have him evicted and thrown on the streets, regardless of whether any alternative accommodation is available to him to shift to or not. Parliament, in the case of tenants of premises of the other category has taken them under its protective wings, may be in view of their economic circumstances and enjoined that such tenants should not be rendered homeless, for no fault of theirs but should be offered shelter by making available to them alternative accommodation before writ of execution is issued.

In view of this social objective, the needs and circumstances of the tenant ought to have some relevance if the offer of alternative accommodation is to be meaningful and not be illusory. The accommodation offered to him must be habitable and appropriate to him and the members of his family. It must be appropriate for a family of his size and must have the elementary amenities enjoyed by him in the house occupied by him. It must not be located in a far off area with which he has no local connection, an area where, because of his religion, race or caste etc., it is unsafe for him to dwell. The nature of the environment where the proposed accommodation is located is a relevant consideration in determining whether the new accommodation can fairly be described as 'alternative'. The alternative accommodation must be roughly comparable with the existing accommodation in the matter of basic amenities, rental, and appropriateness so that the tenant could continue to lead the mode of life which he had led in the premises from which he is to be ejected. The tenant however should not expect a better dwelling house than that from which he is to be ejected. The facts disclosed show that the Commissioner had not addressed his mind to these relevant considerations in deciding on the alternative accommodation that he was offering. He has exercised his power unreasonably.

It was contended by counsel for the appellants that what the Commissioner has offered is not a house from his stock, but a house belonging to the National Housing Development Authority which is an

independent statutory Authority. It was submitted that the Commissioner has himself not provided alternative accommodation and that hence his notification does not satisfy the requirement of law that he should be able to provide alternative accommodation to the tenant (section 22(1C). I do not agree with this submission that the Commissioner should be the owner of the proposed alternative accommodation.

The Commissioner can provide alternative accommodation not only when he is the proprietor of same, but also when he is able to arrange such accommodation from some other source, the obligation and responsibility for making such arrangement and warranting the tenure of the accommodation to the tenant however resting with him. The Commissioner does not discharge his statutory obligation by putting the tenant and the other party who owns such accommodation in touch with each other and requesting the tenant to negotiate with the other party the terms on which accommodation will be available to him. It is only after he had finalised the terms and got the other party bound to provide the accommodation for the tenant that the Commissioner can truthfully notify that he is able to provide alternative accommodation to the tenant.

I agree with counsel for the appellants that section 22(1C) of the Rent Act provides for the alternative accommodation to the tenant on a tenancy basis only and not on a rent-purchase basis. This section has to be construed in the background of the special concern shown by Parliament to tenants of premises whose standard rent does not exceed one hundred rupees. Parliament was alive to the fact that current market conditions do not conduce to such tenants finding alternative accommodation easily and that they would be rendered homeless if ejected from the premises they were occupying. This state of affairs prompted legitimate concern on the part of the State to provide alternative accommodation to that class of tenants who are generally impecunious; this concern cannot be satisfied by the Commissioner informing the tenants that they could have alternative accommodation if they are ready and willing to purchase such accommodation. This special concern which is reflected in section 22(1C) would be rendered illusory, if the alternative accommodation ensured by the State can be had only on such onerous terms. Having regard to the social purpose of the legislation, a purposive approach has to be adopted in construing section 22(1C). In my view the words 'provide alternative accommodation for such tenant "must be liberally

construed to mean 'alternative accommodation for such tenant in the character of tenant'. To interpret these words literally to mean 'alternative accommodation' for such tenant as owner or quasi-owner will be to defeat the obvious intention of the legislature and to produce wholly unreasonable results. In such circumstances it is legitimate to adopt a construction which will accord with the intention of Parliament, even at the cost of restricting the wide scope which the words of the statute may lend themselves to otherwise. In all these appeals what the Commissioner has offered are premises belonging to the National Housing Development Authority on terms of Hire Purchase and not on tenancy basis. True the landlords have deposited substantial sums with the National Housing Development Authority to the credit of the appellants, as initial payments. But that circumstance cannot constrain the tenants to enter into Hire Purchase Agreements which involve the tenants paying as monthly instalments a much higher amount than the monthly rental which they were paying.

A Hire Purchase Agreement is always attended with the risk of cancellation of the agreement and forfeiture of the instalments paid on default of regular payment of any instalment. Further the Agreement, will result in the tenant being compelled to invest his money which he can ill afford in the acquisition of premises in an area, not of his choice.

The alternative accommodation stipulated by section 22(1C) of the Rent Act is accommodation as tenant and not in any other capacity. The accommodation offered on a Hire Purchase Agreement, is not the alternative accommodation provided for by section 22(1C). In these cases the appellants have not been offered alternative accommodation in terms of section 22(1C) by the Commissioner. Hence his notifications were not in terms of the section, and are inoperative to authorise the District court to issue writ of execution of the decree for ejectment of the tenants. In my view principles of fairness and natural justice require the District Court, before it issues writ of execution, following on a notification purported to be made by the Commissioner in terms of section 22(1C) of the Rent Act, which has the potentiality of affecting the plaintiff and the defendant, to hear them on the question whether the accommodation specified in the Commissioner's notification is, in the circumstances of the case, alternative accommodation as contemplated by that section. Sub-section 22(1E) contemplates such procedure. The court should not allow writ of execution automatically on receipt of a notification

from the Commissioner. The court gets jurisdiction to issue writ of execution only after being satisfied that what is offered by the Commissioner is alternative accommodation, meaningful to the particular tenant in the case – meaningful does not mean that it should be adequate or suitable to the tenant. In fact the court is prohibited by section 22(1E) from inquiring in any proceeding under subsection (1C) into the adequacy or suitability of the alternative accommodation offered by the Commissioner. This prohibition does not however render irrelevant the determination of the question, whether what is offered is basically alternative accommodation to the tenant or not, the circumstances of the tenant, as stated earlier.

The notification of the Commissioner is clearly susceptible to judicial review as it affects the legal rights of the appellants to continue in the occupation of the premises until evicted by writ of execution on a proper notification by the Commissioner. Further the appellants have a legitimate expectation that they would not be evicted from their present premises except on a writ of execution allowed by court after the issue by the Commissioner of a proper notification in terms of section 22(1C). This right and expectation provide them with sufficient interest to challenge the legality and propriety of the notification made by the Commissioner. The ground on which the court reviews the exercise of administrative discretion by public officers is abuse of power. The Commissioner has in these cases abused the power vested in him my misconstruing the conditions and limits imposed on him by section 22(1C) of the Rent Act and by exercising his discretion unreasonably. His notification is vitiated by the fact that what he purported to offer as alternative accommodation to the tenants was, not, in law alternative accommodation in terms of that section. Counsel for the respondents referred to the prohibition contained in section 22(1E) and submitted that the court cannot inquire into the adequacy or the suitability of the alternative accommodation offered by the Commissioner. But that section does not bar the court from inquiring or ascertaining whether what is offered is "alternative accommodation" in terms of the law. Since the notification made by the Commissioner is bad in law, the District Court in each of these appeals, would have no jurisdiction to issue writ of execution in terms of section 22(1C) of the Rent Act.

I allow the application of the appellants for the issue of writs in the nature of Writs of Certiorari and quash the notification made by the Commissioner of National Housing (the 2nd respondent) in each case under section 22(1C) of the Rent Act.

The Appellants are not entitled to a Writ of Mandamus directing the Commissioner to provide alternative accommodation in terms of section 22(1C). A Mandamus will not issue when it would be futile in its result and where there is no practical possibility of enforcing obedience to the order. Further it may not be possible for the Commissioner to comply with the order.

I allow the appeals and set aside the judgment of the Court of Appeal. In the circumstances, parties will bear their own costs.

In appeal No. 62/86, C.A.Appln. 81/86, this court was informed that, acting on the impugned notification, the District Court has issued writ of execution of the Decree and the appellant had been ejected from the premises in suit. Though the application for issue of writ was made after one year of the date of the decree, the District Court, in breach of the mandatory provisions of section 347 of the Civil Procedure Code requiring notice of the application for execution to be served on the judgment-debtor and he be heard, allowed *exparte* the application for execution and the appellant was ejected. The court, in issuing writ, acted without jurisdiction in breach of section 22(1C) of the Rent Act and of section 347 of the Civil Procedure Code. Inasmuch as the court acted without jurisdiction in issuing the writ, the appellant who was dispossessed of the premises in suit in consequence of the execution of the writ is entitled to be restored to possession (*Srinivasa Thero v. Suddasi Thero,(2)*. Hence I direct the District Court to restore the appellant to vacant possession of the premises in suit viz: No. 5, Vaverset Place, Colombo 6.

It has been brought to our notice that the term "alternate accommodation" is used in section 22(1C) of the Rent Act. In my view the word "alternative" has been erroneously used for 'alternative'. The word 'alternative' should be substituted for 'alternate' in that section.

ATUKORALE, J.– I agree.

SENEVIRATNE, J.–I agree.

Appeal allowed.

Certiorari to go.

Parties evicted to be restored to possession.