SITAMPARANATHAN
V.
PREMARATNE AND OTHERS

SUPREME COURT.
G.P.S. DE SILVA, C.J.
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 53/95
C.A. APPLICATION NO. 241/91
23RD JANUARY, 1996.

Certiorari - Ceiling on Housing Property Law - Sections 8(4) and 39(3) - Act, No.4 of 1988 - Board of Review decision - Finality-Ex facie lack of power as a ground of review - Interpretation Ordinance, Section 22 - Computation of time for appeal–Rule 7 of the Supreme Court Rules.

The Appellant a daughter of the late Wijesekera who died in 1987 appealed to the Board of Review under the Ceiling on Housing Property Law No. 1 of 1973 against an order made in 1989 by the Commissioner for National Housing vesting a house under Section 8(4) of the Law on the ground that the said Wijesekera as the owner thereof failed without reasonable cause to disclose it in his statutory declaration. In 1974 Wijesekera declared 10 houses in the capacity of a co-owner thereof along with his children being the heirs of his deceased wife. In a subsequent affidavit he said that the houses totalled 11 but in giving the house numbers he mentioned only 10. The Commissioner accepted the declaration and determined the excess houses which vested in him and concluded all action including the payment of compensation. The impugned vesting was effected after an inquiry in 1989 to which the appellant was summoned and after the abolition of the

Ceiling on Housing Property by Act No. 4 of 1988. The Board of Review affirmed the decision of the Commissioner.

Held :

(1) The appeal is not time barred. In computing the six weeks (42 days) within which the application for special leave to appeal has to be made the date of the judgment should be excluded.

(2) The liability if any for making an incorrect declaration of houses was personal to Wijesekera. His heirs cannot be penalised for the alleged lapse.

(3) The decision of the Commissioner is patently invalid, null and void or vitiated by a total lack of jurisdiction. The Board of Review decision affirming the Commissioner's decision is also void and not protected by the finality clause in section 39(3) of the Ceiling on Housing Property Law. It is reviewable on the ground of ex facie lack of power provided by Section 22 of the Interpretation Ordinance.

Cases referred to :

1. *Tea Small Factories Ltd., v. Weragoda* (1994) 3 Sri L.R. 353.
2. *Shah v. Presiding Officer Labour Court Coimbatore*1978 AIR SC 12 at 16
3. *Kailayar v. Kandiah* 59 NLR 117
4. *Mac Foy v. Africa Company Ltd., (*1961) ALL E.R. 1169, 1172.

AN APPEAL from a judgment of the Court of Appeal.

N.R.M. Daluwatte, P.C. with *B. Koswatte for Appellant.*

A.K. Premadasa, P.C. with *C.E. de Silva for Respondent.*

Cur. adv. vult.

6th February, 1996.
KULATUNGA, J.

This is an appeal against the judgment of the Court of Appeal dismissing an application to quash, by way of Certiorari, a decision of the 2nd Respondent (Commissioner for National Housing) to vest a house No. 31/6A(1) (now No. 31/6B) under S. 8(4) of the Ceiling on Housing Property Law No. 1 of 1973 and an order made by the Board of Review under the said law, affirming the said decision. The Court of

Appeal dismissed the application primarily on the ground that in view of the finality provision contained in S 39 (3) of the Law, it had no power to quash the order of the Board, in the absence of a ground permitted by S. 22 of the Interpretation Ordinance.

Special leave to appeal was granted, subject to the question whether the appeal is time barred. Mr. A.K. Premadasa P.C. for the Respondent did not seriously argue that question but said that he would rely on the objection. It was submitted that the appeal has not been filed within six weeks of the judgment appealed from, as required by Rule 7 of the Supreme Court Rules 1990.

The judgment appealed from was delivered on 27.01.95. It was submitted that "six weeks" not being the equivalent of 42 days, the date of the judgment should be included in computing time; if so, the last appealable date was 09.03.95 but the appeal has been filed on 10.03.95.

Mr. N.R.M. Daluwatte P.C. for the Appellant submitted that "six weeks" means 42 days; if so, the date of the judgment should be excluded in computing time; on that basis the appeal has been filed on the 42nd day, within time.

In *Tea Small Factories Ltd. v. Weragoda* [1] this Court held that under Rule 7, "six weeks" means 42 days. The Court relied on *Shah v. Presiding Officer Labour Court Coimbatore*[2] Stroud's Judicial Dictionary (3rd Edt.); *Kailayar v. Kandiah*[3] and Maxwell (Interpretation of Statutes) 12th Edt. p. 309 where the author states :

> "A 'week' may according to context, be a calendar week beginning on Sunday and ending on Saturday or any period of seven days.
>
> Where a statutory period runs from a named date to another, or the statute prescribes some period of days or weeks or months or years within which some act has to be done, although the computation of the period must in every case depend on the intention of Parliament as gathered from the statute, generally the first day of the period will be excluded from the reckoning, and consequently the last day will be included".

For the foregoing reasons, I reject the objection that the appeal is time barred and proceed to consider the appeal on the merits.

The impugned order was made by the 2nd Respondent on 21.12.89. The Appellant's position before the Court of Appeal was that on the facts of the case and particularly in view of the abolition of the Ceiling on Housing Property and the right of tenants to purchase houses by the Ceiling on Housing Property Act No. 4 of 1988, the order made by the 2nd Respondent was plainly ultra vires; hence the decision of the Board of Review which affirmed such order was one which was *ex facie* not within its power to make.

The judgment of the Court of Appeal does not show that the above objection was considered before dismissing the Appellant's application. Before considering the correctness of that judgment, it is necessary to set out the background facts and events which led to the making of the impugned orders.

The Appellant is a daughter (one of five children) of the late Mr. S. de S. Wijesekera who died in 1987. On 08.02.88 the said five children filed D.C. Colombo case No. 5710/ZL (X1) against the 1st Respondent for ejectment from premises No. 31/6B situated on a land called Millagahawatte, Wellampitiya. The Plaintiffs claimed to have inherited the said land from their late mother B.A. Anula de Silva. They add that 8 houses situated thereon had vested in the Commissioner for National Housing, under the Ceiling on Housing Property Law; that the late Mr. Wijesekera had permitted the 1st Respondent to occupy the said premises; but he has since constructed several unauthorised and insanitary huts and leased the same. Hence, they sought the ejectment of the 1st Respondent.

In his answer dated 24.01.89, the 1st Respondent claimed to be a tenant of the said premises from 1971 under the late Wijesekera and thereafter under the Appellant. By then he had also made representations to the Commissioner requesting that steps be taken to vest the said premises to enable him to purchase it under the Law. Consequently, the Commissioner, by his letter dated 20.02.89 (X5) summoned S. Dias (Wijesekera) a sister of the Appellant "for a discussion" regarding the said premises. Thereafter, the Commissioner by his letter

dated 21.12.89 informed her that he had decided to vest the same under S. 8(4) of the Law. The Appellant appealed to the Board of Review against the said decision but the Board held that the said decision was justified as the Appellant's father had without reasonable cause failed to disclose the said house in his declaration.

At every stage of these proceedings including in the Court of Appeal it has been assumed, without scrutiny, that as per the declaration of the late Mr. Wijesekera dated 31.10.74 (X13), the Commissioner's letter dated 06.05.76 to Mr. Wijesekera (P6(a)), the affidavit of Mr. Wijesekera dated 08.12.80 (X8), the survey plan 5719 dated 08.01.82 (X10) and the Gazette notification under S.20 of the law published on 29.07.83 (X12), Mr. Wijesekera owned a number of excess houses which vested in the Commissioner and that he had failed to declare house No. 31/6 A1 (now No. 31B).

The declaration X13 and the affidavit XB refer to houses at Wellampitiya. In X13 Mr. Wijesekera said that these houses belonged to late B.A. Anulawathie (his wife) and that he was only a shareholder. X3 states that the said houses totalled 11, but when he set out the house numbers he had mentioned only 10 namely, Nos. 31/1, 31/2, 31/3, 31/4, 31/5, 31/6, 31/7, 31/6A, 31/7A and 31/7B. X9, X 10 and X12 show that in all, 8 houses at Wellampitiya and 3 houses at Dematagoda had vested.

Thus even if there was in existence a house No. 31/6A (1), the story that the houses in Wellampitiya were owned exclusively by Mr. Wijesekera is a fiction resulting from the failure of the Commissioner to have scrutinised the declaration. The houses appear to have been owned in undivided shares by Mr. Wijesekera and his 5 children; in which event the number of excess houses had to be determined under S.3 of the Law. This has not been done.

In the result, it is possible that houses have been taken over by the Commissioner incorrectly without applying the provisions of the Law; but as all action, including payment of compensation has been concluded, without legal challenge, it would be too late to review such action. In this background and in particular, on facts of this case, I am in agreement with the submission of Mr. Daluwatte that in view of the

provisions of Act No. 4 of 1988, the Commissioner had no power as on 21.12.89 to make a vesting order under S. 8(4).

In any event, S. 8(4) is a penal provision which operated against the late Mr. Wijesekera, if he had made an incorrect declaration of houses owned by him. It provides, inter alia, that a person who without reasonable cause makes an incorrect declaration of houses shall be guilty of an offence and any such house as may be specified by the Commissioner by notification published in the Gazette shall vest in the Commissioner. In the context, the liability , if any, was personal to Mr. Wijesekera. He alone could, in the circumstances, have shown reasonable cause for his conduct.

The Appellant or any of the other heirs will not be subject to proceedings under S. 8(4). I cannot agree with the submission of Mr. A.K. Premedasa P.C. that, in a case such as this, the heirs could be penalised for the alleged lapse of their father. Penal statutes should be construed narrowly in favour of the person proceeded against; and if in construing the relevant provisions there is any reasonable doubt, it will be resolved in favour of the person who would be liable to the penalty Maxwell (Interpretation of Statutes) 12th ed. 238, 239.

S. 4 of Act No. 4 of 1988 says:

(a) the past operation of, or anything duly done or suffered under the principal enactment prior to January 1st, 1987;

(b) any offence committed or penalty incurred under the principal enactment, prior to January 1st, 1987; and

(c) any action proceeding or thing commenced under the principal enactment, and pending or incompleted on January 1st, 1987.

This section has no applicaiton here. Paragraph (a) refers inter alia, to the past operation of anything suffered under the principal enactment. There is no such thing. Paragraph (b) cannot be applied as Mr. Wijesekera the alleged offender is dead; and paragraph (c) is plainly inapplicable, there being no pending proceeding as on January 1st, 1987.

The decision of the Commissioner is *ultra vires*, unauthorised by law, outside jurisdiction, null and void and of no legal effect. Vide Wade Administrative Law 6th ed. 349. The decision of the Board of Review affirming such an order is itself outside jurisdiction. At common law such a determination is not protected by a "no certiorari clause" Wade 725. S.22 of the Interpretation Ordinance has merely narrowed down the review jurisdictionof the Court in such a case when it provided "ex facie" Lack of power as a ground of review. It refers to a case where the invalidity of the act is patent or where there is a total lack of jurisdiction Vide 'Essays on Administrative Law of Sri Lanka 1979' Prof. G.L. Peiris 274-275. This is such a case where both the orders namely, that of the Commissioner and of the Board of Review are void for total lack of jurisdiction and the invalidity of the decison is patent. Hence, the decision of the Board of Review is not protected by S. 39(3).

If the decision of the Commissioner is patently invalid and is a nullity, the Board of Review cannot, by affirming it, preclude judicial review. As Lord Denning said in *Mac Foy v. Africa Company Ltd.*[4]

> "You cannot put something on nothing and expect it to stay there. It will collapse".

For the foregoing reasons, I allow the appeal, set aside the judgment of the Court of Appeal and issue a writ of Certiorari quashing the order made by the 2nd Respondent on 21.12.89 and the decision of the Board of Review dated 11.12.91. Without doubt, the Appellant has been subjected to much hardship and expense by the ill considered actions on the part of the 2nd Respondent. I, therefore, direct the 2nd Respondent (Commissioner for National Housing) to pay the Appellant costs in a sum of Rs. 5000/-

G.P.S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.