

CASSIM
v.
WEERAWARDENE, COMMISSIONER FOR
NATIONAL HOUSING AND ANOTHER

SUPREME COURT
FERNANDO, J.,
WADUGODAPITIYA, J. AND
ISMAIL, J.
SC APPEAL NO. 72/2002
CA APPLICATION NO. 897/2000
FEBRUARY 25, 2002

Ceiling on Housing Property – Application for purchase of house – Section 13 of Law, No. 1 of 1973 – Death of applicant tenant after the vesting order for the sale of the house is Gazetted – The right of the tenant's widow to purchase the house – Vested right.

The late Shah Mihilar was the tenant of the premises in suit since 1954 and occupied it from that year with his wife the 2nd respondent. On 21. 06. 1968 Mohideen Cassim purchased the premises with Mihilar in occupation who continued as the tenant of Mohideen Cassim. Appellant, the widow of Mohideen Cassim is the present owner in terms of the Last Will of said Mohideen.

On 20. 10. 1971 Mihilar applied to the Commissioner for National Housing to purchase the house in terms of section 13 of the Ceiling on Housing Property Law, No. 01 of 1973. On 09. 04. 1996 the Commissioner recommended to the Minister that the house be vested in him for the purpose of sale to the tenant. The decision was affirmed by the Board of Review in appeal by an order dated 22. 08. 1997. Thereafter, acting under section 17 (1) of the Law by a Gazette notice the house was vested with effect from 22. 04. 1988 in the Commissioner. Mihilar the tenant died on 27. 04. 2000 leaving his wife the 2nd respondent as the tenant in occupation of the house. In the meantime the Valuation Board under the law had determined the value of the premises as Rs. 76,728 and notified the parties by letter dated 08. 05. 2000. The 2nd respondent having received the said notification informed the Commissioner that as her husband had died she was willing as the lawful heir of her deceased husband to make payment and purchase the house.

The Commissioner informed the 2nd respondent that in view of the Supreme Court decision in *Leelawathie v. Ratnayake* she was not entitled to purchase the house and that steps will be taken to divest the house.

Held:

In the circumstances of this case, in which the Minister had at the time of the applicant-tenant's death made a vesting order in terms of the law, the right to purchase the house was a proprietary right which on the death of the applicant devolved on his widow. It was a vested right which devolved on the applicant's heirs.

Cases referred to :

1. *Leelawathie v. Ratnayake* – (1998) 3 Sri LR 349 (distinguished).
2. *Atapattu v. People's Bank* – (1997) 1 Sri LR 208 at 218-219.

APPEAL from the judgment of the Court of Appeal.

A. A. M. Marleen, PC with Miss R. Jayatilleke for appellant.

Anil Gooneratne, Deputy Solicitor-General with Ms. Shaheeda Barrie, State Counsel for 1st respondent.

Ms. Priyanthi Gunaratne for 2nd respondent.

Cur. adv. vult.

May 14, 2002

ISMAIL, J.

The 2nd respondent is the widow of Shah Mihilar who was the tenant, until his death on 27th April, 2000, of the residential premises bearing assessment No. 14, 9th Lane, Kollupitiya. The premises, as depicted in plan No. 731 dated 07. 07. 1965 made by A. F. Sameer, Licensed Surveyor, is in extent 9.4 perches.

The appellant, the present owner of the premises in terms of the Last Will, is the widow of Mohamed Mohideen Cassim, who purchased the same by deed No. 812 dated 21. 06. 1968 attested by Felix J. P. Perera, Notary Public. The deceased husband of the 2nd respondent

ent who was then in occupation of the premises continued as the 10
tenant of the purchaser. The 2nd respondent and her deceased
husband have occupied the premises since their marriage in 1954.

The 2nd respondent's husband made an application as the tenant
on 20. 10. 1975 to the Commissioner for National Housing for the
purchase of the said premises in terms of section 13 of the Ceiling
on Housing Property Law, No. 1 of 1973. The Commissioner on being
satisfied after an inquiry of the conditions enumerated in section 17
(1) (a) (b) (c) of the said Law recommended to the Minister on
09. 04. 1996 that the house be vested in him for the purpose of sale
to the tenant. 20

The appellant appealed against the said decision of the Commis-
sioner to the Board of Review, which by its order dated 22. 08. 1997,
affirmed the decision of the Commissioner and dismissed the appeal
after consideration without costs. The appellant did not seek to have
this decision varied in any appropriate proceedings.

Thereafter, the Minister of Housing and Urban Development by
virtue of the powers vested in him by section 17 (1) of the Ceiling
on Housing Property Law, as amended, vested the house No. 14,
19th Lane, Kollupitiya, with effect from 22. 04. 1998 in the Commis-
sioner for National Housing by publication in the *Gazette*. 30

The Valuation Board constituted under the Ceiling on Housing
Property Law determined the value of the said premises as being
Rs. 76,728.00 and notified the parties by letter dated 08. 05. 2000.
The 2nd respondent who received the letter addressed to her husband
informed the Commissioner of the death of her husband and indicated
her willingness as the lawful heir of her deceased husband to make
the payment and purchase the house.

The Commissioner informed the 2nd respondent by his letter dated
24. 07. 2000 that in view of the decision of the Supreme Court in
Leelawathie v. Ratnayake⁽¹⁾ that she was not entitled to a transfer 40
of the premises in her favour and that steps would be taken by him
to divest the premises.

The 2nd respondent then moved the Court of Appeal by way of a Writ of *Certiorari* to quash the aforesaid decision and to restrain or prohibit the Commissioner from divesting himself of the ownership of the house. The Court of Appeal by its judgment delivered on 29. 06. 2001 allowed the application and directed the Commissioner to accept the money and to transfer the house to the 2nd respondent. The present appeal is against the judgment of the Court of Appeal.

Learned President's Counsel for the appellant relying on the judgment in *Leelawathie v. Ratnayake* submitted that the right of a tenant to make an application for the purchase of a house let to him under section 13 of the Ceiling on Housing Property Law was personal to him and that it ceased upon his death. He pointed out that the Commissioner had not entered into an agreement with the tenant for the sale of the house to him after the vesting as required by section 17 (2) of the Law and that the tenant had not paid the purchase price before his death. 50

The facts in *Leelawathie v. Ratnayake* were that pursuant to the application of the tenant under section 13 of the Ceiling on Housing Property Law to purchase the house let to her, the Commissioner decided to recommend to the Minister the vesting of the house in him for the purpose of sale to her. On an appeal by the owner of the house under section 39 of the Law, the Board of Review set aside the decision of the Commissioner. The tenant then moved the Court of Appeal by way of a Writ of *Certiorari* to quash the order of the Board of Review. The tenant died pending the hearing of the application and her daughter was substituted after which the Court of Appeal restored the order of the Board of Review. On appeal to the Supreme Court it was held that the right conferred by section 13 is personal to the tenant making the application and that as her right ceased upon her death, the daughter was not entitled to proceed with the application made by her mother. It was noted that the tenant who made the application died before an order was made vesting the house in the Commissioner and that there was not even a notification by the Minister under section 17 (1) of the Law. It was held that in the 60 70

circumstances the deceased tenant had no proprietary rights in respect of the house which could pass to the heirs on her death.

The facts of the present case are not similar and the judgment in *Leelawathie v. Ratnayake* would, therefore, not be applicable. The house was vested in the Commissioner for the purpose of sale to the tenant before his death. The order of vesting was made by the Minister by a publication in the *Gazette* dated 15. 05. 1998 in terms of section 17 (1) of the Law and the only outstanding step required of him to effect a formal transfer of the premises was the payment of the purchase price. The tenant died on 27. 04. 2000 less than two weeks before the valuation of the house was communicated to the parties. Upon receipt of the said letter dated 08. 05. 2000, the 2nd respondent wife as the lawful heir indicated her willingness to pay the purchase price of Rs. 76,728 for the formal transfer of the house to her.

Even though the right of the tenant to make an application to purchase the house was a personal right, once that right was exercised and a vesting order made, the character of that right changed. It was a vested right which on the death of the applicant devolved on his heirs. See the cases cited in *Atapattu v. People's Bank*.⁽²⁾

The Court of Appeal has correctly held that in the circumstances of this case that the tenant had acquired a proprietary right in respect of the house which could be passed upon his death to his widow, the 2nd respondent.

Accordingly, the judgment of the Court of Appeal is affirmed and the appeal is dismissed without costs.

FERNANDO, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Appeal dismissed.