

**INDRAKUMAR**  
**v.**  
**PREMAWARDENA AND OTHERS**

SUPREME COURT  
AMERASINGHE, J.  
BANDARANAYAKE, J. AND  
EDUSSURIYA, J.  
SC APPEAL NO. 37/2000  
SC SPECIAL LA APPLICATION NO. 110/2000  
CA APPLICATION NO. 213/2000  
24<sup>TH</sup> OCTOBER, 2000

*Writ of mandamus - Tenant's application to purchase the house let to him - Ceiling on Housing Property Law, No. 1 of 1973 - Sections 13 and 17(1) of the Law - Writ application to compel sale made after the landlord had obtained judgement for ejectment of tenant - Power of Court of Appeal to stay execution of the decree in the action pending the determination of the writ application.*

One Gananathan, father of the Appellant (now deceased) was the landlord of the premises in dispute. He had instituted D.C. Colombo Case No. 6908/RE for the ejectment of the 1<sup>st</sup> respondent-tenant from the said premises and obtained a judgement for ejectment. That judgement was affirmed by a judgement of the Supreme Court.

Before the execution of the decree in the Supreme Court action the 1<sup>st</sup> respondent made an application dated 28<sup>th</sup> February, 2000 to the Court of Appeal for a writ of mandamus for directions on the 2<sup>nd</sup> respondent (the Commissioner for National Housing) and the 3<sup>rd</sup> respondent (the Minister of Housing) to take steps under section 17(1) of the Ceiling on Housing Property Law, No. 1 of 1973 to vest the premises in the 2<sup>nd</sup> respondent and to transfer it to the 1<sup>st</sup> respondent pursuant to an application he had made under section 13 of the Law. The 1<sup>st</sup> respondent averred that by a letter dated 7<sup>th</sup> February 1977 the then Commissioner for National Housing had informed that he had decided to vest the premises in him pursuant to the section 13 application made by him to purchase the premises. The 1<sup>st</sup> respondent sought an order directing the 2<sup>nd</sup> respondent (the present Commissioner) to notify that decision to the 3<sup>rd</sup> respondent, for an order directing the 3<sup>rd</sup> respondent to vest the premises in the 2<sup>nd</sup> respondent and for an order directing the 2<sup>nd</sup> respondent to convey the ownership of the premises to him (the 1<sup>st</sup> respondent) after the vesting.

The 1<sup>st</sup> respondent also sought an order staying further proceeding in D.C. Colombo Case No. 6908/RE which was in effect an interim order staying the execution of the decree entered in favour of Ganathan (now deceased) in whose place the appellant had been substituted. The Court of Appeal issued the interim order sought until the final disposal of the application for writ. This resulted in staying the execution of a decree which had been affirmed by the Supreme Court.

**Held :**

1. There is no basis on which the Court of Appeal could have stayed the execution of the decree of the Supreme Court in D.C. Colombo Case No. 6908/RE even if the Court of Appeal had a right to do so since in this case neither the 1<sup>st</sup> respondent nor the Commissioner for National Housing had any manner of title to the premises in suit.
2. The 1<sup>st</sup> respondent had no "legitimate expectation" to have the writ application concluded in his favour in that the Commissioner had failed to communicate his decision to the landlord before he notified his decision to the Minister to enable the landlord to avail himself of his right of appeal to the Board of Review under section 39(1) of the Law.
3. An order for vesting of the premises can only be published in the Gazette after the appealable period expires in the event of there being no appeal to the Board of Review or after a decision of the Board of Review in favour of the 1<sup>st</sup> respondent in the event of an appeal being filed by the appellant. Hence the 1<sup>st</sup> respondent's application to the Court of Appeal was premature.

**Cases referred to :**

1. *Neliya Silva v. Commissioner of National Housing and Another* (1999) 1 Sri L.R. 291 at 293
2. *Broome v. Cassell and Co.* (1972) A.C 1027 at 1054

**APPEAL** from the judgement of the Court of Appeal.

*S. Mahenthiran with E.A. Premalingam and M.S.C. Rajasingam* for appellant.

*A.K. Premadasa, P.C.* with *C.E. de Silva* for 1<sup>st</sup> respondents.

*K. Sripavan, Deputy Solicitor General* for 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

*Cur. adv. vult.*

**Editor's Note :** Vide *Premawardena v. Indrakumar* (2000) Sri LR 139 for the judgement of the Supreme Court in DC Colombo Case No. 6908/RE referred to above.

December 01, 2000.

**EDUSSURIYA, J.**

The 1<sup>st</sup> Respondent to this appeal made an application dated 28<sup>th</sup> February 2000 to the Court of Appeal for the issue of;

- (a) a writ of Mandamus compelling the Commissioner of National Housing (2<sup>nd</sup> Respondent to this Appeal) to notify the Minister of Housing (3<sup>rd</sup> Respondent to this Appeal) to vest premises bearing assessment No. 137 - 1/1, Ananda Rajakaruna Mawatha,
- (b) a writ of Mandamus directing the 3<sup>rd</sup> Respondent on being so notified by the 2<sup>nd</sup> Respondent, to vest the said premises in the 2<sup>nd</sup> Respondent by publishing a vesting order in the Government Gazette,
- (c) to issue an order directing the 2<sup>nd</sup> Respondent to convey by deed the ownership of the said premises to the 1<sup>st</sup> Respondent after the said premises had vested in the 2<sup>nd</sup> Respondent,

on the basis that the then Commissioner of National Housing had informed him (1<sup>st</sup> Respondent) by letter dated 7<sup>th</sup> February 1977 (XI) that he had decided to have the premises in question vested in him (then Commissioner of National Housing), pursuant to an application made by the 1<sup>st</sup> Respondent (as tenant) under Section 13 of the Ceiling on Housing Property Law No. 1 of 1973 to the then Commissioner of National Housing to purchase the said premises belonging to the then landlord K.C. Gananathan (the father of the Appellant).

The 1<sup>st</sup> Respondent also sought from the Court of Appeal an interim order staying further proceedings in D.C. Colombo Case No. 6908/RE which was in effect an interim order staying the execution of the decree of this Court entered in favour of K.C. Gananathan (now deceased) in whose place the Appellant has been substituted in action No. 6908/RE which said action had been instituted by K.C. Gananathan for the ejection of the 1<sup>st</sup> Respondent from the premises relevant to this Appeal on the ground that the tenant (1<sup>st</sup> Respondent to this Appeal) was guilty of conduct amounting to a nuisance to the adjoining occupiers including the landlord as set out in Section 22(2)(d) of the Rent Act.

The Court of Appeal had in the first instance issued an interim order staying the proceedings in D.C. Colombo Case No. 6908/RE and thereafter the Court of Appeal had after inquiry into an application to vacate the said order extended it until the final disposal of the application for writ, thereby in effect staying the execution of a decree of this Court.

The Appeal now before this Court is from that order of the Court of Appeal.

It is evident from the contents of the Application for the writ of Mandamus made to the Court of Appeal that the alleged decision to vest the premises in question in the Commissioner of National Housing had not been gazetted and is devoid of any force or avail in law and it was for that reason that the 1<sup>st</sup> Respondent filed the application for a writ of Mandamus in the Court of Appeal.

I refer to XI as the alleged decision to vest the premises, since it purports to have been signed by someone on behalf of the Commissioner of National Housing, but it does not bear the official frank of the Commissioner of National Housing or the person who signed it. The position is the same with regard to document X3. Further, only alleged true copies of these documents have been produced but not the originals.

Even assuming that these are copies of genuine documents, XI does not show that a copy of the same had been sent to the **landlord** nor is there any other evidence placed before either the Court of Appeal or this Court to establish that the alleged decision of the Commissioner of National Housing was ever communicated to the landlord. Nor has the 1<sup>st</sup> Respondent to this Appeal averred in his Petition and Affidavit, filed in the Court of Appeal, that the Commissioner of National Housing had communicated his decision under Section 17(1) of the Ceiling on Housing Property Law, No. 1 of 1973 to the landlord K.C. Gananathan who is now deceased.

Before an order of vesting is made by the Minister by publishing in the Gazette, the decision of the Commissioner of National Housing must necessarily be communicated to the landlord to enable the landlord to avail himself of the right of appeal to the Board of Review (*Neliya Silva v. Commissioner for National Housing and Another*<sup>(1)</sup>). Hence, the relief prayed for by the 1<sup>st</sup> Respondent before the Court of Appeal cannot be granted.

Even if the law permits the substitution of the present owner (the Appellant) namely, the son of the former owner - landlord K.C. Gananathan (now deceased) in the place of the said K.C. Gananathan, in the proceedings before the Commissioner of National Housing, the decision of the Commissioner of National Housing will first have to be communicated to the present owner, the Appellant, to enable the Appellant to exercise his right of appeal to the Board of Review under Section 39(1) of the Ceiling on Housing Property Law No. 1 of 1973. Thus, the order of vesting can only be published in the Gazette, after the appealable period expires in the event of there being no appeal to the Board of Review, or after a decision of the Board of Review in favour of the 1<sup>st</sup> Respondent in the event of an appeal being filed by the Appellant. Therefore, in any event the 1<sup>st</sup> Respondent's application to the Court of Appeal is premature.

On a reading of the order appealed from it is clear that the sole basis for extending the order staying further proceedings in D.C. Colombo Case No. 6908/RE is that the Petitioner-Respondent has a "legitimate expectation" to have the matter concluded in his favour in as much as the Commissioner of National Housing had informed him, that he the Commissioner of National Housing had decided to have the house in question vested in him after inquiry into the Petitioner-Respondent's application to purchase the house and also required the Petitioner-Respondent to deposit one quarter of the estimated sale price of the house.

However, at the hearing of this appeal not only did the Petitioner-Respondent's Counsel not pursue this line of argument but also denied making submissions on that basis in the Court of Appeal, until Counsel for the Respondent-Appellant drew the attention of Court to paragraph 7 of the written submissions tendered to the Court of Appeal by none other than the Counsel for the Petitioner-Respondent himself. So that, having "planted" the argument based on the doctrine of "legitimate expectation" in the mind of the Judge in the Court of Appeal, he then sought to disassociate himself from such submission when he realized the futility of pursuing such a line of argument before this Court. Therefore I do not think that there is any need to dwell any further on this topic.

Counsel for the Appellant submitted that the Court of Appeal had issued the order to stay further proceedings in D.C. Colombo Case No. 6908/RE in the first instance without notice to the Appellant in violation of the Rules of Court.

Though there is provision in the Rules to issue interim stay orders without notice for a limited period on grounds of urgency, the question is whether even with notice the Court of Appeal has the authority to issue an order staying the execution of a decree affirmed by this Court.

In this connection it is appropriate to quote Lord Hailsham from his judgment in *Broome v. Cassell and Co.*<sup>(2)</sup> where His Lordship said "The fact is, and I hope it will never be necessary to say so again, that, in the hierarchichal system of Courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers".

In this case now in appeal before this Court, the Court of Appeal has issued an order staying the execution of a decree entered by this Court after a carefully considered judgment.

Although in issuing such order the Court of Appeal had not questioned the correctness of the judgment of this Court, the said order had been issued to enable the 1<sup>st</sup> Respondent judgement-debtor in Case No. 6908/RE to pursue another course of action, namely, the application for a writ of Mandamus compelling the gazetting of a decision taken by the Commissioner of National Housing twenty three (23) years ago, in order to vest the premises in suit in the Commissioner of National Housing. Even if the reliefs applied for by the 1<sup>st</sup> Respondent are granted, still certain steps will have to be taken thereafter before the premises in suit can be conveyed to the 1<sup>st</sup> Respondent. Hence, at the moment there is no basis on which the Court of Appeal could have stayed the execution of the decree of this Court in 6908/RE even if the Court of Appeal had a right to do so, since neither the 1<sup>st</sup> Respondent nor the Commissioner of National Housing has any manner of title to the premises in suit.

In the circumstances, the interim order of the Court of Appeal dated 2<sup>nd</sup> June 2000 is set aside and this Appeal is allowed with costs fixed at Rs. 10,500/-.

**AMERASINGHE, J.** - I agree.

**BANDARANAYAKE, J.** - I agree.

*Appeal allowed.*