SIDDEEK

v.

JACOLYN SENEVIRATNE AND THREE OTHERS

SUPREME COURT
SHARVANANDA, A.C.J., SOZA, J., AND RODRIGO, J.
S.C. APPEAL No. 22/83 ; C.A./L.A. 9/83
NOVEMBER 28, and DECEMBER 1, 1983.

Sections 29 and 39 (13) of Rent Act, No. 7 of 1972 – Can a statutory tenant be a " person seeking to be a tenant ? " –Deed of Agreement – Application to register agreement with Rent Board – Order made by the Board refusing registration but not communicated – Second order made by Rent Board in ignorance of the first and contrary to it – Appeal to the Board of Review from second order – Application for Writ of Certiorari to quash the second order of the Rent Board and the order made on appeal to the Board of Review – Delay – Exercise of discretion to issue Certiorari.

The appellant was a lessee of the 4th respondent on a bond dated 26.4.1970 in respect of residential premises in Colombo to which the Rent Restriction Act No. 29 of 1948 then operative applied. The lease expired on 30.6.1973. In the meantime the Rent Act No. 7 of 1972 had come into operation. The appellant continued in occupation as a statutory tenant and on 26.8.1973 entered into a fresh bond for five years valid until 31.8.1978 as permitted under section 29 of the Rent Act. The 4th respondent applied to the Rent Board to have the bond registered under section 29 (2) of the Rent Act. Shortly after the hearing the members of the Board went out

of office but unknown to the parties the Board had made its Order on 25.2.1975 refusing registration of the bond on the ground that the appellant was not a person seeking to be a tenant. This Order was not communicated to the parties as required by section 39 (13) of the Rent Act. When the Board was reconstituted by a new membership the application was heard afresh by the new members who were unaware that an Order had already been made. The new members made an Order on 26.6.1978 permitting registration. The Appellant (tenant) appealed to the Board of Review but the appeal was dismissed on 13.6.1979. Thereupon the appellant moved for a Writ of Certiorari in the Court of Appeal to quash the second Order of the Rent Board and the Order made in appeal by the Board of Review. The Court of Appeal refused the application and the appellant then appealed to the Supreme Court.

Held –

(1) The Rent Act recognises three classes of tenants : contractual tenants, statutory tenants and persons deemed to be tenants. It is open to a statutory tenant to seek to become a contractual tenant within the meaning of section 29 (2). The appellant was a statutory tenant after his first lease expired on 30.6.1973. As such he was a person seeking to be a tenant when he entered into the second lease bond. This second lease bond was therefore qualified for registration and the first Order of 25.2.1975 of the Rent Board was erroneous.

(2) If the Order of 26.6.1978 of the Rent Board and the Order of 13.6.1979 of the Board of Review are quashed then the resultant position would be that the Rent Board would have to communicate the erroneous Order of 25.2.1975 in frustratingly belated compliance with section 39 (13) of the Rent Act. It would then be open to the 4th respondent to appeal to the Board of Review which will most likely set aside the Order. Hence the issue of the Writ of Certiorari will not help the appellant in the long run. Further the bond itself had expired more than five years ago on 31.8.1978. The ensuing result, if the appellant is granted the relief he seeks, will be stultifying. Certiorari being a discretionary remedy will be withheld if the nature of the error does not justify judicial intervention. Certiorari will not issue where the end result will be futility, frustration, injustice and illegality.

Per Rodrigo, J. (agreeing) :

(1) " If a person who is a statutory tenant or a person deemed to be a tenant already protected by the Act chooses to enter into an agreement to vacate the premises after 5 years or on the happening of an event, why should the Act stand in the way or put it outside the ambit of section 29 (2) ? "

(2) The appellant has not been vigilant enough to " ascertain and get the first order of the Board communicated. He has only himself to blame if through neglect, laches or delay, he has not brought it (the first order) to the notice of the Board or taken steps to give effect to it. "

Cases referred to

(1) *Gunaratne v. Thelenis (1946) 47 NLR 433.*

(2) *Sideek v. Sainambu Natchiya (1954) 55 NLR 367.*

(3) *Aron Singho v. Samuel Silva (1961) 63 NLR 137.*

(4) *Siriwardena v. Karunaratne (1959) 60 NLR 501, 503, 504.*

(5) *Ibrahim Saibo v. Mansoor (1953) 54 NLR 217, 234.*

(6) *Alikanu v. Marikar (1948) 50 NLR 57.*

APPEAL from an Order of the Court of Appeal.

H. L. de Silva, S.A. with *P. A. D. Samarasekera* and *A. L. M. de Silva* for petitioner-appellant.

Eric Amerasinghe, S.A. with *D. R. P. Gunatilleke, Miss D. Guniyangoda* and *Miss K. Wanigasekera* for 4th respondent.

Cur. adv. vult.

January 24, 1984.

SOZA, J.

The appellant took premises No. 29, Fussel's Lane, Wellawatte, Colombo (hereafter referred to in the appropriate context as " the premises ") on lease from the 4th respondent on Bond No. 1436 of 26.4.1970 attested by U. W. Jayasooriya N.P. for a period of three years commencing from 1.7.1970. These were residential premises and governed by the Rent Restriction Act No. 29 of 1948. The lease was still in force when the Rent Restriction Act No. 29 of 1948 was repealed and replaced by the Rent Act No. 7 of 1972 operative from 1st March 1972. The lease bond expired on 30.6.1973 but the appellant continued in occupation of the premises. Although the notarial lease had terminated by effluxion of time, still there can be no dispute that the appellant's continued occupation was protected by the statute law governing landlord and tenant–see the cases of *Gunaratne v. Thelenis* (1) *Sideek v. Sainambu Natchya* (2) and *Aron Singho v. Samuel Silva* (3). Upon the termination by effluxion of time of his lease the appellant became, in current legal parlance, a statutory tenant of the

premises. When he was still a statutory tenant the appellant took a fresh lease of the premises for a period of five years commencing from 1.9.1973 on Deed No. 1985 of 26.8.1973 attested by G.A. Nissanka, Notary Public. One of the covenants of this lease was that the appellant would peaceably hand back the premises at the expiry of the period of five years as they would be required for the use of the 4th respondent for her occupation and/or for the occupation of a member of her family. This deed No.1985 was no doubt executed in this manner with an eye on section 29(2) of the new Rent Act No. 7 of 1972 to which I will presently refer.

One result of the enactment of legislation imposing curbs on the common law freedom of contract was that a tenant could not, even if he wished to do so, contract out of the protection afforded him by the statute. Hence an agreement whether notarial or non-notarial by the tenant with his landlord that he would deliver possession of the premises tenanted by him to his landlord by a certain date is not enforceable ; it is essentially different from a notice of quitting given by the tenant. See the cases of *Siriwardena v. Karunaratne* (4) and *Ibrahim Saibo v Mansoor* (5). The only ways by which the statutory protection given to the tenant can come to an end are :

1. surrender of possession by the tenant to the landlord, and
2. an order for eviction of the tenant by a competent Court

–see *Ibrahim Saibo v Mansoor* (supra) p. 224

The statutory fetters on the freedom of contract were however relaxed in a limited class of cases by section 29 of the Rent Act No. 7 of 1972. With effect from 1st March 1972 it became lawful " for the landlord of any residential premises and the person seeking to be the tenant thereof to enter into a written agreement whereby such premises are let to such person for a period specified therein, such period being not less than five years, or until the happening of an event specified therein, where at the end of such period or on the happening of such event, such premises will be required for occupation as a residence for the landlord or any member of his family ; and no such contract or agreement shall, notwithstanding anything in any other written law, be valid or have effect in law

unless it is registered with the board on application made either by such landlord or by such person within thirty days after it is entered into ". (section 29(2)). On the expiry of the period or on the happening of the event, as the case may be, specified in the agreement the tenant is obliged to vacate the premises. (section 29(3)). Certain other stipulations follow in the remaining subsections of section 29 which are not relevant for the purpose of the case before us and therefore need not detain us.

It goes without saying that unless the agreement fulfils the requirements of section 29 the tenant can always recall a promise given by him in his contract of tenancy or even in a later compromise to surrender possession (*Alikanu v Marikar* (6), *Ibrahim Saibo v Mansoor* (supra) p.224 and *Siriwardena v. Karunaratne* (supra) pp.503,504). Four important stipulations of section 29(2) must be noted :

1. The lease, agreement or contract must be in writing (not necessarily notarial) and entered into on or after 1st March 1972.
2. The person with whom the lease, agreement or contract is entered into by the landlord must be a " person seeking to be a tenant ".
3. The period for which the letting must be operative must not be less than five years or until the happening of an event specified in the lease, agreement or contract.
4. The lease, agreement or contract must be registered with the Rent Board on application by either party to it made within thirty days after it is entered into.

In the instant case the controversy revolves round stipulations (2) and (4) above. The premises the subject-matter of the suit before us are situate within the local limits of the Municipality of Colombo. At the material dates their annual value did not exceed the relevant amount, that is Rs. 2000/–. The first lease bond No.1436 of 26.4.1970 expired on 30.6.1973. The second lease bond No.1985 of 26.8.1973 was entered into after the Rent Act No. 7 of 1972 came into force. At the time the appellant entered into this lease he was already a statutory tenant. The lease on this second bond was for a period of five years and ostensibly executed with a

view to taking advantage of the provisions of section 29. On its execution the 4th respondent made an application within the prescribed time limit of thirty days to the Rent Board for the registration of the bond in question. An inquiry was held by the Board at which both the appellant and the 4th respondent participated. As it later transpired the Board made order on 25.2.1975 refusing registration on the ground that the appellant was not a person seeming to be a tenant but before the order could be communicated to the parties under Section 39(13) of the Act, the members of the Board went out of office. Thereafter new members were appointed and they, oblivious of the fact that an order had already been made which only remained to be communicated, held a fresh inquiry. Both the appellant and 4th respondent participated at this inquiry too not knowing that an order had already been made. The second Board held that the appellant was a person seeking to be a tenant and that the bond qualified for registration. This order was made on 26.6.1978 and duly communicated to the parties.

The appellant appealed to the Board of Review against the order of 26.6.1978. In appeal the Board of Review of which 1 to 3 respondents were members affirmed the order of 26.6.1978 and dismissed the appeal. The order of the Board of Review was delivered on 13.6.1979. The appellant then moved the Court of Appeal for grant of a writ of certiorari quashing the orders of the Board of Review and Rent Board made against him. The Court of Appeal dismissed the application on 16.2.1983 and the appeal before us is from that order. At the stage of the certiorari proceedings the appellant discovered that the Rent Board which had originally heard the application for registration had in fact made order on 25.2.1975 in his favour refusing registration but had not communicated it to the parties as the members of that Board had gone out of office before that step could be taken. In this situation learned Senior Counsel for the appellant argued that the failure to communicate the order was only an administrative irregularity and that the order of 25.2.1975 was operative and binding and therefore the new Board had no jurisdiction to hear the matter afresh and make the order of 26.6.1978. In these circumstances the order made in appeal by the Board of Review on 13.6.1979 was also without jurisdiction.

The present appeal however can be disposed of by considering two questions :

1. Did the lease bond No. 1985 of 26.8.1973 qualify for registration ?
2. If so do the circumstances of this case warrant the issue of certiorari ?

Did the lease bond No. 1985 qualify for registration ?

The contention of the appellant is that he is not a person seeking to be a tenant and therefore the lease bond No. 1985 does not qualify for registration. The expression 'tenant' is not defined in the Rent Act but from its provisions it is clear that one or more of three different meanings can be attributed to it namely –

1. contractual tenant,
2. statutory tenant,
3. tenant on a deeming provision.

Of these meanings the expression 'tenant' would generally mean a contractual tenant unless the context of the particular statutory provision otherwise implies. There is nothing legally or semantically repugnant to the notion of a statutory tenant seeking to be a contractual tenant. There could very well be situations when a statutory tenant would like to be assured of an occupancy for a fixed period free from the perils and anxieties of possible litigation and a hostile landlord. Hence there is no intrinsic unlikelihood in a statutory tenant seeking to become a contractual tenant by entering into an agreement such as we have in this case like bond No. 1985. In the instant case the bond, it must be noted, is not being attacked on any grounds of undue influence, duress or fraud. Hence the bond must be treated as embodying an agreement voluntarily entered into. Accordingly I have no difficulty in holding that the appellant, though he was at the relevant time a statutory tenant, was seeking to be the tenant of the premises within the meaning of section 29(2) of the Rent Act and that the lease bond No. 1985 is valid and qualified for registration under the said section. In this view of the matter the first order of the Rent Board made on 25.2.1975 is clearly erroneous.

Do the circumstances warrant issue of certiorari ?

Accordingly if the order of the second Rent Board made on 26.6.1978 and the order of the Board of Review affirming it are quashed as sought by Counsel for the appellant then the resulting

position would be that the parties would be thrown back on the erroneous order of the first Rent Board of 26.2.1975. The Board would have to communicate this wrong order to the parties in frustratingly belated compliance with section 39(13) of the Rent Act which prescribes that "a copy of the order shall be forthwith transmitted by registered post or delivered to the applicant and to the respondent". It will be open to the 4th respondent to appeal from this order to the Board of Review which in the face of our conclusion that the order of 25.2.1975 is erroneous, will most likely hold likewise and set aside the order. In these circumstances the issue of the writ of certiorari will not help the appellant in the long run. Add to all this the fact that the period of the lease granted on the bond ended more than five years ago on 31.8.1973 and then it will be realised what a grotesque and stultifying result is going to be achieved if certiorari goes.

It is necessary at this stage to bear in mind that certiorari is a discretionary remedy–see Wade : "Administrative Law" 5th Ed. (1982) pp. 546, 591. As de Smith says in his work "Judicial Review of Administrative Action" 4th Ed. (1980) p. 404 :

> "Thus, certiorari is a discretionary remedy and may be withheld if the conduct of the applicant, or, it would seem, the nature of the error does not justify judicial intervention".

The Court will have regard to the special circumstances of the case before it before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality. Accordingly I uphold the order of the Court of Appeal refusing the appellant's application for the issue of a writ of certiorari and dismiss this appeal with costs payable by the appellant to the 4th respondent.

SHARVANANDA, A. C.J.–I agree.

RODRIGO, J.—I agree.

This is an appeal that raises a novel point and, one not without difficulty, as to the construction of s. 29 (2) of the Rent Act No. 7 of 1972 as amended. The section reads :

" s. 29 (2) Notwithstanding anything in any other provisions of this Act, it shall be lawful, with effect from the date of commencement of this Act, for the landlord of any residential premises and the person seeking to be the tenant thereof to enter into a written agreement whereby such premises are let to such person for a period specified therein, such period being not less than five years, or until the happening of an event specified therein, where at the end of such period or on the happening of such event, such premises will be required for occupation as a residence for the landlord or any member of his family ; and no such contract or agreement shall, notwithstanding anything in any other written law, be valid or have effect in law unless it is registered with the Board on application made either by such landlord or by such person within thirty days after it is entered into."

The construction revolves around the question " what is the meaning to be given to the phrase 'seeking to be a tenant ?" and as to the scope of an inquiry by the Rent Control Board under this section. The context in which this arises is this. The tenant, who is the appellant, had been in occupation of the premises in suit under a written tenancy agreement with the respondent–landlord which expired on 30 June, 1973. The tenant, however, continued to occupy the premises when on 26th August, 1973 the landlord and the tenant purported to enter into a fresh written agreement of tenancy conditioned to terminate at the expiry of 5 years, as mentioned in the section. The section requires such an agreement to be registered with the Rent Control Board (Board). Unless so registered the agreement is not valid in terms of the section. The landlord, therefore, applied to the Board to register the agreement with the Board. But the tenant, after notice, objected to its registration on the ground that the agreement fell outside the ambit of the section in that he was already a tenant of the premises on the date of the making of the agreement and that therefore he was not a person 'seeking to be a tenant' thereof or, to put the point in other words, the section enables such an agreement to be entered into only between the landlord and a person who is seeking to come

into occupation of the premises for the first time on the footing of a tenancy. Counsel for the tenant says this is the plain meaning of the phrase ' seeking to be a tenant ' and backed it up with a reference to the presumed objective of the legislature when it enacted this provision, the objective being to induce owners of residential premises who, being public servants or Diplomats on transfer or service abroad, do not require the premises for occupation by themselves for an ascertainable period, to let such premises to reliable persons instead of keeping them unoccupied for fear of not being able to get vacant possession if they let them otherwise. Owners of houses intending to give them to their children on their marriage in the foreseeable future are also said to have been in contemplation by the legislature, when the provision enacted the happening of an event also as a condition.

Counsel for the respondent–landlord, while not offering any argument on the presumed objective of the provision, disputes that the meaning of the phrase contended for, for the tenant is as plain as it is said to be. He, however, rests his case or this part of it, on the submission that the Board has no jurisdiction to be holding inquiries into the contractual or if I understood him rightly, even the statutory validity of the agreement sought to be registered. He will not get involved with disputes as to the meaning of the phrase 'seeking to be a tenant'. What he says is that the Board's function is only ministerial when an agreement is tendered for registration on application and that the Board has merely to enter it in a register kept for the purpose leaving any dispute arising from its alleged inadequacies as an agreement, to be determined by a Court of Law when the agreement is sought to be enforced at the end of the specified period or on the happening of the specified event.

It is argued for the tenant, that this is reducing the Board to a mere rubber stamp in this regard and that the words used in the section with regard to the procedure for the registration militates against such a view, the words used being " on application made by ". This brings into operation it is said, s. 39 (3) of the Rent Act which reads :

> " s. 39 (3). Before making any order upon any application under this Act, the Board shall give all interested parties an opportunity of being heard and of producing such evidence, oral or documentary, as may be relevant in the opinion of the Board."

The agreement cannot be registered, it is argued, without an order on the application for registration and an order cannot be made without noticing the tenant – the agreement was sought to be registered by the landlord – and hearing his objections. This was the procedure followed by the Board on this application. Counsel for the landlord does not agree. He cited ss. 5 ; 19 (2)(*b*)(ii) ; (9) ; 11 ; 13 (1)(4) ; 14 (2) ; 18 ; 25 (1) ; 26 (1) ; 34 ; 35 (2) ; 36 (3) ; and 37 (5) and submitted that each of these requires in the section itself an order to be made by the Board on an application to it made by either the landlord or the tenant but under section 29 (2) no such order is required or contemplated and a general provision as is found in s. 39 (3) does not govern s.29 (2).

It is not without significance that where an agreement is registered with the Board and the tenant refuses to vacate the premises on the happening of the specified event or on the expiry of the specified period he is liable to a fine of up to Rs.5000/–and/or to imprisonment of either description not exceeding one year. The Board also is given control, where an agreement has been registered, over the character of occupation of the premises during and after the pendency of the agreement. For instance, in the event of the tenant leaving the premises prematurely, the Board it is that will authorise its occupation by an approved tenant for the balance period and at the end of the period or the happening of the event; the Court must be satisfied that the landlord requires the premises for his occupation or that of a member of his family and where the landlord or a member of his family is permitted to occupy the premises, he is obliged to be in occupation for a minimum period of three years. Did the legislature impose restrictions on the landlord or visit the tenant with penalties on registration of a purported agreement on a mere tendering of such an agreement for registration by either the landlord or the tenant, as the case may be, behind the back of the other ? While it is obvious that the provision– s. 29 (2)– has been inspired to induce landlords to let their premises which would otherwise be kept closed with an assurance of being able to get them back for their own occupation within the times specified, was any mischief sought to be avoided by the requirement that that agreement should be registered with the Board ? The Board is not specifically required to be satisfied on any matter before registration. At one time in the course of the

argument I thought that to permit such agreements to be entered into is to allow one to ride a coach and six through the Rent Act but I am of the view that the Court must be satisfied when the agreement is sought to be enforced that the landlord or a member of his family actually requires it for his occupation and the requirement that the landlord or the member of his family should stay in occupation for a period of three years if they recover the premises are adequate safeguards against any abuse of the provision. See s. 29(13) & (14). There does not appear to be any mischief sought to be avoided by this section. But it has its uses. Registration will make the tenant take the agreement more seriously than he would otherwise and, of course, enable the Board to control the character of occupation of the premises during its pendency.

If and when objection is taken to the registration of an agreement before the Board by either the landlord or the tenant, I think all that the Board need be concerned with is that the application for registration has been made within 30 days of the making of the agreement – s. 29 (2) – and the tenant or the landlord, as the case may be, admits the making of the agreement. Such an admission imports more than signing the document. One may sign a document but it may not reflect his agreement to the terms therein. It is important that at the time registration is sought both parties must agree impliedly or expressly that the document expresses their agreement on the matters specified therein and what is crucial is that they are willing to be bound by it as at that date. If they are not, then the alleged agreement is a non–starter and the section is not intended to effect futile registration of alleged agreements which are in dispute from the word 'go' and which, the tenant, for instance, does not intend to perform. To register such a disputed agreement is to impose on the tenant or the landlord something forcibly when the legislature intended it to be voluntary. To foul the relations between the landlord and the tenant from the moment of the forced registration, is to deny the objective sought to be achieved by the section. The landlord will not put the tenant into occupation in the generality of cases till the agreement is registered. So such situations will not be common. The section, no doubt, permits the registration of a written agreement entered into not earlier than a month. But it is absurd that where one or the other has resiled from it in the meantime, the party holding on to it

can compel its registration notwithstanding protest by the other. When the agreement was required to be registered within a month of its making the legislature intended to avoid stale agreements that no longer hold water from being registered. The agreement must be a subsisting agreement at the time of registration. Where therefore either party denies the making of it or disputes its validity or refuses to be bound by it, I am of the view that the Board may reject its registration: It is not required to adjudicate upon issues relating to its validity as an agreement as, for instance, duress, fraud or incapacity and the like. It is an agreement which is valid on the face of it and admitted by parties to have been entered into and otherwise not disputed that is required to be registered. It is not a Court of law to determine whether the document tendered is in law a valid agreement. The provision is a simple one to enable parties to voluntarily enter into an agreement for the purpose on the one hand, and on the other, to enable the Board with the co-operation of parties to give effect to it. It is rarely, if at all, that an agreement will be denied by the tenant for it is left to the landlord not to put the tenant into occupation of the premises till the agreement is registered with the Board. The instant case is unusual because the tenant is already in occupation of the premises and he can without anxiety afford to dispute the registration of the agreement.

I am, therefore, of the view that the Board rightly noticed the parties and heard them. As for the Board deciding the dispute, see later.

The dispute that has arisen is one raised by the tenant who has had second thoughts about the wisdom of entering into the agreement. He does not allege that he was imposed upon into entering into it. His legal advisers have shown him the way out. He has found it in the fact that he was already a tenant, either an overholding contractual tenant or a statutory tenant. But the point is he is disputing that he is bound by it. As I said the Board should have refused to enter upon that kind of inquiry and refused to register it. Where, for instance, an agreement is registered because no objection is taken to it by either party though the alleged tenant is not " a person seeking to be a tenant " at the time of the agreement and therefore outside the ambit of s. 29 of the Act, he may, if so advised, canvass it before a Court of law where it is sought to be enforced. But, because the matter had been argued before us I will express my view on this aspect of the matter.

The provision – s. 29 (2) – does not seek to control landlords and persons seeking to be their tenants in entering into agreements of the kind specified. They are voluntary agreements. The section does not seek to avoid any mischief. There is no problem if the agreement is between the landlord and a prospective tenant in the sense of a person who is seeking to enter into occupation of a premises for the first time. The problem arises where he is already in occupation otherwise than as a licensee. In this instance, the appellant was already in occupation as an overholding contractual tenant. He by operation of the Act became a statutory tenant. There is another class of tenants styled "deemed to be a tenant". This has reference to the spouse or a dependant child of a deceased tenant. The question is whether an agreement of the kind specified in s. 29 (2) cannot be entered into between a landlord and a statutory tenant or a person " deemed to be a tenant ". If a person who is a statutory tenant or a person " deemed to be a tenant " already protected by the Act chooses to enter into an agreement to vacate the premises after 5 years or on the happening of an event, why should the Act stand in the way or put it outside the ambit of s. 29(2) ? Whom is it seeking to protect ? No tenant can be protected against himself. He is free to vacate any premises at his pleasure. Where there is nothing to compel him to relinquish his protected premises, if he enters into an agreement voluntarily limiting his period of occupation, perhaps, to salve his conscience that he is keeping the landlord from reasonably requiring the premises for his own occupation or for that of a member of his family, why should he be prevented from entering into such an agreement ? " The person " in s. 29 (2) does not necessarily exclude a person who is already a tenant and in occupation of the premises. For this reason it is not right to exclude persons who are already in occupation as statutory tenants or persons " deemed to be tenants " who are really statutory tenants from entering into such agreements.

I am, therefore, of the view that a landlord is entitled to enter into an agreement under s. 29 (2) with any person including persons already in occupation of the premises in any capacity.

Arguments were also addressed to us on another matter said to have a bearing on the order of the Board to register the agreement. The present Board has succeeded another which had gone out of

office. The application for registration of this agreement had come before that other Board in the first instance for consideration. That was as far back as 1975. It had, after hearing parties, refused to register it taking the view that the respondent is not a " person seeking to be a tenant " within the meaning of s. 29 (2) as he is already a statutory tenant. This decision, though signed by the Chairman, had not been communicated to the parties at any time and in fact was unkown to the appellant or the respondent or their legal advisers throughout the proceedings before the Board or the Board of Review. They had stumbled upon it at the hearing before the Court of Appeal. Anyway, the point was taken before the Court of Appeal by Counsel for the tenant that inasmuch as the application for registration has been rejected by a decision by the Board which is a continuous body though its composition may change from time to time, the present Board now comprising different members, has no jurisdiction to consider the selfsame matter. Counsel for the landlord admits that a decision appears to have been made by the previous members of the Board but as the decision had never been communicated either orally or in writing that decision is in law a 'no-decision' and cannot be taken judicial notice of. Counsel also says that the decision is not a final order since it was not canvassed before the Board of Review and it is only if the Board of Review impresses its stamp of approval on it, it becomes a final and conclusive order.

The order of the previous Board had been made more than 7 years ago and the party now seeking its benefit should have stirred himself to take appropriate steps to ascertain and get the order communicated. Law helps only the vigilant and the tenant who sought to benefit from the order, in the view that I have taken of the matter now, has only himself to blame if through neglect, laches or delay, he has neither brought it to the notice of the present members of the Board or taken steps to give effect to it. These are writ proceedings which look for errors of law on face of the record and there is nothing in the proceedings before the Board or the Board of Review relating to the present application which indicates a trace of the order of the earlier Board. I, therefore, think that it is too late in the day to hark back to that decision.

The tenant, however, has not been prejudiced by the proceedings before the Board or the Board of Review, in the view I have taken on the merits of his objections. Writ proceedings being

discretionary, I am inclined not to exercise my discretion in favour of granting the relief claimed by the tenant. I, therefore, dismiss this appeal with costs, payable by the appellant to the 4th respondent.

Appeal dismissed.