

**LIYANAGE  
V.  
KARUNARATNE**

SUPREME COURT  
SHARVANANDA, A. C. J., WIMALARATNE, J.  
AND ABDUL CADER, J.,  
S. C. NO. 20/83, C. A. No. 458/81.  
NOVEMBER 11, 1983.

*Writ of Certiorari — Vesting order made under Section 17 of the Ceiling on Housing Property Law, No. 1 of 1973.*

The Appellant filed an application in the Court of Appeal praying, *inter alia*, for the issue of a writ of *certiorari* to quash the vesting order made under section 17 of the Ceiling on Housing Property Law, No. 1 of 1973, by the then Minister of Housing.

In his petition the Appellant stated, *inter alia* :—

- (a) that he became aware of the publication of the said order on 10th January, 1977.
- (b) that on 3rd February, 1977, he lodged an appeal against the order before the Board of Review constituted under the Ceiling on Housing Property Law and that by letter dated 25th of April, 1977, he had invited the attention of the Board regarding the said Appeal, but had received no intimation whatsoever.
- (c) that by the letters dated 12.09.1977 and 14.11.1980 addressed to the 4th Respondent, the present Minister of Housing, he had sought administrative relief.

**Held—**

The Court of Appeal has, in reaching the conclusion that there was undue delay on the part of the petitioner in applying to that Court for relief, overlooked the appellant's appeals dated 12.09.77 and 14.11.80 to the 4th Respondent, the present Minister of Housing, for relief.

These appeals to the Minister for administrative relief are not irrelevant, but have significance and relevance. They show that the Appellant had not acquiesced in the vesting of his house by the order. The Petitioner was in the circumstances justified in seeking relief from the Minister. The delay occasioned by pursuing this legal remedy cannot be counted against the petitioner as unreasonable. The vesting order was admittedly a nullity and *certiorari* should issue.

**Cases referred to :**

- (1) *Mrs. Kadiramanpulle v. Mailvaganam*, (S. C. Application No. 536/77 —S.C. Minutes of 19th September, 1980)
- (2) *Biso Menika v. Cyril R. de Alwis*, (S. C. 59/61 — S. C. Minutes of 12.05.1982.)

**APPEAL** from a judgment of the Court of Appeal.

*Faiz Mustapha* with *K. Balapatebendi* for Petitioner.

*Nimal Senanayake*, S. A. with *L. V. P. Wettasinghe* and *Miss S. H. Senaratne* for 1st Respondent.

*Cur. adv. vult*

November 25, 1983

**SHARVANANDA, A. C. J.**

The Appellant filed an application in the Court of Appeal on **25th April, 1981**, praying, *inter alia*, for the issue of a writ of *Certiorari* to quash the Vesting Order dated **19. 5. 76** made, under section 17 of the Ceiling on Housing Property Law No. 1 of 1973, by the then Minister of Housing, in respect of premises bearing No. 130/52, Kirillapona Avenue, Colombo. The said order had been published in the Government Gazette of 13th August 1976.

In his petition the Appellant stated, *inter alia* :—

- (a) that he became aware of the publication of the said order on 10th of January, 1977.
- (b) that on 3rd February 1977, he lodged an appeal against the order before the Board of Review constituted under the Ceiling on Housing Property Law and that by letter dated 25th of April, 1977, he had invited the attention of the Board regarding the said Appeal, but had received no intimation whatsoever.

(c) that by the letters dated 12.09.1977 and 14.11.1980 addressed to the 4th respondent, the present Minister of Housing, he had sought administrative relief.

At the hearing of the application in the Court of Appeal, Counsel for the 1st Respondent (the tenant of premises No. 130/52) conceded that the Vesting Order dated 19.5.76, was a nullity, but however, objected to the issue of a writ of *certiorari* on the ground that there had been undue delay. By its judgment dated 17.12.82, the Court of Appeal upheld the plea of delay and dismissed the appellants' application with costs.

The concession on the part of the Counsel for the 1st respondent that the Vesting Order dated 19.5.76 was bad in law and was a nullity, was based on the decision of *Mrs. Kadiramanpulle v. Mailvaganam*<sup>1</sup> on the ground that the petitioner was not given notice by the Commissioner of National Housing, regarding the notification to the Minister by him under section 17(1) of the Ceiling on Housing Property Law No. 1/73. As notice of the notification to the Minister was not given to the Petitioner, the Petitioner was deprived of the right of appeal to the Board of Review under section 39(1) of the said Law. In the circumstances, the vesting order P2 has to be treated as invalid and a nullity.

Counsel for the Appellant has relevantly submitted that since the vesting order, P2 was a nullity, the Appellant was entitled to relief as prayed for, *ex debito justitiae* and that he should not be denied relief and that his application should not be dismissed solely on the ground of undue delay. In my view this submission is entitled to succeed.

It is to be noted that the Court of Appeal has, in reaching the conclusion that there was undue delay on the part of the Petitioner in applying to that Court for relief, overlooked the Appellant's appeals dated **12.9.77** and **14.11.80** to the 4th

Respondent, the present Minister of Housing, for relief. In view of the provisions of section 17A (1) of the Ceiling on Housing Property Law which provides "that the Commissioner may, with the prior approval in writing of the Minister, by order published in the government gazette divest himself of the ownership of such house". These appeals to the Minister for administrative relief are not irrelevant, but have significance and relevance. They show that the Appellant had not acquiesced in the vesting of his house by the order P2. The Petitioner was in the circumstances justified in seeking relief from the Minister, the delay occasioned by pursuing this legal remedy cannot be counted against the Petitioner as unreasonable. The consequent delay is excusable. Counsel for the Appellant has drawn our attention to the judgment of this Court in *Biso Menika v. Cyril R. de Alwis*<sup>2</sup>, where the legal effect of delay is fully discussed. It was stated there that

"when the Court has seen the record and is satisfied that the order complained of is manifestly erroneous or without jurisdiction, the court will be loathe to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there is some extraordinary reason to justify such rejection."

The record does not show that the petitioner has slept on his rights without any reasonable excuse. The time lag has certainly been explained in the petition. Further no prejudice to the 1st Respondent (the tenant who has sought to purchase the premises) by the delay of the petitioner in coming to court has been disclosed.

The 1st Respondent appears to have deposited certain monies with the Commissioner of National Housing (the 3rd Respondent). According to the 1st Respondent, the Commissioner of National Housing (3rd Respondent) requested him to deposit 1/4 of the estimated purchase price of the premises in question and to pay Rs.36/- per mensem and he has deposited certain sums of money. In my view these payments cannot constitute such prejudice as to bar the issue of the writ. Since the vesting order is a nullity as conceded by Counsel for the 1st respondent, title

to the premises that are subject to the vesting order continued in the petitioner. The 1st respondent has not done anything substantial to the premises on the faith of the validity of the vesting order.

In the circumstances I cannot agree with the conclusion of the Court of Appeal that the delay of the appellant in preferring this application for a writ of *certiorari* is not justified, and that it is fatal to the application. I therefore set aside the judgment of the Court of Appeal and direct the issue of a writ of *certiorari* quashing the vesting order dated 19.5.76 made by the Minister and published in the Government Gazette (P2). The appeal is allowed. The 1st Respondent will pay the appellant his costs in the Court of Appeal and in this Court. Since the vesting order is being quashed the 1st respondent will be entitled to the refund of the sum deposited towards the purchase price paid by him. Since the 1st Respondent had been paying Rs. 36/- per month as rent to the 2nd Respondent, I direct the Commissioner of National Housing (3rd respondent) to pay the petitioner the said sums of Rs.36/- paid by the 1st respondent to the Commissioner monthly. The monies so paid by the 3rd Respondent to the Petitioner will be set off by him against the arrears of rent due from the 1st Respondent to the petitioner.

**WIMLARATNE, J.** — I agree

**ABDUL CADER, J.** — I agree

*Appeal allowed.*