

JIFFRY
v
COLOMBAGE AND OTHERS

SUPREME COURT
S.N.SILVA, CJ
ISMAIL, J. AND
EDUSSURIYA, J.
S.C. APPEAL No.19/2001
C.A.APPLICATION No. 894/99
4TH OCTOBER 2001

Writ of certiorari – Ceiling on Housing Property – Information given by tenant that the appellant owned eleven houses – Commissioner’s decision vesting a house – Validity of the decision in view of Act, No. 4 of 1988.

The appellant and his deceased brother being owners of 10 houses made their declaration under the Ceiling on Housing Property Law (“the Law”) on 31.08.1976. The declaration stated that they were joint owners of 10 houses but gave particulars of only 09 houses. including the house in dispute. The 6th respondent the Commissioner for National Housing (“the Commissioner”) vested 06 houses excluding the premises in question. Thereafter another house of which particulars had not been disclosed was also vested; and all proceedings in respect of the houses including payment of compensation for the vested houses were finalized by 31.05.1985.

The first respondent (“the tenant”) who succeeded to the tenancy of the house in dispute in 1992 sent an affidavit dated 21.12.1994 to the Commissioner that the appellant and the 2nd respondent were excess house owners. After in inquiry into this matter, the Commissioner by a decision dated 08.09.1995 purported to vest the house in dispute. The Board of Review Ceiling on Housing Property set aside that decision on the ground that the Commissioner had no jurisdiction to make it in view of the provisions of the Ceiling on Housing Property (Special Provisions) Act, No.4 of 1988.

Held:

1. In view of the provisions of section 3 of the Ceiling on Housing Property Law (Special Provisions) Act, No.4 of 1988 (“The Act”) which precluded a tenant from making an application under the Law after 01.01.1987 the tenant was not entitled to make his “application” dated 21.12.1994.

2. Section 4(c) of the Act which provided for the completion of pending matters had no application as all proceedings in respect of the declaration made by the appellant and the other co-owner had been concluded by 31.5.1985.

APPEAL from the decision of the Court of Appeal reported in (2000) 3 Sri LR 367

Faiz Musthapha, PC with Reza Muzni and A.M.Jeefry for appellant

N.B.D.S.Wijesekera for 1st respondent

N.Pulle, State Counsel for 6th respondent.

Cur.adv.vult

Editor's note

Vide (2000) 3 Sri L.R.367 for a detailed statement of the facts relating to the purported vesting.

October 04, 2001

S.N.SILVA, C.J.

This is an appeal from the judgment dated 4.9.2000 of the Court of Appeal. By that judgment, the Court of Appeal directed the issue of a Writ of Certiorari to quash the decision of the Board of Review established under the Ceiling on Housing Property Law. That decision is dated 25.8.1999. In the proceedings in question the Board of Review considered the appeal of the present appellant in respect of a decision made by the Commissioner of National Housing dated 8.9.1995. By that decision, the Commissioner purported to vest premises bearing No.90, Yatinuwara Veediya, Kandy owned by the appellant and the 2nd respondent. The decision dated 8.9.1995 was made by the Commissioner pursuant to an application made by the tenant on 21.12.1994.

The Board of Review has set aside the order of the Commissioner on the basis that the tenant could not have made an application in respect of the premises bearing assessment

No.90, after 01.01.1987 in view of the provisions of the Ceiling on Housing Property (Special Provisions) of Act.No. 4 of 1988. Section 3 of that Act specifically precludes an application being made by the tenant in terms of the principal Act after 01.01.1987. In this instance, the application was made on 21.12.1994. The Court of Appeal has gone on the basis that the order could have been made by the Commissioner in view of the provisions of Section 4(c) of Act, No. 4 of 1988. This provision reads thus.

“Any action proceeding or thing commenced under the principal enactment and pending or incomplete on 01.01.1987 which action, proceeding or thing may be carried on and completed as if the principal enactment had not been amended by this Act.”

The Court of Appeal has observed that the proceedings before the Commissioner were pending since the declaration made under the Act by the owners was false or incorrect.

It is to be noted that a declaration was made by the appellant and the 2nd respondent being joint owners of several houses on 31.8.1976. In that declaration, they have disclosed the fact that they owned 10 houses. However, only the particulars with regard to 9 houses have been specified. This includes premises bearing No. 90 Yatinuwara Veediya, Kandy which is the subject matter of this appeal. Pursuant to inquiries that were held, Commissioner vested 6 of these houses of which particulars were disclosed excluding the premises in question. Thereafter the 7th house of which particulars were not disclosed was also vested. The decision of the Board of Review reveals that the appellant was paid compensation in respect of the vested houses on 31.5.1985.

Thus all proceedings with regard to the declaration made by the appellant and the other co-owner had been concluded as far back as 31.5.1985. The premises bearing No. 90 Yatinuwara Veediya, Kandy was a permitted house which the owners were entitled to retain. In the circumstances, there was no basis whatsoever for the tenant, the 1st respondent, to make an application in 1994 in respect of these premises. According to the material available, he succeeded to the tenancy only in 1992 long after the

period for making an application lapsed in terms of provisions of Act, No. 4 of 1988.

Accordingly, we hold that the basis on which, the Court of Appeal issued a Writ of certiorari quashing the decision of the Board of Review is incorrect. We allow this appeal and set aside the judgment dated 4.9.2000. We make no order for costs.

ISMAIL, J. - I agree.

EDUSSURIYA, J. - I agree.

Appeal allowed.