

THURAIRAJAH

v.

BIBILE, CHAIRMAN, BOARD OF REVIEW CEILING ON HOUSING
PROPERTY LAW AND OTHERS

COURT OF APPEAL

PALAKIDNAR, J.

GUNAWARDANA, J. AND

WEERASEKARA, J.

C.A. 535/88;

C.H.P. BOARD OF REVIEW 1542

18 AND 19 FEBRUARY 1991

Ceiling on Housing Property Law, No. 1 of 1973 – Eligibility of tenant to purchase excess house – Can sub-tenant claim right to purchase excess house against the tenant?

Held:

The Ceiling on Housing Property Law, No. 1 of 1973 requires that eligibility to purchase an excess house from the Commissioner is founded on a tenancy with the owner. A sub-tenant does not have priority over the tenant whose prior claim is statutorily recognized under section 12(2) of the Law.

Case referred to:

1. *Root King v. Kent County Council*, (1981) 2 All ER 227.

H. L. de Silva, P.C. with *S. Mahenthiran* and *P. M. Ratnasundaram* for petitioner.

P. A. D. Samarasekara, P. C., with *Lasantha de Silva* for 7th respondent.

Cur adv vult.

15th March, 1991.

PALAKIDNAR, J.

Premises number 256, Vauxhall Street was owned by Tyrecrafts Ltd. It was rented out to George Stewarts. The 7th Respondent Dias who was an employee of George Stewarts occupied this premises. Dias by reason of an internal agreement with the employers changed

his residence to a bungalow belonging to George Stewarts called the Mill manager's bungalow. He however retained an occupancy interest in the premises number 256, Vauxhall Street. Dias's position as an occupier was attained to by the petitioner Thuraiajah who contracted with him for the tenancy on 1.2.1974. In effect Dias states that Thuraiajah was a sub-tenant under him.

The premises referred to fell into the category of an excess house under the Ceiling on Housing Property Law (No. 1 of 73) in regard to the ownership by Tyrecrafts Ltd. Therefore in law the premises became vested in the Commissioner of Housing Property on 13.1.1974.

The Commissioner acting under the law offered the house for sale to Dias on 30.9.1974 by letter marked "A". This offer was accepted and a formal agreement to purchase was entered into between the Commissioner and Dias. The agreement is marked "B". The petitioner made an application to buy the premises but it was refused by the Commissioner on 4.11.1976 by order marked "C". The Commissioner had given time to the petitioner to find alternate accommodation and directed Dias to file an action for ejectment. This action is now pending in the District Court. On 23.9.1981 a letter from the Valuation Board confirming the decision to sell to Dias was sent to him. This confirmation is marked "F".

Having proceeded thus far the Commissioner performed a *volte-face* as it were and reversed his decision to sell to Dias and rescinded the agreement "B" and made order to sell this premises on 19.4.1984 to the petitioner.

This order was made consequent to an inquiry under Section 12 of the Act as evidenced by documents P5, P6 and P7. The petitioner appealed from the order to the Board of Review. The Board of Review by order dated 15.3.1988 marked P8 allowed the appeal of the 7th Respondent Dias.

The matter before this Court is an application by way of writs of certiorari and prohibition inviting this Court to review the order P8 and prohibit the consequences that flow from that order. It may be

pertinent to note at this stage that no appeal lies from order P8. Section 39(3) of the Act states that P8 shall be final and shall not be called in question in any Court. The petitioner has therefore invoked the writ of this Court on the main ground that there is an error on the face of the record.

It may also be pertinent to note that the decision by Commissioner to sell to the 7th respondent Dias on order marked "A" was appealable under Section 39(1) of the Act. The petitioner has not exercised his right of appeal in the circumstances. Instead he had moved the Commissioner to hold an inquiry and obtained the order P4, reversing the decision to sell. Learned President's Counsel for the petitioner sought to justify P4 as a measure taken to rescind the previous order on the ground of fraud, mistake and error. The law he submitted would permit this administrative decision. He based his view on the authority of cases reported in *Root King v. Kent County Council*⁽¹⁾.

In our view such a move by the Commissioner could have stemmed from a direction by the Board of Review on an appeal from the order marked "B". It was a statutory right which could not have been circumvented by the petitioner in any other way. The reversal in effect swept aside a series of far-reaching steps taken by the Commissioner to sell the premises to the 7th respondent Dias. The decisions were clearly taken on the basis of the 7th respondent's eligibility to purchase the house. This eligibility is based on substantial proof of his position as a tenant under Section 12 of the Act. As observed earlier in this judgment the petitioner himself acknowledged the position of Dias by contracting with him to tenant the house for himself.

The argument that this tenancy enabled the petitioner to qualify under the Act to become a purchaser does not convince us as being the correct legal position consonant with the facts. The Act requires that eligibility to purchase an excess house from the Commissioner would be founded on a tenancy with the owner. The argument that any tenancy would meet the requirement does not accord with the scheme of the statute. The statutory context has to be reviewed in the light of the impact on other provisions of the statute. A sub-tenant in

our view does not have priority over the tenant whose prior claim is statutorily recognised under Section 12(2) of the Act.

For the purpose of this application the petitioner must prove his eligibility under this statute. Equitable consideration may apply only when the person who has a right to purchase in the 1st instance does not exercise such a right.

The eligibility of the 7th respondent is borne out by the Commissioner's decision to sell to him. The Board of Review has based its decision on the acceptance of such eligibility. Eligibility is based on the proof of the facts which show a prior claim. The full extent of such eligibility was within the purview of the Commissioner and the Board of Review. Tenancy by George Stewarts under whose license the 7th respondent came to occupy the premises and his subsequent interest in the premises as acknowledged by the petitioner himself support the presumption that the Commissioner acted in the proper exercise of his rights as an act correctly done in offering to sell the premises to the 7th respondent. In law he could only do so to the tenant. The onus does not lie on the 7th respondent to prove his tenancy for the purpose of this application. The petitioner must establish his statutory right under the Act to displace the 7th respondent.

In our view he has failed to do so. Therefore we dismiss the petition with costs fixed at Rs. 1,000/-.

GUNAWARDANA, J. – *I agree.*

WEERASEKARA, J. – *I agree.*

Application for writ dismissed.