

MUTTIAH
v.
COMMISSIONER FOR NATIONAL HOUSING

COURT OF APPEAL.
ISMAIL, J.
C.A. NO. 674/92
OCTOBER 17, 1994.

Ceiling on Housing Property Law – No. 1 of 1973 – Excess house – S.8, 8.3(a) 8(4) of Ceiling on Housing Property Law – Application under S. 18A of Rent Act – Demolition of House.

Petitioner applied on 9.11.1983 under S. 18A of the Rent Act for an Order to demolish the buildings standing in the premises owned by her. The Inquiry was laid by as the occupants of the houses had made applications for the purchase of these premises. This Order to lay by was quashed by the Court of Appeal, and the Commissioner was directed to proceed with the S. 18A Inquiry. After 1 1/2 years, on 2.1.1992 the Commissioner requested the petitioner to pursue the matter with the Provincial Housing Commissioner. On 28.3.1992 the Commissioner informed the Petitioner that 6 out of the 9 houses were vested in him under Section 8(4) of Ceiling on Housing Property Law. This application is to quash the vesting Order.

Held:

(1) It appears that the Commissioner has not communicated his decision, to vest the said six houses in writing for almost 16 months although he claims to have orally informed the Petitioner.

The petitioner has been denied an opportunity to challenge the decision of the Commissioner.

(2) It is not clear as to the basis upon which only 6 of the 9 houses became vested in the Commissioner. It is also not clear whether the Commissioner acted under S. 8 3(a).

(3) It appears that the decision to vest was taken by the Commissioner after he was directed by the Court of Appeal to proceed with the S. 18A Inquiry.

AN APPLICATION for writ of Certiorari.

S. Mitrakrishnan with Mrs. C. R. Mitrakrishnan for Petitioner.
Kumar Paul, S.C. for Respondent.

December 7, 1994.

ISMAIL, J.

The petitioner became the owner of premises bearing assessment Nos. 417, 419, 419/1, 419/2, 419/3, 419/4, 419/5, 419/6 and 419/7, Prince of Wales Avenue (now Sirimavo Bandaranaike Mawatha) Colombo 14, by deed No. 2169 dated 8.10.64. Out of the aforesaid premises those bearing Nos. 417, 419, 419/1, 419/2, 419/3 and 419/4 became vested in the Commissioner for National Housing with effect from 23.11.90, under section 8(4) of the Ceiling on Housing Property Law No. 1 of 1972, as amended. The notice of the said vesting was published in the Gazette dated 14.12.90 (XII). The petitioner has in the present application sought a writ of Certiorari to have the order vesting these premises quashed.

The petitioner made application to the Commissioner on or about 9th November 1983 under section 18A of the Rent Act, No. 7 of 1972, for an order authorizing her to demolish the buildings standing on the premises owned by her. An inquiry into this application commenced on 6.2.84 but soon thereafter the respondent informed the petitioner by letter dated 6.3.84 that he was laying by the said inquiry as the occupants of the houses have made applications for the purchase of these premises. This order was quashed by this Court in C.A. Application No. 743/87 and a writ of mandamus was issued directing the Commissioner to proceed with the inquiry into the said application of the petitioner – (C.A. Minutes of 22.6.90).

The Commissioner has stated in his affidavit that he could not comply with this order as his powers had by then devolved on the Provincial Housing Commissioner and that, in any event, he too could not have proceeded with the inquiry into the application of the petitioner for an order authorising the demolition of the houses as the said premises had been vested in him.

The order vesting the premises has been made on 23.11.90 according to the Gazette Notifications published in English and Sinhala, while the vesting order is dated 24.11.90 in the Gazette Notification published in Tamil.

It is clear that no steps were taken by the Commissioner pursuant to the order of this Court directing him to proceed with the inquiry into the petitioner's application for the demolition of the premises for a period of one and a half years. Then on 21.1.92 he requested the petitioner to be present at a discussion and admittedly on 29.1.92 he advised the petitioner to pursue this matter with the Provincial Housing Commissioner. The Commissioner confirmed this by his letter dated 20.3.92 and by a further letter, on 28.3.92, he has informed the petitioner that the said premises were vested in him under section 8(4) of the Ceiling on Housing Property Law.

The petitioner has produced the letter of the Commissioner dated 1.7.92 (X10), to which was annexed a copy of the Gazette notification of 14.12.90 (X11), informing him that the premises referred to therein were vested in him under section 8(4) of the Ceiling on Housing Property Law. It is to be noted that the Commissioner has specified that 6 of the 9 houses bearing Nos. 417, 419, 419/1, 419/2, 419/3, and 419/4 owned by the petitioner were vested in him.

The Commissioner explaining the circumstances in which these houses came to be vested in him has stated that in March 1985 the tenants of all the houses owned by the petitioner complained to him that she owned surplus houses, including those occupied by them. He held an inquiry into this matter at which the petitioner was represented by an Attorney-at-Law and he found that she owned surplus houses. He claims that on 17.9.88 the petitioner was informed that 8 houses, excluding house bearing assessment No. 419/3, were vested in him in terms of section 8(4) of the Ceiling on Housing Property Law. The Commissioner has also stated that the petitioner was at all relevant times fully aware that these premises were surplus houses which had vested in him. Yet, it appears that the Commissioner has not communicated his decision to vest the surplus houses owned by the petitioner in writing, although he claims to have orally informed the petitioner about the vesting on 17.9.88. He could not have done so earlier because the vesting order has been signed by him either on 23.11.90 or 24.11.90. However, it is not clear as to the basis upon which the Commissioner could have orally informed the petitioner, on 17.9.88, that 8 of the 9 houses owned by her, excluding house bearing assessment No. 419/3, vested in him. Nor is

it clear as to the basis upon which only 6 of the 9 houses owned by the petitioner specified in the Gazette notification vested in him. The Commissioner has failed to communicate his decision after the vesting order was signed by him on or about 23.11.90, until about an year and 4 months later, either on 28.3.92 as claimed by him or until 5.3.92 (X9) as stated by the petitioner. This was, in any event, after the Commissioner was directed to proceed with the inquiry into the petitioner's application for the demolition of the buildings by the judgment of this court on 22.6.90 in C.A.Application No. 743/87.

Section 8(4) of the Ceiling on Housing Property Law provides as follows:

"Any person who has, without reasonable cause, failed to send the declaration, within the period referred to in subsection (1) or subsection (2), as the case may be, or has made any incorrect declaration in regard to the number of houses owned by him or by his family, as the case may be, shall be guilty of an offence under this Law, and any such house owned by such person or by any member of the family of such person as may be specified by the Commissioner by Notification published in the Gazette shall vest in the Commissioner with effect from such date as may be specified therein."

Section 8(1) and 8(2) refer, *inter alia*, to declarations within the time specified by an individual who is not a member of a family and members of a family respectively, who own houses in excess of the permitted number of houses and the vesting of such houses if no such declaration or an incorrect declaration is made.

The petitioner has stated in paragraph 15 of her affidavit that the said houses were not surplus houses within the meaning of the Ceiling on Housing Property Law and that she had previously sent a declaration to the Commissioner that they are not surplus houses and that she proposes to retain them for her husband and her 6 children. The Commissioner has not replied this averment in the affidavit of the petitioner on the basis that reference has been made by the petitioner to "excepted premises" not known to the Ceiling on Housing Property Law. This has subsequently been corrected by the petitioner to read as "surplus premises".

The Commissioner has stated that he became aware in March '85, on representations made by the occupants of the houses owned by the petitioner, that she owned houses in excess of the permitted number of houses. The petitioner has herself not set out the circumstances in which she sent the declaration referred to in her affidavit. It is also not clear whether the Commissioner did take action in terms of section 8(3A) of the Ceiling on Housing Property Law, the relevant provisions of which are as follows:

"Where the Commissioner has reason to believe that houses in excess of the permitted number of houses were owned by any person who has not made a declaration as required by subsection (1) or subsection (2), the Commissioner shall by a notice served on such person require such person to furnish the requisite declaration together with any other particulars in such a manner as may be specified by the Commissioner within a period of six weeks from the date of service of such notice ..."

The respondent Commissioner has failed to explain the circumstances in which he specified that 6 of the 9 houses owned by the petitioner vested in him under section 8(4) of the Ceiling on Housing Property Law. There is no indication as to whether he took into account that the petitioner had 6 children and if so, whether she had houses in excess of the permitted number of houses, whether it was necessary for her to submit a declaration under section 8(2) of the Ceiling on Housing Property Law or whether she failed to send the declaration "without reasonable cause" or that, if she had made a declaration whether it was an incorrect declaration and whether she was guilty of an offence under this Law. These are some of the relevant matters which the Commissioner should have considered before proceeding to specify in the Gazette notification that 6 of the 9 houses owned by her vested in him. If in fact the Commissioner has considered these matters, prior to making a decision on or about 23.11.90 to vest these houses, he had failed to communicate his decision to the petitioner soon thereafter, and the petitioner could now claim that she was deprived of her right of appeal to challenge the decision of the Commissioner.

For these reasons I am of the view that the Commissioner has erred in law and that he has not acted in accordance with the provisions of section 8 of the Ceiling on Housing Property Law in vesting the premises specified in the Gazette Notification dated 14.12.90. I therefore direct the issue of a writ of certiorari to quash the vesting order dated 23/24.11.90 published in the Gazette dated 14.12.90 (XII).

Application allowed.
