

GNANASAMBANDAM
v.
THE REHABILITATION OF PROPERTY & INDUSTRIES
AUTHORITY (REPIA) AND OTHERS

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

PERERA, J. AND

DR. SHIRANI A. BANDARANAYAKE, J.

S.C. APPEAL 105/96.

C.A. 1195/87.

JULY 25, AUGUST 4, 1997.

Writ of Certiorari – Emergency (Rehabilitation of Affected Properties, Business or Industries) Regulations No. 1 of 1983 – Divesting of vested property – Tenant's Rights.

The appellant was the tenant of the disputed premises which was burnt down during civil disturbances in July 1983. Such property vested in the state in terms of regulation 9 of the Emergency (Rehabilitation of Affected property Business or Industries) Regulations No. 1 of 1983. On 23.12.83 the appellant sought relief in respect of the disputed premises. On 17.1.84 the body called REPIA under the Emergency Regulations divested the property in terms of regulation 14. Thereafter the owner of the premises (The 5th respondent) repaired it and obtained a letter dated 28.6.84 from REPIA granting him permission to deal with his property to the exclusion of the tenant.

Held:

When the property was divested, the tenancy with the appellant revived by operation of law, in terms of regulation 14(2); and the decision of REPIA contained in its letter dated 28.6.84 was made without the appellant being heard, in breach of the *audi alteram partem* rule. That decision was made by REPIA in excess of its authority and was devoid of legal effect.

APPEAL from the judgment of the Court of Appeal.

A. R. Surendren with *G. Ranawaka* for the appellant.

Faisz Musthapha, P.C. with *Gaston Jayakody* for the 5th respondent.

Cur. adv. vult.

September 5, 1997.

G. P. S. DE SILVA, C.J.

The petitioner who sought relief by way of certiorari and mandamus was admittedly the tenant of the premises which are the

subject-matter of these proceedings for many years prior to the civil disturbances which occurred in the latter part of July 1983. It is also not disputed that the premises were burnt and the petitioner's household goods and vehicles were also burnt during the period of the civil disturbances in July 1983. The petitioner and his family were thus compelled to leave the premises.

The petitioner had on 23.12.83 made an application by way of an affidavit (1R1) for relief to the body known as the Rehabilitation of Property and Industries Authority (REPIA) established under the Emergency (Rehabilitation of Affected Property, Business or Industries) Regulations No. 1 of 1983, published in gazette extraordinary No. 257/3 of 7.8.83. Regulation 9(1) provides that "Every affected property ... shall with effect from the date these regulations come into force vest absolutely in the State free from all encumbrances." "Affected property" is defined as "any immovable property damaged or destroyed on or after July 24, 1983, by riot or civil commotion." It is common ground that the 5th respondent, one of the co-owners of the premises, had by his affidavit dated 16.1.84 (1R4) given a specific undertaking to REPIA that he would "restore tenancy to the previous tenant after effecting repairs ...". The previous tenant is the petitioner. On 17.1.84 the REPIA had "divested" the premises; provision for "divesting" is found in Regulation 14 which reads thus:-

"14(1) Notwithstanding that, any affected property, or industry or business has vested in the State by reason of the operation of these regulations REPIA may at any time by Order published in the gazette divest such property, industry or business.

(2) The following provisions shall apply to a divesting Order made under paragraph (1):-

(a) the property, industry or business shall be deemed never to have vested in the State by reason of the operation of these regulations and any question which may arise as to any right, title or interest in or over such property, industry, or business shall be determined accordingly.

(b) the divesting Order shall have the effect of reviving any arrangement, agreement or other notarially executed instrument in and over that property, industry or business subsisting on the date on which such property, industry or business vested in the State.”

There, by virtue of the operation of Regulation 14(2) the contract of tenancy with the petitioner “revived”. In other words, the tenancy revived by operation of law.

The Chairman of the REPIA, (3rd respondent) however, by his letter dated 28.6.84 (1R6 and also marked as 5R2) addressed to the 5th respondent has stated as follows:—

“This is to inform you that you are absolved of the undertaking you had given in your affidavit of 16.1.84 to the effect that you would restore tenancy of the above premises to your previous tenant, as he has not claimed it to date. Please also be informed that the divesting order dated 17.1.84 issued in your name is valid and that you are free to do whatever you desire with your property.”

The reasons for the decisions contained in 1R6 are set out by the 3rd respondent in his affidavit dated 23.2.88 filed before the Court of Appeal. The first reason is that the 5th respondent by his letter dated 16.6.84 had informed the Chairman, REPIA “that the premises had been repaired and kept vacant to be given to the previous tenant, the petitioner, but as his whereabouts were not known and as he was losing income by keeping the premises closed indefinitely and requested that he be released from the undertaking to give the premises to the petitioner.” The second reason is “that no application had been made by the petitioner to retain the tenancy.” In my view both reasons do not bear scrutiny. In the first place, REPIA had acted on the representations made by the 5th respondent that the whereabouts of the petitioner were unknown **without the petitioner being heard**. There was thus a clear violation of the *audi alteram partem* rule on a matter which vitally affected the rights of the petitioner. The letter P6 addressed to REPIA by the petitioner clearly established his continued interest in returning to the premises. Secondly, the statement in 1R6 that “no application has been made by the petitioner to retain the tenancy” is in the teeth of the affidavit

1R1. Moreover, REPIA has no authority to make a "divesting order" in the name of a particular person; nor has it the authority to inform the 5th respondent "that you are free to do whatever you desire with your property." 1R6 is devoid of legal effect as it has been issued without authority. I accordingly hold that REPIA has clearly acted in excess of its authority.

The Court of Appeal has upheld the preliminary objection to the application on the erroneous assumption that REPIA is not a party to the proceedings. REPIA is in fact the first respondent in the present application.

Prayer (b) of the application, namely a writ of Mandamus on REPIA is, however, misconceived. The proper party should have been REPIA established under and in terms of the Rehabilitation of Persons Properties and Industries Authority Act No. 29 of 1987. But REPIA was not made a party to these proceedings and hence mandamus cannot issue.

It was submitted on behalf of the 5th respondent that REPIA was not in existence at the time the petitioner filed his application for writ of Certiorari and Mandamus in November 1987. There is no merit in this submission; the 1st respondent (REPIA) and the 3rd respondent (Chairman, REPIA) filed a statement of objections on 24.2.88, but nowhere in their objections have they taken up the position that REPIA ceased to exist by November 1987. Nor has the 3rd respondent pleaded this position in his affidavit dated 23.2.88.

In the result, I set aside the judgment of the Court of Appeal in so far as it has dismissed the application for a writ of certiorari and I direct that a writ of certiorari do issue to quash 1R6 (also marked as 5R2 by the 5th respondent). 1R6 (5R2) is accordingly quashed.

I make no order as to costs.

PERERA, J. – I agree.

DR. SHIRANI A. BANDARANAYAKE, J. – I agree.

*Appeal allowed
writ of certiorari issued.*