

**SAHEED**  
**v.**  
**GAIYOOM AND OTHERS**

SUPREME COURT  
AMERASINGHE, J.,  
WIJETUNGA, J. AND  
GUNAWARDANA, J.  
S.C. APPEAL NO. 92/95  
C.A. APPEAL NO. 464/89 (F)  
D.C. COLOMBO NO. 5137/ZL  
OCTOBER 6TH, 1997  
NOVEMBER 11TH, 1997.

*Vindictory action – "Affected property" under REPIA Regulations 1983 – Termination of tenancy over affected property – Title of the owner to have the tenant ejected.*

The plaintiffs sued the defendant for a declaration of title to the premises in suit and ejection of the defendant on the ground that the tenancy of the defendant terminated by the destruction of the building let to him during the civil riots in 1983. The District Judge held that the building had been completely destroyed. In terms of Regulation 9 (1) of the Rehabilitation of Affected Property or Business or Industries Regulations, 1983, such premises, being "affected property" within the ambit of Regulation 19, vested absolutely in the State. However, in order to enable the plaintiffs to assist rebuilding the premises, REPIA, the body empowered

to rehabilitate affected properties, acting under Regulation 9 (2) declared the premises to be not "an affected property". Issue 7 at the trial was whether that declaration restored the premises to the plaintiffs.

**Held:**

Upon the destruction of the premises, the contract of tenancy came to an end, irrespective of the question whether it also came to an end by reason of the premises being automatically vested in the State as an "affected property". The declaration of REPIA under Regulation 9 (2) of the Regulations restored the premises to the plaintiffs.

**Cases referred to:**

1. *Giffry v. De Silva* (1965) 69 NLR 281.
2. *P. T. Samuel v. M. M. Mohideen* (1968) 71 NLR 451.
3. *Muzamil v. REPIA* (1985) S.C. 2 Sri LR at 310, 322.
4. *Rupasinghe v. Madatti* (1994) 2 Sri LR 161.
5. *Muzamil v. REPIA* (1984) C.A. 2 Sri LR 197.

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

*A. K. Premadasa*, PC with *Ikram Mohamed* and *C. E. de Silva* for the defendant-appellant.

*R. K. W. Goonasekera* with *Luxman de Alwis* and *M. H. A. Raheem* for the plaintiffs-respondents.

*Cur. adv. vult.*

December 17, 1997.

**AMERASINGHE, J.**

The plaintiffs (the respondents in the matter before me, hereinafter referred to as the 'respondents') instituted action in the District Court of Colombo on the 17th of December, 1985, for a declaration of title in their favour to premises No. 44, 2nd Cross Street, Colombo 11 (hereinafter referred to as the 'premises'), and for ejection of the defendant (the appellant in the matter before me, hereinafter referred to as the 'appellant'), on the ground that the tenancy of the appellant had been terminated by the complete destruction of the building by fire during the Civil riots in July, 1983.

The appellant, inter alia, pleaded that he was the lawful tenant of the premises, which were governed by the provisions of the Rent Act, and that, although the premises had been slightly damaged, he had continued to do business on the premises uninterruptedly, having effected repairs in 1983.

However, the respondents maintained that the premises were completely destroyed and that, in the circumstances, the tenancy came to an end by operation of law. According to the respondents, and this is borne out by the document P1, on 22nd August 1993, they made a declaration to the Rehabilitation of Property and Industries Authority (REPIA) – a body established by the President by Regulations made under section 5 of the Public Security Ordinance and published in *Gazette Extraordinary* No. 257/3 of August 07, 1983 – stating that the premises had been "completely burnt down" and that they proposed to rebuild the property out of their own resources. In response to that declaration, REPIA by its letter dated 1st September 1983 (P2) declared the premises to be not "an affected property" for the purposes of the Regulations, but required the plaintiffs to "obtain the prior approval of the Urban Development Authority and/or the Local Authority before commencing any development activities or repairs".

The learned District Judge granted the reliefs prayed for by the respondents. With regard to the issue (Issue 7) whether the declaration by REPIA on 1st September 1983 had restored the premises to the respondents, the learned District Judge found that the declaration did have that effect. In the Court of Appeal, the appellant submitted that the learned District Judge had erred in arriving at the conclusion that the premises were so destroyed that they were not available for the appellant to carry on his business at that place. In support of that submission, it was pointed out that the learned District Judge had placed reliance on the inspection report of an officer of the Urban Development Authority who had visited the premises and had stated that the premises were completely destroyed. However, the report refers to Nos. 44 and 46, Main Street, Colombo, whereas the premises in suit was No. 44, 2nd Cross Street, Colombo. The Court of Appeal, considered this a matter of "grave importance", but did not accept the submission that "the learned District Judge's rejection of the [appellant's] evidence was coloured by [the officer's] evidence. "The Court of Appeal found other evidence in the record to sustain the

finding of the learned District Judge that the premises had been completely destroyed, and accordingly dismissed the appeal.

Special leave to appeal from that decision was granted by the Supreme Court on the following questions:

- (1) Was issue No. 7 raised in the course of the proceedings of 18.6.86 answered correctly by the learned District Judge?
- (2) Are the regulations, namely the Rehabilitation of Affected Property or Business or Industries Regulations published in the *Government Gazette Extraordinary* 257/3 dated 7.7.1983 and the provisions of Act No. 29 of 1987 relevant to these proceedings?

Mr. Premadasa submitted that issue No. 7 was not correctly answered by the learned District Judge. His position was as follows: When premises were "affected property" within the meaning of the regulations, then, in terms of regulation 9 (1) such premises vested automatically in the State. The premises in suit were "affected property", since regulation 19 defines "affected property" to mean "any immovable property damaged or destroyed on or after July 24, 1983, by riot or civil commotion and includes any immovable property used for the purposes of an affected business or industry". The premises in suit were damaged and they, therefore, vested in the State. If they were to be divested, then, in terms of regulation 14 (1), REPIA should have divested the premises by Order published in the *Gazette*. There is no such Order. The letter issued by REPIA on 1 September 1983 could not have restored the premises to the plaintiffs, and therefore the answer to issue 7, should have been in the negative; consequently, the learned District Judge's finding that the declaration by REPIA on 1 September 1983 had the effect of restoring the premises to the respondents was erroneous. And so, the respondents' claim for a declaration of title should have been rejected.

Mr. Goonesekere submitted that issue No. 7 was correctly answered by the learned District Judge. His position was as follows: REPIA was established to assist in the rehabilitation of damaged property. Admittedly, in order to facilitate their task, 'affected property' was vested in the State by law. Entrusting the task of rehabilitation to REPIA, however, did not mean that the Government or REPIA took

on the entire responsibility for doing everything necessary to achieve that end: where, as in this case, a person who was the owner of premises but for the vesting of such premises by operation of law, indicated that he or she was willing to undertake the task of rebuilding affected premises, REPIA welcomed the offer, and permitted rebuilding, subject to the person conforming with the requirements of the Urban Development Authority or the Local Authority. However, since affected premises vest in the State, in order to enable a person authorized to assist REPIA to perform its functions, the property could be restored to such person either by a divesting order made under regulation 14; or by a declaration, as was made in this case, by REPIA that the premises were not "affected premises". The effect of such a declaration would be that, although by operation of law the premises might otherwise have been regarded as vested in the State, yet in view of the declaration by REPIA, the premises in effect are restored to the former owner. That was the finding of the learned District Judge with regard to "issue 7" and it is a finding that was correct.

Mr. Premadasa referred to section 11 (1) (a) of the Act of 1987 which states: "Where any affected property consists of premises to which the Rent Act No. 7 of 1972 . . . applies, then any person who was the tenant of such premises on the day immediately preceding the relevant date shall be entitled to enter upon and occupy such premises and it shall be the duty of the landlord to permit such tenant to enter upon and occupy such premises". I am inclined to agree with Mr. Premadasa's submission that section 11 (1) (a) was intended to ensure that landlords would not be in a position to eject tenants merely because there was any damage whatsoever, however slight, to the premises. However, in my view, the protection afforded by section 11 (1) (a) assumes that the tenancy agreement was in force: Where premises are destroyed without the fault of the landlord or the tenant, as in the matter before us, the contract comes to an end, whether the tenancy was one that fell within the operation of the Rent Act or otherwise: *Giffry v. De Silva*<sup>(1)</sup> total destruction is unnecessary; for the test is whether the premises are so damaged that they cannot be used for the purposes for which they were leased: *P. T. Samuel v. M. M. Mohideen*<sup>(2)</sup>. Although the appellant said that the premises were only 'slightly damaged' and that the premises continued to be used, yet the learned District Judge and the Court of Appeal found that the premises had been rendered uninhabitable by the damage they had suffered. There are no reasons why I should not accept

the correctness of the conclusion reached by the two Courts. In the circumstances, in my view, the contract came to an end, irrespective of the question whether it also came to an end by reason of the premises being automatically vested in the State as an 'affected property'.

There is no dispute that the premises were damaged: the dispute is with regard to the extent of the damage. In the circumstances, the premises were, in my view, "affected property" within the meaning of regulation 19. As such, the premises automatically vested in the State, for regulation 9 (1) states: "Every affected property . . . shall . . . vest absolutely in the State free from all encumbrances". Consequently, the tenancy agreement would have been automatically extinguished: *Muzamil v. REPIA*<sup>(3)</sup> at 322.

The tenancy agreement could have been revived by a divesting order published in the *Gazette*, for regulation 14 (2) (b) states that where there is such an order it "shall have the effect of reviving any arrangement, agreement or other notarially executed instrument in and over that property . . . subsisting on the date on which such property . . . vested in the State". However, there is no divesting order in the matter before me. The tenancy was at an end and, since the appellant, nevertheless, insisted on remaining on the premises, steps were taken in the District Court to eject him from the premises. In my view, the appellant had no business to be on the premises after his tenancy agreement had come to an end, and so, order was, in my view, rightly made by the District Court that the appellant should be ejected from the premises. Indeed, section 10 (1) of the Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987 states: "Any person who without lawful authority, proof whereof shall be on such person, enters or occupies any affected property . . . shall be guilty of an offence . . ."

The steps to eject the appellant were taken by the persons who had, prior to the vesting of the premises in the State under and in terms of regulation 9 (1), been the owners of the premises. It was not suggested in the District Court, the Court of Appeal, or in the Supreme Court, that owners whose properties were vested in REPIA, under and in terms of regulation 9 (1), were stripped of their ownership for all time, unconditionally: And, in my view, rightly so; for the vesting process was manifestly for the limited purpose of facilitating

rehabilitation: Surely, it was not an underhand device for the State acquiring properties? Why should owners of property be penalized because their properties had been damaged by criminals? Civilized societies attempt, within their means, to compensate victims of crime, and assist to rehabilitate them – and this was manifestly the intention of the Executive, as expressed in the Emergency (Rehabilitation of Affected Property, Business or Industries) Regulations No. 1 of 1983, and that of the legislature, as expressed in the Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987. There was no intention to confiscate the properties of owners whose properties were destroyed and to place them in the tragic position of the well-known character who fell off a tree, only to be gored by an unsympathetic bull. They remained owners, except that for facilitating the process of rehabilitation, ownership was vested in the State.

In my view, in carrying out its function of repairing and restoring affected properties, REPIA is not restricted in any way to using only the resources made available by the Government for the achievement of its objectives. Indeed regulation 6 (b) contemplates financial assistance for the work of REPIA from "any source whatever, whether in or outside Sri Lanka". When a person who owned a property, but was by law divested of it, because it was "affected property", undertakes to assist REPIA by rebuilding the damaged property, I am of the view that REPIA may make reasonable decisions with regard to such an offer and enter into reasonable arrangements, and adopt reasonable procedures it deems appropriate for giving effect to its decisions. In my view, it may, as it did in this case, issue a declaration under regulation 9 (2) that the premises are not "affected premises", not because the premises were in fact undamaged, but deemed to be undamaged, in order to restore the property to the *de facto* owner to enable the *de facto* owner to rebuild a damaged building. Such a declaration does not result in divesting: *Rupasinghe v. Madatti* <sup>(4)</sup> at 170. However, REPIA is not, in my view, obliged to first divest the property and make the person who offers to rebuild the premises, technically the *de jure* owner, before it does these things: cf. *Muzamil v. REPIA* (*supra*), at p. 324 affirming the decision of the Court of Appeal *Muzamil v. REPIA* <sup>(5)</sup>.

REPIA knew what the position was, namely, that legally the premises were "affected property". The respondents' position was set out in the declaration to REPIA made by Mohamed Salihu Ahamed Abdul Gaiyoom

(the 1st plaintiff-respondent) on the 22nd of August 1983: "13. Do you propose to repair the affected property out of your own resources?: Yes. The property has been completely burnt down and we have to rebuild the property at our own expense." Having accepted the offer of the *de facto* owners to rebuild the premises, REPIA restored the premises to the respondents so as to enable them to assist it in the discharge of its functions. And, in my view, the learned District Judge was quite right in answering issue 7 by holding that the declaration of REPIA on the 1st of September, 1983, restored the destroyed premises to the [respondents]. With regard to the second ground on which leave to appeal was granted, although learned counsel for the appellant did say: "Forget the regulations", as we have seen, both the Emergency (Rehabilitation of Affected Property, Business or Industries) Regulations No. 1 of 1983 and the Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987 are "relevant to these proceedings".

For the reasons stated in my judgment, I dismiss the appeal with costs.

**WIJETUNGA, J. – I agree.**

**GUNAWARDANA, J. – I agree.**

*Appeal dismissed.*