

**WIGNESWARAN**  
**v.**  
**THAMBIPILLAY AND OTHERS-**

COURT OF APPEAL

PALAKIDNAR, J. &

SENANAYAKE, J.

C.A. NO. 694/85

D.C. MT. LAVINIA CASE NO. 667/RE

9 AND 11 JULY

*Writ of Certiorari – Ceiling on Housing Property Law, No. 1 of 1973 as amended by Ceiling on Housing Property (Amendment) Law, No. 18 of 1976, section 13A – Purchase by tenant – Continuous residence abroad – Notice – Fair hearing – Natural justice.*

**Held:**

The continuity of residence abroad is not broken by occasional visits to Sri Lanka on holiday or for personal exigencies.

The notice required by section 13A of the Ceiling on Housing Property Law is only constructive notice and not actual notice. Publication in the newspapers satisfies the requirement.

The report (under section 13A(5)) submitted by the 2nd respondent to 3rd respondent though not made available to the petitioner was made after inquiry and hence the petitioner was aware of the substance of the report. Hence there was no violation of natural justice.

**Cases referred to:**

1. *Ridge v. Baldwin* (1964) A.C. 40 (H.L.).
2. *Cooper v. Wandsworth Board of Works* (1863) 14 C.B.N.S. 180.
3. *Chief Constable of North Wales Police v. Evans* (1962) 2 Q.B. 677
4. *R. v. Deputy Industrial Injuries Commissioner, ex parte Jones* (1962) 2 Q.B. 677.

**APPLICATION** for writ of certiorari.

*J. W. Subasinghe, P.C.* with *D. J. C. Nilanduwa* for petitioner.

*H. L. de Silva, P.C.* with *P. A. D. Samarasekera, P.C.* and *A. P. Niles* for 1st respondent.

*Eva Wanasundera, S.C.* for 2nd and 3rd respondents.

*Cur adv vult.*

27th September, 1990.

**SENANAYAKE, J.**

The application is made by the petitioner for a Writ of Certiorari to quash the order purporting to have been made by the 3rd respondent under section 13(A) subsection 6 of the Ceiling on Housing Property Law No. 1 of 1973 as amended.

The petitioner averred that the 1st respondent had on 02.12.83 made an application to the 2nd Respondent under section 13A of the Ceiling on Housing Property Law No. 1 of 1973 as amended by the Ceiling on Housing Property (Amendment) Law of 18 of 1976.

The petitioner averred that the statements in the said application P3 were false, untrue, misleading and are misrepresentations made deceitfully and fraudulently and that the 2nd respondent acted on the false, untrue and misleading statements contained in the application P3 and published the notice in terms of the provisions of Section 13A(2) of the Ceiling on Housing Property Law without checking on the said statement and not affording an opportunity to the petitioner to affirm or deny the said statements and or without ascertaining whether the 1st respondent could lawfully and properly make an application in terms of the provisions of section 13A(1) of the said Law.

The learned Counsel for the petitioner submitted that the application of the 1st respondent did not fulfil the imperative requirements of Section 13A(1) of the said law. Section 13A(1) reads as follows :

“Whether the owner of a house”.

- (a) has left Sri Lanka and has either renounced citizenship of Sri Lanka or has ceased to be a citizen of Sri Lanka under the citizenship Act.
- (b) has been residing abroad for a continuous period of ten years otherwise than as an employee of the Government of Sri Lanka or any foreign Government or of any international institution.
- (c) has left Sri Lanka for the purpose of settling abroad.
- (d) is not in existence or is not known or cannot be traced.

"The tenant of such house may apply to the Commissioner for the purchase of such house".

His position was these provisions were not fully adhered to and therefore the application of the 1st Respondent was defective.

His second submission was that the 2nd respondent had published the notice in the Gazette but failed to publish it in the Newspapers as required in terms of Section 13A(2) and he further submitted that the notice sent by post to the address of the petitioner was returned undelivered and that the petitioner therefore was unaware of the notice.

His third submission was that the 2nd respondent had to submit a report in terms of Section 13A subsection 5 to the 3rd respondent and his position was that there was a failure of natural justice and that there was no fair hearing given and that the petitioner should have been given an opportunity to make his objections before the vesting order. He submitted that he had a right to be made aware of the opposing case.

He finally submitted that the 1st respondent did not represent the true position and he was lacking in *uberrima fides* and therefore the Court should grant relief to the petitioner.

The petitioner's learned Counsel's first submission was that the absence of the petitioner for a period of 10 years was not continuous

and he was not a resident abroad for a continuous period of 10 years. His contention was that the petitioner had visited Sri Lanka on nine occasions and the last visit was in January 1984. It is apparent that when the 1st respondent made his application P3 on 02.12.1983, the petitioner had been residing in the United States since 28.03.1969. He was a resident for a period over 14 years. It is my view that the term "continuous period of ten years" in section 13A(1) means that residence abroad should be for a continuous period of 10 years. This position in no way would be altered by coming to Sri Lanka for a holiday. The petitioner has admitted in paragraph 8(b) of the petition that during a period of 14 years she had come on nine occasions. This establishes that her permanent residence was United States and that she was coming here for holidays either to escape the rigours of winter of the host country or for some personal exigencies in visiting this country. Therefore it is clear that she was residing in the United States for a period over 10 years. I am unable to accept the submission of the learned Counsel that the petitioner's nine visits to Sri Lanka has in any way affected the "continuity" as contemplated in the section. Therefore the first submission of the learned Counsel fails.

The learned Counsel though he commenced his second submission on the high ground that there was no publication of the notice as envisaged in the provisions of Section 13A(2), abandoned this position once he was made aware by the learned Counsel of the 2nd & 3rd respondents that there was publication in the Newspapers as contemplated by this section. The publication had been in the Newspapers on 28.02.84. The petitioner was in Sri Lanka as she had arrived here on 6th January 1984 and was in Sri Lanka at the relevant time and she had signed the District Court Record on 08.03.84. Therefore I do not think that the learned Counsel could be heard to say that the petitioner had no notice.

The learned Counsel for the petitioners submitted that the notice sent to the petitioner's address abroad had been returned undelivered. The statute does not envisage that notice be sent by post. There was no obligation cast on the 2nd respondent to verify the petitioner's correct address and direct the said notice. If at all the 2nd respondent's action was laudable but he was not duty-bound to

send any notice by post. In the circumstances I am of the view that the learned Counsel's submission is not tenable in view of the plain, unambiguous language of the section. It is my view that what is contemplated in this section is only a constructive notice and not actual notice. The petitioner was in Sri Lanka when the notice was published in the Newspapers. The petitioner who had the opportunity had failed to tender her written objections if any. Therefore I am of the view that she cannot take up the position that she was unaware of the publication in the circumstances. I am unable to accept the second submission of the learned petitioner's Counsel.

The third submission of learned petitioner's Counsel was that the report in terms of section 13A subsection 5 submitted by the 2nd respondent to the 3rd respondent should have been made available to the petitioner. He submitted that he should have been made aware of the opposing case and therefore he contended that there was no fair hearing given to him and there was a failure of natural justice. He admitted that there was no statutory requirement but he submitted that the trend of decisions was that a copy of the report should be made available to the party especially as this deals with property rights. There is force in this submission if the report was submitted by a third party and such report led to the ultimate decision. He relied on the authority *Ridge v. Baldwin*<sup>(1)</sup> page 40 where the right to be heard was held to be imperative but the facts had no application to the instant case.

He relied on *Cooper v. Wandsworth Board of Works*<sup>(2)</sup> where an owner had failed to give proper notice to the Board, under an Act of 1855 where there was authority to demolish any building he had erected and recover the cost from him. This action was brought against the Board. The Board maintained that their discretion to order demolition was not a judicial discretion and that any appeal should have been to the Metropolitan Board of Works. But the Court decided unanimously in favour of the owner.

He relied on the principle "a proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view". He relied on the authority *Chief Constable of the North Wales Police v. Evans*<sup>(3)</sup>

where a Chief Constable required a Police Commissioner to resign on account of allegation about his private life but he was given no fair opportunity to rebut. The House of Lords granted him the remedies of unlawful dismissal.

He relied on *R. v. Deputy Industrial Injuries Commissioner ex parte Jones*.<sup>(4)</sup> Hence the Court quashed by certiorari a decision of an Industrial Injuries Commission as the Commissioner obtained a report from an independent medical expert but the parties were not notified and were therefore unable to comment on the report.

There is a wealth of authorities which shows that natural justice often requires the disclosure of reports and evidence in the possession of the deciding authority.

In the instant case the petitioner was aware of the 2nd respondent's report because his report has to fall exclusively within the provisions of section 13A subsection (5) (a), (b), (c) & (d) of the said case.

The subsection reads as follows:

After considering the written objections if any made under subsection (3) the Commissioner shall make a report to the Minister on the application and shall *inter alia* state as to whether –

- (a) "Such house is situated in an area which in his opinion will not be required for some clearance, development, or for any other public purpose;
- (b) It is feasible to alienate such house as a separate entity;
- (c) The applicant is in a position to make the purchase; and
- (d) the owner of such house had a spouse or dependent child residing in Sri Lanka on the date when such application was made".

Therefore the petitioner would be aware of the exclusive nature of the report even though in fact she was not given or made aware of the report submitted by the 2nd respondent to the 3rd respondent.

The Court has to consider whether substantial fairness had taken place to the petitioner, and it is my view this has been adequately achieved in terms of the provisions of section 13A subsection 5, (a), (b), (c) & (d) as the petitioner would be aware of the substance of the case the petitioner has to face even without disclosing the report of the 2nd respondent.

I am in complete agreement with Lord Denning, M.R. that the rules of natural justice must not be stretched too far, if the parties understand the issues that have to be met. I am of the view the petitioner was aware as to what the report would contain. In the circumstances I am of the view that there was a fair hearing and there was no violation of natural justice. I am unable to accept the third submission of the learned Counsel of the petitioner.

The learned Counsel submitted that the Court should not exercise its discretion as there is a lack of *uberrima fides*. I am unable to accept this submission. The non-disclosure of the settlement arrived in Court in the rent case would not have materially affected this application P3, since P3 was made prior to the settlement in the District Court. The non-disclosure of the case pending in the District Court in P3 cannot be treated as a breach of *uberrima fides*.

In the above circumstances I dismiss the petition with costs.

**PALAKIDNAR, J.** – *I agree.*

*Petition dismissed.*