

**PIYADASA**  
**v.**  
**SURAWEERA**

COURT OF APPEAL  
J. A. N. DE SILVA, J. (P/CA)  
AMERATUNGA, J.  
C.A. No. 304/99  
MAY 11<sup>TH</sup>, 2001

*Ceiling on Housing Property Law No. 1 of 1973 - S. 13, S. 17 An Application to purchase by Tenant? New Land lord - No attornment - can the Tenant maintain the Application ?*

The petitioner who was the tenant of one P. made an application on 14. 03. 1977 under S. 13 of the CHP Law to purchase the property from the said P. Before the inquiry commenced in 1983, the said P transferred his rights to H and C, and H gifted subject to life interest a portion of the property to D, her son. H and C were made parties before the Board. The Board of Review was of the view that, as the Petitioner had failed to attorn to his "New" landlord as tenant he was not entitled to make an application under S. 13.

**Held :**

- (i) The relevant point of time at which the validity of the claim has to be determined is the stage at which the Commissioner of National Housing holds the Inquiry, 'Notifies' the Minister and the Minister makes the vesting order. This is the decisive point of time at which rights of parties are affected.

The Applicant is entitled to pursue his application against the "Landlord" for the time being entitled to receive the rent. It is not necessary to make a fresh application everytime there is a change of ownership.

It also appears that the transfer in question had been made surreptitiously after the Petitioner made the application to the Commissioner. In this situation, the question of attornment or refusing to attorn to the new owner does not arise.

**APPLICATION** for a Writ of Certiorari.

**Cases referred to :**

1. *Blso Menike v. Cyril de Alwis* - 1982 1 SLR 368 (Distinguished)
2. *Hussain Teyabally v. R. Premadasa*- SC 69/92 SCM 05. 11. 93 (followed)

*Wijedasa Rajapaksha* for Petitioner.

*A. K. Premadasa P.C.*, with *C. E. de Silva* for Respondents.

*Cur. adv. vult.*

June 22, 2001.

**J. A. N. DE SILVA, J. (P/CA)**

This is an application for a writ of Certiorari to quash the order dated 10. 03. 1999 of the Board of Review set up under the Ceiling on Housing Property Law and the decision of the Commissioner of National Housing the 6<sup>th</sup> respondent dated 20. 07. 1989. By order P14 the Board of Review held that the petitioner has no right to make an application to the Commissioner of National Housing as the petitioner has not attorned to the new owner of the premises as her tenant.

The petitioner had come into occupation of premises No. 203, High Level Road, Pannipitiya in the year 1961 under his landlord one Elvitigala Don Peter. Thereafter he made an application on 14. 02. 1977 under the Ceiling On Housing Property Law No 1 of 1973 to purchase this property from the aforesaid E. D. Peter and the said application had been assigned the number C. H. 1/16/45838/145. The Commissioner of National Housing decided to have an inquiry only in 1983. When the inquiry commenced in 1983 it was brought to the notice of the Commissioner that the 7<sup>th</sup> and 8<sup>th</sup> respondents had become the owners of the subject matter. Thereafter the 7<sup>th</sup> and 8<sup>th</sup> respondents were made parties to the said inquiry and the inquiry proceeded only against them under the same application number viz C. H/1/16/45838/145 although a second application was made under the Ceiling On Housing Property Law in respect of the said premises against the 7<sup>th</sup> and 8<sup>th</sup> respondents.

After the inquiry the Commissioner of National Housing made order dated 20. 07. 1989 refusing the application of the petitioner on the grounds of equity. From the said decision of the Commissioner the petitioner appealed to the Ceiling On Housing Property Board of Review. After a full hearing and allowing the parties to tender written Submissions the Board of Review delivered an order on 15. 06. 1991 allowing the appeal of the petitioner and directing the Commissioner to recommend the vesting of the premises in question and to notify the Minister that it should be vested. Being dissatisfied with the decision of the Board of Review the 7<sup>th</sup> and 8<sup>th</sup> respondents moved the Court of Appeal for a writ of certiorari (C.A. 723/91) The Court of Appeal having considered the submissions of Counsel quashed the said decision of the Board of Review and sent it back to the Board of Review. In the Judgement of Hon. Justice Sarath N. Silva the following direction was made to the Ceiling On Housing Property Board of Review.

“In the circumstances I am of the view that the matter should be referred back for a fresh hearing before the Board of Review that is now functioning. The Board should consider all objections raised to the application by the petitioner (now 7<sup>th</sup> to 8<sup>th</sup> respondents) including the question whether the 1<sup>st</sup> respondent (now the petitioner) had the necessary competency as tenant to make the application under Section 13 of the Ceiling On Housing Property Law. The question of equities would have to be considered afresh in the light of the evidence and findings of the Commissioner.”

After a fresh hearing the Board of Review delivered its order on the 10<sup>th</sup> of March 1999 (P14) on the basis that as the petitioner had failed to attorn to his “New” landlord as tenant he was not entitled to make an application under Section 13 of Act No. 1 of 1973. The Board of Review in its order has stated that they were going to consider in whose favour equities would lie but unfortunately had ignored this aspect altogether in the order.

It is an accepted and undisputed fact that at the time of making the first application on the 14<sup>th</sup> of February 1977 in terms of the Ceiling On Housing Property Law, it was E. D. Peter who was the landlord of the premises in question. By deed No. 24684 dated 08. 08. 1977 attested by H. W. Gunasekera Notary Public the said original owner E. D. Peter sold and conveyed a part of the premises together with the house therein to the 7<sup>th</sup> respondent. Prior to that on 04. 02. 1977 by deed No. 24175 Peter had sold part of the land to the 8<sup>th</sup> respondent N. A. D. Chandralatha. Thereafter the 7<sup>th</sup> respondent by deed No. 4687 dated 08. 02. 1987 attested by H. A. S. Thilekaratne Notary Public gifted her portion of the said premises to her son, the 9<sup>th</sup> respondent, subject to her life interest.

Having slept over the original application for nearly six years the Commissioner commenced the inquiry on 28. 10. 1983 on which date objection was raised with regard to the maintainability of the application as the ownership has been transferred to 7<sup>th</sup> and 8<sup>th</sup> respondents and the petitioner was not their tenant. When this objection was raised the petitioner has made another application to the Commissioner on the very day viz 28. 10. 1983.

Section 13 of the Ceiling on Housing Property Law is as follows.

"Any tenant may make an application to the Commissioner for the purchase of a house let to him."

The language of Section 13 of the Ceiling On Housing Property Law makes it clear that tenant and landlord must be parties to the application. It is only a tenant who can make an application under Section 13 of the Ceiling On Housing Property Law against the landlord owner.

Mr. A. K. Premadasa, President's Counsel submitted that at the time 2<sup>nd</sup> application was made the petitioner was not the tenant of the 7<sup>th</sup> respondent in respect of the premises in suit.

He further contended that a tenant who refused to attorn to the landlord cannot make an application under Section 13 of the Ceiling On Housing Property Law. Reliance was placed on the decision of *Biso Menika v. Cyril de Alwis*<sup>(1)</sup> on the ground that the facts in that case were identical to the facts in the instant application.

It is to be noted that in *Biso Menika*'s case after property was transferred to *Biso Menika* the tenant was informed of that fact and a request was made for him to attorn to the new landlady which the defendant in that case refused.

In the instant case the transfer of the premises in question had been made surreptitiously after the petitioner made a application to the Commissioner under Section 13 of the Ceiling On Housing Property Law. According to the evidence of the petitioner the rent had been paid to Peter till January 1980 direct to him. In 1980 N. D. A. Hemalatha had made an application to the Rent Board against Peter and petitioner naming petitioner as her tenant and asking for rent. As this dispute was there the petitioner deposited the rent with the local authority. At the inquiry before the Commissioner petitioner's evidence was as follows. "නවද E. D. Peter නමාගේ ගේ විකුණා නොමැති බවත් නමාට දිගටම කුලිය ගෙවන ලෙසත් දන්වා සිටියි."

It is also important to note that petitioner had stated that neither Peter nor Hemalatha ever told him that the premises in question was sold. Hemalatha too in her evidence has stated that the petitioner never paid rent to her. It had been suggested to the petitioner that Hemalatha's Attorney informed the petitioner about the sale of the property in 1980 and requested the petitioner to pay the rent to her. This suggestion was rejected and denied by the petitioner. A letter from the lawyer was produced subject to proof but never proved by the 7<sup>th</sup> respondent.

From the above circumstances it is clear that when the petitioner went before the commissioner for an inquiry in 1983

in respect of his original application naming Peter as the landlord, Hemalatha and her sister Chandralatha complained to the Commissioner that they are the owners of the premises. Even though Hemalatha's sister N. A. D. Chandralatha was the owner of a strip of land the petitioner was compelled to make a fresh application naming both of them as landladies on their representation. In this situation the question of attornment or refusing to attorn to the new owner does not arise. The original application was against the landlord for the time being entitled to receive the rent and therefore is valid.

His Lordship Chief Justice G. P. S. de Silva in an unreported case *Hussain Teyabally v. R. Premadasa*<sup>(2)</sup> in a similar situation where the house was sold over the head of the tenant to a 3<sup>rd</sup> party prior to the commencement of the inquiry by the Commissioner of National Housing held as follows.

"I agree with the submission of Mr. Samarasekera for the 3<sup>rd</sup> respondent that in making the application all that the tenant does is to notify the Commissioner of National Housing of his claim to purchase the house. The relevant point of time at which the validity of the claim has to be determined is the stage at which the Commissioner of National Housing holds the inquiry, "notifies" the Minister and the Minister makes the vesting order under Section 17 of Law No 1 of 1973. This is the decisive point of time at which the rights of parties are affected. Thus the applicant is entitled to pursue his application against the "landlord" i.e the person for the time being entitled to receive the rent of the premises let (Section 48 of the Rent Act). If such person has become the landlord by purchasing the house over the head of the tenant such house is liable to be vested for the purpose of sale to the applicant. If on the other hand at that point of time the applicant has "ceased" to be a "tenant" or the premises in respect of which the application was made is no longer a "house" within the meaning of the law, then the application cannot be entertained. In the present case the house was purchased by the appellant in October 1995 and the inquiry was held in February 1976. When the appellant

purchased the house "over the head of the tenant" she did so clearly at her peril. The submission of Mr. H. L. de Silva that the tenant must make a fresh application every time there is a change of ownership is not well founded. It is not in accord with the statutory scheme. Law No 1 of 1973 is a piece of social legislation which should be construed with little technicality as possible."

In view of the above decision I hold that the Board of Review's decision that the petitioner did not have the capacity to make an application against the 7<sup>th</sup> and 8<sup>th</sup> respondents is erroneous and contrary to law. Therefore I set aside the said order dated 10. 03. 1989 and the Commissioner's order dated 20. 07. 1989 rejecting the application.

Since the Board of Review has failed to consider equities I am compelled to make the following observations. It is to be noted that Chandralatha the new owner could not have taken action under Section 22(7) of the Rent Act as she had not got the "house" by way of inheritance or gift from parent or spouse. I am also mindful of the fact that Hemalatha had paid only Rs. 4000/= for the premises in question (according to the deed).

In these circumstance I direct the Commissioner of National Housing to consider whether the petitioner has satisfied the other requirements under Section 17 of the Ceiling On Housing Property Law and take appropriate action accordingly. This application is allowed with costs fixed at Rs. 5500/=.

**AMARATUNGA, J.** - I agree.

*Application allowed.*