

JULIAN,
v.
SIRISENA COORAY, MINISTER OF NATIONAL HOUSING AND
CONSTRUCTION AND OTHERS

SUPREME COURT.

KULATUNGA, J., RAMANATHAN, J., AND

GOONEWARDENA, J.,

CA APPLICATION NO. 424/91.

SC APPEAL NO. 79/92.

MARCH 16th, 1993.

Ceiling on Housing Property – Tenant's right to purchase – Ceiling on Housing Property Law , No. 1 of 1973 sections 13 and 17 – Ceiling on Housing Property (Special Provisions) Act No. 4 of 1988, sections 3 and 4.

The appellant was the tenant of premises No. 54, Cripps Road, Galle, under one Samad. On 16.02.73 the appellant applied to purchase the house. However, on 09.02.73 Samad had gifted the house to the 8th respondent. On 26.04.76 the 2nd respondent (Commissioner for National Housing) rejected the appellant's application on the ground that the owner (8th respondent) had withheld consent to the sale under the proviso to section 13 of the Ceiling on Housing Property Law. On appeal, under section 39 of the Law the Board of Review by its order dated 02.11.78 held that the owner (8th respondent) was not a person entitled to withhold his consent and set aside the order of the 2nd respondent and directed that the tenant be permitted to purchase the house, if the other requirements are in order. An application by the 8th respondent to have the order quashed by *Certiorari* was dismissed. The 8th respondent filed a suit for declaration of title and ejection in respect of the premises in dispute against the appellant in DC Galle and this suit too was dismissed.

In the meantime the 2nd respondent held an inquiry into the appellant's application as directed by the Board of Review ; and although all the preconditions of section 17 of the Law were satisfied, the 2nd respondent recommended that the " equities are more in favour of the landlord than the tenant ". Consequently the 1st respondent Minister decided not to vest the house and the 2nd respondent informed the appellant that the house would not be vested. The appellant believing that this was the decision of the 2nd respondent appealed to the Board of Review. On 21.02.90 the 2nd respondent clarified to the appellant that the decision was the Minister's. In the meantime on 26.01.90 the appellant had also appealed to the Minister to reconsider his decision. This was replied by the 2nd respondent to the effect that no further action could be taken in the matter. On 15.10.90 the Board of Review made order dismissing the appellant's appeal on the ground that it had no jurisdiction to quash a decision of the Minister.

On 23.05.91 the appellant applied for *Certiorari* and *Mandamus* for quashing the decisions of the Board of Review and the 1st and 2nd respondents and to compel a sale of the house to the appellant.

Held :

(1) Before the 2nd respondent made his recommendation to the 1st respondent against the vesting of the house, he should have communicated his decision against the vesting to the appellant. Failure to do this vitiates the decision made by the 1st respondent to reject the appellant's application.

(2) In the absence of a cross appeal against the judgment of the Court of Appeal, the 8th respondent would have to pursue his claim, if any, afresh before the Board of Review, at the appropriate time.

Case referred to :

Gaderamanpulle v. Keuneman SC Appeal No. 15/79 SCM of 19.09.1980.

APPEAL from judgment of the Court of Appeal.

Petitioner in person.

K. Siripavan SSC for 1st and 2nd respondents.

M. Farook Thakur with M. Z. M. Hilamy for 8th respondent.

Cur. adv. vult.

May 13, 1993.

KULATUNGA, J.

In this appeal, the appellant being the tenant of premises No. 54, Crips Road, Galle, seeks reliefs from this Court to enable him to purchase the said premises in terms of the provisions of s. 13 read with s. 17 of the Ceiling on Housing Property Law No. 1 of 1973. S. 3 of the Ceiling on Housing Property (Special Provisions) Act No. 4 of 1988 removed the right of a tenant to purchase a house under the said provisions from, or after 01.01.87 but s. 4 expressly preserved the right in proceedings which had been commenced under the principal enactment and pending or incompleated on 01.01.87 and provides that such proceedings may be carried on and completed as if the principal enactment had not been amended by the said Act.

The appellant first became a tenant of this house on 01.01.58. His landlord was one Sameem until November, 1970 when the house was sold to one Samad and others after which the appellant accepted the said Samad as the landlord. On 16.02.73 he applied under s. 13 to purchase the house. However, on 09.02.73 Samad had by deed No. 1530 dated 09.02.73, gifted the house to the

8th respondent. Consequently, the 8th respondent was made a party to the proceedings before the Commissioner for National Housing (the 2nd respondent) at the inquiry held into the appellant's application on 25.03.76. Thereafter, the 2nd respondent by his letter dated 26.04.76 (P1) addressed to the appellant, rejected his application on the ground that the owner had withheld consent to the sale of the house under the proviso to s. 13. On an appeal by the appellant under s. 39 of the Law, the Board of Review, by its order dated 02.11.78 (P2), held that the owner (the 8th respondent) is not a person entitled to withhold his consent to the proposed sale, set aside the 2nd respondent's determination (P1) and directed that the tenant be permitted to purchase the house, *if the other requirements are in order*. An application by the 8th respondent to have the said order quashed by way of *Certiorari* was dismissed by the Court of Appeal, by its judgment dated 28.06.85 (P3). The 8th respondent also sued the appellant in DC Galle case No. 11272 for a declaration of title and ejection. That action was dismissed by the District Court by its judgment dated 19.01.90 (P4).

In the meantime, on 17.08.88 the 2nd respondent held an inquiry into the appellant's application as directed by the decision of the Board of Review and made his recommendation to the Minister (the 1st respondent) to enable the 1st respondent to make his decision in terms of S. 17 of the law as to whether the house may be vested in the 2nd respondent for the purpose of sale to the appellant. The said recommendation dated 06.12.89 (*vide* minutes sheet No. XVII in the file maintained by the department) shows that all the pre-conditions set out in s. 17 for a vesting of the house are satisfied, but the 2nd respondent states that he does not recommend a vesting for the reason that " equities are more in favour of the landlord than the tenant ". Consequently, the 1st respondent by his order dated 28.12.89 (appearing on the minutes sheet No. XVIII in the file) decided not to vest the house ; and the 2nd respondent by his letter dated 03.01.90 (P6) informed the appellant that it has been decided to reject his application. P6 does not state that the decision against the vesting had been made by the 1st respondent. Whereupon on 17.01.90 the appellant appealed to the Board of Review against the said decision on the assumption that it was a determination of the 2nd respondent. In view of this, the 2nd respondent by his letter dated 21.02.90 (P7), addressed to the appellant, clarified that the appellant's application had been rejected by the 1st respondent. On 26.01.90, the appellant

appealed to the 1st respondent to reconsider his decision. This was replied by the 2nd respondent by his letter dated 21.02.90 (P9) stating that no further action can be taken in the matter.

On 15.10.90 the Board of Review made its order (P9) dismissing the appellant's appeal holding that it had no jurisdiction to quash a decision of the 1st respondent and to direct the 2nd respondent to sell the house to the appellant. The Board so decided presumably for the reason that s. 39 of the law provided an appeal to the Board against a decision or determination of the Commissioner and the Board had been informed that the appeal before the Board was in fact in respect of a decision of the Minister ; whereupon on 23.05.91 the appellant made an application to the Court of Appeal (p10) in which he sought the following reliefs :-

- (a) a *Writ of Certiorari* quashing the order of the Board of Review dated 15.10.90 ;
- (b) a *Writ of Certiorari* quashing the decision of the 2nd respondent dated 03.01.91 ;
- (c) a *Writ of Certiorari* quashing the decision of the 1st respondent communicated by the letter dated 22.01.90 ;
- (d) a *Writ of Mandamus* directing the 1st and the 2nd respondents to take immediate action to sell the house to the appellant giving effect to the previous decisions of the Board of Review dated 02.11.78 and the judgment of the Court of Appeal dated 28.06.85.

The Court of Appeal accepted the submission that the appellant's appeal to the Board of Review was in respect of determinations made by the 2nd respondent and not against a decision of the 1st respondent and accordingly quashed the order of the Board of Review dated 15.10.90. However, the Court did not grant any of the reliefs referred to at (b), (c) and (d) above.

The appellant is aggrieved by the failure of the Court of Appeal to grant the several reliefs as prayed for by him. The appellant submits :

(a) that unless the communication of the 2nd respondent against a vesting of the house and the decision of the 1st respondent not to vest the house are also quashed, it would not be possible to effectively prosecute his claim before the Board of Review on its merits ;

(b) that the order of the Board of Review dated 02.11.78 affirmed by the Court of Appeal judgment dated 28.06.85 constitutes an enforceable directive to vest the house and to sell it to the appellant, binding on the 1st and 2nd respondents ; and hence the Court of Appeal should have directed such sale ; and that in the circumstances he is entitled to obtain such a direction from this Court.

During the argument before us, the learned Senior State Counsel representing the 1st and the 2nd respondents brought to our notice the fact that before the 2nd respondent made his recommendation to the 1st respondent against the vesting of the house, the 2nd respondent had failed to communicate to the appellant his decision against the appellant's application to purchase the house. The Counsel conceded that in the light of the decision in *Caderamanpulle v. Keuneman* ⁽¹⁾ such failure vitiates the decision made by the 1st respondent to reject the appellant's application. In the circumstances, he agreed to a quashing of the impugned communication by the 2nd respondent and the decision of the 1st respondent. As regards the prayer for a direction to sell the house to the appellant relying on the previous order of the Board of Review, Counsel submitted that the said order (affirmed by the Court of Appeal) only declares that the appellant is eligible to make an application to purchase the house and that it cannot be construed as a direction to effect a sale.

The learned Counsel for the 8th respondent submitted that the order of the Board of Review dated 15.10.90 is correct. However, in the absence of a cross-appeal against the judgment of the Court of Appeal I am unable to entertain this submission. The 8th respondent would have to pursue his claim, if any, afresh before the Board at the appropriate time.

I am in agreement with the submission made by the Senior State Counsel. Accordingly, I allow the appeal and grant (in addition to the relief already granted by the Court below) a *Writ of Certiorari* quashing

the order of the 2nd respondent contained in his letter dated 03.01.90 and a *Writ of Certiorari* quashing the order of the 1st respondent communicated by the 2nd respondent's letter dated 22.01.90. I further direct the 2nd respondent to communicate to the appellant the decision dated 06.12.89 (appearing on the minutes sheet No. XVII in the departmental file) to enable the appellant to prefer an appeal to the Board of Review in terms of s. 39 of the law, if he so desires. The appellant is also granted costs in a sum of Rupees seven hundred and fifty (Rs. 750) payable by the 2nd respondent.

RAMANATHAN, J. – I agree.

GOONEWARDENE, J. – I agree.

Appeal allowed.
