

SIRISENA
v.
DOREEN DE SILVA AND OTHERS

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SUPREME COURT
G.P.S. DE SILVA, CJ.,
WADUGODAPITIYA, J., AND
GUNASEKERA, J.
S.C. APPEAL NO. 190/96
C.A. NO. 563/88
C.H./15/1423/26
JULY 10, 1988

Writ of Certiorari – Ceiling on Housing Property Law – Tenant's application to purchase the house let to him – Sections 13 and 17 (1) of the Law – Invalid vesting order – Board of Review Order to implement the invalid order.

Pursuant to an application by the 4th respondent tenant under S. 13 of the Ceiling on Housing Property Law against the then owner of the house let to him to purchase it and a recommendation by the Commissioner for National Housing,

the Minister signed an order on 10.09.1976 for vesting the house. However, that Order was not published in the *Gazette* as required by S. 17 (1). Hence there was no valid vesting Order. No steps were taken on that order when in November, 1982 the Commissioner summoned the appellant who was now the owner of the premises for an inquiry and decided to recommend the vesting of the house. The appellant who was informed of that decision by a communication dated 16.12.83 appealed against that decision to the Board of Review in terms of S. 39 of the law. The Board of Review dismissed the appeal, affirmed the Commissioner's decision made in 1976 and directed the Commissioner to take steps on the "vesting" made on 10.09.1976.

Held:

In making its decision the Board of Review acted without jurisdiction firstly, because the appeal was not against the Commissioner's decision made in 1976, but against the decision communicated to the appellant on 16.12.83; secondly, The Board had no jurisdiction to direct the Commissioner to act on the "Vesting made in 10.9.76" for the reason that there was no valid vesting order made in terms of s. 17 (1) of the Law.

APPEAL from the judgment of the Court of Appeal.

Sanjeewa Jayawardena for the appellant.

A. K. Premadasa, P.C., with *C. E. de Silva* for the 4th respondent.

Cur. adv. vult.

July 31, 1998.

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

The 4th respondent was the tenant of premises No. 473, Liyanage Mawatha, Nawala. She made an application to the 5th respondent (Commissioner of National Housing) in terms of section 9 and/or section 13 of the Ceiling on Housing Property Law ("the law") to purchase the premises. The respondent to the application was one M. W. Perera who was the owner and landlord of the premises.

The 5th respondent held an inquiry and "recommended" to the Minister on 10.9.76 to "vest" the premises. The Minister signed the "order" on 12.10.76. However, it is very relevant and important to note that the "order" was NOT published in the *Gazette* as expressly required by the provisions of section 17 (1) of the law. Thus it is manifest that there was no valid order "vesting" the premises in the

5th respondent. No rights could therefore flow from the purported "order" signed by the Minister on 12.10.76. Moreover, the "recommendation" of the 5th respondent to the Minister to "vest" the premises was not communicated to the owner and landlord M. W. Perera. (Caderamanpulle v. Pieter Keuneman, SC Appeal No. 15/79, SCM of 19.9.80).

The 5th respondent does not appear to have taken any steps in terms of the Law until November 1982 when the present petitioner, who was now the owner and landlord of the premises, received a notice stating that an inquiry will be held into the application made by the 4th respondent in terms of section 13 of the law to purchase the premises. Both the petitioner and the 4th respondent participated at the inquiry. At the conclusion of the inquiry, by a communication dated 16.12.83 (marked P5) the 5th respondent informed the petitioner of his decision to "recommend" to the Minister to "vest" the premises.

The petitioner appealed to the Board of Review in terms of section 39 of the law against the decision of the 5th respondent communicated to him by P5. The Board of Review by its order dated 15.3.88 (marked P7) dismissed the appeal of the petitioner. The petitioner moved the Court of Appeal by way of certiorari to quash both P5 and P7. The Court of Appeal dismissed the petitioner's application and hence the present appeal to this court.

This appeal turns on the legality of the order of the Board of Review (P7). The Board of Review having referred to the **first inquiry** held in 1976, the "recommendation" to vest made by the 5th respondent on 10.9.76, and the "Order" signed by the Minister on 12.10.76, expressed its findings in respect of the **second inquiry in 1983** in the following terms: "When a Commissioner makes a decision that decision stands until it is reversed in appeal by the Board of Review . . . In this instance the Commissioner having made an Order to vest on 8.9.76 (*sic*) and thereafter having obtained the Minister's approval for the vesting has held a second inquiry after which he has come to the same finding. In holding the second inquiry in the year 1983 the Commissioner has manifestly acted without jurisdiction. Therefore the decision made after the inquiry in 1983 and conveyed by the Commissioner's letter dated 16.12.83 (i.e. P5) has also been made without jurisdiction". On this finding, as submitted by Mr. Jayawardena for the petitioner-appellant, the Board of Review should have set aside

P5 and allowed the appeal. Instead, the Board of Review proceeded to hold that "the Commissioner's decision made on 10.9.76 is the decision in respect of this application. As the Minister has signed the Vesting Order the Commissioner is directed to take the necessary steps on the basis of the vesting made on 10.9.76. The appeal is dismissed and the Commissioner's decision made on 10.9.76 is affirmed".

In so holding the Board of Review acted without jurisdiction for two reasons. First, the petitioner's appeal was not against the Commissioner's decision made on 10.9.76 but against the decision of the Commissioner communicated to the petitioner on 16.12.83, by P5. The validity of the decision made on 10.9.76 was never a matter in issue before the Board of Review at any time. Secondly, the Board of Review, had no jurisdiction to direct the Commissioner to act on the basis of the "vesting made on 10.9.76" for the reason that there was no valid "vesting Order" made in terms of section 17 (1) of the law in 1976. It is also to be noted that a period of 12 years had passed since the Minister signed the purported "Order".

The Court of Appeal fell into the same error as the Board of Review when it took the view that ". . . the Board could not ignore the earlier recommendation of the 5th respondent to vest the premises and the follow-up action of the Minister in signing the vesting order. *The Board was acting within its jurisdiction* in directing what action the 5th respondent was to take on the earlier order". As I have pointed out above, no rights could flow from "the earlier order" which had no force or avail in law. The Court of Appeal too was in grave error when it held that the Board of Review "was acting within its jurisdiction".

For these reasons, the appeal is allowed, the judgment of the Court of Appeal is set aside and I direct that a writ of certiorari do issue to quash P5 and P7. I make no order as to costs of appeal.

WADUGODAPITIYA, J. – I agree.

GUNASEKERA, J. – I agree.

Appeal allowed.