

COLOMBAGE
v.
JIFFRY AND OTHERS

COURT OF APPEAL
J.A.N. DE SILVA, J.
CA NO. 894/99
2604/BR
3RD JULY, 2000
3RD AUGUST, 2000

Ceiling on Housing Property Law 1 of 1973 - S.8(4) - Removal of Ceiling on Housing Property - Ceiling on Housing Property (Special Provisions) 4 of 1998 - S.2, S.3, S.4.

The 1st Respondent and his deceased brother made a declaration disclosing nine houses, when in fact they owned ten houses. In terms of the law they were permitted to retain 3 houses and six houses were vested. The Commissioner published a notice in November 1994, calling upon the public to inform him about undeclared houses belonging to owners, to enable the Commissioner to wind up its affairs.

The Petitioner in response disclosed that the 1st Respondent and his brother are excess house owners, with the result, the premises in question was also vested in the Commissioner. This decision was set aside by the Board of Review.

The main contention of the 1st Respondent was that the Ceiling on Housing Property was removed under S.2 of C.H.P (Special Provisions) Act No. 4 of 1998, and the Commissioner therefore cannot make such an order in view of the provisions of C.H.P (Special Provisions) Act No. 4 of 1988.

Held :

(i) In view of Section 4(c) of Act No. 4 of 1988 any action, proceeding or thing commenced under the principal enactment and pending and incompleated could be carried on and completed.

(ii) The decision made by the Commissioner in 1995, is a direct result of the false declaration of the 1st Respondent and his brother, therefore the decision falls within the parameters of "incomplete thing" and is valid.

APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Magi Nona v. Commissioner of National Housing* (1997) 3 SLR 131 at 131
2. *Sithamparanathan v. Premaratna* (1996) 2 SLR 203
3. *Imadeen v. Peoples Bank* CALA 150/97 - CAM. 30. 06. 2000

N.B.D.S. Wijesekera for Petitioner.

Riza Muzni with A.M. Jeffry for 1st Respondent.

Ms. M.N.B. Fernando, S.S.C for 6th Respondent.

Cur. adv. vult.

September 04, 2000.

J.A.N. DE SILVA, J.

The 1st respondent A.C.H. Jiffry and his deceased brother Mohammed Nawaz were the Co-Owners of a number of houses inherited by them from their father by a deed of gift bearing No. 721 dated 16. 02. 1957. The subject matter of this application viz No. 90 Yatinuwara Veediya, Kandy was one of those houses. When the Ceiling of Housing Property Law No 1 of 1973 came into force they made a declaration disclosing nine houses when in fact they were the owners of ten houses. In terms of the provisions of the said Act they were permitted to retain three houses and six houses were vested with the Commissioner of National Housing. Thereafter upon been informed that the landlords had failed to declare two more houses the said two houses were also vested with the Commissioner after due inquiry.

The petitioner in this case been the tenant of house No. 90, Yatinuwara Veediya, Kandy at all relevant times. The tenancy had been admitted by the 1st respondent. The petitioner states that the Commissioner of National Housing published a notice in the Dinamina Newspaper on the 27th of November 1994 calling upon the public to inform the Commissioner about undeclared houses belonging to owners to enable the Department of National Housing to wind up its affairs. The petitioners's position is that in response to this notice she submitted an affidavit dated 21. 12. 1994 disclosing that the

1st respondent and his brother Nawaz are excess house owners. After inquiring into this matter, house No. 90 Yatinuwara Veediya, Kandy was vested in the Commissioner.

The 1st respondent appealed to the Board of Review. The Board of Review by its order dated 25. 08. 1999 allowed the appeal and set aside the vesting order on the basis that the Commissioner had no jurisdiction to launch an investigation and vest this house in view of the provisions of the Ceiling on Housing Property (Special Provisions) Act No. 4 of 1998. The present application by the petitioner is to quash the said order.

The Ceiling on Housing Property was removed under Section 2 of the Ceiling on Housing Property (Special Provisions) Act No. 4 of 1998. Under Section 3 of the said Act, the right to make applications under the principal enactment was taken away after 1st of January 1987.

Section 8(4) of the Ceiling on Housing Property Act reads as follows.

“Any person who has, without any reasonable cause, failed to send the, declaration within the period referred to in subsection (1) or subsection (2) as the case may be, or has made any incorrect declaration in regard to the number of houses owned by him or by his family as the case may be, shall be guilty of an offence under the law and any such house owned by such person or by any member of the family of such person as may be specified by the Commissioner by notification published in the Gazette shall vest in the Commissioner with effect from such date as may be specified therein.”

Therefore it is clear that when a person makes an incorrect declaration, the Commissioner is empowered to vest the houses through a Gazette notification. As the then Chief Justice G.P.S. de Silva held in *Magiriona v. Commissioner of National Housing*⁽¹⁾ “a prosecution is not a condition precedent to a vesting.”

The question that arises for determination now is, can the Commissioner make such an order in view of the provisions of Ceiling on Housing Property (Special Provisions) Act No. 4 of 1988.

The position taken up by the 1st respondent is that the house in question was declared by them to the Commissioner of National Housing and therefore this is not a house that can be considered as "not disclosed". It is to be noted that in the declaration form ten houses had been declared but details had been given only in respect of nine houses. On information received by the Commissioner subsequently two more houses were also vested on the basis of non disclosure. In these circumstances I am of the view that the 1st respondent cannot rely on his declaration form and affidavit tendered to the Commissioner.

Section 2 and 4 of the Act No. 4 of 1988 read as follows.

(2) Notwithstanding anything to the contrary in section 2 or any other provision of the Ceiling on Housing Property Law No. 1 of 1973 (principal enactment) or any other written law, there shall be no limit from or after January 1st, 1987 as to the maximum number of houses which may be owned by an individual who is, or is not, a member of a family or by any body of persons, corporate or unincorporated and the provisions of the principal enactment shall be construed accordingly."

(4) For the avoidance of doubt it is hereby declared that the provisions of this Act shall not affect, or be deemed to have affected,

- (a) The past operation of, or anything duly done or suffered under, the principal enactment prior to January 1st, 1987.
- (b) Any offence committed, any right, liberty or penalty acquired or incurred, under the principal enactment, prior to January 1st, 1987.

- (c) Any action, proceedings or thing commenced under the principal enactment and pending or incompletd on January 1st, 1987 which action proceedings or thing may be carried on and completed as if the principal enactment had not been amended by this Act.

The Commissioner of National Housing published a notice intimating to the public that Commissioner is winding up his affairs and all transactions with his department would cease with effect from 31. 12. 1994.

The matters referred to in the said notice are as follows.

- (1) Execution of deeds in favour of the tenants under the Ceiling of Housing Property Law.
- (2) Payment of compensation.
- (3) Information regarding any house not disclosed by the landlord.

The 3rd item refers to the declarations that are already made by the landlords.

It must be kept in mind everything that the Commissioner has done stems from the incomplete, inaccurate or false declaration made by the 1st respondent and his brother. Therefore in view of the provisions of subsection 4(c) any action, proceeding or thing commenced under the principal enactment and pending and incompletd could be carried on and completed. In the circumstances I hold that the decision made by the Commissioner in 1995 is a direct result of the false declaration of the 1st respondent and his brother. Therefore that decision falls within the perimeters of "incomplete thing" and is valid.

The decision in *Sithamparanathan v. Premaratne*⁽²⁾ cited by the 1st respondent has no application to this case as it refers

to pending proceedings, where as in this instant the decision of the Commissioner is with regard to an incomplete action.

Counsel for the 1st respondent also raised a preliminary objection to this application on the basis that certified copies of the documents are not annexed to the petition and therefore the application should be dismissed, as it violates rules 3(1)(a) of the Court of Appeal (Appellate Procedure) Rules 1990, and in support of this contention cited the decision in *Imadeen v. Peoples Bank*⁽³⁾. The main document in this case is the order of the Board of Review dated 28. 08. 99. That document is a duly certified document. Therefore I reject the preliminary objection since there is substantial compliance. I also set aside the decision of the Board of Review dated 25. 08. 1999.

This application is allowed. The Commissioner of National Housing is directed to take consequential steps to give effect to his decision. The petitioner is entitled to cost fixed at Rs. 2000/=.

Application allowed.