

IN RE LOCAL AUTHORITIES HOUSING STATUTE
NO. 2 OF 1995 OF THE PROVINCIAL COUNCIL
NORTH CENTRAL PROVINCE

SUPREME COURT.
FERNANDO, ACJ.,
WIJETUNGA, J AND
ANANDACOOMARASWAMY, J.
S.C. NO. 16/97 (S.D.)
SEPTEMBER 24, 1997.

Constitutional Law – Provincial Council Statute – Constitutionality – Item 4.3 List I (Provincial Council List) Ninth Schedule to the Constitution – Local Government – Local Authorities Housing Act – Article 154G (8) of the Constitution.

Section 4(1) of the Local Authorities Housing Statute No. 2 of 1995 made by the Provincial Council of the North Central Province compelled a Local Authority to gift to a tenant of a house which had been let in terms of section 3(1) of the Local Authorities Housing Act No. 14 of 1964 as amended by Act No. 63 of 1979 where the rental of such house prior to such letting did not exceed one hundred and fifty rupees as on 01.01.1991. Section 4(2) of the Statute compelled gift of similar houses let otherwise than under the Provisions of section 3(1) of Act No. 14 of 1964.

Held:

Sections 4(1) and 4(2) and the long title of the Local Authorities Housing Statute No.2 of 1995 are inconsistent with the Constitution in that:

- (a) The provisions of sections 4(1) and 4(2) compelling gifts of houses diminished the power of a local authority in derogation of the constitutional prohibition against taking away the powers of a local authority, imposed on a Provincial Council by section 4.3. of List I (Provincial Council List) in the Ninth Schedule to the Constitution.
- (b) Although the statute was inconsistent with the Local Authorities Housing Act, it failed, contrary to Article 154G(8) of the Constitution, to describe the Statute in its long title as being inconsistent with that law.

Reference under Article 154 H(4) of the Constitution.

K. C. Kamalabaysan, P.C. A.S.G. with N. Pulle, S.C. for the Attorney-General.

L. C. Seneviratne, P.C. with D. H. N. Jayamaha and H. V. Situge for the Chairman and the Chief Minister of the Provincial Council of the North Central Province.

September 26, 1997.

FERNANDO, ACJ:

This is a Reference under Article 154H(4) of the Constitution.

The Reference states that the Provincial Council of the North Central Province made a Statute entitled the "Local Authorities Housing Statute, No 2 of 1995"; that upon being presented to the Governor for his assent in terms of Article 154H(2), the Governor returned that Statute to the Provincial Council for reconsideration, on the basis that it was not within the legislative competence of the Provincial Council; that the Provincial Council having reconsidered the Statute passed it a second time without amendment; and that when presented to the Governor for a second time for his assent, the Governor reserved the Statute for reference by the President to this Court for a determination that it is not inconsistent with the provisions of the Constitution.

Notice was issued by this Court on the Attorney-General, and thereafter on the Governor, the Chief Minister and the Chairman of the Provincial Council. Written submissions were tendered on behalf of the Attorney-General, the Chief Minister and the Chairman.

Mr. Kamalabayson, PC, ASG, submitted that the Governor had withheld assent because the Statute was inconsistent with the Constitution for two reasons only.

First, sections 4(1) and 4(2) of the Statute are inconsistent with item 4.3 of List I (the Provincial Council List) in the Ninth Schedule to the Constitution, because they took away a power which local authorities has under the Local Authorities Housing Act, No 14 of 1964, as amended by Act No 63 of 1979, despite the express prohibition in item 4.3:

"4. Local Government

4.3 Local authorities will have the powers vested in them under existing law

It will be open to a Provincial Council to confer additional powers on local authorities **but not to take away their powers."**

Second, although the Statute is inconsistent with the Local Authorities Housing Act, it fails – contrary to Article 154G(8) of the Constitution – to describe the Statute “in its long title as being inconsistent with that law”.

Section 3(1) of the Local Authorities Housing Act (“the Act”) provides:

“... a local authority may, either upon a resolution passed in that behalf at a duly constituted meeting of that local authority or upon the direction of the Minister, let to any person any house.

- (a) which has vested in that local authority under section 2; or
- (b) which has been, or **may** be, constructed by that local authority within the administrative limits of that local authority for the purpose of residence,

on such terms as will enable that person to become the owner of that house and the land appertaining thereto after making certain number of monthly payments as rent.”

Section 4 of the Statute provides:

- “(1) Where prior to the coming into force of this Statute a house to which the Local Authorities Housing Act applies has been let to any person under the provisions of section 3(1) of that Act and the monthly rental of such house prior to such letting did not exceed one hundred and fifty rupees as at 01.01.1991, the local authority within the administrative limits of which that house is situated shall, by an instrument of disposition, transfer, free of charge, that house to that person.
- (2) Where prior to the coming into force of this statute a house to which the Local Authorities Housing Act applies has been let to any person otherwise than under the provisions of section 3(1) of that Act and the monthly rental of that house did not exceed one hundred and fifty (rupees), the local authority within the administrative limits of which that house is situated shall, by an instrument of disposition (transfer that house?)

- (a) to the tenant of that house who is in occupation thereof on the date of coming into force of this Statute; or
- (b) to the person in occupation of that house on the date of coming into force of this Statute, where the tenant of that house is not in occupation thereof on that date,

if, and only if, the Advisory Board constituted for that local authority is satisfied that ...

1. It is clear that section 3(1) of the Act conferred a power on a local authority – in its discretion – to let to any person a house (either vested in it or constructed by it) on rent-purchase terms. By providing that the local authority “may” let any such house, it was made clear that it had the power to let, but was under no obligation to let, any such house. If it exercised that power to let, it had the power to stipulate monthly rent-purchase payments; and it also had the right to receive the stipulated payments and the power to enforce that right. If section 4(1) of the Statute came into operation, while it is true that it would not affect **future** lettings by a local authority under section 3(1) of the Act, yet in respect of all **past** lettings, a local authority would be compelled to gift to the tenant every such house, whose monthly rental was less than Rs. 150. The imposition of that obligation to gift every such house would immediately extinguish the rights and powers which the local authority had previously enjoyed in respect of future monthly payments receivable in respect of such houses. Its powers would thus be taken away, and that a Provincial Council cannot do, because of the constitutional prohibition contained in item 4.3 of List 1.

Section 4(2) of the Statute is open to a like objection. Where a local authority let a house owned by it, otherwise than under section 3(1) of the Act, it had the power to stipulate the rental, and thereupon the right and power to receive the agreed rentals. It was under no obligation to forego such rentals. By imposing an obligation to gift such houses to the tenants, section 4(2) of the Statute would take away those rights and powers.

Mr Kamalabayson, PC, ASG, submitted that there would have been no inconsistency with the Constitution if the Statute had

recognised and left unimpaired the existing powers of local authorities, and had proceeded to grant them an additional power, in their discretion, of gifting such houses to the tenants.

Mr. Seneviratne, PC, Contended, however, that the effect of section 4(1) of the Statute would be to confer a "power" on a local authority to transfer a house to a tenant, in the same way as section 5A(1), introduced by the amending Act No 63 of 1979:

"5A(1) Where prior to the 15th day of October, 1979, a house to which this Act applies has been let to any person under the provisions of section 3(1) and the monthly rental of such house immediately prior to such letting did not exceed twenty-five rupees, the local authority ... shall, by an instrument of disposition, transfer, free of charge, that house to that person."

That provision undoubtedly curtailed a local authority's rights and powers, because it compelled it to gift any such house, whether it wished to or not. It imposed an obligation, which diminished or extinguished its rights and powers under section 3(1) of the Act. The fact that, in order to give effect to that obligation, a local authority was also "empowered" to execute an instrument of disposition does not mean that its power under section 3(1) was not diminished.

2. Mr. Kamalabayson submitted that an amendment to the long title was necessary. As section 4(1) and (2) of the Statute would be inconsistent with section 3(1) of the Act, I hold that the Statute should have been described in its long title "as being inconsistent with that law" as required by Article 154G(8). Mr. Seneviratne did not dispute this.

For these reasons, I determine that the long title and sections 4(1) and (2) of the Statute are inconsistent with the Constitution.

WIJETUNGA, J. - I agree.

ANANDACOOMARASWAMY, J. - I agree.

Statute determined to be unconstitutional.