DESMOND PERERA AND OTHERS
v.
KARUNARATNE, COMMISSIONER OF NATIONAL HOUSING AND OTHERS

COURT OF APPEAL.
GRERO, J.
C. A. APPLICATION NO. 33/92
15, 16, 17, 18, FEBRUARY 1993 AND
4, 5,16 AND 19 MAY 1993

Writ of certiorari – Ceiling on Housing Property Law No. 1 of 1973 Sections 2(3)(c), 8(1)(9), 12(1), 12(2), 13 and 17A(1) – Compliance with Section 9 – Legal right and legitimate expectation – Grounds for judicial review – Legality of divesting.

The 1st to 4th petitioners had taken the premises referred to in the petition from the 3rd respondent. In response to a press notice the 3rd respondent company furnished to the 1st respondent (Commissioner of National Housing) a declaration dated 5.7.78 under the provisions of the Ceiling on Housing Property Law No. 1 of 1973 regarding the houses belonging to the 3rd respondent company. The 1st respondent by letter dated 5.7.78 informed the 3rd respondent that 31 houses has been excluded under section 2(3)(c) of the Ceiling on Housing Property (CHP) Law. The 31 houses excluded consisted of apartments given on rent to the petitioners. The 3rd respondent appealed to the Board of Review from the determination of the 1st respondent. The Board of Review noticed the four petitioners, the husband of the 2nd petitioner and several other tenants to be present at the hearing of the appeal. The 3rd respondent objected to their presence but the Board inquired into the objection and overruled it. The 3rd respondent appealed from this order to the Court of Appeal but the Court of Appeal affirmed the order of the Board. Thereafter the Board of Review heard the main appeal of the 3rd respondent and dismissed it by its order of 9.11.1983. The 3rd respondent made an application against this order to the Court of Appeal and this application (No. 1460/85) is still pending.

The petitioners further averred the houses bearing No. 7 1/3, 7 1/5, 7 1/6 and 7 1/2 tenanted by them have been divested by the 1st respondent with the written approval of the 2nd respondent (Minister to Housing and Construction) acting under section 17 A(1) of the CHP Law but without giving an opportuniy to the petitioners to be heard. The order was *ultra vires* and in excess of and abuse of their power and therefore the divesting order is null and void.

The 1st respondent's position is that the 1st petitioner should have made his application for the purchase of the premises within four months of the

commencement of the CHP Law, i.e. four months from 13.1.1973, but he made his application only on 27. 3. 1981. The divesting had been done with the approval of the Minister and under section 17A(1). The divesting order was published in Government Gazette No. 516/90 of 19.10.1990.

The questions for decision were –

(1) Whether the 1st petitioner has made his application of 27. 3. 1981 in terms of section 9 of the CHP Law;

(2) Whether the petitioners have a legal right or a legitimate expectation of being heard before the 1st respondent makes a divesting order under section 17A(1); and

(3) Whether the pending application No. 1460/85 operates as a bar to the divesting order of the 1st respondent.

Held:

(1) Section 9 of the CHP Law is precise, clear and unambiguous. A tenant who wishes to purchase a surplus house should make an application to the Commissioner within 4 months from the date of commencement of the CHP Law which was 13.1.1973. In his application to purchase the premises, the 1st petitioner has failed to comply with the provisions of section 9 of the CHP Law. His application was out of time.

(2) Section 12 of the CHP Law is to the effect that once a house is vested with the Commissioner, he may transfer it to a local authority or Government Department or public corporation under section 12(1). If he chooses not to take action upon section 12(1) but sell such house, he should in the first instance offer it to the tenant of such house. If the tenant does not accept his offer, then he can sell it to some other person-section 12(2). The option under section 12 is not to offer the house only to the tenant occupying the house in the first instance; the Commissioner has a discretion.

As section 12 stands, a tenant may have a hope that the Commissioner acting under section 12(2) may offer to sell the house to him in the first instance. Such a hope does not fall into the category of a legitimate expectation which has been defined as a right or interest which is looked forward to by a person. The principle entrenched in administrative law regarding legitimate expection is the "right to be heard". A hope does not create a legitimate expectation in law. A tenant may have a hope that the Commissioner if he proposes to sell the house will offer it to him in the first instance but he cannot have a legitimate expectation which includes the right to be heard. If only the Commissioner elects or proposes to sell

to the tenant and the offer is made, then the tenant can buy the house if he so wishes.

In the question of the right to be heard, administrative action could be made subject to control by judicial review under three heads:

(i) Illegality

(ii) Irrationality

(iii) Procedural impropriety

By illegality what is meant is that the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute by those persons, by judges by whom judicial power of the state is exercisable.

Irrationality may succinctly be referred to as unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

The third head is described as procedural impropriety rather than failure to observe the basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision.

The divesting of the apartments had been done on good and resonable grounds. Illegality and irrationality cannot be attributed to the action taken by the 1st respondent.

Only the 1st petitioner had applied to purchase a house and that too out of time. As he was out of time he cannot expect a right to be heard and the Commissioner is not to be blamed for not affording an opportunity to hear him before divesting the premises. There has been no failure on the part of the 1st respondent to observe the principles of natural justice.

Section 13 of the CHP Law applies to premises which have not got vested with the Commissioner but are still owned by private individuals. Therefore the petitioners cannot complain that by reason of divesting they were deprived of the right to apply to the 1st respondent under this section. Their rights were not affected.

The petitioners were tenants prior to the vesting. Even after the divesting they still continue to be tenants. There has therefore been no change in their legal status or rights owing to the divesting order made by the 1st respondent. They still continue to enjoy all rights and privileges as tenants of these houses.

The application No. CA 1469/85 does not operate as a bar to the divesting order made by the 1st respondent. No prejudice has been caused to the petitioners by reason of the divesting order having been made while application No. CA 1460/85 was pending.

Cases referred to :

1. *Stock v. Frank Jones* (1978) 1 All ER 955.
2. *CCSV v. Minister for the Civil Service* (1984) 3 All ER 950, 954.
3. *McInnes v. Onslow Fane and Another* (1978) 3 All ER 211, 218,219.
4. *Schmidt v. Home Secretary* (1969) 2 ch. 149.

APPLICATION for a writ of certiorari to quash the decision of the Commissioner of National Housing.

Fred de Silva, P.C. with *P. Nagendran, P.C.* and *Miss. S. M. Senaratne* for petitioners.

K. Siripavan, S.S.C. for 1st and 2nd respondents.

K. N. Choksy, P.C. with *P. A. D. Samarasekera, P.C., Jayantha Almeida Gunaratne, B. Mutunayagam* and *Miss. S. Samarasekera* for 3rd respondent.

Jacolyn Seneviratne for 5th and 6th respondents.

Cur. adv. vult.

July 15, 1993.

GRERO, J.

The petitioners in this application are seeking for an order in the nature of a Writ of Certiorari to quash the order of divesting made by the 1st respondent (the Commissioner of National Housing) published in the Government Gazette No. 316/90, dated 19th October, 1990.

The petitioners averred in their petition, that the 3rd respondent is a Company with limited liability, duly incorporated under the

provisions of the Companies Act. The 1st to 4th petitioners have taken on rent premises bearing assessment numbers stated in the petition, from the 3rd respondent, and these premises are situated at Upper Chatham Street, Colombo 1.

The 3rd respondent in response to a press notice issued by the 1st respondent furnished a declaration on 26.2.73 under the provisions of the Ceiling on Housing Property Law regarding the houses belonging to the 3rd respondent Company.

The 1st respondernt by his letter dated 5.7.78 informed the 3rd respondent that 31 houses had been excluded under Section 2(3)(c) of the Ceiling on Housing Property Law as they were already rented out to non-employees of the Company. The 31 houses excluded, consisted of the apartments given on rent to the petitioners.

The 3rd respondent appealed to the Board of Review against the determination of the 1st respondent. The Board of Review, noticed the 1st, 3rd, 4th petitioners, the husband of the 2nd petitioner and several other tenants to be present at the hearing of the appeal. The 3rd respondent objected to their presence. The Board of Review inquired into the objection and overruled it.

The 3rd respondent challenged the order of the Board of Review in the Court of Appeal and the said Court affirmed the order of the Board. Thereafter the Board of Review heard the main appeal of the 3rd respondent and by its order dated 9.11.85 dismissed the appeal of the 3rd respondent. Then the 3rd respondent aggrieved with the said order made an application which bears the No. 1460/85 to this Court for Writs of Certiorari, Mandamus and Prohibition. The said application is not yet finally decided and is pending before this Court.

The Petitioners further averred that the houses bearing Nos. 7 1/3, 7 1/5, 7 1/6 and 7 1/12 tenanted by the petitioners have been divested by the 1st respondent with the approval in writing of the 2nd respondent. (The Honourable Minister of Housing and Construction) acting under Section 17A (1) of the Celling on Housing Property Law. Petitioners averred that no opportunity has been given to them or any

other person who would be affected by the said divesting order, before it was made by the 1st respondent. According to them the 1st and/or 2nd respondent acted *ultra vires* in excess of and abuse of their power and therefore the said divesting order is null and void. In the circumstances, they prayed that the relief sought in the petition be granted by this Court.

The 1st respondent filed his affidavit and stated that the 1st petitioner should have made his application for the purchase of the premises in question within 4 months of the commencement of the Ceiling on Housing Property Law of 1973. The date of commencement of the Law was 13.1.73. The 1st petitioner has made his application on 27.3.81. i.e. 8 years after the Ceiling on Housing Property Law came into operation. He also has disclosed the reasons why he formed the view to divest the residential units that got vested in the department. Further he stated that he obtained the approval of the Honourable Minister of Housing for divesting and the said divesting was done according to the power vested in him under Section 17(A)(1) of the CHP Law. Some of the averments contained in the 1st petiitioner's affidavit are admitted by him and some are denied. For the reasons contained in his affidavit he stated that a Writ of Certiorari does not lie to quash the order of divesting which is published in the Government Gazetta No. 516/90 of 19.10.90.

The 3rd respondent filed his statement of objections and for the averments contained therein prayed that the petition of the petitioners be dismissed. Among the objections he has stated, that the petitioners have misconceived their remedy if any. The decision whether the units in the Baurs building occupied by the petitioners constitute houses or flats has not been finally decided according to the 3rd respondent. The decision that such units are vested as surplus houses has been challenged in an application made to this Court bearing No. 1460/85 and it is still pending. The decision regarding vesting has not reached the stage of finality. Therefore the 3rd respondent has taken up the position that the petitioners' present application is premature, and this Court should not exercise its discretionary jurisdication to issue a writ in the nature of certiorari.

The learned President's Counsel for the 1st petitioner, the learned Senior State Counsel for the 1st and 2nd respondents, the learned

President's Counsel for the 3rd respondent, and the learned Counsel for the 5th and 6th respondents made their oral submissions very exhaustively, and handed their written submissions to this Court at the end of making such oral submissions.

Considering both oral and written submissions of Counsel, this Court is of the view, that such submissions could be reduced to three broad issues to be decided. They are –

(i) Whether the 1st petitioner has made his application dated 27.3.81, in terms of Section 9 of the Ceiling on Housing Property Law, No. 1 of 1973?;

(ii) Whether the petitioners have a legal right or a legitimate expectation of being heard before the 1st respondent makes a divesting order under Section 17A (1) of the CHP Law?;

(iii) Whether the pending application bearing No. 1460/85 before this Court operates as a bar to the divesting order of the 1st respondent?

In dealing with the 1st issue stated above, it is necessary to examine Section 9 of the Ceiling on Housing Property Law. The said section is as follows :-

" The tenant of a surplus house or any person who may succeed under Section 36 of the Rent Act to the tenancy of such house may, **within four months from the date of commencement of this Law, apply to the Commissioner for purchase of such house.**"

Is there any ambiguity in the words used in this section? Could there be two interpretations given to the words used in this section? This court is of the view, that there is no ambiguity, and could not give two interpretations to the aforesaid section. The words used in this section are precise, clear, and unambiguous.

Maxwell on The Interpretation of Statutes (12th Edition) states:

"Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise" (Vide page 29). Further in the same book it is said :

"Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be". (Vide page 29).

The language used in the above stated section is plain and clear. The meaning it conveys is that the tenant of a surplus house if he wishes to purchase it may within four months from the date of commenement of the CHP Law apply to the Commissioner. This is the simple, plain and clear meaning of this section.

As contended by the learned President's Counsel for the 3rd respondent, Bindra, on Interpretation of Statutes (7th edition) at page 99 states :

"It is one of the well established rules construction that if the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense. The words themselves in such case best declaring the intention of the Legislature".

The learned President's Counsel for the 1st petitioner in his written submissions stated as follows:

"Section 9 should be interpreted in a reasonable way and not as the respondents insist, claiming that an application to purchase should have been made within 4 months of the commencement of the Law. Such an interpretation will defeat the very purpose of the Act. As no tenant can know within 4 months to this Act, whether any house is a surplus house or not within the meaning of Section 8(5) of the CHP Law" (Vide page 11 of his written submissions).

He further stated: "It is only after the owner decides that he is not going to retain ownership of a house and gives simultaneous notice to the tenant, does the house become a surplus house within the

meaning of the CHP Law, and only from that time onwards could a tenant make an application to purchase the surplus house". (Vide page 11).

The learned President's Counsel for the 3rd repondent in his written submissions drew the attention of this Court to the language used in Section 8(1) of the CHP Law, and the language used in Section 9 of the said Law, and stated that Parliament has in unambiguous terms in Section 9, stipulated the period of 4 months from the commencement of the Law, and not from the date of the Commissioner's determination as in Section B(1) of the Law.

He further stated, "Where in the same law in two different sections Parliament has stipulated different time periods, the conclusion is inevitable that Parliament decidedly made the difference. The Court cannot therefore act on the basis that Parliament has made a mistake or committed an oversight and that therefore the Court can change the time limit" (Vide page 6 of written submissions).

This Court entirely agrees with the views expressed by the learned President's Counsel for the 3rd respondent with regard to the construction of Section 9 and the interpretation that should be given to it.

As contended by him, if the intention of the Legislature has been to allow a tenant to make an application to the Commissioner to purchase a surplus house after the determination of the Commissioner, then it would have clearly stated so in Section 9 of the CHP Law. If it was the intention of the Lagislature (Parliament) to wait till the Commissioner makes a determination of surplus houses, then it would not have used the words "from the date of commencement of this Law" in Section 9 of the CHP Law. Precisely, clearly, and without obscurity, the Legislature has expressed its intention as to the time limit within which a tenant may make an application to the Commissioner to purchase a surplus house.

The learned President's Counsel for the 3rd respondent cited a passage taken from the judgment of Viscourt-Dilhorne in the case of *Stock v. Frank Jones* [1].

"It is now fashionable to talk of a purposive construction of a statute, but it has been recognised since the 17th century that it is the task of the judiciary in interpretation of an Act to seek to interpret it according to the intent of them that made it. If it were the case that it appeared that an Act might have better drafted, or that amendment to it might be less productive of anomalies, it is not open to the Court to remedy the defeat. That must be left to the legislature".(Vide page 951 of the judgment).

Even if this Court thinks that it would have been better that Section 9 to the Law was drafted in such a manner as to allow a tenant to make an application to the Commissioner after his determination of surplus houses, to purchase such a house, this court cannot remedy the defect by giving an interpretation which is contrary to the clear intention of the legislature.

The learned President's Counsel for the 1st petitioner has cited Bindra, on Interpretation of Statutes, where it is stated that when there is obscurity and ambiguity in the wording of a statute, the Court is entitled to construe it in accord with justice and reason and to give effect to the intention of the Legislature.

This Court is of the view, that there is no obscurity and ambiguity in the wording of Section 9 of the CHP Law. In the case cited earlier (*Stock v. Frank Jones* [1]). Lord Scarman quoted Lord Atkinson who held that "If the language of a statute be plain, admitting of only one meaning, the Legislature must be taken to have meant and intended what it has plainly expressed, and whatever it has in clear terms enacted must be enforced though it should lead to absurd or mischievous results". Therefore this Court has to give effect to the plain meaning of this section. In doing so this Court is of the view, that a tenant who wishes to purchase a surplus house should make an application to the Commissioner within 4 months (four) from the date of commencement of the CHP Law. Much prominence was given to this Law, when it came into force. Petitioners who are the tenants of the 3rd respondent should be or ought to be vigilant about the laws enacted and published regarding their rights and duties. They may make full use of them if they so desire. Failure in their part

to comply with Section 9 of the CHP Law is not a ground to make a complaint against draftsmen of the said Law. When the wording of the section is so clear and precise, they should have made applications to the Commissioner within four months after the commencement of the Law to purchase the houses as stated in that section. This Law came into operation on 13.1.73. The 1st petitioner (but not the other petitioners) made his application to the Commissioner on 27.3.81, i.e. 8 years after the commencement of this Law.

For the aforesaid reasons this Court holds that the 1st petitioner has failed to comply with the provisions of Section 9 of the said Law.

The learned Senior State Counsel in his submissions stated that the 1st petitioner's application was out of time and that too was made not to the 1st respondent Commisioner but to the Board of Review, as evidenced by P3A. This Court perused the affidavit filed by the 1st respondent and in paragraph 13 of the said affidavit, he has not denied the fact of receiving the application of the 1st respondent. If he did not receive such application he could have stated so in his affidavit. The fact that there was no denial by the 1st respondent about the making of the application although it was made 8 years after the commencement of the CHP Law shows that in fact he received the application of the 1st petitioner.

The next issue that is to be discussed is, whether the petitioners and the 5th and 6th respondents have a legal right or a legitimate expectation to be heard before the 1st respondent makes a divesting order under Section 17A (1) of the CHP Law.

Section 17A (1) states :

"Notwithstanding, that any house is vested in the Commissioner under this Law, the Commissioner may, with the prior approval in writing of the Minister, by order published in the Gazette, divest himself of the ownership of such house, and on publication in the Gazette of such order, such house shall be deemed never to have vested in the Commisioner".

It is common ground that the 1st respondent Commissioner has by his order dated 5.9.90, published in the Gazette divested the 31 houses described in the schedule to the order, and 7 of them are houses occupied by the parties to this application.

The 1st respondent has admitted in paragraphs 21(g) and (h) that with the prior approval of the Minister in writing, he divested the houses in question. The grievance of the petitioners and the 5th and 6th respondents is, that before divesting of these houses they were not heard by the 1st respondent.

It was contended by the learned President's Counsel for the 1st petitioner, that the petitioners had rights and/or expectant rights or legitimate expectations that they could purchase the apartments.

The learned President's Counsel for the 3rd respondent submitted to Court that it is incumbent on the petitioner to establish that some legal right or interest of his has been prejudiced without having been heard. There must be an adverse affectation of his legal rights.

The argument put forward by both Counsel for the 1st petitioner and the 5th and 6th respondents is that they could purchase the houses or apartments which they occupy at present, and therefore they have expectant rights or legitimate expectation. Such expectations have now been removed as a result of the divesting order made by the 1st respondent. They rely much on Section 12 of the CHP Law. What is very relevant is section 12 (2) which says:

"Any house vested in the Commissioner under this Law shall, if the Commissioner proposes to sell such house be offered for sale, in the first instance, to the tenant, if any, of such house, and where the tenant does not accept such offer, the Commisioner may sell such house to any other person. Where any house vested in the Commissioner is at the time of vesting not let to a tenant, the Commissioner may sell such house to any person."

According to Section 12(1) any house vested in the Commissioner may be transferred by him to any local authority, government department or public corporation.

Considering the manner in which this Section 12 is framed it could be seen that the Commissioner has the discretion to transfer a house vested in him to a local authority, or government or public corporation. If he chooses not to act upon Section 12(1), but to sell such house then he should in the first instance offer it to the tenant of such house. If the tenant does not accept his offer, then he can sell it to some other person.

A plain reading of this section clearly reveals, that once a house is vested in the Commissioner, he may transfer it to local authority etc. But if he proposes to sell it, then the first offer should be made to the tenant occupying the house.

This Section 12 does not state that after the vesting of a house the only act the Commissioner is empowered to do is to offer the house to the tenant to purchase it. A discretion is given to him. **If he proposes to sell such house, then it has to be first offered to the tenant.** But as in Section 12(1) if the Commissioner transferred such house to any local authority, government department etc., then the question of offering the house for sale to the tenant does not arise. Thus one could see as the section stands, a tenant may have a "hope" that the Commissioner acting under Section 12(2) may propose to offer it for sale in the first instance to him.

The question is whether such a "hope" falls into the category of a legitimate expectation? What is meant by legitimate expectation? A simple definition that can be given is, **a right or interest which is looked forward to by a person.**

Lord Hoskill in the case of *CCSV v. Minister for the Civil Service* [2] observed that principle which has entrenched in the branch of administrative law regarding legitimate expectation is the "right to be heard".

One may have, a mere hope. But that does not mean he has a right to be heard. But a person who has a legitimate expectation comes within the principle of "right to be heard". The view taken

by the House of Lords in the case of *McInnes v. Onslow Fane and Another* [3] was that a hope does not create a legitimate expectation in law. (Vide pages 218 and 219).

As contemplated in Section 12(2) of the CHP Law, a tenant occupying a house vested in the Commissioner can have a hope or even a reasonable hope that if the Commissioner proposes to sell such house the offer would be made to him first. But he cannot have a legitimate expectation (which includes a right to be heard) that the house vested in the Commissioner be offered for sale to him, because the discretion is granted to the Commissioner to elect to sell such house to the tenant. If only he elects or proposes to sell to the tenant, and the offer is made, then the tenant can buy the house if he wishes so. This is the legal position as far as a vested house in the Commissioner in concerned.

With regard to a divesting of a house vested in the Commissioner there is provision under Section 17A (1) of the CHP Law.

The question that has arisen in the instant case is, whether the petitioners are entitled to a right to be heard before the Commissioner divests the ownership of the houses in which these petitioners are in occupation as tenants of the 3rd respondent.

As one reads the above mentioned section, it does not state that a tenant is granted a right to be heard before the Commissioner makes a divesting order, but over the years laws dealing with the administrative sections of public authorities have been developed as a result of a great number of decisions made by the Superior Courts. Such laws have stepped in, and provided the necessary grounds for Superior Courts to exercise their powers to review the actions of administrative bodies and/or persons.

As pointed out by the learned President's Counsel for the 3rd respondent, Lord Diplock in the case of *CCSV v. Minister for the Civil Service* [2] clearly classified under three heads, the grounds on which administrative action could be made subject to control by judicial review. They are:

(i) Illegality;

(ii) Irrationality; and

(iii) Procedural impropriety.

Describing the aforesaid grounds Lord Diplock said as follows:

> "By 'Illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute by those persons, the Judges by whom the judicial power of the state is exercisable".
>
> "By **'irrationality'**, I mean what can by now be succinctly referred to as unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".
>
> "I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision".

The decision-maker, the 1st respondent, in the instant case in paragraph 21 of his affidavit has stated the reasons why he decided to divest the apartments in question after having obtained the written approval of the Minister. This Court cannot hold that the grounds upon which he decided to divest the apartments or houses are unreasonable. Although the petitioners allege *mala fide* on the part of the 1st respondent, this Court cannot agree with them. A perusal of the grounds or reasons which he had described in paragraph 21 of his affidavit reveals, that divesting of these apartments has been done on good and reasonable grounds.

This Court is of the view, that illegality and irrationality could not be attributed to the action taken by the 1st respondent in this case. Has

the 1st respondent failed to observe basic rules of natural justice or failed to act with procedural fairness towards the parties?

Except the 1st petitioner, there is no evidence before this Court to show that others have made any application to the 1st respondent to purchase those apartments. Although the 1st petitioner has made an application, yet as earlier stated in this order, he has failed to make such application as contemplated in Section 9 of the CHP Law. Therefore when the 1st respondent Commissioner acted under Section 17A (1) of the CHP Law, (i.e. divesting of the apartments) there was no application made to him in terms of Section 9 of the CHP Law. He should have heard them, if they had made their applications in terms of the aforesaid Section 9 of the Law. One cannot expect the Commissioner to call upon the parties who (i.e. the tenants occupying these apartments) to air their views for or against divesting when they have not acted in terms of Section 9 of the Law.

No doubt the 1st petitioner had made an application to the 1st respondent, before the divesting order was made. But this application has not been made within the prescribed time limit. In the circumstances, he cannot expect a right to be heard and the Commissioner is not to be blamed for not affording an opportunity to hear him.

In *Schmidt v. Home Secretary* [4] alien students of 'scientology' were refused extension of their entry permits as an act of policy by the Home Secretary. The Court of Appeal held that they had no legitimate expectation of extension beyond the permitted time, and no right to a hearing (Vide Wade Administrative Law – 5th edition at page 465).

The aforementioned students had no legitimate expectation beyond the permitted time, and therefore they were not entitled to a right to hear them. Similarly the 1st petitioner who made his application out of time, could not have expected a right to be heard, before the 1st respondent made his divesting order.

When no request has been made in the form an application to purchase the apartments (or houses) by the tenants in terms of

Section 9 of the CHP Law, the 1st respondent Commissioner need not hear them before taking steps to divest the houses under Section 17A (1) of the Law. This would have been different if the petitioners had made applications in terms of Section 9 of the said Law. Then natural justice demands that the 1st respondent should give them a hearing before he makes the divesting order. But they have not made applications in terms of Section 9 of the Law. In the circumstances, this Court is of the view that there had been no failure on the part of the 1st respondent to observe the principles of natural justice.

As stated earlier, the petitioners cannot have a legitimate expectation to purchase the apartments under Section 12 of the CHP Law.

Section 13 of the CHP Law applies to premises which have not got vested with the Commissioner, but are still owned by private individuals. Therefore the petitioners cannot complain that by reason of divesting they were deprived of the right to apply to the 1st respondent under this section. In the circumstances, the petitioners cannot complain that the divesting order made by the 1st respondent prevented them from applying to purchase the houses in question. In other words it cannot be held that their rights were affected.

As the learned President's Counsel for the 3rd respondent submitted, that the petitioners were tenants prior to the vesting. Even after the divesting they still continue to be tenants. There has therefore been no change in their legal status or rights owing to the divesting order made by the 1st respondent. They still continue to enjoy all rights and privileged as tenants of these houses.

The last issue that this Court raised was, whether the pending application bearing No. C.A. 1460/85 operates as a bar to the divesting order of the 1st respondent.

The above stated application is in the nature of a Writ of Certiorari, Mandamus and/or Prohibition, made by the 3rd respondent to the present application. It appears from the application in Case No. 1460/85, that the Commissioner of National Housing

(1st respondent to the application) has by his order dated 5.7.78, determined that the petitioners (i.e. the 3rd respondent) was entitled to over 54 houses, and 31 houses were vested on the basis that they were let to tenants, within the meaning of section 2(3) (o) of the CHP Law. An appeal against this determination to the Board of Review too, failed, as it was dismissed. Then the petitioner (3rd respondent to the present application) made the present application to this Court asking that writs in the form certiorari be issued to quash the orders of the Commissioner and the Board of Review. He also prayed for Writs of Mandamus and Prohibition.

The aforesaid application is still pending before this Court. The contention of the learned President's Counsel for the petitioners is that the 1st respondent should not have divested the houses pending the determination of C.A. Application No.1460/85. The learned President's Counsel for the 3rd respondent submitted to Court that no prejudice has been caused to the petitioners by reason of the divesting order having been made whilst the said application was pending.

As stated earlier the aforementioned application is against the vesting order made by the 1st respondent Commissioner. What happens if the application is allowed by this Court? Then it would mean the vesting never lawfully took place. The petitioners are not affected and they still remain and continue as tenants. Suppose the application is dismissed. Then the Commissioner could immediately divest such houses, because, Section 17A (1) of the Law empowers him to do so. Even if divesting is done no prejudice is caused to the petitioners, because they continue to be tenants of the houses in question. In the circumstances, this Court is of the view, that the application bearing No. C. A. 1460/85 does not operate as a bar to the divesting order made by the 1st respondent.

One other matter that this Court wishes to mention is the decision in C.A. 134/81, which is marked and filed along with the application as P18. The Commissioner decided that 31 houses of that 3rd respondent Company were surplus houses. Against this determination 3rd respondent made an appeal to the Board of Review, and the Board issued notice on several occupiers of the

houses to be present at the hearing of the appeal. The 3rd respondent (appellant-petitioner) objected to the occupants being heard when the appeal was taken up for hearing. The Board of Review made order overruling the objection taken by the petitioner (i.e. the 3rd respondent in the present application). Thereafter the petitioner (the 3rd respondent) made application to the Court of Appeal for a Writ of Certiorari to quash the order of the Board of Review. This Court dismissed the said application.

The decision of the said application C.A. 194/81 did not go into the question of divesting of the houses under Section 17A (1) of the CHP Law. The said decision dealt with the question whether the Board of Review was correct when it decided that the occupants of the houses should be heard at the hearing of the appeal. At the hearing of the appeal, the Court did not address its mind to the question of divesting of houses by the Commissioner. Sections 12, 17A (1) and the applicability of Section 9 with regard to the making of applications under the said section have not been discussed in the judgment. Although the judgment refers to Section 9, the Court had no occasion to consider the effect of it, in deciding whether the Commissioner should hear the petitioners to this application before he makes a divesting order. In the instant application this Court entirely deals with a different stage of the proceedings taken by the 1st respondent under the CHP Law. Therefore the decision of the said case, has no binding effect insofar as the present application is concerned.

In the aforesaid circumstances, this Court is of the view that a Writ of Certiorari does not lie against the divesting order made by the 1st respondent Commissioner and hence the application for such a writ is hereby dismissed. The petitioners are ordered to pay a sum of Rs. 750/- to the 3rd respondent as costs.

Application for Writ of Certiorari is dismissed.

Application dismissed.