

LEELAWATHIE
v.
MANEL RATNAYAKE

SUPREME COURT
G. P. S. DE SILVA CJ.,
WIJETUNGA, J. AND
BANDARANAYAKE, J.
S.C. APPEAL NO. 73/95
C.A. APPLICATION NO. 54/85
JUNE 15, 1998.

Ceiling on Housing Property Law – Writ of Certiorari – Tenant's application to purchase the house let to him – S.13 of the law – Death of tenant pending writ application – Right of deceased tenant's daughter to proceed with S.13 application.

The tenant applied in terms of S.13 of the Ceiling on Housing Property Law, No.1 of 1973 to purchase the house let to her. The Commissioner for National Housing decided to recommend to the Minister the vesting of the house for the purpose of sale to the tenant. On an appeal by the owner of the house under S. 39 of the law, the Board of Review set aside the Commissioner's decision. The tenant moved the Court of Appeal by way of certiorari to quash the order of the Board of Review. The tenant died pending the hearing of the application and her daughter (the respondent) was substituted after which the court set aside the order of the Board of Review.

Held:

The tenant's right conferred by S.13 of the Ceiling on Housing Property Law is personal to the tenant making the application. That right ceased upon the tenant's death; and the respondent is not entitled to proceed with the application under S. 13 made by the original tenant.

Cases referred to:

1. *Caderamanpulle v. Keuneman* SC Appeal No. 15/79 SC Minutes 19, September, 1980.
2. *Perera v. Lokuge and Others* (1996) 2 Sri LR 282.

APPEAL from the judgment of the Court of Appeal.

P. A. D. Samarasekera, PC with *Peter Jayasekera* and *R. Y. D. Jayasekera* for the respondent.

T. B. Dillimuni with *Tissa Bandara* for the substituted petitioner respondent.

June 24, 1998.

G. P. S. DE SILVA, CJ.

The 5th respondent-appellant (appellant) is the owner of premises No. 35, Ananda Mawatha, Colombo 10, which forms the subject-matter of these proceedings. The tenant of these premises Aslin Ratnayake (now deceased) made an application to the Commissioner of National Housing in terms of section 13 of the Ceiling on Housing Property Law (CHP law) to purchase the premises. The Commissioner of National Housing held an inquiry and informed the appellant and the tenant of his decision to recommend to the Minister to "vest" the premises in terms of section 17 of the CHP law. Thereupon the appellant preferred an appeal to the Board of Review against the decision of the Commissioner of National Housing. (Section 39 of the CHP law). The Board of Review, after inquiry, allowed the appeal and set aside the decision of the Commissioner of National Housing recommending the "vesting" of the premises. Thereafter the tenant moved the Court of Appeal by way of a writ of Certiorari to quash the order of the Board of Review. The Court of Appeal set aside the order of the Board of Review. The present appeal is against the judgment of the Court of Appeal.

It is common ground that pending the hearing of the application for a writ of Certiorari, the tenant (Aslin Ratnayake) of the premises died. The daughter of the tenant was formally substituted in the room of her deceased mother. She is the present substituted petitioner-respondent. It would appear that the appellant did not object to the substitution as the substitution was of a formal nature in order to proceed with the hearing and disposal of the application before the Court of Appeal. I am therefore of the view that the failure of the appellant to object to the substitution of the daughter in the room of the deceased tenant has no relevance to the question that arises for decision on this appeal.

The short point that arises for consideration before us is whether the application made by the tenant in terms of section 13 of the CHP law can be proceeded with by the substituted petitioner-respondent after the death of the tenant. In other words, has the substituted petitioner-respondent the *locus standi* to maintain the application made by her mother (now deceased) who was the tenant of the premises?

The material provisions in the CHP Law are sections 9, 13 and 17 (1) and (2):

Section 9 – "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 the purchase of such house."

Section 13 – "Any tenant may make application to the Commissioner for the purchase of the house let to him where no action or proceedings may under the Rent Act be instituted for the ejectment of the tenant of such house on the ground that such house is reasonably required for occupation as a residence for the landlord of such house or for any member of his family.

Provided, however, that where the application made is to purchase a house in respect of which an application may be made under section 14 (1), the Commissioner shall not take any action in respect of the application made unless the owner of such house consents to the sale of such house; and such consent may be withheld under this law in respect of only one of the permitted number of houses.

For the purpose of this section and section 12, "tenant" includes a tenant in whose favour an order for the delivery of possession of a house has been made under section 5 of the Protection of Tenants (Special Provisions) Act.

In this section, the expression 'house' does not include a house owned by a local authority, a Government department or public corporation".

Sections 17 (1) and (2) – "(1) Where an application has been made under this law for the purchase of a house, and the Commissioner is satisfied—

- (a) that such house is situated in an area which in his opinion will not be required for slum clearance, development or redevelopment or for any other public purpose;
- (b) that it is feasible to alienate such house as a separate entity; and

- (c) that the applicant is in a position to make the purchase.

the Minister may, on being so notified by the Commissioner, by Order (hereinafter referred to as a "vesting order") published in the *Gazette* vest such house in the Commissioner with effect from such date as may be specified therein.

- (2) as soon as may be after a house is vested in the Commissioner under subsection (1), the Commissioner shall enter into an agreement with the applicant for the sale of such house to the applicant, subject to the following conditions:
- (a) that the applicant shall pay to the Commissioner a lump sum or on rent purchase terms or in such instalments as may be determined by the Commissioner, the amount determined under this law as the price payable for such house to the former owner and an additional sum of five per centum of such amount to cover the costs incurred by the Commissioner;
 - (b) that until the amount payable as the price of such house is finally determined under this law, the applicant shall make to the Commissioner a monthly payment of an amount not less than the monthly rent payable for such house, which payment shall be set off against the amount payable as the price of such house;
 - (c) that the applicant shall be responsible for the repairs to, and the maintenance of, the house and shall insure the house against loss or damage by fire, civil commotion and riot and pay all rates and taxes due to any local authority; and such other conditions as may be determined by the Commissioner."

Section 9 applies to a "surplus house" within the meaning of section 8 (5). Thamotheram, J. in *Caderamanpulle v. Keunemar*⁽¹⁾, referring to an application under section 9 observed, "In regard to such an application no question of an inquiry arose as between landlord and tenant as the landlord had *already lost his rights of ownership*". On the other hand, section 13 (the section relevant to this case) applies to a house which is within the permitted number which a landlord is

entitled to retain as owner. In regard to section 13, Thamotheram, J. in Caderamanpulle's case (*supra*) stated: "As the application under section 13 is in respect of a house permitted by law to be owned by the landlord, his consent is always relevant even where the Commissioner has the discretion to act under section 17 notwithstanding the landlord refusing consent. The Commissioner has to hear the landlord and consider his position fairly before deciding to act under section 17."

Moreover, there is a significant difference in the language of section 9 and section 13, insofar as the person entitled to make the application is concerned. While the entitlement to make an application for the purchase of the house is confined to "any tenant" in terms of section 13, the provisions of section 9 speak of the "tenant . . . or any person who may succeed under section 36 of the Rent Act to the tenancy." . . . The words *underlined* above are not found in section 13. It seems to me that the difference in the language tends to show that the right conferred by section 13 is personal to the tenant who makes the application. In this connection, it is also relevant to note (as stated earlier) that section 13 applies to houses which are within the permitted number allowed to be owned by the landlord.

Once an application is made in terms of section 13 to purchase a house, the Commissioner of National Housing has to be satisfied in regard to the specific matters set out in sections 17 (1) (a), (b) and (c). Analysing the provisions of section 13 read with section 17, Thamotheram, J. in Caderamanpulle's case (*supra*) expressed himself in the following terms: "It seems to me that the effective decision or determination in regard to the tenant's application under section 13 is made by the Commissioner and not by the Minister. . . Under section 13 an application has to be made under the law for the purchase of a house. This does not mean that every application purporting to be validly made under section 13 has to be acted on and a notification made to the Minister under section 17 even if (a), (b) and (c) of the latter section are satisfied. It was rightly conceded by Mr. H. L. de Silva that there was an area of discretion left to the Commissioner for him to consider the equities in the case and decide whether the application should be entertained. Before going into the question raised at (a), (b) and (c) of section 17, he must decide whether he is going to accept an application under section 13 and notify the Minister that an application has been made under this law. The Commissioner is not a mere conduit pipe through whom an application of a tenant under

section 13 goes to the Minister even if conditions (a), (b) and (c) are satisfied." It would also be relevant to refer to the case of *Perera v. Lokuge and others*⁽²⁾, wherein Kulatunga, J. held (1) that the "Minister's power to make the vesting order is discretionary", (2) "the Commissioner is under a duty to consider equities in addition to the matters set out in section 17 to enable the Minister to make a fair decision". It is thus abundantly clear that the CHP law requires the Commissioner of National Housing to address his mind to "the equities in the case" and to act fairly. This again is a pointer to the true nature of the application made under section 13, namely, that the right conferred is personal to the tenant making the application. The position of the present substituted-petitioner-respondent may well be different from the position of the original applicant. In short, "the equities in the case" could be different.

Furthermore, there is the significant fact that in the present case the tenant who made the application in terms of section 13 died before an Order was made by the Minister under section 17 (1) vesting the house in the Commissioner of National Housing. There was not even a notification by the Commissioner to the Minister under section 17 (1). Thus the deceased tenant had no proprietary rights in respect of the house which could pass to her heirs on her death.

Admittedly, the present substituted petitioner-respondent is not the person who made the application under section 13 to purchase the premises in suit. For the reasons stated above, I hold that the substituted petitioner-respondent is not entitled to proceed with the application made under section 13 by the original applicant, namely, the deceased tenant (Aslin Ratnayake) and the Commissioner of National Housing himself has now no right to entertain the application. The right conferred by section 13 is personal to the tenant who makes the application and comes to an end upon her death – *Actio personalis moritur cum persona*. Accordingly, the appeal is allowed and the judgment of the Court of Appeal is set aside. In all the circumstances, I make no order for costs.

WIJETUNGA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Appeal allowed.