

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for
Writ of Certiorari under Article
140 of the Constitution of the
Democratic Socialist Republic of
Sri Lanka.

Court of Appeal (Writ) Appln.
Case No. C.A. 660/10
Rent Board of Review
Case No. 5744

Mrs. Reeta Sivapakiam
No. 5, Hill Road,
Nawalapitiya.

Rent Board Gampola
Case No. 18/2003

Petitioner.

Vs.

01. Mrs. Marjan
No. 101, Dolasbage Road,
Nawalapitiya.

And 06 others.

Respondents.

Before : S. Sriskandarajah, J (P/C.A.) &
H.N.J. Perera, J.

Counsel : S. Kumarasingham for the Petitioner.

A.M. Jiffry with M.R.M. Marzook for the Respondent.

Decided on : 15.02.2012

H.N.J. Perera, J.

The Petitioner filed this application seeking a Writ of Certiorari to quash the order made by the Rent Board of Review dated 22.07.2010. The Petitioner filed an application in the Rent Board of Nawalapitiya on 1st April 1999 seeking a certificate of tenancy in respect of residential premises bearing assessment No. 5 Hill road, Nawalapitiya and other reliefs. The said application was later transferred to the Rent Board of Gampola. The Petitioner filed the said application on the basis that the Petitioner has succeeded to the tenancy of her mother Mrs. T.A. Fan Grace the original tenant who died on 10.09.1977 under and in terms of Section 36(2)(a) (ii) of the Rent Act No. 7 of 1972. The Rent Board after inquiry by order dated 27.09.2010 granted a certificate of tenancy to the Petitioner. The Respondent who is the landlord of the said premises filed an appeal in the Rent Board of Review from the said order of the Rent Board dated 29.07.2010. Section 40(4) of the Rent Act No. 7 of 1972 states that "any person who is aggrieved by any order made by any Rent Board under this Act may, before the expiry of period of 21 days after the date of the receipt by him of a copy of the order

appeal against the order to the Board of Review. Provided however that no appeal shall lie except upon a matter of law. The Board of Review which heard the parties on matters pertaining to the appeal made order on 22.07.2006 reversing and setting aside the order made by the Rent Board on 22.07.2006. The Rent Board of Review after considering the relevant documents has come to the conclusion that the petitioner has not proved that she had been a member of the household of the deceased tenant during the whole of the period of 3 months preceding the death of original tenant. Under Section 36(2)(a)(ii) of the Rent Act who succeed to the tenancy the petitioner applicant must established that she was the member of the household of the deceased tenant during the whole of the period of 3 months preceding the death of the original tenant. Section 36(2)(a)(ii) is as follows: "Any person who in the case of residential premises the annual value of which does not exceed the relevant amount and which has been led prior to the date of commencement of this Act (ii) was a member of the household of the deceased tenant (whether in those premises or in any other premises) during the whole of the period of 3 months preceding his death. That therefore in terms of the

provisions of Section 36(2)(a)(ii) of the said Act to succeed to the tenancy rights the petitioner-applicant must establish that she was a member of the household of the tenant, during the whole of the period of 3 months preceding the death of the original tenant. It was contended on behalf of the Respondent that the relevant period of 3 months must be reckoned from 10.06.1977. The original tenant has died on 10.09.1997 and therefore proof of occupation prior to 10.06.1997 or after 10.09.1997 is not relevant or material to the question of succession and that the burden of proving that the petitioner-applicant was a member of the household of the deceased tenant during the whole of the period of 10.06.1997 to 10.09.1997 is on the petitioner-applicant and no burden is cast on the Respondent to prove negative. It is the contention of the Counsel for the Respondent that the Rent Board of Review has considered the relevant documents and has reached the finding that the Petitioner-applicant has proved that she had been a member of the household of the deceased tenant during the whole of the period of 3 months preceding the death of the original tenant. It is the position of the counsel for the Petitioner that Rent Board of Review has failed to analyse and assess all the

documentary and oral evidence led before it. In the order made by the Rent Board of Review it is clearly stated that evidence led by the Petitioner-applicant in this case does not support her claim to be in occupation during the 3 months period preceding the death of her mother. It is further stated in the order of the Board of Review that although the Applicant in her evidence has stated that she had come into occupation of the premises in 1958 this claim is not supported by any material evidence.

In Ceylon Cinema and Film Studio Employer in his Union Vs Liberty Cinema Ltd. 1994 3 S.L.R. 121 was held that:

“If the case contains anything ex facie which is bad in law and which bears upon the determination it is obviously on a point of law; may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In these circumstances the

appellate court must intervene. This court that there is no legal evidence to support the conclusion of facts."

Further this proposition is supported by the decision in D.S. Mahavitharana Vs. Commissioner of Inland Revenue 64 NLR 217. In that case it was held that;

"if that inference had been drawn on a consideration of inadmissible evidence, or after excluding admissible and relevant evidence, if the inference was a conclusion of fact drawn by the Board but supported by legal evidence, if the conclusion drawn from relevant facts was not rationally possible, and was perverse and should therefore be set aside."

Having considered the evidence led before the Rent Board, the Rent Board of Review has come to the conclusion that the decision arrived by the Rent Board is not supported by any material evidence.

It is stated in the order of the Rent Board of Review that the Applicant has tendered rent for the premises to the authorized person one day before the death, of Mrs. Fan Grace on 09th of September 1997 and that evidence too does not support her claim to be in occupation during the 3 months period preceding the death of her mother. Further referring to the evidence of the officer of the Election Department the Board of Review have further held that this evidence too does not support the order of the Rent Board and the payment of the electricity bills in the Applicant's name shows involvements in the aforesaid premises on or after 1998.

It is the view of this Court that the decision of the Rent Board cannot be sustained in law when considering the evidence led before it. Therefore I am of the view that there is no merit in the application of the Petitioner, as the Rent Board of Review had good reasons to interfere with the decision made by the Rent Board on a question of law. Section 35(i) of the Rent Act stipulates that the landlord of any premises shall upon been requested to do so by the

tenant of such premises give to the tenant a certificate of tenancy relating to such premises in the prescribed form. Section 35(ii) of the same Act stipulates further that where the landlord of any premises refuses to give the tenant a certificate of tenancy the Rent Board shall upon application made to it by the tenant give to the tenant a certificate of tenancy relating to such premises in the prescribed form. And a certificate of tenancy given by the Rent Board to the tenant shall be deemed to be a certificate of tenancy given by the landlord to the tenant. The Petitioner has made an application to the Rent Board of Nawalapitiya inter alia claiming declaration of tenancy to the said premises and for other rights as tenant. It is stated in the order of the Rent Board of Review that the Applicant had made the application after lapse of 19 months since the death of the preceding tenant. The Board of Review have held that the application of the Applicant under the circumstances appear to be colourable and is unlawful in as much as no application has first been made to the landlord. In the instant case it is clearly seen that the tenant has not requested the landlord to issue a certificate of tenancy prior to making the application to the Rent Board. And the Board has held that this application had

been made after a period of 19 months since the death of the preceding tenant. In the written submissions filed on behalf of the petitioner it is stated that a request under a given piece of legislation is not always absolute and there can be circumstances that provide exceptions and that hostility between the landlord and tenant could compel a tenant to avoid making a request to the landlord and apply directly to the Rent board for a certificate of tenancy. The Petitioner's Counsel has referred to the fact that there has been a police complaint made by the landlord against the petitioner. Therefore a hostile situation existed and the petitioner was in the belief that requesting the landlord for a certificate of tenancy would be of no avail and that the petitioner was therefore compelled to make an application direct to the Rent Board for a certificate. This Court cannot agree with the submissions made by the Counsel for the petitioner with this regard. It is not in dispute that the petitioner has made this application to the Rent Board after the death of the preceding tenant on 1st April 1999. This Court finds that the police complaint referred to by the Counsel for the Petitioner ¶1 has been made on 19.06.2005 that is nearly after 6 years from the date of the said application to the Rent Board by the petitioner. There

is no evidence to show that the petitioner has even made an attempt to make a request to the landlord. Therefore there is no doubt that the petitioner has failed to make any request to the landlord in this case prior to the application made to the Rent Board. The Rent Board of Review has referred the case reported in (1996) 2 SLR 61 Suppiah Pille Vs Wilson Samarawickrema where it was held that the application for a certificate of tenancy could be made only upon a refusal by landlord to justly issue such certificate to the tenant. In the said case it was held;

“ Thus, it is clear from these provisions of the Rent Act that an application could be made by a tenant to the Rent Board for a certificate of tenancy only where the landlord of any premises had refused to give the tenant a certificate of tenancy which the tenant had requested from the landlord.

It is only in circumstances where a landlord has turned down the request of a tenant for the issue of a certificate of tenancy to him that the Rent Board could be clothed with jurisdiction

to entertain and inquire into an application by a tenant for the issue of a certificate of tenancy to him.

"In the instant case before us, there is not an iota of evidence led either at the trial or even at the inquiry held by the Rent Board that the Defendant Appellant - had made a request to the Plaintiff for the issue to him of a certificate of tenancy in respect of premises No. 51 Kotahena Street, Colombo 13, and that that request was refused by the Plaintiff. In these circumstances there has been a patent lack of jurisdiction in the Rent Board in entertaining and inquiring into the application made to it by the Defendant for the issue of a certificate of tenancy in respect of the premises in suit and also in making the order after that inquiry. Thus, there is no basis for the order made by the Rent Board."

In this case there is no evidence to show that the petitioner has ever made a request to the landlord for a certificate of tenancy. No evidence whatsoever had been led before the Rent Board to show that under the circumstances the petitioner was prevented from making such a request to the landlord. Therefore this Court see

no merit in the submissions made by the Counsel for the petitioner in this regard. In the circumstances I am of the view that the petitioner has not placed any material to establish that the said order of the Rent Board of Review contains errors of law that warrants the intervention of this Court. It is pertinent at this stage to refer to the decision referred to below when it comes to an issue of a Writ of Certiorari.

In P.S. Bus Company Ltd. Vs. Members and Secretary of Ceylon Transport Board 61 NLR 49 it was held that the prerogative writs are not issued as a matter of cause and it is in the discretion of Court to refuse to grant it if the fact and circumstances are such as to warrant of refusal.....”

The petitioner has failed to satisfy this Court that the Board of Review has taken into consideration irrelevant matters and disregarded relevant matters in the said order on 27.07.2010.

For the above reasons I see no reason to interfere with the order made by the Rent Board of Review on 22.07.2010. Therefore dismiss the application with costs fixed at Rs. 15,000/=.

~~JUDGE OF THE COURT OF APPEAL~~

S. Sriskandarajah, J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL