

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

**CA Writ No: 542/2010.**

Rent Board of Review 5778.

Rent Board, Dehiwala - Mt.Lavinia No: D.M./12/2000

Hemamal Abeysinghe,  
No.24,  
Union Place,  
Karagampitiya.

**PETITIONER.**

**Vs.**

Seetha Udumalagala Perera  
No. 136/9,  
Pragnaloka Mawatha,  
Kawdana,  
Dehiwala.

And 10 others.

**RESPONDENTS**

**CA Writ 542/2010**

**Before** : S. Sriskandarajah J. P/CA

**Counsel** : Rohan Sahabandu appears for the Petitioner.  
Palitha Yaggahawita for 1<sup>st</sup> Respondent.  
N. Unamboowa DSG appears for the 11<sup>th</sup>  
Respondents.

**Argued &  
Decided on** : 02.11.2012.

**S. Sriskandarajah J. P/CA**

The Petitioner in this application is seeking to challenge the order of the Rent Board of Review dated 17.06.2010 marked P11. This is an appeal against the order of the Rent Board of Dehiwela Mt. Lavinia dated 18.09.2007 on the application of Seetha Udumalagala Perera dated 19.12.2000 for a declaration of tenancy of premises bearing No. 136/9, Pragnaloka Mawatha, Kawdana, Dehiwala and also to determine monthly rent. The Rent Board of Review observed that the order of the Rent Board is contrary to the evidence.

The Rent Board in its order dated 18.09.2007 after making several observations has come to the finding that it has no jurisdiction, in view of the fact that Section 2(4) (c) of the Rent Act as per the amendment of the Rent Act No. 55 of 1980. In fact the question of jurisdiction should have been considered as a threshold issue and the board should have decided

this issue before making any other observation or findings in relation to the application. But the board after making several observations has concluded that the board has no jurisdiction to entertain the application. The Rent Board of Review has considered the issue whether the Rent Board has jurisdiction or not and has observed that in terms of Section 2 (4) (c) of the Rent Act the residential premises occupied by the owner as at January 1980 and let on or after that date are exempted premises and as there is no evidence to show that the said premises were occupied by the owner as at 1<sup>st</sup> of January 1980 this premises cannot be considered as an exempted premises. In view of this fact that the Rent Board has jurisdiction to hear the said application and to make an appropriate order. The Rent Board of Review after coming to this finding that the Rent Board has jurisdiction to hear and determine the application should have requested the Rent Board to go into the merits of the application and to make an appropriate order. In fact when the board made their determination that they have no jurisdiction to entertain the application any other observation or order made by them, have no validity in law. But when their order is reviewed by the Board of Review and held that the Rent Board has jurisdiction to look into the application of the Petitioner, then by that order the Rent Board assumes jurisdiction or in other words the decision of the Rent Board is being revised and the Rent Board has jurisdiction to entertain this application of the applicant and the Rent Board after assuming the jurisdiction has to consider the merits of

the application and should have come to a finding and those findings are binding on both parties subject to an appeal to the Board of Review.

In this circumstances, this court issues a writ of certiorari to quash the order of the Board of Review other than the order made by the Board of Review in relation to the finding that the Rent Board has jurisdiction to entertain the application of the applicant dated 19.12.2000. This court directs the Rent Board of Dehiwela Mt.Lavinia to consider the application of the applicant dated 19.12.2000 and to make an appropriate order in relation to the relief prayed in that application as the Rent Board has jurisdiction to go into the application that was tendered by the applicant.

The application for writ of certiorari is allowed in relation to the part of the order of the Rent Board of Review as referred to above. No costs. Registrar is directed to convey this order to the Rent Board of Review and also to the Rent Board.

PRESIDENT OF THE COURT OF APPEAL.

Mm/-