

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

In the matter of an Application for mandates
in the nature of Writs of Certiorari and
Mandamus in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

C.A. Application
No. 679/09 (Writ)

Muthusamy Dharmaratnam of
No. 52/2, Peradeniya Road,
Kovilawattte, Katukele, Kandy

Petitioner.

-Vs-

1. Commissioner for National Housing,
Housing Division, Ministry of Construction,
Engineering Services,
Housing and Common Amenities,
2nd Floor, " Sethsiripaya",
Sri Jayawardanapura Kotte,
Battaramulla.
2. Dr. M.S.Jaldeen,
3. Mr. R.W.M.S.B. Rajapakse,
4. Mr. J.M.S. Bandara,
5. Mr. M. Sritharan,

Chairman and Members of the Board of Review
constituted under the Ceiling on Housing
Property Law.

Respondents.

6. T.S. Balasubramaniam,
C/O: No. 36, Sagara Road,
Bambalapitiya, Colombo-04.

Respondent-Respondent

Before: **Anil Gooneratne, J &**

H.N.J. Perera, J

Counsel: Ikram Mohamed PC with A.M. Faiz for the
Petitioner.

U. Abdul Najeem for the 6th Respondent-Respondent.

Argued on: 13.03.2013

Judgment
delivered on: 27.05.2013

Anil Gooneratne, J

The premises in suit belonged to the ' Selva Vinayagar Kovil' trust of Katukela, Kandy, was vested in the Commissioner of National Housing in accordance with the Provisions of the Ceiling on Housing Property Law. Along with the premises in dispute bearing No. 52/2 Peradeniya Road, Kovilwatta, Kandy, several other premises which belonged to the above Kovil was also vested as aforesaid. Material furnished indicates that the vesting was communicated to the trustees by letter of 13.11.1982 (P1). Petitioner

alleges that he was in occupation of the premises in dispute since 1986. It is also pleaded that the 6th Respondent occupied the premises prior to 1986 as tenant and the 6th respondent had agreed to assign his tenancy rights for Rs. 175,000/- and having accepted this sum, placed the petitioner in occupation.

The Petitioner seeks a Writ of Certiorari to quash the order of the Commissioner of National Housing marked P10 and P10a and also an order to quash the Board of Review order dated 26.08.2009 (P17) which confirmed the order of the Commissioner. Board of Review held; whilst confirming the order of Commissioner, that the Respondent T.S. Balasubramaniam (6th Respondent) is the tenant of the premises in suit. A writ of mandamus is sought to compel the Commissioner of national housing to sell and transfer the premises in dispute to the Petitioner.

It is disclosed in the petition that the 6th respondent placed the Petitioner in occupation of the premises in question and left for U.K (per letter P3) and has expressed his willingness to purchase the premises in question in or about 1999. (as in P3) but has not till August 2003 taken any steps to pursue the same with the Commissioner.

It is also pleaded that by P2(plaint) the trustees of the above named Kovil filed action against the 6th Respondent on the ground of subletting and thereafter withdrawn the action since the premises was vested as above. In the meanwhile as pleaded in the

petition letter P4(23-11-2001) was addressed by the Commissioner, to the occupier and requested to forward an application to purchase the premises. Accordingly this being the case of the petitioner, made an application to purchase the premises and provided documents to prove his occupation. Vide P5, P5a to P5f. The Commissioner had taken time to follow up action on petitioners requested to purchase, has informed him to deposit the amount valued with certain other charges amounting to Rs. 367,850/- (P6). The Petitioner deposited the said sum (vide P7). However by notice P8 both the Petitioner and the Attorney of the 6th respondent was called for an inquiry, by the Commissioner. Having inquired into the question of tenancy (as pleaded in paras 12,13 and 14 of the petition and the corresponding averments of the affidavit) the Commissioner of National Housing made order by P10 and P10a that the 6th Respondent is the tenant to whom the offer was made to purchase the premises in dispute and to refund the sum of Rs. 367,850/- to the Petitioner.

It was urged on behalf of the petitioner the several grounds pleaded in para 14 of the petition to contest the above order P10 and P10a of the Commissioner of National Housing, and the grounds urged in para 18 to challenge the order of the board of Review marked P17.

We have considered the case of both parties. On behalf of the 6th Respondent , the following matters were inter alia urged;

- a) Respondent being an employee of the Hatton National bank, Kandy had resided with his family for over 40 years in the rented premises.
- b) Petitioner was occupying an adjoining premises and the 6th respondent permitted the petitioner to utilize part of his premises to store some commodities.
- c) 6th Respondent left for U.K in or about 1999. Respondent only handed over the premises to the petitioner for safe custody during his absence.
- d) By documents 6R1 & P3 the 6th respondent establish the fact that by letter of 26.07.1999 application to purchase the property in dispute was made to the Commissioner, and he could not follow up action.
- e) Based on document P5 and P5e the Commissioner of National Housing believing same to be bona fide documents at the initial stages decided to sell the premises to the petitioner.
- f) 6th Respondent communicated by 6R2 of September 2003 and demonstrated that document P5e was a bogus or fraudulent document which was never signed by 6th Respondent. As such by P8 Commissioner summoned both parties for an inquiry and came to the conclusion as in P10 and P10a.

We have considered the case of either party. Even on the hearing date learned counsel for the Petitioner did not seriously contest original tenancy of the 6th respondent. It was his position that the 6th respondent was a non-occupying tenant, and due to 6th respondent absence from Sri Lanka the Commissioner earlier decision to sell the premises to the Petitioner is the correct decision. The Commissioner of National Housing after inquiry made order as in document P10a and has carefully analyzed all facts and circumstances,

and accepted the tenancy of the 6th respondent. We cannot find any flaw in the inquiry procedure and the decision of the Commissioner in P10 and P10a.

Section 12(2) of the Ceiling on Housing Property Law reads thus:

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 Commissioner 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.

The 6th Respondent being the original tenant lawfully exercised his right to purchase the rented premises. Absence from the country for a period of time cannot preclude him from applying to purchase the premises in dispute and any other like the petitioner, cannot take undue advantage when the rights of the genuine tenant is asserted or where the tenant exercise his statutory right to purchase as in Sec. 12(2) above.

In *Thurairajah Vs Bibile.... 1992 SLR Vol I pg. 116-119* held.....

“The Ceiling on Housing Property Law. No. of 1973 requires that eligibility to purchase an excess house from the Commissioner is founded on a tenancy with the owner. A sub-tenant does not have priority over the tenant whose prior claim is statutorily recognized under section 12(2) of the Law. ”

The Board of Review has very carefully affirmed the orders of the Commissioner of National Housing (P17).This Court does not wish to interfere with such orders of the Commissioner and the Board of Review. As such we dismiss this application without costs.

JUDGE OF THE COURT OF APPEAL

H.N.J.Perera, J

I agree.

JUDGE OF THE COURT OF APPEAL

Kpm/-