

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

In the matter of an application for
mandate in the nature of Writ of
Certiorari and Prohibition in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

C.A (Writ) Application No. 105/2012

Mr. K.G.Somapala,
No.36/12,
Parakum Mawatha,
Attidiya,
Dehiwela.

PETITIONER

Vs.

1. Mr. S.S.G.Perera
2. Mrs. Samarage Sirima Kamalani
Perera,
Both of No. 36/9 (26/3),
Parakum Mawatha,
Attidiya,
Dehiwela.

3. Mr. Raja Gunaratne,
The commissioner of National
Housing,
Department of National Housing,
Ministry of Construction,
Engineering Services, Housing and
Common Amenities,
“Sethsiripaya”,
Sri Jayawardenapura Kotte,
Battaramulla.

4. Hon. Wimal Weerewansa,
Ministry of Constructions,
Engineering Services, Housing and
Common Amenities,
“ Sethsiripaya ”,
Sri Jayawardenapura Kotte,
Battaramulla.

RESPONDENT

BEFORE

: S. SRISKANDARAJAH, J (P/CA)

P.W.D.C. JAYATHILAKE, J

COUNSEL : C.E de Silva with S. Walgama for the
Petitioner
D.P. Mendis P.C. for the 1st and 2nd
Respondents
Vikum de Abrew, SSC for the 3rd and 4th
Respondents

Argued On : 07.02.2013

Decided On : 31.07.2013

P.W.D.C. Jayathilake J.

S.V. Perera father of the 1st and the 2nd Respondents came for occupation in premises No: 36/9 (26/3), (hereafter referred to as premises in suit) Parakum Mawatha, Aththidiya, Dehiwala, in 1950 as the tenant under Mulin Pieris who was then owner of the said premises. An application was made by said H.V. Perera against Mulin Pieris in 1976 under section 13 of the Ceiling on Housing Property Law No: 01 of 1973. Subsequent to the said application Mulin Pieris had transferred the said property to Michel Dabare and Mala

Pieris in 1981 and the Petitioner has bought the property from them in 1988 by the deed marked as X1. After an inquiry held under the provisions of CHP Law, the 3rd Respondent as the Commissioner of National Housing had been satisfied that the application made by said H.V. Perera was consistent with the requirement under section 71 of CHP Law and had decided to report the matter to the 4th Respondent the Minister of Housing affairs. The said decision had been informed to the Petitioner by the letter dated 17.08.1988 which is marked as X2. The Petitioner had made an appeal to the CHP Board of Review and the Board of Review had decided to agree with the order made by the 3rd Respondent and had dismissed the appeal. The said decision marked as X3. Thereafter the Petitioner has filed an application in this court seeking the writ of certiorari to quash the decision of the Board of Review and that application had been dismissed by this court by the order which has been marked as X4.

The Ombudsman had recorded some proceedings relevant to a file No: P/2/3/1242 on 29.10.2001 regarding a matter between the petitioner and the 3rd Respondent which appears to be an understanding between the two parties. According to those proceedings which has been marked as X6 an undertaking has been given on behalf of the 3rd Respondent to take steps to disown two houses, premises in suit and another after obtaining necessary instructions. The 3rd Respondent by the letter dated 14.10.2010 which has been marked as X11 had informed the Petitioner that premises in suit had not been vested in him under CHP Law. But again the 3rd Respondent had informed to the Petitioner by the letter dated 09.01.2011 referring to the previous letter, that even if it had been informed that the premises in suit had not been vested in the Commissioner of National Housing it was now under review on new facts submitted before him. The said letter has been marked as X12.

In the instant application the Petitioner is seeking to grant and issue mandate in the nature of a Writ of Certiorari quashing the decision of the 3rd Respondent contained in X12, and a writ of prohibition against the 3rd Respondent taking steps in any manner and dealing with the premises in suit under the CHP Law.

The 1st & 2nd Respondents in their objections state *inter alia* that the Petitioner has acted in fraudulent manner not only in purchasing the property over the head of the tenant but also in obtaining X6 and X11 which over ride X2 and X3 ignoring the principle of *audi alteram partem*.

The Petitioner's contention is that the decision of the 3rd Respondent contained in X2 had not been published in the government gazette. With the death of S.V. Perera his application made under section 13 of CHP Law had come to an end. The Petitioner further submits that heirs of S.V. Perera are not entitled to proceed with the same application, according to the principle of law stated by the Supreme Court in the case of *Lilawathi Vs Manel Rathnayake* 1998(3) SLR 349.

The argument raised by the learned SSC who appeared for the 3rd and 4th Respondents was that there is no decision taken by the 3rd Respondent as per X12 to be challenged by way of a Writ application. Learned SSC submits in the case of **R v. Statutory Visitors, St. Lawrence Hospital Caterham ex p. Pritchard [1953] 2 All ER 766,773**, Parker J held that there must be a decision or determination for a writ to be available. It has been pointed out that above judgment has been followed in the case of **Mendis, Fowzie V Goonerwardane 78-79 2SLR 322**.

It is quite clear that the 3rd Respondent has taken a decision on the application made by S.V. Perera, to publish a " Vesting order " in respect of the premises in suit and the said order has not been changed or quashed

either by the Board of Review or by this court. An action taken by a public officer which comes under his / her preview becomes enforceable only if it is done following the procedure relevant to such action. Any action done or decision taken outside the relevant procedure shall be treated, as personal and arbitrary. Obviously the proceedings recoded by Dr. R.B. Ranaraja (X6) and the letter sent by M. Sridaran (X11) in their capacity as the Ombudsman and the Commissioner of National Housing, respectively are not based on acceptable procedure. Therefore this court is of the view that the 3rd Respondent has not been prevented from taking whatsoever procedural action in regard to the matter in issue in his capacity as the Commissioner of National Housing. This court decides that there is no merit in the application of the petitioner and therefore dismisses the application with cost.

JUDGE OF THE COURT OF APPEAL

S. SRISKANDARAJAH, J (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL