

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

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

1. D.J.B. Silva
 2. Mrs. W.E.S. De Silva
- Both of No. 26A,
Station Road,
Mt. Lavinia.

PETITIONERS

C.A. Application No. 214/2009 (Writ)

Vs

1. Commissioner of National
Housing
2nd Floor, "Sethsiripaya"
Sri Jayawardenapura Kotte
Battaramulla.
 2. Hema Wijesekara
 3. R.W.M.S.B. Rajapakse
 4. V.G. Karunasena
- 02nd-04th Respondents all
members of the Board of
Valuation established in terms

of Ceiling on Housing Property
Law No. 1 of 1973 as amended
re VB No. 2113.

5. Mrs. W.A. Ratnayake of 26
Station Road,
Mt. Lavinia.
6. Hon. Minister of Housing and
Common Amenities
Ministry of Housing and
Common Amenities
"Sethsiripaya"
Sri Jayawardenapura Kotte
Battaramulla.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Rohan Sahabandu PC for the
Petitioners

Faiz Musthapha PC with Ashiq
Hassin for the 5th Respondent.

Yuresha Fernando SSC for the
1st to 4th and 6th Respondents.

ARGUED ON

: 27th August, 2014

DECIDED ON

: 27th November, 2015

Deepali Wijesundera J.

The first and second petitioners have filed this application seeking a writ of Mandamus against the first respondent to vest the house and appurtenant land depicted as lot 3 in plan 2301 (P6) and for a writ of Certiorari to quash the award of the Board of Valuation marked as P12A and P12B.

The first respondent is the Commissioner of National Housing and second to fourth respondents are all members of the Board of Valuation established in terms of *Ceiling on Housing Property Law No. 1 of 1973*. The fifth respondent is the statutory tenant and the sixth respondent is the Subject Minister.

The petitioners stated that at all times material to the instant application they were the owners of the property described in Deed No. 3571 which included the house bearing No. 26 Station Road, Mt. Lavinia and land in extent of one rood and 1.61 perches. The petitioners have made an application to the first respondent to construct a building in the excess land which was refused under *Sec. 20 of the Rent Act*. Another application was made to the Rent Board which was allowed on

03/04/1984. The petitioners were allowed to build a house in the excess land in lot 1 in plan 2897C. The fifth respondent being aggrieved by the order has made an application for a writ of Certiorari in the Court of Appeal which had been dismissed. The fifth respondent's appeal to the Rent Board of Review was also refused. **(X3 and X4)**.

The petitioners stated that when they bought the house the fifth respondent gave an undertaking to vacate the house but went back on the undertaking and made an application to the first respondent to purchase the house under the Ceiling on Housing Property Law. The first respondent has allowed the fifth respondent's application and a recommendation was sent to the sixth respondent. The petitioners stated that in September 1985 the said house owned by them was vested in the first respondent under *Sec. 17 (1) of the Ceiling on Housing Property Law*, by order published in the Government Gazette notification **P3**. The petitioners stated that the said house was the only residential house owned by them at that time. The petitioners have made an application to the Court of Appeal which was dismissed by the Court of Appeal **(P4A and P4B)**. The petitioners have made an application for leave to appeal in the Supreme Court which was allowed by the Supreme Court **(P4C)**. The Supreme Court on 17/09/2002 had directed the first respondent to make a determination in respect of the extent of land that is reasonably appurtenant to the house, and was

directed to take steps in terms of *Sec. 16 (1)*. The petitioners stated that the first respondent in the Supreme Court agreed for the petitioners to retain the excess land and the land was surveyed and plan No. 2361 marked **P6** was made. In **P6** the excess land is shown as lot 1, lot 2 is the access road and lot 3 is the house. The petitioners have received a letter marked as **P7A** by which they were informed that only lot 3 will be vested for the fifth respondent when the Gazette notification was filed under *Sec. 20 of the Ceiling on Housing Property Law*. The petitioners have made a claim for compensation in respect of lot 3 (**P8**) to the first respondent. The petitioners stated that they did not make any claims in respect of lots 1 and 2 since they were not vested with the first respondent. The petitioners' application had been referred to a board of valuation comprising second, third and fourth respondents the proceedings are marked as **P9 and P10**. The computation of compensation had been in dispute since the fifth respondent had said it should be calculated on the value at the time of the original vesting date which was in year 1985 and the petitioners claiming from the value in the years in which the Supreme Court order was made. The petitioners have been informed that they have been awarded a sum of Rs. 2,71,000/= as compensation and stated that the ownership of the land has not been proved. The value in 1985 was taken in computing the compensation. These are marked as **P12A and P12B**.

The counsel for the petitioners submitted that according to the Supreme Court order what was vested is the house and not the entire land. The petitioners stated that the fourth to sixth respondents erred in law when computing compensation due on a valuation in 1985. When there was an order by the Supreme Court much later. The petitioners stated that the decision of the valuation Board is final and the first respondent had no authority to alter the same.

The learned Senior State Counsel for the respondents stated that under Sec. 16 (1) the house and the appurtenant land go with the house and that the land is not valued separately. Citing the judgment in ***Leelawathi vs Pinto 3 Colombo Appellate Law Reports 100*** said that the land is not separately valued. The respondents further submitted that there is no statutory duty done by the first respondent to issue a writ of Mandamus against the first respondent. The respondents stated that the valid vesting order is the Gazette notification published in 1985 on which date the value should be calculated.

Gazette notification 367 of 13/09/1985 marked as **P3**, the said house has been vested in the commissioner for National Housing with effect from the said date. The petitioners have made an application to the Supreme Court after this date and in the Supreme Court the first

respondent had agreed to give the excess land to the petitioners. This judgment is dated 27/01/2003. Thereafter plan No. 2301 marked as **P6** was made and the house is shown in lot 3 and the lots 2 as the access road and 1 as the excess land which the first respondent has agreed the petitioners could retain. This is shown in the letter marked as **P7A** dated 26/12/2002 in which the first respondent has informed the petitioners that they have decided not to acquire lot 1 and only the house which will include the land appurtenant amounting to 21.26 perches will be acquired. After that on 30/05/2003 Gazette Notification No. 1291 has been published under Sec. 20 stating the house no. 26, Station Road, Mt. Lavinia is vested with the first respondent from the date of the said notice. In this document the extent of the land so vested is 21.26 perches.

Sec/ 16 (1) of the Act states;

Where any house which is not a flat or a tenement is vested in the Commissioner under this Law. There shall also be vested in the Commissioner such extent of land as is in the opinion of the Commissioner reasonably appurtenant to the house.

Therefore the land vested by the Gazette notification marked **P73** is the land mentioned in the said notice and not the land shown as lot 1

of **P6**. Only 21.26 perches along with the house have been vested with the first respondent.

Sec. 15 (1) of the Act says.

Before the date specified by the Commissioner or by the Minister under this Law, as the date on which any house vests in the Commissioner, the Commissioner or the Minister, as the ease may be, may from time to time, alter, by Notification or Order, as the ease may be, published in the Gazette, the date on which such house shall so vest.

Therefore by the consequent Gazette notification the earlier Gazette notification becomes invalid. **P7B** was published after the settlement entered in the Supreme Court and it should stand since it was published after an order by the Supreme Court.

The valuation of the property so vested should be calculated on the market value on the date in which it was vested which should be the date of **P7B**, and not **P3**.

For the afore stated reasons the application of the petitioner is allowed. Prayer C and F of the petitioners petition is allowed and writs of Mandamus and Certiorari are issued.

JUDGE OF THE COURT OF APPEAL