

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

**CA Writ Application No.
1039/2008**

Rent Board of Review
Appeal No. 5720

Rent Board of Kandy
Application No. 772/2002

In the matter of an application for a mandate
in the nature of a writ of certiorari in terms of
article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Diyawattegedara Gunawathie,

Care of D.G. Gunarathne

of "Ariyawansa Grocery",

Poththapitiya, Manikdiwela.

Respondent - Appellant - Petitioner

-Vs-

1. Gallinda Wattedgedara Gunapala,
Alagalla, Thalagama,
Hatharaliyadda.

Applicant - Respondent - Respondent

2. M.A.Q.M. Ghazzali, (Chairman)
3. R.C.B. Joseph (Member)
4. D. Titus Padmasiri (Member)

5. M.I. Hadi (Member)

The Chairman and the Members of Rent Board of Review.

No. 10G, Sri Vipulasena Mawatha,

Maradana,

Colombo 10.

Respondents

BEFORE : **Vijith K. Malalgoda, P.C. J, (P/CA) & A.H.M.D. Nawaz, J.**

COUNSEL : Rohan Sahabandu P.C. with S. Kumarawadu for the Petitioner.

G.R. Dilip Obeysekera with U. Fonseka for the Substitutes-Respondent-Respondent.

Argued on : 22.01.2015

Decided on : 19.01.2016

A.H.M.D. NAWAZ, J,

The premises in suit is the premises bearing assessment No. 304, Manikdiwela in Pothupitiya within the territorial limits of the Pradeshiya Sabha of Yatinuwara. Admittedly this premises is a business premises situated within the Yatinuwara Pradeshiya Sabha area. It is admitted that the owner of the premises was one D.G. Balaya, who was the father of the Appellant, and who had rented this premises to

G.D.Guneris, who was the brother of the Applicant-Respondent-Respondent (hereinafter referred to as "1st Respondent"). The original tenant Guneris died on 30th August 1998 after his death the 1st Respondent claimed tenancy.

After the death of the original landlord Balaya, the Respondent-Appellant-Petitioner (hereinafter referred to as "the Petitioner") refused to accept rent, and therefore the 1st Respondent made an application on 23rd November 2000 to the Rent Board of Kadugannawa against the for an order determining the 1st Respondent is the tenant of the said premises and to obtain permission to deposit the rent in the Pradeshiya Sabha. Later this application was transferred to the Rant Board of Kandy.

The Rent Board of Kandy commenced inquiry into this application on 11th December 2002, Since the Petitioner denied tenancy, the Rent Board fixed the matter for inquiry to determine the tenancy claimed by the Respondent. At the inquiry the 1st Respondent-Gunapala and his witness Mapa Herath Mudiyansele Ananda Abey Bandara had given evidence and closed the case reading evidence on documents marked E1 to E25. The Petitioner-Gnanawathie did not give evidence but called the Grama Sevaka, Deniya Gedara Jayatileke Banda. After his evidence in chief, date was granted for cross-examination but on that date this witness was not available for cross-examination.

The 1st Respondent Gunapala had given evidence at length before the Rent Board. The position taken by the 1st Respondent was that he came to do business at the premises in suit in 1973 and had been paying rent to the owner Balaya and produced receipts E1 to E8 to support that position. He was carrying on a business in partnership with the deceased brother D.G. Guneris. Guneris has also paid the rent as per receipts E9 to E13. He produced a receipt marked E14 which states that

the year 1996, the Rs.85/- had been paid to the Pradeshiya Sabha by Gunapala in the name of Guneris as licence fees, and from 1998 this licence fees had been paid by the 1st Respondent as per receipts marked E15 to E17. He further said that he and his brother were carrying on a business in partnership and after his brother's death he became the sole tenant of the premises in suit. He was given a letter (E19) by the Kadugannawa Rent Board to pay the rent to the Yatinuwara Pradeshiya Sabha, and had been paying rent continuously. The evidence of the 1st Respondent had not been contradicted by the opposite party and was accepted by the Rent Board.

Upon perusal of the evidence led before the Rent Board by the 1st Respondent and his witness Abey Bandara, which is filed of record marked X6, it is abundantly clear that the 1st Respondent's position was that since 1973 he had been carrying on a business in partnership with his brother Guneris and after his brother's death in 1998, the 1st Respondent was carrying on the business alone and paying rent himself. The registration of the partnership business did not arise as the capital was less than Rs.1,000/-. A partner in a business is recognized to succeed to tenancy by Section 36(1)(c)(ii) of the Rent Act No.7 of 1972 subject to any order of the Rent Board.

At the end of the inquiry, the Rent Board made its order on 24th January 2006 determining the 1st Respondent is the tenant of the premises in suit and permitted him to pay the rent at the Yatinuwara Pradeshiya Sabha. Being aggrieved by this order, the Petitioner appealed to the Rent Board of Review, which made its order on 2nd October 2008 dismissing the appeal and affirming the order of the Rent Board. The Rent Board of Review had come to the conclusion that there was an implied partnership between the 1st Respondent and the deceased Guneris, who

were brothers and which fact was not challenged or contradicted by the Petitioner, and that the 1st Respondent is entitled to his rights of tenancy under Section 36(1) and Section 36(2)(c)(ii) of the Rent Act No.7 of 1972. The Rent (Amendment) Act No.26 of 2002 does not apply to this case as the said amendment has no retrospective effect.

Being aggrieved by the Order of the Rent Board of Review, the Petitioner has, by her application dated on 23rd December, 2008 preferred this application to this Court for a mandate in the nature of a Writ of Certiorari, to have the said order of the Rent Board of Review and the Order of the Rent Board of Kandy quashed. The Respondents to this application are the Applicant-Respondent-Respondent (tenant) and the Chairman and members of the Rent Board of Review.

The Petitioner took up the position that the Rent Board of Review has erred in holding that there was an implied partnership between the said Guneris and the 1st Respondent, and that the Rent Board of Review had no jurisdiction to create a tenancy between the Petitioner and the 1st Respondent in respect of the said premises.

The 1st Respondent has filed his statement of objection on 27th February, 2009 stating *inter alia* that the order of the Rent Board of Review dated 2nd October 2008 is final and conclusive in terms of paragraph 40(11) of the Rent Act No.7 of 1972 as amended, read with Section 22 of the Interpretation Ordinance as there was neither no violation of the Principles of Natural justice nor the Petitioner has alleged such violation of natural justice in respect of the inquiry before the Rent Board of Review, and that the Petitioner has not averred any material question of law to invoke the remedy of Writ of Certiorari.

Section 40(4) of the Rent Act No.7 of 1972 states:

“any person who is aggrieved by any order made by any Rent Board under this Act may, before the expiry of twenty-one days after the date of the receipt by him 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 question before this Court is whether there was a business in partnership between the original tenant Guneris and the 1st Respondent Gunapala and whether this position had been established by evidence before the Rent Board. I am of the view that the evidence of the 1st Respondent-Gunapala clearly established that he was carrying on a business with his deceased brother Guneris until his death in 1998 and thereafter he was carrying on the business by himself. In support of this position he has tendered the documents marked and produced as aforesaid can be accepted as testimony to prove his position. No evidence whatsoever produced by the Petitioner at the inquiry to contradict this position. The matter of partnership business of the 1st Respondent and his deceased brother Guneris is also not disproved or contradicted by the Petitioner. In the absence of any evidence against the position taken by the 1st Respondent, the Rent Board had correctly come to the conclusion that the 1st Respondent is the tenant of the premises in suit.

Equally, the Rent Board of Review was right in holding that “the proceedings before the Rent Board clearly indicate that the Applicant-Respondent has been carrying on the business with his deceased brother as a partner.....According to the evidence both oral and documentary, it is proved that there is an implied partnership.....The uncontradicted evidence of the Applicant-Respondent establishes a clear case in favour of the Applicant-Respondent and there by the Applicant-Respondent is

entitled to his rights of Tenancy under Section 36(1) and Section 36(2)(c)(ii) of the Rent Act No.7 of 1972.”

In this case, the only evidence before the Rent Board was the evidence given on behalf of the 1st Respondent. The Petitioner Gnanawathie had not given evidence, instead she elected to call the Grama Sevaka - Jayathilaka Banda. This witness, after giving evidence in chief on 24th February 2004, was asked to be present on the next date for cross-examination, but had failed to turn up. As such his uncross-examined evidence was rejected by the Rent Board. Hence, the Rent Board, had taken into consideration the relevant items of evidence and had decided the dispute of tenancy on the uncontradicted oral and documentary evidence led before it. This Order of the Rent Board has been affirmed in appeal by the Board of Review on the grounds stated above.

Section 40(11) of the Rent Act No.7 of 1972 provides that “The decision of the Board of Review on any appeal under this section shall be reduced to writing and signed by the members of the Board who heard the appeal. They shall set out the reasons for the decision. Such decision shall be final and conclusive and-

(a) Shall, in so far as it annuls or varies the order of the Rent Board against which the appeal was preferred, be substituted for and take the place of that order for the purposes of this Act; and

(b) Shall be binding on and followed by every Rent Board.

The decision of the Rent Board is neither annulled nor varied by the Board of Review. I am of the view that the Board of Review has correctly and properly evaluated the evidence led before the Rent Board and had come to the correct conclusion that it did not want to interfere with the Order of the Rent Board.

Therefore, the 'final and conclusive' nature of the decision of the Board of Review particularly in this case cannot be questioned in this application.

In the case of ***Nalini Ellegala vs. Poddalagoda and Others***¹, this Court has held that:

“section 22 of the Interpretation Ordinance permits an application to this Court to be made to quash the decision of the Rent Board of Review only if it ex facie had no authority to make the decision or if it had acted contrary to the principles of natural justice or a mandatory rule of law; none of which, save the question of evaluation of evidence by the Board of Review has been alleged in the petition. Since the Board of Review was correct in treating the defective evaluation of evidence by the Rent Board as a question of law, the Petitioner cannot therefore succeed in this application”.

In this case the Petitioner has not led any evidence to contradict the position taken by the 1st Respondent nor did she raise any question of law to say that the 1st Respondent has no right to succeed to tenancy as a partner of a business he jointly carried on with his deceased brother, Guneris, who was the original tenant.

When the case of ***Nalini Ellegala vs. Poddalagoda and Others*** (*supra*) went up in appeal, the Supreme Court held that 'the decision of the Board of Review is "final and conclusive" under Section 40(11) of the Rent Act and there being no grounds recognized by Section 22 of the Interpretation Ordinance, the Appellant could not have succeeded in the application before the Court of Appeal for a writ of certiorari to quash the decision of the Board of Review'.²

¹CA Application No. 142/96

²Supreme Court decision is reported in 1999 (1) Sri L.R. 46

For the foregoing reasons I hold that the impugned Order of the Rent Board of Review and the Order of the Rent Board are valid and there are no grounds for quashing them by way of certiorari. Accordingly, I dismiss this application without costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda, PC. J. (P/CA)

I agree

PRESIDENT OF THE COURT OF APPEAL