IN THE COURT OF APPEAL OF THE DEMOCRAIC SOCIALIST REPUBLIC OF SRI LANKA.

In the matter of an application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka seeking a mandate in the nature of writ of certiorari and writ of mandamus read together with section 07 of the High Court of the Provinces (Special Provisions) Act N. 19 of 1999.

Court of Appeal case no. CA/PHC 123/2012

High Court case no. 277/2011

Kithsiri Pradeep Witharana,
No.19, Colombo Road, Padukka.
Petitioner Appellant

Vs.

1. P. Leka Geethanjalee Perera,
   The Provincial Commissioner of Housing of the Western Province,
   The Department of the Provincial Commissioner of Housing – Western Province,
   No. 204, Densil Kobbekaduwa Mawatha,
   Battaramulla.
2. K.P.C. Malkanthi,
   No. 553, Kumara Mawatha, Padukka.
3. The Attorney General,
   Attorney General's Department,
   Colombo 12.

Respondent Respomdent.

Before : H.C.J.Madawala J.

: L.T.B. Dehideniya J.

Counsel : Atheek Imam for the Petitioner Appellant.

: Chandrasiri Wanigapra for the 2nd Respondent..

Argued on : 27.10.2016

Written submissions: 1st and 3rd Respondents filed on 03.01.201
Appellant filed on 19.01.2017

Decided on : 02.03.2017

L.T.B. Dehideniya J.

The Petitioner Appellant was the tenant of the premises no. 19 of Colombo Road, Padukka, under the 2nd Respondent Respondent. The 2nd Respondent Respondent landlord (hereinafter called and referred to as the landlord) made an application to the 1st Respondent Respondent Commissioner of National Housing (hereinafter called and referred to as the 1st Respondent) under section 18A of the Rent Act, as amended, seeking permission to demolish the building which is more than 40 years old and to re-develop. After inquiry, the 1st Respondent allowed the application subject to the conditions that the landlord shall pay Rs. 280,000/- as compensation to the tenant and the re-development shall be concluded as per the approved plan within 24 months from the date of tenant vacating the premises.

Being aggrieved by the said order of the 1st Respondent, the tenant instituted action in the High Court of Colombo seeking for mandate in the nature of a writ of *certiorari* to quash the order of the 1st Respondent and a writ of *mandamus* compelling the 1st Respondent to hold a fresh inquiry. The learned High Court Judge dismissed the application. This appeal is from the said dismissal.

Section 18A (1) of the Rent Act reads thus;

18A.

(1) The Commissioner for National Housing may-

(a) upon application made in that behalf by owner of any building used for residential or business purposes and constructed at least forty years prior to the date of the application;

(b) after affording the occupants of such building an opportunity of being heard, make order authorizing such owner to demolish such building if the Commissioner is satisfied that the re-development of the land on which such building stands is necessary for the more efficient utilization of such land.

Under this section the two requirements that are necessary is that

1. The building is more than 40 years old.
2. The Commissioner shall satisfy that the re-development is necessary for more efficient utilization of the land.

The learned Counsel for the 1st and 3rd Respondents submitted that the first requirement is objective and the second is subjective. The fact that the building standing on the land is more than 40 years is not in issue. The tenant did not contest that fact. Therefore it can be considered as an admitted fact that the building is more than 40 years old. Whether the land can be utilized more efficiently by re-developing, is a matter for the Commissioner to decide.

The Act has not specified any condition other than the age of the building. The Commissioner has to consider whether the commercial building that has been constructed more that 40 years ago to suit the

socio-economic environment prevailed during that time is good enough to serve the present day requirements. The land area does not expand with the expansion of the population and their requirements. Therefore the only solution to fulfill the need of the society is to utilize the land more effectively. Whether this can be done by just a renovation/modification or whether the building needs a structural change is matter to be decided by the Commissioner. Whether the building is in a dilapidated condition or not is not material. What is material is that whether the re-development of the land on which such building stands is necessary for the more efficient utilization of such land.

In the present case the 1st Respondent has come to the conclusion that the re-development is necessary for the more efficient utilization of the land.

The Counsel for the 1st Respondent cited the case of Aboobucker v. Wijesinghe [1990] 2 Sri L R 278 where it has been held that "When the Legislature enacted Section 18A in the terms *"if the Commissioner is satisfied"* the evident intention of the Legislature was to make the Commissioner the sole judge of whether conditions existed to warrant demolition."

The tenant's Counsel argue that the financial capacity of the landlord to re-develop the building is a matter that has to be taken into consideration by the 1st Respondent but has failed to do so. I do not agree with this submission. The Act does not provide that the financial capacity of the landlord as a material fact in an inquiry under section 18A of the Rent Act. Instead, the law provides that if the landlord fails to re-develop the building within the specified period or periods, he is running at the risk of acquiring the land by the state. Therefore it is for the landlord to obtain necessary financial assistance and it is not for the 1st Respondent to satisfy that he has financial capacity to re develop.

The learned Counsel for the landlord further argues that the 1st Respondent has violated the principals of natural justice by not observing the rule of "audi alteram partem". The 1st Respondent at the beginning offered an opportunity to the tenant to file objections to the application. Thereafter at the inquiry the tenant was permitted to call witnesses on his behalf. Finally the Counsel was allowed to make submissions. Therefore it cannot be said that the tenant was not heard. The Counsel's contention is that the 1st Respondent has not considered the evidence led by the tenant. It does not amount to audi alteram partem. On the other hand the evidence in the nature of that the building is not in a dilapidated condition, the effect to the adjoining buildings if this is demolished, the financial capacity of the landlord are not material for this inquiry. The re-development has been approved by the local authority concerned and it is not for the 1st Respondent to consider the effect to the other buildings. As I pointed out earlier the financial capacity and the condition of the building is also not material facts. Therefore it cannot be said that the 1st Respondent has not considered material evidence and thereby violated the principals of natural justice.

In the case of Aboobucker v. Wijesinghe (supra) it has been held that "Courts no doubt have jealously guarded its rights to review administrative action, but it has now been well established that courts will not interfere with the exercise of such administrative authority unless they are satisfied that the administrative tribunal has acted mala fide or on no evidence or unreasonably or has failed to follow the principle of natural justice or has gone wrong in law."

There is no reason to interfere with the order of the 1st Respondent as well as the order of the High Court.

The Counsel for the tenant brought to the notice of the Court certain factors that has taken place after the pronouncement of the order

of the 1st Respondent, such as, landlord not completing the re-development within the stipulated period, demolishing the building on the strength of the decree entered in the District Court of Avissawella case no. 26539/RE, and advertising to sell the land. The events taken place after the order of the 1st Respondent will not vitiate the order. The order made on the conditions prevailed at the time of making the application. It is for the proper authorities to take action under law, if any, for any violation of law.

The Counsel submits that the building was demolished on the strength of a decree entered in the District Court. If a competent Court has declared that the tenancy agreement between the tenant and the landlord is duly terminated, it is questionable as to what right that the former tenant has, to prevent the owner of the land, being dealing with his property.

Under these circumstances I see no reason to interfere with the findings of the learned High Court Judge.

The appeal is dismissed subject to costs fixed at Rs. 10,000/-

Judge of the Court of Appeal

H.C.J.Madawal J.

I agree.

Judge of the Court of Appeal