

**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 *Mandamus* and *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CASE NO: CA/WRIT/296/2019**

Kotuwe Gedara Dimuthu Sanjeewa  
No.16/3, Mahawaththa Road,  
Ambuldeniya, Nugegoda.

**PETITIONER**

**VS.**

1. Mr.S.S.G.Perera  
No.36/9 (26/3), Parakum Mawatha,  
Attidiya, Dehiwala
2. Mrs.Samarage Sirima Kamalani Perera  
No.36/9 (26/3), Parakum Mawatha,  
Attidiya, Dehiwala
3. Mr.Sarath Athukorala  
The Commissioner of National Housing,  
The Department of National Housing,  
Ministry of Housing, "Sethsiripaya", Sri  
Jayawardhenapura Kotte,  
Baththaramulla.

4. Hon. Mahinda Rajapakse  
Ministry of Housing, Construction and  
Cultural Affairs, Ministry of Housing,  
"Sethsiripaya", Sri Jayawardhenapura  
Kotte, Baththaramulla.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**S. U. B. Karalliyadde, J.**

Counsel: Rohan Sahabandu, P.C. with C. Elvitigala for the  
Petitioner.

D. P. Mendis, P.C. with K. V. Sirisena for the 1<sup>st</sup> and  
2<sup>nd</sup> Respondents instructed by Gamini  
Senanayake.

Ms. Amasara Gajadeera, S.C. for the 03<sup>rd</sup> and 4<sup>th</sup>  
Respondents.

Written Submissions on:

08.03.2022 (by the Petitioner).

25.03.2022 (by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents).

Decided on: 26.05.2022

Mohammed Laffar, J.

The Petitioner in this application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, the following reliefs:

- a) A Writ of Certiorari, quashing the vesting Order bearing No. 2116 dated 22-03-2019 marked X28.
- b) A Writ of Certiorari, quashing the decision of the Commissioner, recommending the vesting of the property in dispute in him.
- c) A Writ of Mandamus on the Commissioner, preventing him from transferring the subject matter to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**The Factual Matrix.**

Admittedly, K.G. Somapala was the owner of the house bearing No. 36/9 (21/3) Parakum Mawatha, Aththidiya, Dehiwala (hereinafter referred to as the subject matter) which is the corpus in this application.

In terms of section 13 of the Ceiling on Housing Property Law No. 1 of 1973 (as amended), one Samarage Victor Perera made an application to the Commissioner of National Housing to purchase the subject matter. The Commissioner of National Housing, by letter dated 17-08-1988 marked X2, informed K.G. Somapala that he has recommended to the Minister to vest the subject matter. K.G. Somapala lodged an appeal before the Board of Review against the said decision marked X2, and subsequently, the said appeal was dismissed (X3). Being aggrieved by the dismissal Order marked X3, K.G. Somapala made an application to the Court of Appeal, seeking a Writ of Certiorari to quash the Order marked X3<sup>1</sup>. The Court of Appeal dismissed the said application on the 27-02-1996 (X4).

Subsequently, the said applicant Samarage Victor Perera died on 20-06-1992<sup>2</sup>. As such, the Petitioner contends that Samarage Victor Perera's right to purchase the subject matter conferred by section 13 of the Ceiling on Housing Property Law No. 1 of 1973 (as amended), ceased upon the death of the said applicant and the application made by the said applicant comes to an end.

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<sup>1</sup> CA. Writ Application No. 608/89

<sup>2</sup> The death certificate is marked as X5.

Thereupon, K.G. Somapala made a complaint to the Ombudsman against the Commissioner of National Housing with regard to this matter. The Ombudsman made an Order on the 29-10-2001, holding that after the death of the tenant the application made under section 13 of the Ceiling on Housing Property Law No. 1 of 1973, will be terminated (X6).

Upon the death of the original tenant, Samarage Victor Perera and his spouse Evline Peiris, their children, namely the 1<sup>st</sup> and 2<sup>nd</sup> Respondents requested the Commissioner of National Housing to transfer the subject matter to them. K. G. Somapala objected to that application as well. By letter dated 14-10-2010, the Commissioner of National Housing informed K.G. Somapala that the subject matter is not a vested house under the Ceiling on Housing Property Law (X11). Thereafter, K.G. Somapala received a letter dated 07-01-2011 from the Commissioner referring to the said letter marked X11, stating that the tenant of the subject matter had submitted new facts, and therefore, the Commissioner is studying the file (X12).

The said K.G. Somapala made an application bearing No. CA.Writ 105/12 to the Court of Appeal seeking a Writ of Certiorari and a Writ of Prohibition against the Commissioner, from taking any further steps and dealing with the subject matter under the Ceiling on Housing Property Law. On 31-07-2013, the Court of Appeal dismissed the said application (X20). Being aggrieved by the said Order, the said K.G. Somapala made an application bearing No. SC (Spl) L.A. 233/2013 to the Supreme Court, seeking special leave to appeal, which was refused by the Supreme Court on the 30-06-2014 (X23). The Order of the Supreme Court reads thus;

*“We are of the view that this is not a fit matter in which we should interfere with the Judgment of the Court of Appeal and we, therefore, proceed to dismiss the application for Special Leave. We however observe from a perusal of document X2 that consequent to an application in terms of section 13 of Act No. 1 of 1973 that the decision had to be communicated to the Minister in charge of the subject of housing in terms of section 17 (1) of the Act. This requirement in terms of 17 (1) has not been complied with. We, therefore, direct the Commissioner for National Housing to proceed to take such steps within 03 months of the receipt of the Order with notice to the parties.”*

Thereafter, the Commissioner had dispatched a letter dated 19-08-2016 to the Minister of Housing, recommending to vest the subject matter (X24). Being aggrieved by the decision of the Commissioner, the said K.G. Somapala preferred an appeal to the Ceiling on Housing Property Board of

Review (X25). While the said appeal bearing No. 2757 was pending before the Board of Review, the said K.G. Somapala demised on 11-08-2017, and therefore, the Petitioner who is the son of late K.G. Somapala was substituted in place of the deceased.

While the said appeal was pending before the Board of Review, the two children of late Victor Perera, the original tenant, filed an application on the 29-03-2018 before the Supreme Court<sup>3</sup>, seeking a mandatory Order on the Commissioner directing him to expedite the procedure in completing the vesting of the subject matter and transferring title in terms of the law. On the 30-04-2019, of the consent of both Counsels, the Supreme Court terminated the proceedings on the basis that the relevant gazette, pertaining to the subject matter, has already been published (1R4).

Accordingly, it has been revealed that, by virtue of the gazette bearing No. 2116 dated 22-03-2019 the subject matter has been vested in the Commissioner of National Housing in terms of the provisions of the Ceiling on Housing Property Law (X28).

In these circumstances, the Petitioner is seeking to quash the vesting Order marked X28 and the decision of the Commissioner, recommending the vesting of the subject matter in him on the basis that the said decisions are unlawful, illegal and *ultra-vires*. Accordingly, the Petitioner seeks a Writ of Mandamus on the Commissioner, preventing him from transferring the subject matter to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

### **The contention of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents in a nutshell.**

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents in their statement of objections move for a dismissal of the application of the Petitioner on the footing *inter-alia* that;

1. The central issue in this application has already been determined by the Court of Appeal in its Orders marked X4 and X20. As such, the instant application is devoid of merits.
2. The said K.G. Somapala had purchased the subject matter over the head of the tenant, Victor Perera, and therefore, the former has no pure title to the same.

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<sup>3</sup> SC-LA 233/13.

### **The contention of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents.**

These Respondents have taken up the position that;

1. The decision of the Commissioner (X2) recommending to the Minister in charge of the subject of National Housing to vest the subject matter in the Commissioner, under section 17 (1) of the said Law, had been made prior to the death of the original tenant. As such, there is no legal impediment for the 4<sup>th</sup> Respondent to issue the impugned vesting Order marked X28.
2. These Respondents had acted in accordance with the judgments of the Court of Appeal (X4 and X20) and the Supreme Court (X23).
3. No fresh inquiry into the subject matter had been commenced after the enactment of the Ceiling on Housing Property (Special Provisions) Act No. 4 of 1988.

### **Determination.**

The central question that arises for determination before this Court is whether the application made by the tenant (Victor Perera) in terms of section 13 of the Ceiling on Housing Property Law can be proceeded with by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents after the death of the tenant.

In this regard, the learned President's Counsel for the Petitioner relied upon the observation made by the Supreme Court in **Leelawathi Vs. Manel Ratnayake**<sup>4</sup>. This is the case where the tenant applied in terms of section 13 of the Ceiling on Housing of Property Law No. 1 of 1973 to purchase the house let to her. The Commissioner for National Housing decided to recommend to the Minister the vesting of the house for sale to the tenant. On an appeal by the owner of the house under section 39 of the law, the Board of Review set aside the Commissioner's decision. The tenant moved the Court of Appeal by way of Certiorari to quash the Order of the Board of Review. The tenant died pending the hearing of the application and her daughter was substituted after which the Court set aside the Order of the Board of Review. His Lordship G.P.S.De Silva CJ (agreeing with Wijethunga and Bandaranayake, JJ) held that;

*“The tenant's right conferred by section 13 of the Ceiling on Housing Property Law is personal to the tenant making the application. That right ceased upon the*

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<sup>4</sup> 1998 (3) SLR-p349.

*tenant's death, and the Respondent is not entitled to proceed with the application under section 13 made by the original tenant."*

Further held that;

*"There is the significant fact that in the present case the tenant who made the application in terms of section 13 died before an Order was made by the Minister under section 17 (1) vesting the house in the Commissioner of National Housing. There was not even a notification by the Commissioner to the Minister under section 17 (1). Thus, the deceased tenant had no property rights in respect of the house which could pass to her heirs on her death."*

It is pertinent to be noted that the facts of Leelawathi's case and the facts of the present application are identical.

Undisputedly, in the instant application, the tenant, under section 13 of the said Law had made an application to the Commissioner to purchase the subject matter in 1976. During the pendency of the application, the tenant died in 1992. The vesting Order in dispute marked as X28 was made in 2019. In these respects, it is abundantly clear that, in terms of the observation made by the Supreme Court in Leelawathi's case, the said application of the tenant comes to an end as he died before the vesting Order in dispute was made. The deceased tenant had no property rights as to the subject matter which could pass to his heirs, namely the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

It is to be noted that the impugned vesting Order dated 22-03-2019 marked X25 was made by the Minister upon the recommendation dated 19-08-2016 of the Commissioner marked X24. The said recommendation was also made after the death of the tenant. The learned State Counsel for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents took up the position that the tenant had passed away in 1992 after the Commissioner had already made a decision under section 17 (1) of the said Law, and therefore, the principle enunciated in Leelawathi's case is not applicable to the instant application. Having scrutinized the Leelawathi's case it is manifestly clear that the pith and substance of the determination of the Supreme Court was that, before the vesting Order is made by the Minister, if the tenant passed away, his application made under section 13 of the said Act comes to an end.

In this context, it is the considered view of this Court that the recommendation made by the Commissioner marked X24 and the vesting Order marked X28 are contrary to the determination of the Supreme Court in Leelawathi's case, and accordingly, X24 and X28 are liable to be quashed on the ground of illegality and *ultra-vires*.

This Court is mindful of the fact that the aforesaid central question that arises for determination before this Court was not adjudicated and determined by the Court of Appeal and the Supreme Court in their Orders marked X4, X20, X23 and 1R4. Besides, the said Orders of Apex Courts are not impediments for the Petitioner to proceed with the instant application. Hence, I decline to accept the submission of the learned President's Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that the dispute in suit has already been adjudicated by the apex Courts against the Petitioner.

The learned President's Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, in the written submissions, has disputed the title of the said K.G. Somapala on the basis that he had purchased the subject matter over the head of the tenant. This fact is not relevant to the question in dispute and to the forgoing central question that arises for determination in this application.

For these reasons, I issue writs of Certiorari to quash the vesting Order bearing No. 2116 dated 22-03-2019 marked X28 and the recommendation of the Commissioner of National Housing marked X24. I issue a writ of Mandamus on the Commissioner preventing him from transferring the subject matter to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

I make no Order as to costs.

*Application allowed.*

**Judge of the Court of Appeal**

**S. U. B. Karalliyadde, J.**

I agree.

**Judge of the Court of Appeal**