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

In the matter of an application for Writ of Certiorari in terms of the provisions contained in Article Section 154(P) of the Constitution of the Democratic Socialist Republic of Sri Lanka read together with the provisions contained in Section 7of the provincial High Court (Special Provisions) Act No.19 of 1990.

Court of Appeal Revision Application
No: PHC(APN) 54/2015

Provincial High Court
Writ Application No. HCWA 03/2012

Buddhipala Amrasinghe
No.65/15, Rodney Street,
Borella.

Petitioner

Vs.

1. Ajith Chitradeva Kuruppu
2. Hasanthi Kuruppu
3. Ramani Champa Kuruppu
4. Chandanie Ramya Kuruppu
5. Maya Waruni Kuruppu
6. Hiran Sathindra Kuruppu
   All of 87, Rodney Street,
   Borella, Colombo 08.

   (More correctly No.67)
7. P. Leka Geethanjalie Perera
   The Former Commissioner of National Housing Western Province,
   Department of Housing,
   No.204, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

   Presently at No.89, Kaduwela Road,
   Battaramulla.

Respondents

In the matter of an application for Revision against the Judgement entered in the Provincial High Court of the Western province Writ Application No. HCWA 03/2012.

1. Ajith Chitradeva Kuruppu
2. Hasanthi Kuruppu

3. Ramani Champa Kuruppu
4. Chandanie Ramya Kuruppu
5. Maya Waruni Kuruppu
6. Hiran Sathindra Kuruppu

   All of 87, Rodney Street,
   Borella, Colombo 08.
   (More correctly No.67)

1st to 6th Respondent-Petitioners

Vs.

1. Buddhipala Amrasinghe
   No.65/15, Rodney Street,
   Borella

Petitioner-Respondent

7. P. Leka Geethanjalie Perera
   The Former Commissioner of National Housing Western Province,
   Department of Housing,
   No.204, Denzil Kobbekaduwa Mawatha,
   Battaramulla.

   Presently at No.89, Kaduwela Road,
   Battaramulla.

7a. Mrs. P.H. Colombage,
   The Commissioner of National Housing,
   Western Province,
   Department of Housing,
   No.89, Kaduwela Road,
   Battramulla.

7b. A.K. Nandanie H. Fernando,
   The Former Commissioner of
   National Housing Western Province,
   Department of National Housing,
   Western Province

   No.204, Denzil Kobbekauduwa,
   Mawatha, Battramulla.

7c. L.P. Manoja S.Pathirana
   Commissioner of Housing,
   Department of Housing Commissioner,
   Western Province.

9th Floor, No.204, Denzil
Kobbekauduwa
Mawatha, Battramulla.

7th,7a, 7b and 7c Respondent-Respondents

Before: Prasantha De Silva, J.
K.K.A.V. Swarnadhipathi, J.

Counsel: Ranjan Suwandaratne PC with Haritha Adikari for the 1st- 6th Respondent-Petitioners.
Senior State counsel Surange Wimalasena for the 7th Respondent-Respondents.
Rasika Dissanayake for the Petitioner-Respondent.

Written Submissions tendered on: 28.02.2020 for the Petitioner-Respondent
24.02.2020 for the 7a Respondent-Respondent
25.09.2018 for the 1st to 6th Respondent-Petitioners

Argued on: 01.04.2022

Decided on: 23.02.2023

Prasantha De Silva, J

Judgment

The Petitioner namely, Buddhipala Amarasinghe is the tenant of premises bearing No. 65/15, Rodney Street, Borella, Colombo 8. The 1st to 6th Respondents above named in the caption are the owners of the said premises bearing No. 65/15, Rodney Street, Borella, Colombo 8. The said 1st to 6th Respondents had made an application on 05.01.2009 to the 7th Respondent (the Commissioner of National Housing of the Western Province, under the provisions of Section 18(A) of the Rent Act No. 07 of 1972 as amended seeking to have the premises bearing Nos. 65/9, 65/10, 65/11, 65/12, 65/14, 65/15, 65/16 and 65/17 situated in Rodney Street, Borella, Colombo 8 demolished for the purpose of developing the same. Consequent to the said application, the said 7th Respondent-Respondent (hereinafter sometimes referred to as '7th Respondent') had decided to hold an inquiry.

After conclusion of the inquiry, the 7th Respondent had delivered the order on 10.02.2012 and held that Petitioner should hand over the vacant possession of premises bearing No. 65/15 to the owners of the said premises and had ordered the said 1st to 6th Respondent-Petitioners (hereinafter sometimes referred to as '1st to 6th Respondents') to pay Rs. 150,000/- as compensation to the Petitioner.

Being aggrieved by the said order of the 7th Respondent, the Petitioner had invoked the writ jurisdiction of the Provincial High Court of the Western Province holden in Colombo against the 1st – 7th Respondents in case bearing No. HCRA 03/2012, seeking a Writ of Certiorari to have the said order of the 7th Respondent dated 10.02.2012 quashed.

After objections and counter objections were filed by parties, the said application had been taken up for inquiry. Having considered the material placed before Court and having heard the Counsel who appeared for the respective parties, the learned High Court Judge has delivered the order on 10.03.2015 in favour of the Petitioner by quashing the Order of the 7th Respondent-Respondent (herein after sometimes refereed to on the 7th Respondent).

Being aggrieved by the said order, 1st to 6th Respondent-Petitioners have invoked the revisionary jurisdiction of this Court seeking to have the said Order of the learned High Court Judge set aside.

It should be noted that the original application made by 1st to 6th Respondents to the 7th Respondent (National Housing Commissioner of Western Province) sought to have premises bearing Nos. 65/9, 65/10, 65/11, 65/12, 65/14, 65/15, 65/16 and 65/17 situated in Rodney Street, Borella, Colombo 8 demolished in terms of Section 18A of the Rent Act No. 07 of 1972.

According to the order of the 7th Respondent, it was decided that Petitioner should hand over the vacant possession of premises bearing No. 65/15 to the owner, subject to the condition that a sum of Rs. 150,000/- is paid as compensation to the Petitioner.

The compensation of Rs. 150,000/- was computed by the 7th Respondent as follows;

- In terms of ඔප38, ten years' annual value of the subject matter would be a sum of Rs. 36,000/- (Rs. 3600 x 10)
- The market value of the subject matter would be a sum of Rs. 500,000/- and accordingly, 20% of the said value would be a sum of Rs. 100,000/-.

- In terms of the provisions of the Rent Act, the highest amount that could be compensated is a sum of Rs. 150,000/-.

From the above mentioned three options, the highest amount of Rs. 150,000/- was ordered to be paid to the Petitioner-Respondent as compensation. It was submitted on behalf of the 1st to 6th Respondent-Petitioners that 7th Respondent has placed reliance on the contents of the valuation report titled CM/CMC/LM/701 prepared by the provincial assessor of Assessor's Department.

It was the position taken up by the Petitioner-Respondent that Petitioner-Respondent did not get the opportunity to consider the valuation report submitted by the Government Valuer [අ9] in which the old building was valued at Rs. 500,000/. Furthermore, the Petitioner-Respondent has relied on the Valuation Report prepared by Licensed Valuer, M.T. Hilmy Farook dated 09.03.2012, in which the premises in question 'with the land' was valued at Rs. 3,420,000/-.

As such, it was alleged by the Petitioner-Respondent that he was not given the opportunity to question the Valuation Report [අ9] of the Government Valuer, as it was not produced in evidence at the stage of inquiry by the Landlord-Respondent-Petitioner. Furthermore, 7th Respondent-Respondent had not made even the simplest effort to explain the basis on which she relied upon the said valuation report [අ9] to arrive at her decision without making parties aware thereof.

Therefore, it was contended by the Petitioner-Respondent that failure to make the impugned Valuation Report [අ9] available at the inquiry had caused great prejudice to the Petitioner-Respondent and that Petitioner-Respondent was not given a fair hearing as a result of it. Accordingly, the Petitioner-Respondent has urged the Court to hold that 7th Respondent has blatantly violated the principles of natural justice by not giving the opportunity to rebut the contents in the Valuation Report marked 'අ9' at the inquiry.

On this basis, the learned High Court Judge has held that Petitioner-Respondent was not given an opportunity to respond to the evidence considered by the 7th Respondent with regard to the valuation of the Government Valuer and that it amounts to a violation of the rules of natural justice.

However, it can be observed that 7th Respondent has given the Petitioner-Respondent a fair hearing as the Tenant Petitioner-Respondent was given an opportunity to present his case in an open process. The decision also does not reflect any reasonable suspicion of

bias and is appropriate to the statutory and social context. Therefore, Learned High Court Judge has erroneously come to the conclusion that there was a breach of principles of natural justice.

Under section 114(d) of the Evidence Ordinance the Court may presume that judicial and official acts have been regularly performed. Section 114(d) implies that if it is proven that a judicial or official act has been performed, then in the absence of any other evidence, it shall be presumed that it had been done regularly.

In the case of ***Hemathilake Vs. Allina and Others [2003] 2 SLR 144*** it was emphasized that;

> "What section 114 of the Evidence Ordinance provides for is the common-sense advice that Court may from a proved fact infer another fact which it thinks is likely to be true regard being had to human conduct and the common course of natural events. The particular facts of each case must be carefully considered before any inference is drawn under section 114 of the Evidence Ordinance….."

Therefore, there is a presumption in favour of the 7th Respondent-Respondent (Commissioner of National housing) that the inquiry was conducted in a fair manner and that the valuation done by the chief valuer was conducted in a regular manner. It is for the Petitioner-Respondent to rebut this presumption.

Although the impugned valuation report was not produced in evidence at the inquiry before the Commissioner, the Tenant-Petitioner-Respondent had the opportunity of taking up the matter pertaining to valuation report at the inquiry. If the Petitioner-Respondent wanted to challenge it, he ought to have challenged it at the inquiry by raising questions regarding the said valuation report, in cross examination of the Landlord – 1st Respondent-Petitioner. Petitioner-Respondent had ample opportunity to cross-examine the 1st Respondent-Petitioner with regard to the valuation during the inquiry but has failed to do so. Thus, it seems that the Petitioner-Respondent had slept over his rights and thereby waived off the right to question about the impugned valuation report.

Although the Petitioner-Respondent had taken a valuation for the building sought to be demolished by a private valuer, it had not been produced by the Petitioner-Respondent at the inquiry to challenge the contents of the report of government valuer. Therefore, the Petitioner-Respondent is precluded from coming before this court and stating that 7th Respondent, who conducted the inquiry has violated the rules of natural justice by not

providing a fair trial. In this respect, court takes cognizance of Section 114(d) of the Evidence ordinance.

Furthermore, at the inquiry before the Commissioner, evidence had been led on behalf of the Landlord-1st Respondent-Petitioner. Although the impugned valuation report was not produced in evidence by the Landlord-Respondent-Petitioner, it appears that the Tenant Petitioner-Respondent had the opportunity of taking up the matter pertaining to the valuation report in cross examination since the Landlord-1st Respondent-Petitioner was cross examined on behalf the Petitioner-Respondent and the Petitioner-Respondent had the opportunity to question the Landlord-1st Respondent-Petitioner regard to the government valuation. If he wanted to challenge it, he ought to have challenged it at the inquiry stage. It should also be noted that although Petitioner-Respondent, had taken a valuation for the building sought to be demolished by a private valuer, it has failed to produce the private valuer's report at the inquiry. Thus, the Petitioner-Respondent is precluded from saying that 7th Respondent-Commissioner of the National Housing, by whom the inquiry was conducted, violated the rules of natural justice in not providing a fair trial.

Furthermore, Petitioner-Respondent had adduced evidence at the inquiry and stated that his predecessors were in occupation of the impugned premises as tenants since 1931 and that Petitioner-Respondent carried out repairs to the said premises and virtually reconstructed it to a substantial house. However, the 7th Respondent-Respondent Commissioner had decided that improvements mentioned by the Petitioner-Respondent are mere repairs, that the impugned premises cannot be considered as a new building and that improvements and repairs done by the Petitioner-Respondent were done without authority. The 7th Respondent has also considered whether the Respondent-Petitioner had capacity to make renovations to the property concerned and has concluded based on the documents related to assets and banking documents provided that the Respondent-Petitioner has the capacity to proceed with the renovations.

Based on these observations, the 7th Respondent had determined compensation to be paid to the Petitioner-Respondent as Rs. 150,000/-, restricted to the valuation made by the chief valuer and excluding the costs of improvements supposedly done by the Petitioner-Respondent. Order also states that Petitioner-Respondent should handover possession of the said property within 90 days to the 1st Respondent-Petitioner for the purpose of carrying on with the development work.

The said order has been made in terms of Section 18A(1) of the Rent Act No. 55 of 1980 and Act No. 26 of 2002 as amended. In terms of Section 18A(2)(b)(ii), the Commissioner of National Housing has to order the owner of the building to pay compensation to the tenant, such compensation as the Commissioner determines to be reasonable for the loss of possession by such tenant. The amount ordered to be so paid shall in no case be less than ten years' annual value of the premises calculated as at the date of the application for demolition or, 20% of the market value of the premises as determined by the Chief Valuer as at the date of the application for demolition or Rs. 150,000/-, whichever higher.

Since the annual value of the premises is Rs. 3600, for a period of ten years, it amounts to Rs. 36,000/-. The market value was determined by the Chief Valuer as Rs. 500,000/- and twenty per centum of the market value is Rs. 100,000/-. Thus, the higher value is Rs. 150,000/-.

The main grievance of the Petitioner-Respondent is the Chief Valuer valuing the premises for Rs. 500,000/-, which the private valuer had valued for Rs.3,420,000/. It was the contention of the Petitioner-Respondent that it is illogical to assume the market value of a property situated in Borella as Rs. 500,000/- as at 05.01.2009 and it was further contended that the valuation report ෙ9 does not bear any description or any explanation to justify the calculation of Rs. 500,000/-.

In order to assess whether the valuation by the Chief valuer is proper, we must first interpret the term market value of the 'premises' under Section 18A (2) of the Rent Act No. 07 of 1972 as amended. When construing the intention of the Legislature, one must consider the nature of the statute.

Section 18A (2) of the Rent Act refers to the market value as;

> "Twenty per centum of the market value of the premises as determined by the Chief Valuer as at the date of the application for demolition."

It was argued by Petitioner-Respondent that 'premises' means, "any building or part of a building together with the land appertaining thereto" based on the interpretation given in section 48 of the Act and that Chief Valuer had not properly valued the premises including the building and the land.

When interpreting the word 'premises' indicated in Section 18A (2), it is plausible to apply the purposive rule of interpretation, which provides for an interpretation which gives effect to the purpose of the statute, where the alternative interpretation frustrates the purpose of the statutory provision.

As held in the case of ***Priyavarte Mehta Vs. Amrendu Banerjee [1997] AIHC 4292***;

> "…….When the plain meaning results in absurdity, inconsistency or ambiguity or defeats the purpose or object of the provisions, then the rule of interpretation can be applied to find out the intendment or the object of the relevant provision….."

Hence, if the word "premises" means, "any building or part of a building together with the land appertaining thereto", it results in absurdity, inconsistency, ambiguity and defeats the purpose or object of the provision as the 'premises' in question with the land was valued at Rs. 3,420,000/- by the Private Valuer, which is more than six times the valuation of the Government Valuer.

It should be noted that the description given to "premises" in the 10th edition of Black's Law Dictionary, is "building, property, establishment, office, grounds, estate, site, place". Thus, it is seen that Black's Law Dictionary defines the term premises as a 'building'.

The marginal note of Section 18A of the Rent Act deals with an order for "Demolition of '*buildings*' over fifty years old". The importance of a marginal note for interpretation of Sections was emphasized in **Bindra's Interpretation of Statutes 12th edition 2017, pg. 280**;

> "Courts have settled that marginal notes are to be construed as if they were a part of the Section. Marginal notes form a guide to the mind and intendment of the Legislature……It can afford little guidance to the construction of an enactment, especially when the language is plain and unambiguous."

Section 18A (2) states;

> "Where the Commissioner for National Housing makes an order under subsection (1) authorizing the owner of a building to demolish such building, the Commissioner shall-..."

Marginal note of Section 18A refers to demolition of a building. Therefore, in view of the wordings of Section 18A (2), it is clear that legislature intended to value only the building sought to be demolished. Thus, the word 'premises' used in Section 18A (2) does not consist of the land.

In the case of ***The Film Exhibitors, Guild And ... Vs. State Of Andhra Pradesh And Others, [AIR 1987 AP 110]*** it was held;

> "But in construing the machinery provisions to make the machinery workable *ut res valeat potius quam pereat*, i.e., the Court would avoid that construction which would fail to relieve the manifest purpose of the legislation of the presumption that the legislature would enact only for the purpose of bringing about an effective result. It is not the function of the Court to hunt out ambiguities by strained and unnatural meaning; close reasoning is to be adopted; harmonious construction is to be adhered to; all the relevant provisions are to be read together to gather the intention from the language employed, its context, and give effect to the intention of the legislature."

It was pointed out on behalf of the Respondent-Petitioners that premises can be situated within a land which can vary from 8 perch to even 30 perch and if the property is valued, to pay 20% of the value of the building as well as the land, the owner of the property has to pay as compensation an amount that will exceed the value of the building that is to be constructed. This will frustrate the very purpose of the aforementioned provisions brought in by the Legislature, the intention of promoting the landowners to construct new buildings in place of old buildings which are over 40 years.

Moreover, if an old house over 40 years, situated in a 8 to 10 perch land in highly residential urban areas such as Colombo 3,4,5,6,7,8,9,10 is to be demolished and the Government Valuer is directed to ascertain the market value of the land, house and the rental value, the valuation of even the said small portion of land will be extremely high and obviously be above the cost of constructing a new building. If the Commissioner directs the Tenant to pay 20% of the said market value which consists of land as well as the building, no Landlord in an urban area will be able to utilize Section 18A to construct new houses in places where extremely old houses in dilapidated condition belonging to them are situated.

Therefore, it is plausible to compute the value of the premises by considering the square area of the building, facilities of the building, the present rental and market value of the building, without considering the value of land where the house is situated.

In the instant case, premises concerned is not the land, but the old building, which is over 40 years. Thus, Section 18A (2) of the Act speaks of a valuation that should necessarily be in relation to the building sought to be demolished, which is the subject matter of the said application of the Landlord-1st Respondent-Petitioner.

Landlords-Respondent-Petitioners have submitted that the valuation should exclude the value of the land as it will be an extremely high amount when considering the area where the building is situated. On the contrary, Petitioner-Respondent has submitted the valuation given by the private valuer as the value of the land.

However, private valuer has valued the 'premises' including the building as well as the land. In such an instance, if market value of the land is considered, the whole purpose of Section 18A and the specific intention of the Legislature in introducing the said provisions with regard to demolition of an old building for the purpose of development will be frustrated and no owner would be able to develop a land with a tenant in terms of Section 18A (2) of the Rent Act No. 07 of 1972 (as amended)

Therefore, it clearly manifests that the word "valuation" contemplated in Section 18A (2) (ii) does not intend to value the land where the building in question is situated and the actual value necessary to be calculated for the purpose of Section 18A of the Rent Act No. 07 of 1972 (as amended) is only the valuation of the old building.

Hence, I am of the view that the statutory interpretation of 'premises' referred to in Section 18A(2)(i) and (ii) is confined only to the building. As such, the Chief Valuer valuing the old building for Rs. 500,000/- is reasonable. It is obvious that the private valuer Mr. Hilmy has valued the old building with the land for Rs. 3,420,000/- and it does not come within the purview of Section 18A (2) (ii) of the Rent Act.

In this respect, it is noteworthy, that the principal enactment of Rent Act No. 07 of 1972 was enacted on the 1st of March 1972. The word 'premises' in Section 48 of the principal enactment too was defined in year 1972. However, Section 18A with regard to demolition of buildings over 40 years old was introduced in year 1980 by Act No.55 of 1980.

As there was no provision regarding demolition of a building in the principal enactment, term 'premises' has been defined as a building or part of a building together with the land appertaining thereto in the principal Act. This definition is not in line with the meaning of term 'premises' referred to in Section 18A (2)(ii), as Section 18A(2)(ii) was introduced in year 1980, for the purpose of allowing the demolition of old buildings to facilitate new constructions.

This indicates that the intention of the legislature in view of Section 18A (2)(ii) of the Amended Act was to define 'premises' as a 'building. This interpretation is supported by the definition provided in Black's Law Dictionary to 'premises' as explained above.

Therefore, this court concludes that Chief Valuer has made a proper valuation by considering the only the value of the impugned building sought to be demolished.

Although the Respondent-Petitioners had made the application in terms of Section 18A (2) of the Rent Act and obtained an order for demolition in year 2012, the matter is still pending in Court more than a decade later. Hence, it is apparent that rights of the Landlords-Respondent-Petitioners had been prejudiced by the objections raised by the Petitioner-Respondent. Petitioner-Respondent has been in possession of the premises for the last 10 years after the order was issued by the Commission of National Housing paying a meagre sum as rent.

It should also be noted that Respondents have attempted to reach a settlement with the Petitioner-Respondent by providing alternate accommodation in Kaduwela, Athurugiriya and Homagama, as provided for under section 18A(2)(b)(i) of the Rent Act (as amended). Respondent-Petitioner had also agreed to provide a sum of money as settlement or to pay rent, if the tenant arranges an alternate accommodation for himself. However, Petitioner-Respondent was not willing to accept both such proposals.

Moreover, as the construction was put to a halt by Petitioner-Respondent continuing to be in possession of the above premises, Respondent-Petitioners are most likely to sustain a relatively higher amount of cost due to the massive increase in building materials at present. This has caused the Landlords-Respondent-Petitioners a grave injustice.

It should also be noted that, Section 18A (2) of the Rent Act (as amended) does not provide any party to challenge the valuation of the Chief Valuer or to conduct an inquiry to decide whether to accept or reject the market value of the premises determined by the Government Valuer. The 7th Respondent Commissioner has to decide what is the highest amount out of three categories that has been clearly spelt out in terms of Section 18A(2)(ii) of the said Act.

As such, it is clear that in terms of Section 18A(2)(b)(i) and (ii) of the Rent Act, the Commissioner of National Housing shall order the owner of the building to pay as compensation, an amount which should not be less than ten years' annual value of the premises calculated as at the date of the application made for demolition or an amount which is twenty per centum of the market value of the premises as determined by the Chief Valuer as at the date of the application for demolition, or Rs. 150,000/-, whichever higher. Hence, the minimum compensation that can be paid to a tenant in terms of Section 18A (2) (ii) is Rs. 150,000/-.

In view of the relevant provisions of the Rent Act as amended, the 7th Respondent-Commissioner has acted within the scope of duties entrusted to her and conducted the inquiry according to the principles of natural justice.

On this basis, it is apparent that the learned High Court Judge has failed to properly consider the legal provisions, the evidence led at the inquiry and the scope of writ jurisdiction. An administrative decision can be quashed on the ground of illegality, irrationality, and procedural impropriety. However, the learned High Court Judge had not addressed her mind to the said grounds but come to an erroneous conclusion that the 7th Respondent Commissioner had blatantly violated the rules of natural justice of the Petitioner-Respondent and held against the Respondent-Petitioners. In view of the aforesaid reasons, the Order of the learned High Court Judge dated 10.03.2015 cannot be allowed to stand as it has an effect of frustrating all applications under Section 18A of the Rent Act No. 7 of 1972 as amended.

Therefore, I hold that the learned High Court Judge has erred in law and facts and come to an erroneous conclusion by deciding the application in favour of the Petitioner-Respondent. We set aside the Order of the learned High Court Judge dated 10.03.2015 and uphold the order of the 7th Respondent-Commissioner of National Housing (Western province) and allow for the continuation of the application made by the Respondent-Petitioner to the 7th Respondent under Section 18A (2) of the Rent Act. The Respondent-Petitioner is entitled comply with the order dated 10.02.2012 of the 7th Respondent-Commissioner of National Housing.

We allow the application for revision made by the 1st- 6th Respondent-Petitioners.

Application allowed.

JUDGE OF THE COURT OF APPEAL

K.K.A.V. Swarnadhipathi, J.
I agree.

JUDGE OF THE COURT OF APPEAL