

**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 Writ of *Certiorari*, *Prohibition* and  
*Mandamus* under article 140 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka**

Mr. R.B.L.E. Wijesuriya,  
No. 43-2/2, Gregory's Road,  
Colombo 07.

**PETITIONER**

**CA/WRIT/ 92/2014**

Board of Review Appeal No 2746

CHP File No. CH/0/1033

Vs,

1. Mr. Raja Goonaratne,  
Commissioner for National Housing,  
National Housing Department,  
Sethsiripaya,  
Battaramulla.

**RESPONDENT- RESPONDENT**

- 1A. Dr. W.M. Karunadasa,  
Commissioner for National Housing,  
National Housing Department,  
Sethsiripaya,  
Battaramulla.

**ADDED RESPONDENT-RESPONDENT**

2. Mr. O.R.Jansen (Chairman)
3. Miss R.Y.Amarasinghe

4. Mr. J.M. Bandara
5. Mr. W.N.R.P. Wijepala

All being members of the Ceiling Housing  
Property Board of Review,  
No. 10, Sri Vipulasena Mw,  
Colombo 10.

### **RESPONDENTS**

And now,

Rohan Ajith Senanayake,  
No. 96/ 5,  
Kithulwatte Road,  
Colombo 08.

### **INTERVENIENT- PETITIONER**

Vs,

Mr. R.B.L.E. Wijesuriya,  
No. 43-2/2, Gregory's Road,  
Colombo 07.

### **PETITIONER- RESPONDENT**

1. Mr. Raja Goonaratne,  
Commissioner for National Housing,  
National Housing Department,  
Sethsiripaya,  
Battaramulla.

### **RESPONDENT- RESPONDENT- RESPONDENT**

1A. Dr. W.M. Karunadasa,  
 Commissioner for National Housing,  
 National Housing Department,  
 Sethsiripaya,  
 Battaramulla.

**ADDED RESPONDENT-RESPONDENT-RESPONDENT**

1. Mr. O.R.Jansen (Chairman)
2. Miss R.Y.Amarasinghe
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All being members of the Ceiling Housing  
 Property Board of Review,  
 No. 10, Sri Vipulasena Mw,  
 Colombo 10.

**RESPONDENTS -RESPONDENTS**

**Before:**    **Vijith K. Malalgoda PC J (P/CA) &  
 H.C.J. Madawala J**

**Counsel:**    K. Sri Gunawardane with C.Ladduwahetty for the **Petitioner-Respondent**

Avindra Rodrigo with Akiel Deen and Shamalie Jayathunge

for the **Intervenient-Petitioner**

Chaya Sri Nammuni with Champika Laduwahetti for the **Respondent-Respondents**

Support for Intervention On: 14.09.2015

Written Submissions On: 05.10.2015

**Order On: 11.12.2015**

## **Order**

### **Vijith K. Malalgoda PC J (P/CA)**

Petitioner –Respondent R.B.L.E Wijesuriya has come before this court seeking inter alia,

- b. Grant and issue a mandate in the nature of *Writ of Certiorari* quashing the order of the (Board of Review in Appeal No.2746 (X-10) and the decisions embodied in documents marked X-6 and X-6 (a) send to the Petitioner by the 1<sup>st</sup> Respondent.
- c. Grant and issue a *Writ of Mandamus* directing the 1<sup>st</sup> Respondent to grant permission to the Petitioner in terms of section 17C of the Ceiling on Housing Property Law to sell and dispose premises bearing Assessment No. 43-2/2 Gregory's Road, Colombo 07.

The Petitioner has made the Commissioner of National Housing as the 1<sup>st</sup> Respondent to the present application and the members of the Ceiling on Housing Property Board of Review as 2-5 Respondents to the application. The Application was supported for notices on 16.05.2014 and the court made order issuing notices on all the Respondents on that day. Since then this case has gone down for several days for objections of the said Respondents. On 26.05.2015 papers were filed before this court by Rohan Ajith Senanayake for intervention to the present application. Since the Petitioner-Respondent has objected for the above intervention this court decided to inquire into the said application for intervention.

The position taken up by the Intervenant- Petitioner before this court was that the Petitioner-Respondent had willfully suppressed the existence and/or the contents of Court of Appeal Writ Application No.81/ 2013 which concerns the identical premises that forms the subject matter of the present Writ application and therefore the Intervenant –Petitioner is a necessary party to the present application.

Intervient –Petitioner has further submitted before this court that he was the owner of the premises bearing Assessment No. 43-2/2 Gregory’s Road, Colombo 07 prior to its vesting in the Commissioner of National Housing by operation of the Ceiling on Housing Property Law No. 1 of 1973. Several years later the said property was transferred in the name of the Petitioner- Respondent by the 1st Respondent- Respondent on 2<sup>nd</sup> January 2012. Against the said transfer the Intervient-Petitioner filed a Court of Appeal Writ Application No. 81/2013 challenging the said transfer praying inter alia,

- I. A *Writ of Certiorari* quashing the transfer of the Premises No. 43-2/2 Gregory’s Road, Colombo 07 from the Commissioner of National Housing to the 3<sup>rd</sup> Respondent (Petitioner-Respondent to the present application).
- II. A *Writ of Mandamus* directing the 1<sup>st</sup> Respondent to divest the Premises No 43-2/2 Gregory’s Road, Colombo 07 to the Petitioner (Intervient-Petitioner to the present application).

In view of the above submission, the Intervient- Petitioner has taken up the position that the Petitioner –Respondent to the present application was under a clear duty to disclose the existence and/or the contents of the said application and the said willful suppression warrants dismissal of the present application in limine or permitted the Intervient-Petitioner to intervene in the present application since he is a necessary party to this action.

Whilst objecting the intervention by the Intervient – Petitioner, the Petitioner-Respondent submitted that when the Ceiling on Housing Property Law No 1 of 1973 came in to operation the Premises No. 43- 2/2 Gregory’s Road, Colombo 07 become vested in the 1<sup>st</sup> Respondent-Respondent as an excess house of the Intervient – Petitioner. The Petitioner-Respondent who was the tenant of the said premises at that time had signed an agreement to purchase the said property.

However on representation made by the said Intervenant-Petitioner to the 1<sup>st</sup> Respondent –Respondent, the said premises were divested on him on or around 05.08.1985. Being dissatisfied with the said decision to divest the property in question, the Petitioner –Respondent had come before the Court of Appeal and by its order dated 11.02.2003 the Court of Appeal quashed the said divesting order. The Intervenant-Petitioner then appealed to the Supreme Court against the said decision and the Supreme Court by Judgment dated 29.01.2009 affirmed the Judgment of the Court of Appeal. According to the Petitioner-Respondent the 1<sup>st</sup> Respondent-Respondent had taken 3 years thereafter, and finally on 02.07.2012 a transfer deed was executed in favour of the Petitioner-Respondent. With the said deed of transfer the Petitioner-Respondent had become the owner of the Premises No 43 2/2, Gregory Road, Colombo 07.

According to the Petitioner-Respondent, thereafter on 28.11.2012 he has made an application under section 17 ( c) of the said Act, seeking permission from the 1<sup>st</sup> Respondent –Respondent to sell the said property. However the 1<sup>st</sup> Respondent-Respondent had turned down the said application and the Petitioner-Respondent had appealed against the said order of refusal to the 2<sup>nd</sup> to 5<sup>th</sup> Respondent-Respondents who functioned as Ceiling on Housing Property Board of Review. The said board by its order dated 21<sup>st</sup> January 2014, refused the appeal and the Petitioner-Respondent had filed the present application before this court against the said decision of the 2<sup>nd</sup> to 5<sup>th</sup> Respondents seeking inter alia, to issue a Writ of *Certiorari* to quash the said decision and a Writ of *Mandamus* directing the 1<sup>st</sup> Respondent –Respondent to grant permission under section 17 (c) of the Ceiling on Housing Property Law to sell and dispose the said property.

The court observes at this stage that the Petitioner-Respondent is the lawful owner of the Premises bearing No. 43 2/2 Gregory Road, Colombo 07 after the execution of the transfer deed by the 1<sup>st</sup> Respondent-Respondent on 02.07.2012. The question of ownership of this property is not an issue before this court and the question before this court is the validity of the Order made by the 2<sup>nd</sup> to 5<sup>th</sup> Respondents in their capacity as members of the Ceiling on Housing Property Board of Review. If the

Intervient –Petitioner intends to challenge the deed of transfer executed by the 1<sup>st</sup> Respondent- Respondent, his cause of action is not before this court and therefore the Petitioner- Respondent is not guilty of concealing material facts before this court, for the reason that the Intervient-Petitioner seized to be the owner of the said property after the decision of the Supreme Court confirming the decision of the Court of Appeal to quash the divesting order dated 05.08.1985. As referred by me in this order the question before us is only to decide the validity of the order dated 21.01.2014 and the Intervient- Petitioner is not a necessary party to reach a decision on the matter before this court.

In the case of *L.U.P. Jayawardena V. Minister of Health and Others* [CA Writ Application No. 978/2008- CA minutes of 21.05.2009] the Court of Appeal held that;

“What the court at this point of time need to consider is whether the intervenient party is a necessary party and having such party in the case would in all circumstances assist court in considering the merits and demerits of the application before court.”

Having gone through the material placed by all the parties, I am of the view that Intervient – Petitioner is not a necessary party for the present application before this court and also conclude that his presence to the present application will not assist the consideration of the present application before us. Therefore I decide to dismiss the application by the Intervient-Petitioner to intervene in this application Intervention is Refused.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala J**

I agree,

**JUDGE OF THE CUORT OF APPEAL**