

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

In the matter of an application for Orders in the nature of Writs of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA-WRT-168/2023

Malhami Arachchige Dona Shyamalie Janitha Perera

No. 51/1, Kandangamuwa, Loluwagod

Mirigama

Petitioner

Vs.

1. Commissioner of National Housing
Ministry of Housing, Construction and Culture Affairs
2nd Floor, 'Sethsiripaya' Battaramulla.
2. D.M. Swarna Disssanayake
Commissioner of National Housing
(Acting)
(Legal Officer)
Ministry of Housing, Construction and Culture Affairs
2nd Floor, 'Sethsiripaya' Battaramulla.
3. Manoranjithan Sritharan
Former Commissioner of National Housing and Culture Affairs, 2nd Floor
'Sethsiripaya' Battaramulla

4. Prasanna Ranatunga
Minister of Urban Development and
Housing
6-7th Floor, “Sethsiripaya’
Battaramula.
5. Wattamparam Welage Sheela Kumari
No. 93/1, Kanatta Road
Thalapathpitiya
Nugegoda.

Respondents

AND NOW BETWEEN

Malhami Arachchige Dona Shyamalie Janitha
Perera
No. 51/1, Kandangamuwa, Loluwagod
Mirigama

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3. Manoranjithan Sritharan
Former Commissioner of National
Housing and Culture Affairs, 2nd Floor
'Sethsiripaya' Battaramulla
4. HionA Anura Karunahilake
Minister of Urban Development
Construction and Housing
6-7th Floor, 'Sethsiripaya'
Battaramulla.
5. Wattamparam Welage Sheela Kumari
No. 93/1, Kanatta Road
Thalapathpitiya
Nugegoda.

Petitioner

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: Waruna Nanayakkara for the Petitioners
Avanti Weerakoon, SC for the 1st and 2nd Respondents.
Vipuli Manikkuge for the 5th Respondent

Supported On: 13.11.2024

Written 02.12.2024 (by the Petitioner)

Submissions: 18.11.2024 (by the 1st and 2nd Respondent)

On 02.12.2024 (by the 5th Respondent)

Judgment On: 19.12.2024

JUDGMENT

B. Sasi Mahendran, J.

The Petitioner instituted this action praying for the following reliefs in the petition dated 24.03.2023.

- a) Issue notice on 1st, 2nd, 3rd, 4th and 5th Respondents;
- b) Call for and examine the entire Record and Papers pertaining to the subject matter of this application been held by the 1st Respondent Authority/Establishment;
- c) Issue a Writ of Certiorari quashing the decision of the 1st, 3rd and 4th Respondents to transfer of the premises bearing Assessment No 106/1 and now (93/1) formally Baptist Mawatha and now (Kanatha Road), Thalapathpitiya, Nugegoda.
- d) Issue A Writ of Certiorari quashing the transfer of the premises bearing Assessment No 106/1 and now (93/1) formally Baptist Mawatha and now (Kanatha Road), Thalapathpitiya, Nugegoda from the 1st Respondent Commissioner of National Housing to the 5th Respondent by way of Deed of Conveyance bearing No: 17469 dated 12.01.2010 and certified by the 3rd Respondent Manoranjitharan Sritharan, the then Commissioner of National Housing.
- e) Issue A Writ of Certiorari to quash the Deed of Conveyance bearing No: 17469 dated 12.01.2010,
- f) Grant costs and;
- g) Grant such other and further relief as to Your Lordships' Court shall seem meet.

Briefly, the relevant facts of the case are stated as follows:

As per the petition, the Petitioner is the daughter of one Malhami Arachchige Don Justin Perera who lived as a tenant under the National Housing at assessment No. 106/1 (now

93/1) formally Baptist Mawatha and now Kanatha Road, Thalapathpitiya, Nugegoda. The Petitioner states that the Petitioner's mother left the matrimonial home due to a matrimonial dispute and thereafter, the Petitioner's father, the said Justin Perera had an extramarital relationship with the 5th Respondent as a result of which the 5th Respondent came to live in the impugned premises in 1976. The Petitioner avers that the Petitioner's father passed away on 05.07.1995 who was the permanent tenant of the said premises which comes under Ceiling on Housing Property Law No. 1 of 1973 until his demise.

The Petitioner contends that subsequent to the death of the Petitioner's father, the 5th Respondent has fraudulently tendered the documents representing as the widow of late Don Justin Perera to the 1st Respondent and requested to effect a deed of transfer in her favour in respect of the said premises. Later, the 5th Respondent obtained the ownership of the property by Deed No. 17469 executed on 12.01.2010 between the 3rd Respondent and the 5th Respondent.

The main ground urged by the Petitioner is that, the said transfer of the property to the 5th Respondent by the 1st Respondent on the basis that the 5th Respondent was the wife of late Don Justice Perera by producing false documents is illegal and ultra vires.

We are mindful that the said deed bearing No. 17469 was executed on 12.01.2010. However, the Petitioner filed this application on 24.03.2023. It is to be noted that the Petitioner has failed to disclose the reasons for the delay in seeking relief from this Court.

Further, we note that there is no indication in the petition as to when the Petitioner instituted the application in the District Court of Nugegoda.

When we peruse the said deed marked as X7, the 1st Respondent had taken action to transfer the deed to the 5th Respondent under Section 12 (2) of the Ceiling on Housing Property Law No. 1 of 1973 which reads as follows:

“Where the commissioner is of the opinion that any house transferred under subsection (1) is required for the purposes of the redevelopment of the area in which such house is situated, he may, by notification published in the Gazette, cancel, with effect from such date as may be specified in such Notification, the instrument of disposition by which such house was so transferred upon the cancellation of any such instrument, the title to the house in respect of which such instrument was execute shall revert to, and vest in, the commissioner free from all encumbrances.”

According to the said Section, it gives discretion to the Commissioner to sell the property to any other person if the tenant does not accept the offer by the Commissioner. In the instant case, the original tenant; Justin Perera passed away on 05.07.1995. However, this transfer took place on 12.01.2010. Further, we observe that the 5th Respondent has paid consideration of Rs. 21,900/- for the said transfer.

The question before is by transferring the property to the 5th Respondent, has the Commissioner exceeded his authority. This was considered by His Lordship S. Sriskandarajah J in Fernando Vs. Commissioner of National Housing & another, CA WRIT 2053/2003 decided on 02.05.2008, 2008 BLR page 266 at page 268 held that:

“Under the above provision (Section 12) the Commissioner is entitled to sell the said premises to the tenant, if there is no recognised tenant he could sell it to any person. In these circumstances the Commissioner has not exceeded his authority in offering the said premises for sale to the 2nd Respondent first and if he fails to accept, to offer it to the Petitioner. As the 2nd Respondent is in continuous occupation of the said premises the said decision cannot be considered as unreasonable.”

We also note that there is no evidence placed by the Petitioner that the 5th Respondent claimed or demanded the particular deed to be transferred in her name as a successor to the tenant.

During the argument stage, the Counsel for the 5th Respondent brought to the notice of the Court that in the document marked X8, the 5th Respondent indicated that although she and the deceased original tenant lived as husband and wife, she was not legally married to him. Her claim was that she continuously occupied the said premises. This shows that the 5th Respondent did not misrepresent the facts to the 1st Respondent when the deed was transferred.

In the instant case, the Petitioner challenges the decision of the 1st Respondent by way of an application for judicial review.

The concept of judicial review is considered in the following judgment.

In Reg. v. Hull University Visitor, Ex. P., 1993 Appeal Cases, page 682, at page 700, Lord Browne Wilkinson J. held;

“Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223), reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is

Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully.”

In the instant case, the Petitioner has failed to establish that the decision made by the 1st Respondent falls within any of the grounds for judicial review and thereby is ultra vires.

Thus, this Court holds that the decision of the 1st Respondent marked as X8 is in accordance with law.

For the above said reasons, we dismiss the application with cost.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL