

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**  
**SRI LANKA**

In the matter of an Application for Special Leave to  
Appeal in terms of Article 128 of the Constitution

P.N. Maharajah,  
No. 133/5, Nawala Road,  
Narahenpita,  
Colombo 05.

**Deceased-Petitioner**

1. Nagan Maharajah Weerasingham,
2. Muniyandi Aswath Ammal
3. Nagam Maharajah Nirmala

All of,  
No. 133/5, Nawala Road,  
Narahenpita, Colombo 05.

4. Nagam Maharajah Thilagawathie
5. Nagam Maharajah Thilakarane

Both of,  
No. 16/10, Liyanage Mawatha,  
Nawala Road, Rajagiriya.

**Substituted-Petitioners**

**SC. Appeal No. 121/2010**

**SC (SPL) 286/2008**

**CA/Writ/1923/2006**

Vs,

1. Hema Wijesekara,  
The Commissioner of National Housing,  
National Housing Department,  
"Sethsiripaya" Battaramulla.
2. Perumal Muniyandi Sundarammal (Deceased),  
No. 133/5, Nawala Road,  
Narahenpita, Colombo 05.

3. M.S. Jaldeen
4. H. Akurugoda
5. R.W.M.S.B. Rajapakse
6. N.T. Padmadasa

All members of the Board of Review under Ceiling  
on Housing Property Law  
No. 10G, Sri Vipulasena Mawatha,  
Colombo 10.

#### **Respondents**

7. Sunil Kannangara  
Director-Housing,  
National Housing Department,  
'Sethsiripaya' Battaramulla.

#### **Added Respondent**

#### **Now Between**

1. Nagan Maharajah Weerasingham,
2. Muniyandi Aswath Ammal
3. Nagam Maharajah Nirmala

All of,  
No. 133/5, Nawala Road,  
Narahenpita, Colombo 05.

4. Nagam Maharajah Thilagawathie
5. Nagam Maharajah Thilakarane

Both of,  
No. 16/10, Liyanage Mawatha,  
Nawala Road, Rajagiriya.

#### **Substituted-Petitioners-Petitioners**

1. Hema Wijesekara,  
The Commissioner of National Housing,  
National Housing Department,  
"Sethsiripaya" Battaramulla.

2. Perumal Muniyandi Sundarammal (Deceased),  
No. 133/5, Nawala Road,  
Narahenpita, Colombo 05.  
  
2A. Kasamuthu Singiah  
No. 133/6, Nawala Road,  
Narahenpita, Colombo 05.  
  
2B. Kasamuthu Sinniah  
No. 133/5, Nawala Road,  
Narahenpita, Colombo 05.
3. M.S. Jaldeen
4. H. Akurugoda
5. R.W.M.S.B. Rajapakse
6. N.T. Padmadasa

All members of the Board of Review under Ceiling  
on Housing Property Law  
No. 10G, Sri Vipulasena Mawatha,  
Colombo 10.

#### **Respondents-Respondents**

7. Sunil Kannangara  
Director-Housing,  
National Housing Department,  
‘Sethsiripaya” Battaramulla.
8. Raja Gunaratne  
The Commissioner of National Housing,  
National Housing Department,  
“Sethsiripaya” Battaramulla
9. Dr. M. Karunadasa  
The Commissioner of National Housing,  
National Housing Department,  
“Sethsiripaya” Battaramulla

10. S. Collure

The Commissioner of National Housing,  
National Housing Department,  
“Sethsiripaya” Battaramulla

**Added Respondents-Respondents**

**Before:**           **Sisira J. De. Abrew J**  
                          **Priyantha Jayawardena PC J**  
                          **Vijith K. Malalgoda PC J**

**Counsel:**        S.N. Vijithsingh for Substituted Petitioners-Petitioners  
                          Ms. Yuresha De. Silva SSC for the 10<sup>th</sup> Added Respondent-Respondent  
                          A.C.F. Benazir for 2A and 2B Substituted Respondents-Respondents

**Argued on**      **26.10.2017**  
**Decided on**     **19.02.2018**

**Vijith K. Malalgoda PC J**

The Substituted Petitioners Petitioners have filed the present special leave to appeal application against the decision by the Court of Appeal in CA/Writ Application No. 1923/2005. When this matter was supported, this court had granted special leave on the questions of law raised in sub-paragraphs (a), (b) and (c) to paragraph 43 of the Petition which reads as follows;

43 (a)            Whether the Court of Appeal err in law by holding that, at the time of deciding the questions of preliminary objections the Commissioner of National Housing, (the said decision was affirmed by the board of review) could determine the entire application of the Petitioner by dealing with the merits of the application without informing the Petitioner, that the Commissioner was going to decide the merits of the application as well.

- (b) Whether the Court of Appeal err in law by holding that the inquiry before the commissioner could correctly proceed under section 9 of the Ceiling on Housing Property Law and whereas the Court of Appeal by previous judgment dated 21<sup>st</sup> May 2002 held that the previous owner had sold the houses within the permitted time, in terms of section 10 of the Ceiling on Housing Property Law, (and there was no application made by the contesting Respondent under section 9 of the ceiling on housing property law?
- (c) Did Court of Appeal err in law by not deciding that the inquiry should have proceeded in terms of section 13 of the Ceiling on Housing Property Law as observed by the Court of Appeal in previous judgment dated 21<sup>st</sup> May 2002 and hence equities of the parties would be a relevant consideration, it had to be decided by leading evidence in terms of section 13 of the said law.

As revealed before us, after instituting the said Writ application before the Court of Appeal, the Petitioner P.N. Maharajah had died on 06.06.2007 and his heirs were substituted as petitioners to the said application.

As further revealed before this court, the Deceased Petitioner and one K. Kasimuththu were employed in a company by the name Ramsay Limited. At the time the Ceiling on Housing Property Law came into operation the said Ramsay Limited was owned 44 tenements including the two tenements occupied by P.N. Maharajah and K. Kasimuththu. The two tenements occupied by the said P.N. Maharajah and K. Kasimuththu were bearing tenement numbers 94/5 and 94/6 respectively.

The present application is limited to the tenement bearing number 94/6 occupied by the said K. Kasimuththu and later by his wife Muniyandi Sundarammal and there were series of cases, including several inquiries under the Ceiling on Housing Property Law, a District Court action and two Writ applications filed before the Court of Appeal with regard to the said property. By the present application the Substituted Petitioners were challenging the decision by the Court of Appeal dated 15.09.2008.

Since the said decision by the Court of Appeal, referred to an inquiry under the Ceiling on Housing Property Law, it is necessary to understand the background to the dispute between the two parties with regard to the tenement referred to above.

As referred to above, the Deceased Petitioner and the present Substituted Petitioners (here-in-after referred to as Petitioners) lived in tenement No. 94/5 and there is no dispute with regard to the said tenement. The Deceased Petitioner being the tenant of the said tenement, purchased the said tenement from its previous owner at the time Ceiling on Housing Property Law came into operation, since the said premises came within the provisions of the said law.

This fact is very much clear from the document produced marked 7R10A which is a letter by the previous owner Ramsay Limited to the Commissioner of National Housing dated 11<sup>th</sup> January 1974 and as revealed this is a vital communication by the said previous owner with regard to the sale of houses to its previous occupants.

The 1<sup>st</sup> paragraph of the said letter reads as follows;

“With reference to your letter No, CH/DB/1A/74 dated 7<sup>th</sup> January 1974, we write to inform you that out of the 44 houses in question five houses already been sold to the tenants. Of the balance, to the best of our knowledge and belief twelve of the tenants are citizen of Ceylon and 27 tenants are non-citizens. In view of the fact that they are non-citizens they could not purchase the houses”

From the above it is very much clear that, at the time the above letter was written on 11<sup>th</sup> January 1974, 5 houses had been sold to its tenants.

If the said position is correct, the balance houses would be vested with the Commissioner of National Housing by the operation of Ceiling on Housing Property Law and the disposal of the said property would have to be under the provisions of the said law. With regard to the 5 houses referred to above it is further clear that those tenements had been sold to its rightful tenants and not to any other person, including tenant of the other tenements.

However as revealed before the inquiry conducted by the Commissioner of National Housing, the said Ramsay Limited had disposed tenement bearing No. 94/6 to the Deceased Petitioner on 11<sup>th</sup> January 1974 by deed of transfer No. 545.

It was further revealed at the said inquiry that, when the said Ramsay Limited informed by letter dated 11<sup>th</sup> January 1974 (on the same day as the deed of transfer had been executed) that they have disposed 5 properties to its tenants, the Commissioner believed that the said 5 transfers are

to the rightful tenants and therefore vesting orders were cancelled in respect of those tenements by letter dated 06.06.1977.

By letter dated 17.03.1998 the said Commissioner of National Housing had cancelled his previous order and vested the tenement bearing No. 94/6 with the Commissioner of National Housing in order to proceed under the provisions of the Ceiling on Housing Property Law.

The Petitioners predecessor in title had filed a Writ application before the Court of Appeal against the said decision and the Court of Appeal allowing the said application, directed the Commissioner of National Housing to hold a fresh inquiry in order to consider whether the transfer referred to above by the said Ramsay Limited comes within the provisions of sections 9 and 10 of the Ceiling on Housing Property Law.

The Petitioners predecessor in title who agreed to face a fresh inquiry by the said order of the Court, had gone before the Commissioner of National Housing and raised a preliminary objection for the maintainability of the said inquiry. The Commissioner of National Housing, who permitted the parties to even file written submissions on the issues raised before him, finally disposed the whole matter when he realized that the Petitioner's predecessor in title is raising all these issues as a delaying tactic.

The said decision of the Commissioner of National Housing was once again considered by the Ceiling on Housing Property Board of Review and affirmed the said decision by its order dated 21.09.2005.

The Court of Appeal once again reviewed the decisions of both the Commissioner of National Housing and the Ceiling on Housing Property Board of Review and affirm the said decision to vest the tenement bearing No. 94/6 with the Commissioner of National Housing when Petitioners Predecessor in title filed a Writ application before the Court of Appeal and by the present application the Petitioners have challenged the said decision.

When deciding the said matter the Court of Appeal was mindful of the provisions of section 10 of the Ceiling on Housing Property Law which reads as follows;

Section 10; Where, on the date of commencement of this law, any person owns any house in excess of the permitted number of houses, such person may, if such person is an individual, within a period of twelve months from such date, and if such person is a

body of persons, within a period of six months of the date on which the determination under this law by the Commissioner or as the case may be, by the Board of Review, of the maximum number of houses that may be owned by such body, or where such body applies for, and is granted an extension of time by the Commissioner within six months from the November 1, 1974, **dispose of such house with notice to the Commissioner** unless the tenant of such house or any person who may under section 36 of the Rent Act succeed to the tenancy of such house has made application with simultaneous notice to the owner for the purchase of such house (emphasis Added)

When going through the provisions of section 10 above, it is clear that, the above provision of the Ceiling on Housing Property Law deals with a situation, where a third party could purchase a property, that comes within the Ceiling on Housing Property Law, and such disposition can only take place with notice to the Commissioner of National Housing. As discussed above, the body of persons which belongs the tenement referred to above had transferred it to an outsider within the meaning of the Ceiling on Housing Property Law, without following the said provision of the Ceiling on Housing Property Law, pretending that it was sold to its rightful tenant.

Requirement under section 10 of the Ceiling on Housing Property Law was discussed in the case of **Wahab V. Jayah (1988) 1 Sri LR 78** by the Supreme Court as follows;

“The Ceiling on Housing Property Law No. 1 of 1973, came into operation on 13.1.73. Under section 8 of the said law the Plaintiff made statutory declaration (P1 dated 4.4.73) which included the premises in suit, as a house owned by the appellant in excess of the permitted number of houses which the Plaintiff did not propose to retain. Section 10 of the said law provides that any person who owns any house in excess of the permitted number may, within a period of 12 months from the date of the commencement of the Law, *dispose* of such house with notice to the Commissioner unless the tenant of such house had made an application with simultaneous notice to the present owner for the purchase of that house.”

During the arguments before this court, as well as before the Court of Appeal, the Petitioners alleged that rules of natural justice was not followed by the Commissioner of National Housing when making the impugned order without granting an opportunity to present their full case before the Commissioner.

However as observed earlier in this judgment, the Petitioners predecessor in title had raised an unprecedented objection before the Commissioner of National Housing with regard to his jurisdiction, when the Court of Appeal had directed him to hold an inquiry and even after raising the said objection, the Commissioner had granted time for the parties to file written submissions but, when he realized that it was only a delaying tactic he considered the entire matter on its merit with the help of the detail submissions placed by both parties and made his order.

In the said circumstances, I see no merit in the present application. I therefore answer the questions of law raised by the Petitioners in the negative and dismiss the application with costs.

Application dismissed with costs.

**Judge of the Supreme Court**

**Sisira J. De. Abrew J**

**I Agree,**

**Judge of the Supreme Court**

**Priyantha Jayawardena PC**

**I Agree,**

**Judge of the Supreme Court**