

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST**

**REPUBLIC OF SRI LANKA**

**SC Appeal No. 40/2013**

**SC (Spl) LA Application No. 23/2012**

**CA Application No. 347/88**

In the matter of an Application for Special Leave to Appeal under and in terms of the provisions of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka against the order of their Lordships of the Court of Appeal delivered on 11.01.2012.

Asoka Sarath Amarasinghe  
No. 32, Vidyalaya Road,  
Gampaha.

**Petitioner**

Vs.

1. R. Wijeratne

**Respondent (Deceased)**

1A. Ranjith Flavian Wijeratne  
No. 27/1 (27B),  
Sir Ernest de Silva Mawatha,  
Colombo 07.

**Substituted Respondent**

2. Sirimevan Bibile  
(Former Chairman)

2A. Dr. M.S. Jaldeen  
(Chairman)

3. B. Bodinagoda  
(Former Vice Chairman)

3A. C. Ranawaka (Member)

4. B. Gunasekera (Former Member)

4A. J.M.S. Bandara (Member)

5. S.W. Gunawardene  
(Former Member)

5A. R.W.M.S.B. Rajapakse  
(Member)

6. M. Samaraweera  
(Former Member)

All members of the Ceiling on Housing Property Board of Review, Department of National Housing, Sir. Chittampalam A. Gardiner Mawatha, Colombo 02.

7. D. Weerapana  
Former Commissioner of National Housing

8. Y.B. Pusedeniya  
Former Commissioner of National Housing

8A. M. Sritharan  
Commissioner of National Housing, The Department of National Housing, 'Sethsiripaya', Sri Jayawardenapure Kotte, Battaramulla.

9. Hon. R. Premadasa  
Former Minister of Housing, Local Government and Construction

9A. Wimal Weerawansa  
Minister of Construction, Engineering Services, Housing and Common Amenities, 'Sethsiripaya', Sri Jayawardenapure Kotte, Battaramulla.

**Respondents**

**AND NOW BETWEEN**

Ranjith Flavian Wijeratne  
No. 27/1 (27B),  
Sir Ernest de Silva Mawatha,  
Colombo 07.

**Substituted 1A Respondent**  
**Appellant**

**Vs.**

1. Asoka Sarath Amarasinghe  
No. 32, Vidyalaya Road,  
Gampaha.

**Petitioner Respondent**

2. Sirimevan Bibile  
(Former Chairman)

2A. Dr. M.S. Jaldeen  
(Chairman)

3. B. Bodinagoda  
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All members of the Ceiling on Housing Property Board of Review, Department of National Housing, Sir. Chittampalam A. Gardiner Mawatha, Colombo 02.

7. D. Weerapana  
Former Commissioner of National Housing
8. Y.B. Pussedeniya  
Former Commissioner of National Housing
- 8A. M. Sritharan  
Commissioner of National Housing, The Department of National Housing, 'Sethsiripaya', Sri Jayawardenapure Kotte, Battaramulla.
- 8B. L.S. Palanasooriya  
Commissioner of National Housing, The Department of National Housing, 'Sethsiripaya', Sri Jayawardenapure Kotte, Battaramulla.
- 8C. Prof. W.N. Karunadasa  
Commissioner of National Housing, The Department of National Housing, 'Sethsiripaya', Sri Jayawardenapure Kotte, Battaramulla.
9. Hon. R. Premadasa  
Minister of Housing, Local Government and Construction, 'Sethsiripaya', Sri Jayawardenapure Kotte, Battaramulla.
- 9A. Hon. Wimal Weerawansa  
Minister of Construction, Engineering Services, Housing and Common

Amenities, ‘Sethsiripaya’, Sri  
Jayawardenapure Kotte, Battaramulla.

9B. Hon. Sajith Premadasa  
Minister of Housing and Samurdhi,  
‘Sethsiripaya’, Sri Jayawardenapure  
Kotte, Battaramulla.

**Respondents- Respondents**

Before : K. Sripavan, CJ  
Rohini Marasinghe, J  
Priyantha Jayawardena, PC, J

Counsel : Lakshman Perera, PC with Jagath Wickramanayake instructed by Ms.  
Dissanayake for the Substituted 1A Respondent – Appellant  
A.R. Surendran, PC with M. Jude Dinesh and Ms. Maithrei Rajasingam  
for the Petitioner – Respondent  
Viveka Siriwardena, DSG for the 8C and 9B Respondent – Respondents

Argued on : 7<sup>th</sup> September, 2015

Written Submissions filed on : 21<sup>st</sup> September, 2015 by the Substituted – 1A- Respondent-  
Appellant  
2<sup>nd</sup> October, 2015 by the Petitioner Respondent

Decided on : 12<sup>th</sup> November, 2015

**Priyantha Jayawardena, PC. J,**

This is an appeal filed against the Judgment of the Court of Appeal dated 11.01.2012 delivered in CA/Writ/Application bearing No. 347/1988. The Court of Appeal quashed the decisions of the Commissioner of National Housing and of the Ceiling on Housing Property Board of Review.

The facts of the instant appeal are set out below.

The Substituted – 1A – Respondent – Appellant’s (hereinafter referred to as the Appellant) father late Mr. R. Wijeratne (Deceased 1<sup>st</sup> – Respondent) who was the 1<sup>st</sup> Respondent in CA/Writ/Application No. 347/88, had been the tenant and was in occupation of the premises bearing Assessment No. 27/1, presently bearing Assessment No. 27B, Sir Ernest de Silva Mawatha, Colombo 07 since June, 1965. Upon the death of the said Mr. R. Wijeratne pending the said Writ Application the Appellant was substituted in his place.

One Mrs. Lalitha Rajapakse was the owner of the said premises bearing assessment No. 27/1 (27B) being the widow of late Mr. George Rajapakse who died on 18.06.1976. By the time the Ceiling on Housing Property Law No. 01 of 1973 came into operation on 13<sup>th</sup> January, 1973 the family of late Mr. George Rajapakse owned houses in excess of the permitted number of houses stipulated in the said Law including the aforesaid premises bearing No. 27/1 (27B) tenanted to the Appellant’s late father and premises bearing No. 27 1/1 (27D) tenanted to one Mrs. Roshan Peiris.

The said late George Rajapakse was the male spouse in his family. At the time the said Law came into operation, the said late George Rajapakse was living but did not file the declaration within twelve weeks from the stipulated date of 13<sup>th</sup> January 1973, as required by section 8(2) of the said Law. Sometime after the stipulated period, being the owner of the house Nos. 27/1 and 27 1/1 Mrs. Lalitha Rajapakse had informed the Commissioner of National Housing ( hereinafter referred to as the Commissioner ) that she did not propose to retain the ownership of the said houses by letter dated 3<sup>rd</sup> August, 1973. She had also informed that the delay in furnishing the returns on the due date in respect of the premises was because the auditors to whom she handed over the matter had failed to fill up the forms in time.

Thereafter, on the same day Mrs. Lalitha Rajapakse by her letters dated 3<sup>rd</sup> August, 1973 addressed to Mr. R. Wijeratne, the Appellant’s father and Mrs. Roshan Pieris had offered to sell the said two premises. She had informed them that she did not propose to retain the ownership of the houses under the said Law that were rented to them and gave them the option of purchasing the same if they so desired. Copies of the said letters had been sent to the Commissioner by Mrs. Rajapakse. Mrs. R. Pieris by her letter dated 6<sup>th</sup> August, 1973 had informed Mrs. Lalitha Rajapakse that she did not have the money to purchase the premises in question. It was admitted at the inquiry before the Board of Review by the late Mr. R. Wijeratne that house bearing assessment No. 27/1 was offered to him for a sum of Rs. 125,000/- and he refused to purchase the house at that price.

Thereafter, an application had been made by letter dated 3<sup>rd</sup> January, 1974 addressed to the Commissioner by an Attorney-at-Law on behalf of Mrs. Lalitha Rajapakse seeking time to

dispose of the house. The letter stated that it was impossible for Mrs. Lalitha Rajapakse to dispose of the premises within the stipulated time due to the fact that considerable delay had been caused in the preparation and obtaining of the condominium plan in respect of the premises. The Commissioner by letter dated 12<sup>th</sup> January, 1974 allowed the said application and granted time till 13<sup>th</sup> July, 1974 under Section 11 of the said Law and deferred the vesting of the said premises for a period of 6 months. The said decision was published along with other similar decisions in the gazette bearing No. 94/5 dated 17<sup>th</sup> January, 1974. In the said gazette the Commissioner stated that “ being satisfied that the failure to dispose of such was due to the reasons beyond the control of owners, do hereby defer vesting the said houses in the Commissioner until 13.07.1974. ”

Thereafter, during the said extended time given to Mrs. Rajapakse to dispose of the house, the Commissioner by a letter dated 8<sup>th</sup> May, 1974 addressed to Mrs. Lalitha Rajapakse with copies to the tenants had informed that according to her declaration dated 3<sup>rd</sup> August, 1973 the surplus houses of which the ownership was not proposed to be retained by her are vested in the Commissioner with effect from 13<sup>th</sup> January, 1974 under sections 11 and 16 of the Law and that the tenants have been advised accordingly. However, neither the Commissioner nor any of the parties to this appeal have acted based on this letter.

Once again, the Commissioner by his letter dated 5<sup>th</sup> July, 1974 addressed to Mrs. Lalitha Rajapakse referred to his previous letter dated 12<sup>th</sup> January, 1974 and the gazette published on 17<sup>th</sup> January, 1974 granting time to dispose of the houses had informed that if the failure to dispose of the condominium property owned by her within the prescribed time period was due to reasons beyond her control, to provide details regarding the same in order to consider for a further extension. Responding to the said letter of the Commissioner, a second request for extension of one year was made by letter dated 9<sup>th</sup> July, 1974 stating that Mrs. Rajapakse was unable to dispose of the premises due to the continuing delay to register the condominium plan for various causes including the fact that the said premises had been mortgaged to the Commissioner. It further stated that the application for registration of the condominium plan of the above premises was forwarded to the Land Registry Colombo on 4.4.1974 but was held up due to the existence of the said encumbrance. Therefore, Mrs. Rajapakse requested for a further extension of one year from 13<sup>th</sup> July, 1974 to enable her to enter into the necessary agreements and obtain the consent of the Commissioner for the registration of the said condominium property and thereafter dispose of the same. Later, the gazette notification bearing No. 119/10 dated 12<sup>th</sup> July, 1974 was published. The said gazette referred to the premises under reference and several other houses belonging to other owners of excess houses. It stated that the Commissioner being satisfied that the failure to dispose of the houses in excess of the permitted number specified under the Ceiling on Housing Property Law was due to the reasons beyond the control of the owner hereby defer vesting the said houses in the Commissioner until 13.01.1975.

At the request of Mrs. Rajapakse (as the mortgagee) the Commissioner on 1<sup>st</sup> October, 1974 had written to the Registrar of Lands Colombo and granted consent to Mrs. Lalitha Rajapakse's application for registration of the condominium plan already lodged with the Land Registry Colombo. Mrs. Lalitha Rajapakse by her letter dated 8<sup>th</sup> November, 1974 addressed to the Commissioner has informed that since the premises in question (bearing assessment Nos. 27/1 and 27 1/1 respectively) come under the condominium law and as there was insufficient time for owners of condominium property to register them.

Later, Mrs. Lalitha Rajapakse by virtue of Deed bearing No. 491 dated 11.01.1975 attested by A.R. Mathew, Notary Public, Colombo had sold the said premises bearing assessment No. 27/1 (27B) to the Petitioner – Respondent in this appeal (hereinafter referred to as the 1<sup>st</sup> Respondent) and also the premises bearing No. 27 1/1 tenanted to one Mrs. Roshan Peiris had been sold to one N.H.S. Gunaratne. Accordingly, Mrs. Rajapakse had disposed of the houses within the extended time given to her by the Commissioner.

Thereafter, Mr. R. Wijeratne had made representations to the Minister of Local Government, Housing and Construction regarding the House No. 27/1 in August, 1980. Consequently, the Secretary to the Ministry of Local Government, Housing and Construction had sent the letter dated 25.08.1980 to Mr. R. Wijeratne requesting him to be present at the secretariat office on 07.09.1980 for a discussion. At the said meeting Mr. Wijeratne had informed the Commissioner his willingness to purchase the house No. 27/1 under the said Law.

Further, Mrs. Roshan Peiris also by her letter dated 24.06.1982 addressed to the Commissioner has indicated her willingness to buy the flat bearing No. 27 1/1 at a price determined by the Commissioner.

The Commissioner commenced an inquiry on the 11<sup>th</sup> September, 1982 in respect of the said applications made by late Mr. R. Wijeratne and Mrs. Roshan Peiris to purchase the houses under the said Law. As stated above by that time Mrs. Rajapakse had sold the said premises bearing assessment No. 27/1 to the 1<sup>st</sup> Respondent in this appeal and premises bearing assessment No. 27 1/1 tenanted by Mrs. Roshan Peiris had been sold to one N.H.S. Gunaratne.

The Appellant's father had based his case before the Commissioner on the basis that the sale of the two houses under reference were fraudulent transactions carried out to circumvent the applicability of Ceiling on Housing Property Law to excess houses, and the said houses were vested in the Commissioner by operation of law because there is no disposal under section 10 of the said Law.

At the inquiry the Counsel for Mrs. Rajapakse had requested the Commissioner to notice the new buyers of the houses to enable them to participate at the inquiry. However, the Commissioner made order on 16<sup>th</sup> September, 1982 vesting the houses under reference without giving a hearing

to the new buyers, namely the 1<sup>st</sup> Respondent in this appeal and Mr. N.H.S. Gunaratne, the purchaser of the house bearing assessment No. 27 1/1. The said order of the Commissioner made under section 8 ( 6 ) of the Law was published in the Gazette bearing No. 212 dated 24.09.1982.

Section 8 of the principal enactment was amended by Ceiling on Housing Property (Amendment) Law No. 18 of 1976. It inserted section 8 ( 6 ) to the said Law.

Section 8 ( 6 ) states as follows;

“ Where the ownership of any surplus house has been transferred by way of sale, gift, lease or other alienation, without the owner thereof having intimated in writing to the tenant thereof, as required by subsection ( 1 ) or subsection ( 2 ) that he ownership of such house is not proposed to be retained by him, and such tenant makes an application to the Commissioner to purchase such house the Commissioner may, with the approval in writing of the Minister, by Order published in the Gazette vest such house in the Commissioner with effect from such date as may be specified in such Order. ” [emphasis added]

Being aggrieved by the said purported vesting order appeals were preferred to the Board of Review by Mrs. Lalitha Rajapakse, the 1<sup>st</sup> Respondent and said Mr. N.H.S. Gunaratne.

The 1<sup>st</sup> Respondent's appeal was assigned the number 1283. The said appeal together with appeal bearing No. 1282 lodged by the said Lalitha Rajapakse and appeal bearing No. 1284 lodged by N.H.S. Gunaratne the other purchaser who was placed in similar circumstances were consolidated and taken up for hearing. On 30<sup>th</sup> January, 1988 three orders were delivered by the Board of Review. The 2<sup>nd</sup> and 4<sup>th</sup> Respondents delivered one order dismissing all three appeals. The 5<sup>th</sup> and 6<sup>th</sup> Respondents by their order allowed the 1<sup>st</sup> Respondent's appeal. The 3<sup>rd</sup> Respondent in his order, inter-alia, dismissed the 1<sup>st</sup> Respondent's appeal and affirmed the vesting of the premises.

The 1<sup>st</sup> Respondent being aggrieved by the said order of the Board of Review filed the CA/Writ/Application bearing No. 347/88 seeking for an order in the nature of a Writ of Certiorari quashing the order of the Commissioner dated 16.09.1982 contained in the Government Gazette dated 24.09.1982 and the order dated 30.01.1988 of the Ceiling on Housing Property Board of Review.

The Court of Appeal delivered its judgment allowing the application of the Respondent and quashed the order of the Commissioner dated 16.09.1982 and the order dated 30.01.1988 of the Ceiling on Housing Property Board of Review.

Being aggrieved by the said judgment the Appellant preferred this appeal and special leave to appeal was granted on the following questions of law;

- (i) Are the transferees necessary for the determination of the legality of any transaction done in order to evade the liability under the Ceiling on Housing Property Law?**
- (ii) If so, has His Lordship of the Court of Appeal erred in law in holding that the orders made by the Ceiling on Housing Property Board of Review has been made breaching the rules of Natural Justice?**
- (iii) Whether the Commissioner of National Housing has acted illegally in giving further time after the lapse of the time period specified in the statute to make the declaration of excess houses?**

At the hearing the learned President's Counsel for the Appellant submitted that the said late Mr. George Rajapakse was the male spouse in his family within the meaning of Section 8(2) of the Ceiling on Housing Property Law No. 01 of 1973. When the said Law came into operation, the said late Mr. George Rajapakse was living but however failed to comply with the mandatory provisions of Section 8(2) of the said Law by failing to send the declaration specified therein within the stipulated time and therefore the houses owned by the members of the family of the said late Mr. George Rajapakse including the aforesaid houses bearing Nos. 27/1 and 27 1/1 were vested in the Commissioner of National Housing by operation of Law.

He further submitted that though a declaration was made by Mrs. Lalitha Rajapakse, she did not make the said declaration within the time period stipulated in Section 8(2) of the said Law and in any event Mrs. Lalitha Rajapakse deliberately failed to give a reasonable cause as to why the declaration was not submitted within the stipulated time period.

He submitted that it is an admitted fact that Mrs. Lalitha Rajapakse whilst informing the late father of the Appellant that she did not propose to retain the ownership of the premises under reference, long after the time period permitted to send the declaration under the Law, sent a purported declaration to the Commissioner. Further, Mrs. Lalitha Rajapakse is not entitled in Law to have made this declaration after the period set down by the Law. Section 8 must be read as a whole and is a mandatory provision which deals with the relationship between the owner of the house and the Commissioner. There is an obligation on the part of any owner of a house which falls within section 8(2) to adhere strictly to the time limits given in the said section and there is a corresponding obligation on the part of the Commissioner to impose the time limits given in the said section as at the time Mrs. Rajapakse had to make the said declaration.

It was also submitted that the Commissioner had accepted the said declaration in spite of the long delay though there is no provision in law for him to do so. Further, he did not have jurisdiction to accept the declaration in the absence of a reasonable cause contemplated by Section 8(4) of the Law. Also Mrs. Lalitha Rajapakse had failed to give notice to the Commissioner in respect of the purported sales in terms of Section 10 of the Ceiling on Housing Property Law. Later, on her request, the Commissioner had by notification published in Government Gazette No. 94/15 dated 17<sup>th</sup> January 1974 deferred the vesting of the said premises till 13<sup>th</sup> July, 1974.

However, on the 13<sup>th</sup> January 1974, the excess houses owned by the said Mrs. Lalitha Rajapakse were vested in the Commissioner as she had failed to dispose of the same within the stipulated time period specified in Section 11 ( 1 ) of the said Law.

Further, the Ceiling on Housing Property Board of Review not only had given a hearing to all the parties concerned, but allowed the parties to submit and produce documents came as fresh evidence without even considering the strict limitations of the law in relation to the same.

He also submitted that after the said Law came into operation, in or about 1973 the Petitioner's father was offered, the said premises by Mrs. Lalitha Rajapakse for a sum of Rs. 125,000/- which was way above the value of the said premises at that time and therefore the said offer was not accepted by the Appellant's father.

The Appellant also submitted that the principles of Natural Justice have not been breached. Section 8 of the Law is not dealing with the position of tenants as such. It is found in the early part of the enactment and is more concerned with the relationship imposed by law between house owners and the Commissioner. Therefore, he submitted that the Commissioner is under legal duty only to hear the person who made a declaration in terms of Section 8 ( 2 ) and that is Mrs. Lalitha Rajapakse. The Commissioner at the inquiry stage ruled that the transferees will be summoned in course of the inquiry, in case the Commissioner feels it necessary. However, the 1<sup>st</sup> Respondent who is the transferee is not entitled in law to be heard before the Commissioner as he is not the declarant under Section 8 ( 2 ) of the Law.

Moreover, in terms of Section 39 of the Law any person aggrieved by any decision or determination of the Commissioner can appeal to the Ceiling on Housing Board of Review. The Respondent had thus appealed to the Board of Review and it had given him a full hearing. Therefore, there is no violation of the principles of natural justice.

The learned President's Counsel for the 1<sup>st</sup> Respondent submitted that the order of the Commissioner is in flagrant violation of the rules of Natural Justice because the Commissioner failed to notify the 1<sup>st</sup> Respondent of the inquiry or give any hearing whatsoever to the said Respondent who was then the owner of the house before he made the impugned order. He further

submitted that as the owner of the house the said Respondent had every right to be heard before any decision depriving him of the ownership of the house was taken.

Secondly, he submitted that giving a hearing to the 1<sup>st</sup> Respondent would not have made a difference is devoid of merit. If principles of Natural Justice have been violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at even if a party had been heard.

Thirdly, it was submitted that in any event the Commissioner had given an undertaking to give a hearing to the 1<sup>st</sup> Respondent and his failure to do so is fatal to his decision.

The following question of law will be considered in the first instance.

**“ Whether the Commissioner of National Housing has acted illegally in giving further time after the lapse of the time period specified in the statute to make the declaration of excess houses. ”**

Ceiling on Housing Property Law No. 1 of 1973 came into operation on the 13<sup>th</sup> of January, 1973. The long title of the said law states “ A law to regulate the ownership, size and cost of construction of houses and to provide for matters incidental thereto or connected therewith ”. An analysis of the said Law shows that the sections therein are intrinsically interwoven to each other. In fact the Law was enacted for a specific purpose and it has provided the necessary framework to achieve the said object. Hence, the sections in the Law shall not be read in isolation and given interpretations.

**Is it mandatory for the male spouse to submit the declaration ?**

Section 8 ( 2 ) of the Law requires the male spouse of a family who is subject to the Law to make a declaration to the Commissioner indicating the excess houses within twelve weeks from the date of the Law coming in to operation. However, where such male spouse is not living or is not capable in law to do so, the female spouse shall send the Commissioner a declaration.

Further, in terms of Section 8 ( 3 ) if the person sending the declaration is not the owner of any house the ownership of which is not proposed to be retained, the declaration shall be accompanied by a statement of consent from the owner of such house. Where such owner does not give such consent, the Commissioner shall, after due inquiry, determine the houses the ownership of which shall be retained by the members of the family.

Section 8 ( 4 ) states thus; “ Any person who has, without reasonable cause, failed to send the declaration within the period referred to in subsection ( 1 ) or subsection ( 2 ), as the case may

be, or has made any incorrect declaration in regard to the number of houses owned by him or by his family, as the case may be, shall be guilty of an offence under this Law, and any such house owned by such person or by any member of the family of such person as may be specified by the Commissioner by Notification published in the Gazette shall vest in the Commissioner with effect from such date as may be specified therein.” [emphasis added].

If a male spouse fails to comply with section 8 ( 2 ) of the Law, section 8 ( 4 ) has made provision to vest the surplus houses in the Commissioner owned by the other members of the family. Therefore, in such a situation a necessity will arise to make a declaration to the Commissioner indicating the surplus houses by the other members of such family if they do not wish the Commissioner to act under section 8 ( 4 ) and vest the houses owned by them.

Thus, I am of the opinion that if the male spouse does not comply with the mandatory requirement of sending the declaration the doctrine of necessity permits other members of such family to submit a declaration to the Commissioner specifying the surplus houses and the houses the ownership of which they wish to retain. The need to give such a notice may arise after the stipulated time of the said twelve weeks. Therefore, Mrs. Rajapakse is lawfully entitled in law to forward her declaration with regard to the houses owned by her.

#### **The time frame given to declare the excess houses**

As stated above, section 8 ( 2 ) of the Law requires the male spouse of a family to disclose excess houses within four weeks from the law coming into operation. However, by section 11 ( 1 ) of the said law the Commissioner is given the power to grant an extended time to owners of excess houses, if he is satisfied that the failure to dispose of the house was due to circumstances beyond the control of the owner and defer the vesting of the house for a further period not exceeding twelve months. Conferring a discretion on the Commissioner to decide on the time frame to furnish the declaration shows though it is mandatory to make the declaration under section 8 of the Law, the said declaration can be made within a time frame granted by the Commissioner in terms of section 11 of the Law. In any event, if the male spouse does not comply with the section 8 ( 2 ) of the Law, the Commissioner should take steps under section 8 ( 4 ) of the said Law to vest the houses of the other members of the family in him. This, shows that the failure to comply with section 8 ( 2 ) of the Law by the male spouse would not result in automatic vesting of the houses owned by the other members of the family in the Commissioner.

In fact, this position is very clear from the fact that the Commissioner has accepted the requests made by Mrs. Rajapakse, the owner to have an extended time to dispose of the house under reference, published the necessary gazette notifications twice under section 11 of the Law. Further, the said gazette notifications stated “ being satisfied that the failure to dispose of such

was due to the reasons beyond the control of owners, do hereby defer vesting the said houses in the Commissioner ”. Moreover, as stated above the Commissioner had facilitated Mrs. Rajapakse to redeem the mortgages of the houses by sending a letter to the Registrar of Lands in order to effect the disposal of the houses under the Law.

### **Commissioner’s power to grant time to dispose excess houses**

Section 10 of the said Law has permitted the owners of the surplus houses to dispose such houses within a period of twelve months from the Law coming in to operation 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 an application with simultaneous notice to the owner for the purchase of such house.

Admittedly, the two tenants did not make an application to the Commissioner within four months from the date of commencement of the Law in terms of section 9 of the Law. Therefore, the Commissioner had not taken steps to vest the houses in him under section 17 of the Law.

As stated above an application had been made by letter dated 3<sup>rd</sup> January, 1974 to the Commissioner seeking time to dispose of the house. The Commissioner by letter dated 12<sup>th</sup> January, 1974 allowed the said application under Section 11 of the said Law and deferred the vesting of the said premises for a period of 6 months. Later, the said decision was published along with other similar decisions in the gazette dated 17<sup>th</sup> January, 1974. In the said gazette the Commissioner had stated that “ being satisfied that the failure to dispose of such was due to the reasons beyond the control of owners, do hereby defer vesting the said houses in the Commissioner until 13.07.1974. ”

It is pertinent to note that the said application for an extension of time to dispose of the houses had been made within the stipulated period of one year in section 11 of the Law. i.e. before the 13<sup>th</sup> of January, 1974. Further, no steps were taken to challenge the decisions of the Commissioner to grant time to dispose the surplus houses under reference. Therefore, I hold that the Commissioner had not acted illegally in giving time to dispose of the houses under reference.

However, whilst the first extended time given to Mrs. Rajapakse to dispose of the house was in operation the Commissioner by his letter dated 8<sup>th</sup> May, 1974 addressed to Mrs. Lalitha Rajapakse with copies to the tenants had informed that the houses under reference are vested in the Commissioner with effect from 13<sup>th</sup> January, 1974 under sections 11 and 16 of the Law and that the tenants have been advised accordingly. However, none of the parties have acted based on that letter.

I am of the opinion that it is not possible in law to take such a decision and dispatch such a letter which is contrary to the previous decision of the Commissioner, particularly when the said order of giving extended time was in operation. Further, the Commissioner cannot rescind or cancel a decision already taken, which affects the rights of the parties without giving them a hearing as it affects their statutory rights.

Section 10 of the Ceiling on Housing Property Law No. 1 of 1973 states as follows;

“ Where, on the date of commencement of this Law, any person owns any house in excess of the number of houses, such person may, within a period of twelve months from such date, 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, No. 7 of 1972, succeed to the tenancy of such house, has made application with simultaneous notice to the owner for the purchase of such house. ”

The said section 10 was subsequently amended by the Ceiling on Housing Property (Amendment) Law No. 34 of 1974. The said amendment states;

“ Section 10 of the principal enactment is hereby amended by the substitution, for the words “within a period of twelve months from such date,” of the words “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 was communicated to such body, or where such body applies for, and is granted an extension of time by the Commissioner, within six months from November 1, 1974. ”

Section 11 ( 1 ) of the Ceiling on Housing Property Law No. 1 of 1973 provided inter-alia as follows;

“ (1) Any house owned by any person in excess of the permitted number of houses which has not been disposed of within a period of twelve months of the date of commencement of this Law shall on the termination of such period vest in the Commissioner:

Provided however, that where the Commissioner, on application made to him by the owner of the house, is satisfied that the failure to dispose of the house was due to circumstances beyond the control of the owner, the Commissioner may, by Notification published in the Gazette, defer the vesting of the house for a further period not exceeding twelve months. ”

The said section was subsequently amended by the Ceiling on Housing Property (Amendment) Law No. 34 of 1974. The said amendment states;

“ (1) In subsection (1) of that section, by the substitution, for the words “a period of twelve months from the date of commencement of this Law”, of the words “the period within which such person may dispose of such house in accordance with the provisions of section 10. ”

Section 20 of the Ceiling on Housing Property (Amendment) Law No. 34 of 1974 states as follows;

“ The provisions of this Law other than the provisions of section 3, 12, 16, 17 and 18 thereof shall be deemed for all purposes to have come into force and effect on the date of commencement of the principal enactment. ”

Section 6 ( 3 ) of the Interpretation Ordinance No. 21 of 1901 provides as follows;

“ Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected –

- (a) the past operation of or anything duly done or suffered under the repealed written law;
- (b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law;
- (c) any action, proceeding, or thing pending or incompleated when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal. ”

As stated above the Commissioner granted an extension of time to dispose of the house under reference until 13<sup>th</sup> July, 1974 under section 11 ( 1 ) of the said Law. Thereafter, once again the second extension was granted to dispose of the said house until 13<sup>th</sup> January, 1975. The decisions of the Commissioner granting the said extensions of time were published in Gazettes bearing No. 94/5 of 17<sup>th</sup> January, 1974 and bearing No. 119/10 of 12<sup>th</sup> July, 1974. The said amendments to sections 10 and 11 made by Amendment Law No. 34 of 1974 was certified by the Speaker on the 8<sup>th</sup> October, 1974.

Further, Mrs. Rajapakse has acquired a right to dispose of the property in terms of the extensions given to her by the Commissioner under section 11 of the Law and the said right will continue notwithstanding the amendment made to the said Law by (Amendment) Law No. 34 of 1974, in

terms of section 6 ( 3 ) of the Interpretation Ordinance No. 21 of 1901 as the said Amendment Law did not have any express provision to repeal any right existing when the repealing law came into operation. Thus, I'm of the opinion that the said amendments made to section 10 and 11 of the Law have no application to the extensions given to dispose of the said house as the decision to grant the first and second extension of time had been taken prior to effecting the said amendments to sections 10 and 11 of the said Law. Therefore, I hold that the decision contained in the said letter dated 8<sup>th</sup> May, 1974 is a nullity and has no force or effect in law.

Now I will consider the following question of law that needs to be determined in this appeal;

**“ Are the transferees necessary for the determination of the legality of any transaction done in order to evade the liability under the Ceiling on Housing Property Law ? ”**

The Appellant's father has presented his case before the Commissioner on the basis that the sale of the two houses under reference are fraudulent transactions carried out to circumvent the applicability of Ceiling on Housing Property Law to excess houses and the houses were vested in the Commissioner by operation of law because there is no disposal under section 10 of the said Law.

As stated above Mrs. Rajapakse had sold the said premises bearing assessment No. 27/1 to the 1<sup>st</sup> Respondent and also the premises bearing assessment No. 27 1/1 tenanted by Mrs. Roshan Peiris had been sold to one N.H.S. Gunaratne.

Whilst the Appellant submitted that it is not necessary to hear the new owners of the houses before making a vesting order under section 17 of the said Law, the said Respondent submitted that the owners should have been given a hearing by the Commissioner before vesting the house they purchased from Mrs. Rajapakse as it affected his property rights and they were necessary parties to the inquiry before the Commissioner. Both parties made this submission based on the principle of natural Justice. Hence, it is necessary to consider the applicability of the said principle to the inquiry held by the Commissioner.

### **Principles of Natural Justice**

As stated above at the inquiry the Counsel for Mrs. Rajapakse requested the Commissioner to notice the new buyers of the houses to enable them to participate at the inquiry. However, the Commissioner made the vesting order without giving a hearing to the 1<sup>st</sup> Respondent and Mr. N.H.S. Gunaratne, the purchaser of the house No. 27 1/1.

Principles of natural justice are applicable to every tribunal or body of persons vested with authority to adjudicate upon matters involving rights of individuals. It is likewise applicable to

the exercise of judicial powers too. Every judicial and quasi – judicial act is subject to the procedure required by natural justice. The breach of any one of the said rules would violate the principles of natural justice. In the case of *Ridge v. Baldwin* (1964) A.C. 40 Lord Denning held that a breach of the principles of natural justice renders the decision voidable and not null and void ab initio.

An administrative official or tribunal exercising a quasi – judicial power is bound to comply with the principles of natural justice. i.e. to comply with the rules of *audi altera partem* and *nemo judex in causa sua*. A quasi- judicial decision may involve finding of facts and it affects the rights of a person. Sometimes such decisions involve matters of law and facts or even purely matters of law.

In *Russell v. Duke of Norfolk* (1949) 1 All E.R. 109 Tucker L.J. observed that one essential requirement in regard to the exercise of judicial and quasi – judicial powers is that the person concerned should have a reasonable opportunity of presenting his case.

I am of the opinion that where the power is conferred in an administrative body or tribunal which exercises power in making decisions which affect the rights of persons, such body or tribunal should act according to the principles of natural justice except in cases where such right is excluded, either by express words or by necessary implication, by the legislature.

Lord Diplock in the case of *O'Reilly v. Mackman* (1983) 2 AC 237 at 276 held that the right of a man to be given a fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that a failure to observe it should render null and void any decision reached in breach of this requirement.

A tribunal exercising quasi judicial functions is not bound to adopt a particular procedure in the absence of statutory provision. In some situations the tribunals have to act within certain limits. However, it needs to observe certain minimum standards of natural justice and fairness when discharging its functions.

The need to follow the principles of natural justice is an accepted norm in Sri Lankan courts and tribunals as well as in the world over for several decades. I am of the opinion that the need to follow principles of natural justice has now become part of the Sri Lankan law. Hence, in the absence of special provisions as to how the court or tribunal is to proceed, the law requires that the principles of natural justice to be followed.

A tribunal must do its best to act justly and to reach just ends by just means. It must give the parties notice of what was charged against them and allow them to make representations in answer. A fair opportunity should be given to a party to correct or contradict any relevant

statement made to his prejudice. The party against whom the charge is made, after he has notice of the charges, is entitled to be heard.

Whether an oral hearing is necessary or desirable depends on the relevant laws and rules or procedures which the inquiry is held, the circumstances, the nature of the right infringed, the occasion for the exercise of authority by the tribunal and the effect of the decision on a person.

The question whether the requirements of natural justice have been met by the procedure adopted in any given case depends to a greater extent on the facts and circumstances of the case in point. Tucker L.J. held in the case of *Russell v. Duke of Norfolk* (1949) 1 All E.R. 109 “There are no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth.

In the case of *AG v. Ryan* (1980) AC 718 Lord Diplock held that the Minister was a person having legal authority to determine a question affecting the rights of individuals. This being so it is a necessary implication that he is required to observe the principles of natural justice when exercising that authority; and if he fails to do so, his purported decision is a nullity.

### **Commissioner ought to have followed the principles of natural justice**

The Commissioner is performing quasi – judicial functions under the said Law. However, he failed to give a hearing to the new owners of the houses prior to making the order in vesting the houses under reference which affected the rights of the said new owners. The failure of the Commissioner to afford the 1<sup>st</sup> Respondent an opportunity of showing cause as to why the house should not be vested in the Commissioner violates the principles of natural justice. Further, the inquiry before the Commissioner is inquisitorial proceedings and, as such, the burden is on the Commissioner to conduct the inquiry. Further, in the absence of laid down procedure in the said Law the inquiry should be conducted according to the principles of natural justice.

Thus, the Commissioner’s order is in violation of the principles of Natural Justice which require that a party such as the 1<sup>st</sup> Respondent should have been afforded an opportunity of being heard before any decision affecting his rights was made by the Commissioner. Any decision given in breach of the rules of natural justice is null and void and has no force in law.

### **The need to give reasons for a decision**

There is an accepted rule that reasons should be given for decisions, based on the principle of fairness which permeates administrative law, subject only to specific exceptions to be identified depending on the case.

Unless the reasoning behind the decision is given, a person is unable to know whether it is lawful or not, and thus he is deprived of the protection of the law. A right to know the reasons is therefore an indispensable part of the system of judicial review.

The Commissioner did not file objections in the writ application. Hence, the Court of Appeal held “ *At this point of this judgment I have to observe that the Hon. Attorney-General though appeared and represented 7 and 7A & 9A Respondents (the Commissioner of National Housing and the relevant subject Minister) did not file objections on their behalf, may be for good reasons.* ”

The Commissioner did not furnish any material to defend the allegation made against him for the violation of the principles of natural justice. Thus, it appears that the Commissioner did not have an explanation to offer in this regard.

### **Whether a fair hearing would make no difference**

Under section 39 of the Ceiling on Housing Property Law any person aggrieved by any decision or determination made by the Commissioner under the Law has a right of appeal to the Board of Review.

The learned President’s Counsel for the Appellant submitted that the Board of Review not only had given a hearing to all the parties concerned including the 1<sup>st</sup> Respondent, but also allowed the parties to submit and produce documents as fresh evidence without even considering the strict limitations of the law in relation to the same. Therefore, there is no violation of the principles of Natural Justice.

Section 39 of the Law permits the Board of Review to review the decisions or determinations made by the Commissioner. It functions as an appellate body. However, the Board of Review cannot function as a substitute to the Commissioner.

Administrative Law, 10<sup>th</sup> Edition by William Wade and Christopher Forsyth at page 422 states;

“ If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision. ”

I am of the opinion that if the Commissioner violates the principles of natural justice, the Board of Review cannot rectify the said error by granting the parties a hearing that was deprived by the Commissioner. In fact a decision which is null and void cannot be resurrected by an appellate body.

Hence, I hold that the Board of Review being the appellate body cannot cure the defect of a failure on the part of the Commissioner to follow the principles of natural justice.

### **The right of a tenant to purchase the house**

Section 9 read with section 17 of the said law provides for the tenants to purchase the excess houses.

As stated above under the Ceiling on Housing Property Law the house under reference was admittedly a surplus house. A request was made by the original owner Mrs. Rajapakse to the Commissioner of National Housing for an extension of time to dispose of the house. As a result extensions of time till 13.1.75 were granted by the Commissioner. The sale was carried out within the said extended period.

Admittedly, Mrs. Rajapakse had offered the house to late Mr. R. Wijeratne, the then tenant who declined the offer. The Appellant's position was that the house was offered for a sum of Rs. 125,000/- and it was excessive. If the sale price was high it was possible for a tenant to request the Commissioner to refer the matter to the Board of Review for the determination of the payable price under the said Law.

In terms of section 9 a tenant who wishes to purchase the house that he is occupying should make a request to the Commissioner within four months from 13<sup>th</sup> January, 1973. There is no provision in the Law to grant an extended time to a tenant to make an application to purchase a house. Thus, I am of the opinion that the compliance of section 9 is mandatory and the failure to comply with the said section wipes out the rights of a tenant to make an application to purchase the house occupied by him.

This view was expressed in the case of *Desmond de Perera and Others Vs. Karunaratne, Commissioner for National Housing* ( 1997 ) 1 SLR 148. In this case it was held that section 9 creates the opportunity for the tenant to opt to purchase the house he lives in. So the section categorically requires him to do only one single thing - namely, to apply to the Commissioner for purchase of a house. This he must do within the stipulated period of four months from the date of commencement of the law – which was 13.1.73. The language suggests a clear mandatory provision.

Thus, I am also of the opinion that the Commissioner has no power or authority to entertain any application made to purchase a house by a tenant who did not make an application to purchase the house in compliance with section 9 of the Law. Therefore, the decision made by the Commissioner to vest the house based on a belated application is ab initio void and a nullity as the Commissioner acted without power. Thus, the said decision of the Commissioner dated 16.09.1982 which is under reference is ab initio void and a nullity. Hence, there was no valid order made by the Commissioner to be considered by the Board of Review under section 39 of the said Law and, thus, the matter should have ended there.

The questions of law on which special leave was granted are answered as follows:-

**( i ) Are the transferees necessary for the determination of the legality of any transaction done in order to evade the liability under the Ceiling on Housing Property Law?**

At the time the Commissioner held the inquiry the house under reference was transferred to the 1<sup>st</sup> Respondent. The decision of the Commissioner resulted in the said transferee losing his ownership to the said house. Thus, it is imperative to give a hearing to the transferee prior to making any order which affects his rights. In the circumstances, the failure to give a hearing to the transferee had resulted in breach of the principles of natural justice and, the decision of the Commissioner to vest the said house is null and void.

**( ii ) If so, has His Lordship of the Court of Appeal erred in law in holding that the orders made by the Ceiling on Housing Property Board of Review has been made breaching the rules of Natural Justice?**

The failure to give a hearing to the transferee by the Commissioner resulted in a breach of the principles of natural justice.

**( iii ) Whether the Commissioner of National Housing has acted illegally in giving further time after the lapse of the time period specified in the statute to make the declaration of excess houses?**

No, if a male spouse failed to comply with the time frame given in the Law to furnish the declaration, a female spouse is entitled to furnish a declaration in respect of her assets to the Commissioner within a reasonable period and the Commissioner has the discretion to accept such declarations, provided he is satisfied with the reasons given for the delay in submitting the declaration.

Thus, I hold that the order of the Commissioner of National Housing dated 16.09.1982 and Order dated 30.01.1988 of the Board of Review which affirmed the said Order of the Commissioner of National Housing are not in accordance with the said Law. In the circumstances, I affirm the judgment of the Court of Appeal dated 11.01.2012 which is impugned in this appeal and dismiss the appeal without costs.

**Judge of the Supreme Court**

**K. Sripavan, CJ**

I agree

**Chief Justice**

**Rohini Marasinghe, J**

I agree

**Judge of the Supreme Court**