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

S.C. Appeal No. 103/2005

S.C. Spl. L.A. No. 137/2005
C.A.L.A. No. 34/01
D.C. Negombo 789/RE

In the matter of an Application for Special Leave to Appeal

Madampiti Hettiarachchige
Cyril Norbet Tissera

PLAINTIFF-JUDGMENT-CREDITOR

PETITIONER-RESPONDENT-PETITIONER-APPELLANT

Vs.

Filicia Mary Magdaline
Of No. 131, Negombo Road,
Rilaulla, Kandana.

SUBSTITUTED-DEFENDANT-RESPONDENT-PETITIONER-RESPONDENT-RESPONDENT

BEFORE: Priyasath Dep P.C., C.J.

Priyantha Jayawardena P.C., J.

Anil Gooneratne J.

COUNSEL: Romesh de Silva P.C. for the Plaintiff-Judgment-Creditor Petitioner-Respondent-Petitioner-Appellant

Faize Musthapha P.C. for the Substituted-Defendant-Respondent-Petitioner-Respondent-Respondent

ARGUED ON: 27.06.2017

DECIDED ON: 08.12.2017

GOONERATNE J.

This was a rent and ejectment action filed on or about 1978 in the District Court of Negombo. The premises in question is situated at No 131, Negombo Road, Rilaulla, Kandana. Judgment was entered by the District Court in favour of the Appellant and in terms of Section 22(1) (c) of the Rent Act, a further order was made by the learned District Judge, that before the Writ of Execution is issued by court, directing the Commissioner of National Housing to provide alternate accommodation to the Tenant-Respondent. There was in fact no appeal against the judgment of the District Court. It is the position of the Appellant that representations were made by him to the Commissioner to provide alternate accommodation to the Respondent so that he could execute the decree. It is also stated that the original Respondent expired and the Plaintiff-Appellant substituted the wife of the Respondent on 24.02.1987 in his place.

The material furnished to court suggest that the Commissioner of National Housing by letter dated 17.02.1997 informed the Registrar, District Court of Negombo that the Commissioner is in a position to provide an alternate house from the Divulapitiya, Walpita Housing Scheme which is reserved for the tenant. Thereafter the Appellant moved court and sought a Writ of Execution and also prayed for the issue of notice under Section 377 of the Civil Procedure Code, and in the said application Substituted-Defendant-Petitioner sought an order from court to reject the application of the Plaintiff-Appellant

The Respondent objected to allowing a Writ of Execution and after inquiry, District Court allowed the application for writ and the learned District Judge by order of 19.01.2001 made order allowing the writ subject to conditions. The Respondent being aggrieved by the District Court Order sought Leave to Appeal and Court of Appeal having granted leave, consequently by order of 25.05.2005 set aside the order of the District Court. The Supreme Court on or about 28.11.2005 granted Special Leave to Appeal on question of law set out in paragraph 32 (i), (ii), (iii), (vi) & (vii) of the petition dated 30.06.2005. It reads thus:

(i) Did the Court of Appeal err in law in applying the principles laid down in case Mowjood Vs. Pussadeniya 1987 (2) SLR 292?

(ii) Did the alternate accommodation provided by the Commissioner in accordance with the provisions laid down in Section 22 (1) (c) of the Rent Act as amended?

(iii) In terms of Section 22 (1) (c) of the Rent (Amendment) Act No. 26 of 2002 are the principles laid down in the case Mowjood Vs. Pussadeniya still in force?

(vi) Did the Court of Appeal err in holding that, the agreement referred is a Rent Purchase agreement?

(vii) In any event is the judgment in Mowjood Vs. Pussadeniya correctly decided?

Parties to this suit had been litigating since 1978. Judgment was entered in favour of the Plaintiff-Appellant in 1980, by the District Court. Thereafter the case record went missing from 1987 and later reconstructed by an Order of Court. The substituted-Defendant-Petitioner support the Judgment of the Court of Appeal and further state that the Court of Appeal correctly followed the Judgment in Mowjood Vs. Pussadeniya 1987 2 SLR 287 ... that purported notification on the basis of which the writ had been issued did not constitute "alternate accommodation" as required by Section 22(1) (c) of the Rent Act inasmuch as it was on hire purchase and not tenancy. Defendant also argue that purported notification is bad in law as the notification does not state that alternate accommodation was available for the tenant, and in the contrary it

states that alternate accommodation is available to the Plaintiff, landlord. It is bad in law and invalid.

Section 22 (b) of the Rent Act reads thus:

> Such premises are in the opinion of the court, reasonably required for occupation as a residence for the landlord, or any member of the family of the landlord, or for the purposes of the trade, business, profession, vocation or employment of the landlord, and such landlord has deposited, prior to the institution of such action or proceedings a sum equivalent to ten years' rent or rupees one hundred and fifty thousand, whichever is higher, with the Commissioner for National Housing and has cause notice of such action or proceedings to be served on the Commissioner: or" :

I will at this point of my Judgment consider the Court of Appeal Judgment and the applicability of the case of Mowjood Vs. Pussadeniya which was a Judgment in a Writ Application, and different to the case in hand. In order to clarify the position I will incorporate the operative part of the Court of Appeal Judgment which relied heavily by the Defendant on Mowjood Vs. Pussadeniya, only. The following to be noted.

> At the inquiry into the notification in the present case, all the evidence clearly establishes that the alternative accommodation offered is not on rent basis but on rent purchase basis and the expected occupation of the premises offered is in a character of a rent-purchaser and not of a tenant. In such circumstances, following rule in the decision of *Mowjood Vs. Pussadeniya* (Supra) the learned District Judge could not hold that the premises offered is "alternative accommodation" in the sense of the provisions of Rent Act and specially section 22 (1C) and ought not in law to have allowed the application for the issue of writ of execution of the decree. The learned District Judge has erred in law in holding that what was offered is "alternative accommodation" and consequently basing his decision to allow the writ of execution.

The evidence was led of the Plaintiff and two officers of the National Housing and Development Authority at the inquiry before the District Judge pertaining to the writ of execution. Plaintiff's evidence suggest that agreement to purchase the house at Divulapitiya, Walpita Housing Scheme (alternate house made available to the tenant) is between the Plaintiff-Appellant and the Commissioner of National Housing for Rs. 250,000/- . Plaintiff paid Rs.50,000/- initially and thereafter paid 18 instalements. The Court of Appeal has merely applied the case of Mowjood Vs. Pussadeniya without considering the evidence led at the inquiry. I will refer to certain extracts of Plaintiff's evidence. At Pg. 66 & 67 I note the following evidence.

උ: ඔව්

ප්‍ර : ඒ අනුව විකල්ප නිවාසය සම්බන්ධයෙන් ඉල්ලීමක් කලාද?

උ: ඔව්

ප්‍ර : ඒ ඉල්ලීම අනුව විකල්ප නිවසක් දිවුලපිටිය වල්පිට නිවාස යෝජනා ක්‍රමයෙන් ලබා දීමට ජාතික නිවාස කොමසාරිස් එකග වෙලා තිබෙනවා?

උ: ඔව්

ප්‍ර : ඒ අනුව තමන් ඉල්ලා සිටින්නේ විකල්ප නිවාසයක් ආදේශිත විත්තිකරුට සපයා දීමට දැන් හැකියාව තිබෙන නිසා නඩු තීන්දුව ක්‍රියාත්මක කිරීමට අවසර දෙන්න කියා?

උ: ඔව්

.....

උ: ඔව්

ප්‍ර : ඊට අමතරව ජාතික නිවාස සංවර්ධන අධිකාරිය මගින් මෙම අධිකරණයේ රෙජිස්ට්‍රාර් වරයා වෙත 1977.0217 දින ලිපියක් එවා තිබෙනවා. එම ලිපියෙන් නිවාස සංවර්ධන අධිකාරියේ නිලධාරීන් සඳහන් කරලා තිබෙනවා මෙම නඩුවේ තීන්දුවට අනුව විකල්ප නිවාසයක් සපයා දීමට හැකි බැවින් තීන්දුවට අනුව කටයුතු කල හැකි බව කාරුණිකව දන්වා සිටිමි කියා?

උ: ඔව්

At Pg. 153 of the proceedings which refer to a letter to the Registrar of the District Court from the Commissioner of National Housing clearly states that a house has been reserved, and will be complied with in terms of the order of the District Judge .... "ඉහත තීන්දුව අනුව කටයුතු කල හැකි බව කාරුණිකව දන්වමි.

රෙජිස්ට්‍රාර්,
දිසා අධිකරණය,
මීගමුව.

නඩු අංක 789/ආර්ඊ - නඩු තීන්දුවට අනුව කටයුතු කිරීම

කදාන, හවුගොඩ, අංක 215/ඒ හා පදිංචි එම්.සී.නෝබට් තිසේරා යන අයට ජාතික නිවාස සංවර්ධන අධිකාරිය සතු දිවුල්පිටිය වල්පිට නිවාස ක්‍රමයෙන් නිවසක් වෙන්කර ඇති බැවින්, ඉහත නඩුවේ තීන්දුව අනුව කටයුතු කළ හැකි බව කාරුණිකව දන්වමි.

Though communication by the Commissioner came rather late it is clear that the house is reserved for the tenant. An Assistant Commissioner who gave evidence had this to state, in court.

ප්‍ර : ජාතික නිවාස කොමසාරිස්ගේ කාර්යාලයයි ජාතික නිවාස සංවර්ධන අධිකාරියයි කලින් එකටද තිබුනේ?

උ: එකතැන තිබුනේ.
දෙකක් විදියට තිබී දැන් එකට තිබෙන්නේ.

ප්‍ර : ජාතික නිවාස සැපයිම දැන් කරන්නේ නිවාස සංවර්ධන අධිකාරියද?

උ : ජාතික නිවාස සංවර්ධන අධිකාරිය දැන් කරන්නේ

ප්‍ර : දැන් ජාතික නිවාස සංවර්ධන අධිකාරියෙන් විකල්ප නිවාසයක් සපයන්න පටන් ගත්තේ?

උ: උසාවියේ නියෝගයක්මත ඉල්ලීමක් තිබුනෝත් හදලා තිබුනෝත් ඒ වෙලාවේ නිවාසයක් සපයනවා.

ප්‍ර : කවුද ඉල්ලීම කලේ

උ: ජාතික නිවාස කොමසාරිස්.

The Court of Appeal Judgment has not considered the evidence led at the inquiry and merely arrives at a conclusion based on submission of counsel and the decision in Mowjood Vs. Pussadeniya. The said Judgment has no application at all to the case in hand, especially in the light of evidence that the premises is reserved for the tenant.

On perusing the judgment of Mowjood Vs. Pussadeniya it is stated .. where judgment for ejectment of the tenant had been made it is special concern to protect tenants in occupation of premises whose standard rent does not exceed Rs. 100/-. Hence a purposive interpretation of the statute to give effect to the intention of the legislature should be adopted. ..... reasonably required for occupation as a residence of the landlord or a member of the family writ to issue only after the Commissioner of National Housing has notified the court that he is able to provide alternative accommodation to the tenants. The alternative accommodation should, in view of the social objective of the Act, have some relevance to the needs and circumstances of the tenant so as not to render the offer of alternative accommodation illusory and unmeaningful: the accommodation offered must be habitable and appropriate to the tenant ... It

must be roughly comparable with the existing accommodation in basic amenities.

I cannot certainly agree with the above first part of the judgment. I could only agree with above, only from the point of 'habitable and appropriate' to the tenant. In this regard the Plaintiff as well as the other witnesses testified that, the alternative accommodation provided is a house on a 14 perch land and the house equipped with electricity and water supply and other amenities. It is close to Divulapitiya town. These are all uncontradicted evidence. A house in the nature of the tenants requirements should have basic amenities. Any utility items basic for human habitation must be available, without luxuries. That should be the standard that is required. In todays' context it can be any basis and rent basis is preferred.

In all the above circumstances I would answer the question of law as follows in favour of Plaintiff-Appellant.

(i) Yes

(ii) Yes

(iii) Mowjood Vs. Pussadeniya does not apply to the case in hand in its entirety.

(iv) In view of the answers to above, it does not arise

(v) Same as (iv) above

Mowjood Vs. Pussadeniya was decided 40 years ago, we are today living in a very modern society, notwithstanding the poverty that has crept into the society. I am not in a position to adopt the principles laid down in the above case to the case in hand. Delay that has taken place at various level of courts and the delay of the Commissioner of National Housing to provide alternative accommodation is unfortunate and regrettable. I affirm the Order of the learned District Judge dated 19.01.2001 and I set aside the judgment of the Court of Appeal. The Substituted-Defendant-Respondent-Petitioner and the Plaintiff-Respondent (Judgment-Creditor) to comply with learned District Judges' Order subject to the conditions that the tenant, once the keys to the premises are accepted the tenant should within 6 weeks vacate the premises in dispute and occupy the premises allocated. If any change of circumstances have occurred tenant to notify the District Court, by motion to enable the District Judge to deal with it.

Appeal allowed without costs.

JUDGE OF THE SUPREME CORUT

Priyasath Dep P.C., C.J

I agree.

CHIEF JUSTICE

Priyantha Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREME COURT