

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

1. A.H.M. Mahsoof
2. S.M. Anwardeen
3. M.S.M.A. Razaak
4. M.H.M. Bishrul Haffi

Special Trustees of Jumma Mosque
Moor Street, Chilaw.

PETITIONERS

C.A 381/2012 (Writ)

Vs.

- 1A. K.V. Sirisena
The Chairman
Rent Board of Review
Colombo.
- 1B. Vidura Gunaratne
Member
Rent Board of Review
Colombo.

AND 8 OTHERS

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Rohan Sahabandu P.C., with Samithree Kumarawardena
for the Petitioners

Farook Thahir with A.L.N. Mohamed, N.M. Riyaz and
M. Yusoof for the 3rd Respondent

ARGUED ON: 09.12.2013

DECIDED ON: 30.05.2014

GOONERATNE J.

The Petitioners are all Trustees of Jumma Mosque, chilaw and as described in the amended petition, was appointed under the Wakuff Act (P1). By sub paras (b), (c) & (d) of the prayer to the Petition a Writ of Certiorari is sought to quash decision P11 of 5.7.2012, P3 determination of 26.8.2005 and the decision of 2nd Respondent refusing to vary the earlier order P11. Oder P11 is a decision of the Rent Board of Review. P3 is the determination of the Rent Board, fixing the authorized rent at Rs. 4848/- per annum. A mandamus is sought to compel the 1st Respondent to hear the appeal of the Petitioners, afresh.

To state briefly the position as stated in the petition, 3rd Respondent sought a determination of authorized rent. The Rent Board fixed the authorized rent (P3) at Rs. 4848/=. Without a basis and also the fact that the Rent Act does not apply. By P4 the Petitioner appealed to the Rent Control Board of Review. Rent Control Board of Review referred the matter back to the Rent Board to consider the matter afresh (P5). Perusal of P5, I find as stated in P5 the following matters.

- (1) Property involved in appeal belongs to the Trustees of the Jumma Mosque .
- (2) Applicant state that the application cannot be maintained as premises are excepted premises and not governed by the Rent Act.
- (3) Board of Review observed that there are no proceedings before the Rent Board filed of record and no evidence led to establish that properties are excepted premises

P6 are the proceedings where some evidence recorded.

Superintendant of Work of the Local Authority gave evidence where evidence reveal that the premises in question are unauthorized and without a building plan and a certificate of conformity. Rent Board of Chilaw failed to consider the above and made order by P7. It is recorded in P7 that documentary proof provided by Petitioner and the written submissions do not contain a seal or

name of Attorney at Law and as such rejected. Therefore the earlier decision prevail (P7). I do not know why the written submissions of the Attorney at Law was rejected? If there was no seal or signature of Attorney at Law the Board should verify same before making any order, since the Board deals with a important question? To reject on such a flimsy grounds is to reverse the entire process? Petitioner being aggrieved of P7 appealed to the Board of Review (P8). I would prefer to incorporate the relevant paragraphs of the Petition for what happened before the Rent Board of Review and as to ascertain the complaint of the Petitioner.

(1) When this matter was taken up by the Rent Board of Review on 08.12.2011, the matter had been fixed for oral submissions on 12.01.2012 in the absence of the Petitioners. The Petitioners being unaware of this date failed to be present on that date and make oral submissions. On 12.01.2012, only the Respondent's counsel had made submissions and the matter was then fixed for order on the 15.03.2012.

Thereafter the Petitioners filed a motion and moved that they be allowed to make oral submissions. However as the Respondents objected to this application, the Board of Review decided to only allow the parties to tender further written submissions if necessary.

(2) The Petitioners accordingly submitted further written submissions in which they had referred to the evidence of the Superintendent of Work of the Municipal Council of Chilaw and had also submitted a certificate issued by

the Chairman of the Urban Council of Chilaw dated 14.03.2012 marked 'X' along with the written submissions, which states that the said building is an unauthorized building.

(3) The Rent Board of Review considering the written submissions determined on 05.07.2012 that the Petitioners had failed to establish their preliminary objection i.e that the building concerned is an unauthorized construction on the following reasons.

- (i) Only one witness namely Alroy Perera from the Urban Council of Chilaw had given evidence to testify as regards the assessment.
- (ii) The evidence of Superintendent of Work, Raj Kamal was not available in the case record according to proceedings dated 24.06.2010.
- (iii) The document marked X1 had not been produced at the inquiry, which formed part of the record.

Petitioner urge that the Rent Board of Review failed to properly evaluate evidence placed before it and give reasons, and as such it is contrary to law. The Petitioner fault the Rent Board of Review to properly evaluate the evidence placed before it, and give reason. The Board of Review failed to give due credence to the evidence of the Superintendent of Work of the local Authority, who testified, on.

- (a) Unauthorized construction
- (b) No building plan or a certificate of conformant
- (c) Not calling for the record from the Rent Board (incomplete record)

Therefore the Petitioners submit that the order of the Rent Board of Review is Arbitrary, irrational, capricious, illegal and ultra vires its power.

Having perused the objection of the 3rd Respondent the following points are raised by the 3rd Respondent.

- (1) P3 is not an order of the Rent Board, it is only a letter communicating the order.
- (2) Petitioner failed to take up the position that shop premises are unauthorized and Rent Act has no application.
- (3) Rent Board considered the evidence in arriving at the order P7.
- (4) Only when the matter was set down for fresh inquiry that the Petitioner took up the position that the building was unauthorized, but the Rent Board rejected this contention.
- (5) The shop premises in suit constructed by the former Trustees of the Chilaw Jumma Mosque. (Prior to 1991)
- (6) Former Trustees gave on lease several shop premises.
- (7) 3rd Respondent took the premises on a lease rental of Rs. 550/= per mensum— lease Agreement produced 3R1.
- (8) On or about 23.8.1996 the former Trustees filed action (25564/RE) for eviction of the 3rd Respondent since the lease expired on 31.12.1994. Plaint and answer annexed 3R2 & 3R3.

- (9) On 27.12.1998 learned District Judge dismissed the action 24564/RE (3R4).
- (10) Former Trustees appealed to the Court of Appeal in CA 214/94 F – 3R5.
- (11) Only after dismissal of action in D.C Colombo 24564/RE that 3rd Respondent applied to the Rent Board to determine the rent.
- (12) Rent Board determined the authorized rent at Rs. 4848/-. Former Trustees of the Jumma Mosque appeal against the said order to the Rent Board of Review and the Board of Review referred the matter for a fresh inquiry.
- (13) At the fresh inquiry before the Rent Board the position of unauthorized premises was raised for the first time Rent Board rejected this contention.
- (14) Argument based on above appeal to the Board of Review. The Board of Review dismissed the appeal by P11.

In the submission before court and as pleaded 3rd Respondent take up the position of unexplained delay of the Petitioner in filing this application and suppression and non disclosure of material facts. It is also contended that this application consists of disputed facts which are not amenable to the writ jurisdiction of court. It is also pleaded by the 3rd Respondent that document 'X' dated 19.3.2012 submitted by the Petitioner for the Rent Board made its order on 3.3.2011 is a self serving document.

This court having considered the case of either party wish to state that Writ Applications are discretionary remedies of court. I have to consider the two objections raised by the 3rd Respondent which may disentitle the

Petitioner for remedy by way of a prerogative writ. However if the Petitioner was able to demonstrate that the decisions sought to be quashed should be quashed since these decisions are a nullity, laches cannot be pleaded and no benefit from laches could be attributed to the 3rd Respondent.

The order P11 is dated 5.7.2012 and the petitioner filed the Writ Application by petition dated 30.11.2012. The delay is about 4 months. The amended petition was filed on 6.2.2013. Where the entire Board had been named. Amendment is however permissible in terms of the rules. I do not think the delay could be 22 months as submitted by the counsel for the 3rd Respondent in his written submissions. The filing of the petition to the amended petition is a continuous process for which a party cannot be blamed since over a period of time circumstances and officials would change for various reasons.

However what matters is the other matter i.e suppression and non disclosure of material facts. If proved the application should be dismissed in limine. Paragraph 7 to 11 of the objection of the 3rd Respondent disclose some vital matters not disclosed by the Petitioners. This includes documents 3R1 to 3R5. What need to be emphasized is that the filing of a Rent and ejectment case in a District Court and an appeal from the order of the District Court to

the Court of Appeal (CA 214/94F) are matters not disclosed in the original petition and the amended petition of the Petitioner. It is possible to argue that matters before the Rent Board and the Rent Board of Review, though pertaining to the premises in dispute and the action filed in the District Court and the Appeal to the Court of Appeal, could be categorised as based on different cause of actions. Nevertheless, still there is a necessity to disclose the type of action since it is mandatory to plead before the Court of Appeal (in terms of the rules) that the jurisdiction of the court has not been previously invoked.

In the above circumstances this court need not examine the question whether the premises in dispute are excepted premises or whether the Rent Act applies to the premises in dispute as urged by the Petitioners as their main point. If in fact there is any substance in it, the Petitioner may have to advise themselves and consider other options. When a glaring defect or a lapse or irregularity is brought to the notice of this court, such objections based on same and demonstrated by the 3rd Respondent cannot be treated lightly or ignored by this court.

“In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the court will not go into the merits of the

application, but will dismiss it without further examination. Pathirana J. in Alphonso Appuhamy Vs. Hettiarachchi (1973) 77 NLR 131, 136. Parties need to open and be frank with court and must not suppress material facts or practice deception. Per Sansoni J. Kandy Omnibus Co. Ltd. Vs. Roberts (1954) 56 NLR 293, 304. Such matters could be raised in limine. 1997 (1)SLR 360-363.

This court is not inclined to grant any relief to the Petitioners. As such this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL