

**Sinon v Ward
(1999) SLR 130**

Antony DERJACQUES for the appellant
Philippe BOULLE for the respondent

Judgment delivered on 26 April 1999 by:

PERERA J: The respondent applied to the Rent Board under the Control of Rent and Tenancy Agreements Act (Cap 47) for eviction. It was averred that the respondent was the proprietor of a property in Bougainville and that the dwelling house standing thereon was let to the appellant who was engaged as a "General Supervisor of the property". Evidence on the ground that the said dwelling house was required for occupation by the respondent, conditional upon housing accommodation being provided, a contract for employment had been entered into.

The appellant denied that he was engaged by the respondent as a "General Supervisor", and averred that consequent to looking after the respondent's aged mother, he was granted a life tenancy to occupy the premises during his lifetime and that of his wife.

John Ward, the husband of the respondent testifying on the basis of his own knowledge, admitted that the appellant and his wife looked after and cared for the sickly and aged mother until her death in September 1995 at the property. In a last will dated 5th June 1995 (P 2 B) she bequeathed all her movable and immovable property to the respondent, her daughter. He denied that there was any usufructuary right granted to the appellant by his deceased wife in respect of the dwelling house in dispute.

The appellant continues to be in occupation of that house. The respondent transferred parcel T 1636 which adjoins the parcel containing the dwelling house in dispute to the appellant for a price which she admittedly is a nominal figure. The deed of transfer recites inter

This transfer is being effected in complete and total settlement of the estate of Mrs Sinon's care and kindness to the late Mrs Herta Nazari.

The Rent Board did not find on the evidence that the mother of the respondent had an intention to permit the appellant and his wife to occupy the premises until her death in consideration of the services rendered. There was nothing in her last will to that effect. Hence the transfer of parcel T 1636 by the respondent as executrix of the estate operated as a "complete and total settlement" of any obligation the deceased person may have had. The appellant does not claim that the late Mrs Nazari intended to transfer a parcel of land in addition to the alleged promise to permit him to occupy the

dwelling house in dispute under section 10(2) of the Rent Act. It was averred that the land situated at the premises was let to the appellant who was sought on the ground that he was engaged by a person with whom a contract for employment had been entered into.

The appellant denied that he was engaged by the respondent as a "General Supervisor", and averred that consequent to looking after the respondent's aged mother, he was granted a life tenancy to occupy the premises during his lifetime and that of his wife.

John Ward, the husband of the respondent testifying on the basis of his own knowledge, admitted that the appellant and his wife looked after and cared for the sickly and aged mother until her death in September 1995 at the property. In a last will dated 5th June 1995 (P 2 B) she bequeathed all her movable and immovable property to the respondent, her daughter. He denied that there was any usufructuary right granted to the appellant by his deceased wife in respect of the dwelling house in dispute.

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premises until death. On the same basis, in the absence of evidence it is unreasonable to believe that the executrix transferred that parcel of land in addition to whatever occupational rights that her deceased mother may have granted or promised to the appellant. The appellant testified that he had lost a written document creating a life tenancy in his favour by the late Mrs Nazari. The Board was justified, in the circumstances of the case, to reject that evidence.

The respondent testified that the appellant was given time to build a house on parcel T 1636 and vacate the present premises. Subsequently the respondent by letter dated 24 July 1997 (exhibit P3) sent through her lawyer, gave the appellant notice to quit the premises within two months. The appellant by letter dated 17 September 1997 (exhibit P4) refused to vacate the premises claiming that he has a right of occupation until death. He offered to buy the entire property for R800,000. The respondent replied by letter dated 26 September 1997 (exhibit P6) indicating that she had no intention to sell the property. The appellant however persisted and by letter dated 31 October 1997 (exhibit P5) offered a sum of R1,000,000 (one million) to purchase parcels T 1637 and T 1166. The Cadastral Survey (exhibit P7) shows that these two parcels adjoin P 1636 which is now owned by the appellant. According to the evidence the entire land is about 60 acres in extent, and the market value is about R2 million. It has thereon a main dwelling house, and two other units of dwelling accommodation. The appellant is in occupation of both those units, paying no rent. He has also extended the dwelling house by encroaching on a portion of the eastern boundary of parcel T 1636 now owned by him, without permission or authority of the respondent (exhibit D1).

On an evaluation of the oral and documentary evidence, the Rent Board decided that the appellant had no life tenancy in the premises in suit, and that whatever right he had to occupy the premises had now ceased. They therefore ordered eviction on or before 31 December 1998.

As ground 1 of this appeal, it was contended that the Rent Board did not have jurisdiction to determine this case. It was contended by counsel for the appellant that by extending the dwelling house, the appellant had acquired an interest in the premises and hence an application for eviction could not have been determined until that interest had been adjudicated upon. The Rent Board came to the following finding on this issue.

On the basis of the evidence, we are satisfied that the respondent has slightly extended the structure of the cottage onto the adjacent land of his own, crossing the boundary line as show in exhibit D1. He has done so unlawfully, without permission from the applicant. This deliberate act of encroachment by the respondent cannot provide him any protection in law against eviction. We find this act of extension is illegal and ill motivated to create a pseudo right for the respondent in order to perpetuate his stay in the cottage. In any event an illegal act can in no way metamorphise into a legal right for the benefit of the perpetrator.

It is settled law that a certain set of facts must exist before the Rent Board has

jurisdiction. Hence it can inquire into the facts in order to decide whether or not it has jurisdiction. Where the issue of ownership of the premises arises, the board has jurisdiction to determine that only as a collateral issue. In the case of *Sidna Monnaie v Manoharan Pillay* (unreported) Civil Appeal 6/1994 the Rent Board had, in considering whether a lessor and lessee relationship existed, proceeded to the realms of contractual law and determined that there was a promise to sell between the parties. That finding was held by this Court to be ultra vires the powers and jurisdiction of the Rent Board. Similarly in the case of *May Emilie Richard v Joseph Pillay* (unreported) Civil Appeal 4/1996 the Rent Board, in inquiring into the facts to decide whether it had jurisdiction, made a finding under article 555 of the Civil Code and ordered the occupier of the premises to "remove and take away the structure. This Court held that the board had acted ultra vires its powers.

The facts of the instant case are somewhat different. The appellant does not deny that the dwelling house he occupies free of rent, and parcel T 163 are owned by the respondent. In ground 2 of the memorandum submits that he has an interest beyond that of a lessee in the house and hence should not be considered merely as a lessee. It was therefore contended that the Rent Board ought not to have proceeded with the application for eviction and referred the parties to seek their remedy before the Supreme Court which is empowered to determine a matter falling under article 555 of the Civil Code as it did in the case of *Richard v Pillay* (supra). It was contended that the Board acted in a collateral issue only for the purpose of ascertaining whether it should entertain the application for eviction. Both parties admit that the dwelling house owned by the respondent. The board's finding that the appellant could not alter his position as a "lessee" (in the extended sense of a person enjoying the use and occupation of a dwelling house for which a rent is payable or not), by creating a right of his own to evade the jurisdiction of the Rent Act. Hence grounds 1 and 2 fail. In ground 3, it is contended that the Board failed to consider the respondent's application for eviction. Though not stated, the appellant contended that section 10(2)(f) of the said Act, which reads as follows-

The dwelling house is reasonably required by the lessor as a residence for some person engaged in his employment conditional on housing accommodation being provided, and employment has been entered into and the lessee was the lessor or a former lessor and the dwelling house was let to him in consequence of that employment and he has ceased his employment.

The appellant in his defence denied that he was engaged as a general supervisor to look after the respondent's property. He claimed that by a verbal agreement, he and his wife were given right of occupation of the dwelling house for life for services rendered by looking after and caring for the aged person of the respondent,

which it is situated, in appeal, the appellant had the house and hence contended that the Rent Board acted in excess of its jurisdiction and referred the matter to the Supreme Court. This contention is rejected as it is a finding of fact on which the Rent Board has jurisdiction to act. The Rent Board's finding that the appellant was not a person entitled to a pension is payable by the Rent Board and the respondent's application was based on the fact that the appellant was not a person entitled to a pension.

occupation as a general supervisor with whom he entered into a contract for such employment of the dwelling house let to him in consequence of that employment and he has ceased his employment.

general supervisor to look after the respondent's property. He claimed that by a verbal agreement, he and his wife were given right of occupation of the dwelling house for life for services rendered by looking after and caring for the aged person of the respondent,

who are now both dead. As already held, the appellant failed to establish a life tenancy. Hence, it was, at best, a service tenancy, and the subsequent transfer of parcel T 1636 to the appellant "in complete and total settlement" of the appellant and his wife's "care and kindness to" the deceased parents of the respondent, establishes that the service tenancy has ceased and that the appellant has no "contract" with the respondent to continue to occupy the premises.

The respondent testified that he has engaged one Robert Bason as a caretaker on condition that he could occupy the cottage presently occupied by the appellant, free of rent and for a monthly salary of R400. Robert Bason (Pw2) corroborated the evidence of the respondent and stated that he has been engaged as the caretaker. The board on a consideration of the evidence stated thus –

We are satisfied on a preponderance of probabilities that the applicant reasonably and bona fide requires the cottage to house her employee in her estate with whom the applicant has entered into a contract of employment with condition of housing accommodation being provided in pursuance of such employment.

In the case of *Dubel v Bossy* (1973) SLR 385, Sauzier J gave a strict interpretation to paragraph (f) of section 10(2) and held that "there must be a subsisting contract of employment between the lessor and some person before the provisions of paragraph (f) of section 10(2) of the ordinance may be invoked as a ground of eviction". In that case, the succeeding employee had not yet been appointed, and the lessor in his testimony stated "I have to employ somebody to work the property. I can't until the appellant moves out of the house". The essence of the ground contained in paragraph (f) is to grant relief to a lessor, who is also an employer, to obtain possession of a house let to an employee whose employment has been terminated. For that purpose there should necessarily be a nexus between employment and housing as part of the contract. In such circumstances the contract of tenancy ends with the termination of employment, and hence the employer should be able to obtain vacant possession of the premises to accommodate the succeeding employee with a similar condition regarding accommodation.

In the *Dubel* case (*supra*), the Court allowed the appeal thereby permitting the lessee whose employment had been admittedly terminated to continue in occupation of the premises merely because the lessor employer had not yet employed a successor. With respect, that was an interpretation which was grossly inconsistent with the rationale of the provisions of section 10(2), especially as the lessor may not have had any other ground under section 10(2) to evict a person who had been a lessee only because he was his employee, and the lessor - lessee relationship had ceased, and a succeeding employee may not accept employment until he is assured of housing accommodation.

In the instant case, the nexus between the appellant and the tenancy was the care and support he and his wife gave the aged parents of the respondent. That nexus ended with their deaths. The respondent as an act of gratitude transferred a parcel of land

adjacent to the cottage they are occupying and gave them sufficient time to build a house of their own. They do not seem to be in such indigent circumstances, as they offered to purchase the entire property for 1 million rupees. There is no legal justification for the appellant to continue in occupation of the dwelling house of parcel T 1637. The Board was satisfied that the respondent had employed one Robert Bason as a caretaker of the property on payment of a monthly salary and on condition that accommodation would be provided, as the appellant's services were in any case unsatisfactory. This case should therefore be distinguished from the *Dubel* case (supra). The Court accepts the findings of facts made by the board on that issue.

The Board further noted that the question of a balance of hardship need not be considered under the proviso to section 10(2) of the Act in the case of an eviction under section 10(2) as in the instant case, but proceeded to give two months time to vacate, in the interest of justice. This Court finds no justification to interfere with that finding of fact nor with the order made for eviction. Grounds 3 and 4 therefore fail.

The appeal is accordingly dismissed with costs.

Record: Court of Appeal (Civil No 11 of 1998)