

IN THE SUPREME COURT OF SEYCHELLES

JULIE VARNIER
(Rep by Rassin Sinon)

APPELLANT

VERSUS

MARY JUNE MERIDITH LADOUCEUR
(Executrix of the Estate of Michel Alcindor)

RESPONDENT

Civil Appeal No 1 of 2003

Mr. P. Boulle for the Appellant
Mr. C. Lucas for the Respondent

JUDGMENT

Perera J

This is an appeal from a ruling made by the Rent Board, upon a plea *in limine* raised by the Respondent that

–

“The Respondent is a statutory tenant in terms of the Tenants’ Rights Act 1981, and is not amenable to the jurisdiction of the control of Rent Act (the Rent Board)”.

The Rent Board held that the Respondent was a statutory Tenant and that hence the present Appellant could not proceed with the application unless she obtained a certificate of consent from the Registrar of Tenants’ Rights.

The Appellant relies on two grounds of appeal –

- “1. The Respondent’s certificate dated 29th November 1993 issued under the Tenants’ Rights Act had expired and could no longer afford the Respondent any rights under the Tenants’ Rights Act.
2. *The finding of the Rent Board that the Appellant needed the permission of the Registrar of the Tenants’ Rights before proceeding before the Rent Board was a misinterpretation of the Tenants’ Rights Act.”.*

Admittedly, the Respondent was a lessee of a house, owned by the Appellant. On an application made under the Tenants' Rights Act, the Respondent was registered as a "Provisional Statutory Tenant" on 11 December 1986. Subsequently on 29th November 1993, he was registered as a "statutory tenant" pursuant to Section 23 of the said Act. By virtue of Sub-Section (3) thereof, the "registration date" related back to the date of the provisional registration, that was, 11th December 1986.

Considering ground 1, the preliminary issue before the Rent Board was whether at the time the Appellant made the application for eviction on 20th May 1997, on the ground that the premises were reasonably required by the landlord for occupation by the family, the Respondent had remained a statutory tenant, or had any rights in the premises.

Learned Counsel for the Respondent contended inter alia that the Application to purchase the property is still pending before the Registrar of Tenants' Rights and Regulations to be made by the Minister to complete the transfer of the property are being awaited. He therefore submitted that the Rent Board is not the proper forum to determine an issue regarding the statutory tenancy. In this respect he contends that the Supreme Court in case no. C.S. 263/97 and the Court of appeal in CA 28 of 2000 proceeded on the basis that the statutory tenancy subsisted.

In case no. C.S 263 of 1997, by a plaint filed on 24th July 1997, the present respondent sought specific performance of an alleged contract to sell the premises. By that time he had been declared a statutory tenant. In that case, the Court considered the evidence that the Respondent was negotiating with the Appellant to purchase the house, but as he could not obtain a government loan for Rs.120,000 demanded by the Appellant, he commenced parallel proceedings under the Tenant's Rights Act. The Registrar of Tenants' Rights also testified that the Respondent had made an application for adjudication with the intention of purchasing the house after demarcation. There was also the evidence that a loan of Rs.80,000 was approved by the S.H.D.C. upon his application to purchase the house being referred there by the Registrar of Tenants' Rights. It was also disclosed in evidence that Rs.80,000 was the agreed purchased price, as envisaged in Section 32(1) of the Act. Hence as negotiations between the parties to purchase the house had commenced as a civil contract but subsequently processed under the provisions of the Tenants Rights Act, the court held that "*as there has been an agreement for the sale of the property to the plaintiff, in the sense of a finalisation of the procedure towards the transfer of the premises to the statutory tenant, the defendant was obliged to execute the transfer thereof for the price of Rs.80,000*". The Court also ruled that "*what was being sought to be specifically performed was Section 34(1) of the Tenants' Right Act*". In appeal, it was contended that as the case was based on a civil contract, that finding was ultra petita.

The Court of Appeal S.C.A. no 28 of 2000) held that the Respondent had "*made a mistake* in formulating his claim for specific performance of a contract when he should have initiated proceedings to compel performance of the Appellant's duty as statutory landlord, if so he was. That Court also referred to the penal consequences that flowed on the statutory landlord under Section 27(3) of the Act if he contravened Sub Section 1 of Section 27, which

included a failure to transfer the premises when called upon to do so. The Court also stated –

“Notwithstanding that the Act has been repealed by Act no 7 of 1992, applications such as the present one, received before 13th April 1992 by the Registrar and pending on that date continues to be dealt with under the Act as if it had not been repealed. Even if it may be a moot point whether prosecutions under the repealed Act can now be instituted, the provisions of Section 27(3) show beyond preadventure that the duties created by Section 27(1) were not at all contractual”.

The Court thereupon held that the trial Judge “ought to have dismissed the action for specific performance of the alleged contract, without prejudice to the liberty of the respondent to seek appropriate remedies as the Act may offer him”.

That judgment was delivered on 19th of April 2002. The Supreme Court judgment was delivered on 13th November 2000. The application for eviction, upon which the present plea in limine has been raised had been filed on 20th May 1997. The proceedings of the Rent Board show that this application was stayed pending the disposal of the Appeal before the Court of Appeal.

The ratio decidendi of the judgment of the Court of Appeal was that the Respondent as a statutory tenant ought to have sought to enforce the duty of the statutory landlord to transfer the premises under Section 27(3) of the Act and that the Trial Judge should have dismissed the action for specific performance with liberty to the Respondent to seek his remedy under Tenants' Rights Act. However, when the case was called before the Rent Board on 7th May 2002, Mr Boule, Learned Counsel for the Applicant informed the Board that the Judgment of the Court of Appeal had been delivered and ownership vested in the Applicant. Indeed ownership would continue until the premises is transferred to the statutory tenant under Section 34(1). It was thereupon that the Respondent raised the plea in limine that the Rent Board had no jurisdiction to entertain the application for eviction as the Respondent was a statutory tenant.

A similar objection was raised before the Rent Board in the case of **Philippe Albert & Ors v. Alain Savy & Ors (case no. 25 of 1997)**. In that case an application for registration as a provisional statutory tenant had been objected to by the landlord, and the proceedings were pending before the Registrar of Tenants' Rights when the landlord made the application before the Rent Board to evict the Tenant on the ground that the premises were required for his own use and occupation. The Rent Board upheld the objection on the ground that pursuant to Section 12, an “applicant” who by definition, was an applicant for registration as a statutory tenant under Section 11, could not be evicted. Thereupon, the constitutionality of the Tenants' Rights (Repeal) Act 1992 was canvassed before the Constitutional Court on the ground that it violated the right to property contained in Article 26(1) of the Constitution. That Court unanimously dismissed the application.

The landlord thereupon requested the Registrar of Tenants' Rights to make an early determination on the application on the Tenants. Replying that letter, the Registrar stated "*this is to confirm that Tenancy under the Tenants' Rights (Repeal Act) cannot be sustained*". Thereupon the landlord sent a notice to the Tenant to quit the premises. The Tenant once again raised a preliminary objection on the ground that the matter was *res judicata*. That objection was upheld. As regards the alleged "consent" given by the Registrar, this Court in Appeal (CA 5 of 2000) held that as it had been done without giving the Applicant Tenant an opportunity to object, it was invalid as such consent or leave had not complied with the provisions of Section 12. Thereupon, the applicant was granted provisional statutory tenancy on 21st March 2003 by the Registrar of Tenants' Rights. Objections raised by the statutory landlord were dismissed by the Tenants' Rights Tribunal on 21st July 2004, and an appeal filed against that decision is now pending before this Court.

In the present case, unlike in the case of *Albert (supra)* the Respondent was registered as a provisional statutory Tenant on 11th December 1986 and as a statutory Tenant on 29th November 1993. No objections had been raised for such registration. Previous litigation, as confirmed by the Court of Appeal, revealed that the proceedings before the Registrar of Tenants' Rights had reached the stage envisaged in Section 34(1) of the said Act, and all that remained was the transfer of the premises. However it has since been disclosed that the statutory tenant (*Michel Alcindor*) died during the subsistence of the statutory tenancy, and one Mary June Meredith Ladouceur, his concubine, has been appointed as executrix of his succession. Although under Section 176 of the Code of Civil Procedure a cause or matter does not abate by reason of the death of a party, yet, Section 29 of the said Act provides that if at the time of the death of the statutory tenant, his spouse or a person living en menage with him or a member of his family of 18 years of age or older residing with him, has occupied the registered premises with him for a continuous period of 5 years or more, such person may apply to the Registrar *within one month of the death* to be registered as the statutory tenant by succession in place of the deceased. Under Section 30(2), if no such application had been made, on an application made by the statutory landlord, the Registrar shall issue a notice of termination of tenancy having the effect of terminating of the tenancy. This is a matter to be decided by the Registrar of Tenants' Rights. However, for purposes of this appeal. In the absence of any determination under Section 30, the findings of the Rent Board that the application before the Registrar of Tenants' Rights is still pending by virtue of Section 2(2) of the Tenants' Rights (*Repeal*) Act 1992 cannot be faulted. Accordingly ground 1 fails.

As regards ground 2, the finding that the applicant landlord could not maintain the application for eviction under the Control of Tenancy Agreements Act without a certificate of consent from the Registrar of Tenants' Right, is both contradictory to the finding that the Respondent was a statutory tenant, and is also a misinterpretation of paragraph 1 of Schedule 9 of the Tenants' Right Act.

In any event,, that finding was superfluous. Paragraph 1 was based on Section 8 of the Act. The requirement to obtain the written consent of the Registrar arose in respect of execution on decisions of any civil Court or of the Rent Board which was or is given after 16th November 1981 *and* before 3 months after the commencement of the Act in relation to the premises, *and* concerned the tenancy, lease or occupation of premises, or any interest in premises, to which Sections 6 or 7 would have applied on that date. That was a transitional provision. However, such consent was not required if the decision to evict was based on non payment of Rent or other failure by the Tenant to carry out his obligations. Section 8(2) specifically states that "paragraph 1 of Schedule 9 applies with respect to

decisions of any civil Court or of the Rent Board after 16th November 1981 and before 3 months after the commencement of this Act. The Act commenced on 1st January 1982. Hence that provision is now absolute except in respect of decisions made between 16th November 1981 and 1st April 1982, which may still be pending. Although there is merit in ground 2 of the Appeal, the validity of the finding that the application of the Respondent continues to be pending before the Registrar of Tenants' Rights, remains unaffected.

Consequently, the Appeal is dismissed with costs.

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A.R. PERERA
JUDGE

Dated this 21st day of January 2005