Under the Republican Constitution of 1972 also Superior Court Judges **held office during good behaviour**, and could not be removed except by the President upon an address of the National State Assembly.

But under the present Constitution a Superior Court Judge can be removed only for **proved misbehaviour or incapacity**. This constitutional requirement has introduced a new dimension into the procedure for removal of a Superior Court Judge.

The danger, however, is parliamentary convention appears to be for Parliament to act on the findings of the Select Committee – *vide* for example, the case of Mr. N. D. M. Samarakoon QC where the Parliament acted on the finding of the Select Committee that the Hon. Chief Justice is not guilty of proved misbehaviour.

It is said that the Government of Sri Lanka has given a written assurance and confirmed to the Human Rights Committee established under the International Covenant on Civil and Political Rights that the findings of an ad hoc Select Committee appointed under Standing Order 78A are subject to judicial review. It is hoped that this assurance given by the Government of Sri Lanka will be honoured.

It is, therefore, wrong to assume that the findings of the Parliamentary Select Committee in regard to the alleged misbehaviour of Dr. Shirani Bandaranayake are final and conclusive.

Dr. Shirani Bandaranayake has filed a writ application to have the findings of the Select Committee quashed. The correct thing to do appears to be to await the final outcome of this writ application. We do not have to be reminded that the Rule of Law must prevail over political expediency, and that justice must be done even if the skies fall - ***fiat justitia ruat caelum***.

It is also appropriate to note that the celebrated ruling of Mr. Anura Bandaranaike has no application to the facts of the instant matter. Mr. Anura Bandaranaike was dealing with a case where interim orders had been issued restraining him from appointing a Select Committee of Parliament in terms of Standing Order 78A. Mr. Anura Bandaranaike relied on sections 3, 4, 6 and 7 of the Parliament (Powers and Privileges) Act of 1953, and held that the cumulative effect of those provisions places the question of the exercise of the Speaker's powers wholly outside the control of any Court. Mr. Anura Bandaranaike accordingly held that the Supreme Court had no jurisdiction to issue the said interim orders, that they were not binding on the Speaker, and that there was no legal obligation to comply with them.

Also, it is noteworthy that the case of Mr. N. D. M. Samarakoon QC is not an exact parallel. Mr. S. Nadesan QC who appeared for Mr. Samarakoon QC had, *inter alia*, argued that the appointment of the Select Committee had no constitutional validity. The matter before that Select Committee, however, did not go that far because that Select Committee took the view that it cannot come to the conclusion that the Chief Justice is guilty of proved misbehaviour. Mr. N. D. M. Samarakoon QC retired shortly thereafter upon reaching the statutory age of retirement.

The Resolution to impeach Mr. Sarath N. Silva PC lapsed because of a timely prorogation of Parliament.

It is thus clear that the Resolution to impeach Dr. Shirani Bandaranayake is *res integra*, and must, therefore, be considered as such.

Some newspapers and journalists and certain others have commented on the current impeachment issue on a very superficial note, and in the process have attacked and insulted the lawyers who have expressed the view that the due process of law has not been observed in regard to the impeachment of Dr. Shirani Bandaranayake. Regrettably, the impeachment issue has been personalised and politicised. Even the legal system has not been spared. It is hoped that it will be realised sooner than later that such comments and unfounded criticisms will do more harm than good to the administration of justice in this country. It has not been appreciated that the three important matters the Bar is concerned with are the independence of the judiciary, the security of tenure of Judges of the Superior Courts and the preservation of the Rule of Law.

The Bar Association of Sri Lanka headed by Mr. Wijeyadasa Rajapakshe PC has in a forthright and fearless manner done everything in its power to safeguard the independence of the judiciary and the security of tenure which Judges of Superior Courts are by law entitled to enjoy.

JUDGMENTS

Sections 839 and 341(1) of the Civil Procedure Code / Rent Act / Death of a tenant intestate and issueless during the pendency of a case

SUPREME COURT

Deepthi Fernando* v. *Thilak Padmakumara Arambewela

SC Appeal No. 107/2008
SC HC(CA) LA 127/08
WP/HCCA/COL/57/08
D. C. Mount Lavinia Case No. 687/02/RE

Decided on: 27-03-2012

Decided by: N. G. Amaratunga, J; S. I. Imam, J.; **R. K. Suresh Chandra, J**.

This was an action for ejectment of the Defendant on the grounds of sub-letting and arrears of rent. The Defendant filed Answer denying the allegations in the plaint, and praying for a dismissal of the action. On the trial date the Defendant was absent and unrepresented. The case was fixed for *ex parte* trial. The Plaintiff gave evidence and *ex parte* Judgment was entered against the Defendant. The Fiscal took steps to serve the *ex parte* Decree but he reported that the

Defendant had died.

The Plaintiff filed papers to substitute the Respondent in the room of the deceased Defendant by making an application in terms of section 839 of the Civil Procedure Code.

The Respondent filed objections to the application for substitution, and the matter was fixed for inquiry at which the Appellant and the Respondent had given evidence.

The learned District Judge allowed the Respondent to be substituted. The Respondent appealed to the Civil Appellate High Court, and the Civil Appellate High Court set aside the order of the learned District Judge.

It transpired that the Defendant had died intestate and issueless and there was no evidence to show that the Defendant had left an administrable estate. The Plaintiff purported to substitute the Respondent because he is Defendant's sister's son, and as such a nephew and next of kin of the Defendant. But there was no evidence to show that the Respondent had made any claim to the estate of the Defendant, and adiated the inheritance.

The Plaintiff had asserted that the premises are governed by the Rent Act, No. 7 of 1972.

The Civil Appellate High Court in the circumstances held that the applicable section was section 341(1), and that the Plaintiff could not have made the application under section 839 to substitute the Respondent. The Civil Appellate High Court was thus of the view that the Plaintiff had no right to appoint the Respondent as the substituted Defendant for the purpose of serving the *ex parte* Decree.

The Supreme Court on appeal upheld the Judgment of the Civil Appellate High Court, and dismissed the appeal.

Suresh Chandra J. made the following observations:-

> *"The question that would arise then is as to whether the action which was basically a tenancy action would survive the death of the tenant specially when no claims had been made for the succession of the tenancy. In such a situation it would be prudent to state that since the tenancy action is based on a contract of tenancy that the death of the tenant would terminate the tenancy and therefore the action would not survive as in a contract of tenancy, death of either party would terminate the contract. S.36 of the Rent Act provides for succession to tenancy in a situation where the tenant dies. The landlord or any person specified in the said section could take steps as set out therein to name a person to succeed to tenancy. In the present case no such steps have been taken by the landlord or by anyone on behalf of the deceased tenant. The landlord who is the Plaintiff on the other hand had taken steps to effect substitution of a nephew of the deceased tenant to proceed with the action. It is in that respect that the learned district judge had made an order to substitute the respondent in the room of the deceased tenant. As stated above since there was no claim to succeed to the tenancy in respect of the premises in suit the death of the tenant terminated the tenancy and therefore the action could not be proceeded with thereafter. The resultant position would be that the decree entered would be a nullity and of no effect in law. If the premises in suit had been occupied by some third party the Plaintiff should have had to advise herself regarding the obtaining of vacant possession of premises.*
>
> *Although the Appellant and the Respondent have made submissions regarding matters relating to succession and which matters were considered by both the District Court and the High Court, a consideration of the survival of the action as discussed above would have concluded this matter.*
>
> *In the generality of civil cases proceeded with under the provisions of the Civil Procedure Code where succession to a defendant who dies during the pendency of an action a consideration, of the provisions of s.341(1) of the Civil Procedure Code would be relevant. In that light as the Respondent is the defendant's sister's son, and hence a nephew of the defendant it certainly would make him a next of kin. If he made any claim to the estate of the defendant he may be entitled to such estate if there were no other claims from any other relative of the defendant. There is no evidence of such a claim having been made by the Respondent. If the Respondent had made such a claim and had acted in respect of the estate of the deceased he could be said to have adiated the inheritance or acted as an executor de son tort. But there is no such evidence. Therefore it is my view that the mere fact that the Respondent was the nephew of the defendant does not give the right to the plaintiff to substitute him in the room of the defendant and forced to inherit the obligations of the defendant."* (*vide* pages 3 and 4)

01 / 12-01 / 2012-2013

Land Acquisition Act / Failure to state the question of law to be argued in the Petition of Appeal

COURT OF APPEAL

A. D. Amarasinghe* v. *Acquiring Officer and Assistant Government Agent

C. A./LAQ/BR/01/2005
Land Acquisition Board of Review Appeal No. KG/200

Decided on: 05-03-2008

Decided by: S. I. Imam, J.; **Sarath De Abrew, J.**

In this case a land with a building 105.12 perches in extent situated in Angururuwella in the Kegalle District was acquired by the State. The Appellant who owned one half share of the land and the entirety of the building was awarded total compensation of Rs. 51,700/= by the Acquiring Officer under section 17 of the Land Acquisition Act. Following an appeal to the Board of Review the compensation was enhanced to

Rs. 127,225/= by Order of 06-08-2004. The Appellant appealed to the Court of Appeal praying that the total compensation be increased to Rs. 226,875/=.

When the appeal came up for hearing learned Senior State Counsel for the Respondent raised a preliminary objection that the Appellant had failed to state the question of law to be argued in the Petition of Appeal as required by section 28(2) of the Land Acquisition Act as amended, and hence the appeal cannot be maintained.

Learned Counsel for the Appellant took up the position that there is no legal requirement to specifically formulate the question or questions of law in the Petition of Appeal as long as on a plain reading of the Petition the points or questions of law to be argued are apparent and easily discernible. He relied on two cases, namely, *General Manager, Ceylon Electricity Board and Another* v. *Gunapala*, [1991] 1 Sri L. R. 304 and *Lanka Walltiles Ltd.* v. *K. A. Cyril*, [1986] 2 CALR 344.

The Court of Appeal overruled the said preliminary objection. His Lordship Sarath de Abrew J. said as follows:-

> *"Section 28 of the Land Acquisition Act states as follows: 28(1) Where a party to an appeal to the board is dissatisfied with the Board's decision on that appeal, he may, by written petition in which the other party is mentioned as the Respondent, appeal to the Court of Appeal against the decision* ***on a question of law****.*
>
> *Provided that no such appeal may be preferred on any question determined by any decision which is declared by section 10(5) or section 12(4) to be final.*
>
> *28(2): A petition of appeal under subsection (1) shall* ***state the question of law to be argued****, shall bear a certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal, and shall be presented in duplicate to the board by the appellant within twenty-one days after the date of the board's decision against which the appeal is preferred.*
>
> *Since an appeal on a question of law is intended to be a beneficial remedy, the provisions of section 28 of the Land Acquisition Act have to be interpreted broadly and liberally. Authority for this proposition is the view taken by four Justices of the Supreme Court in the divisional bench landmark decision in Colletes Ltd vs Bank of Ceylon, where the Supreme Court, in interpreting provisions of Article 128(1) of the constitution as to the right of appeal to the Supreme Court on a substantial question of law, took a similar liberal view. A litigant who is aggrieved of the quantum of compensation awarded to him with regard to the State acquiring valuable land and property affecting his substantial rights should not be denied his statutory right of appeal in a mere technicality.*
>
> *The two cases cited in support by the Counsel for the appellant are based on section 31D of the Industrial Disputes Act, where there is no statutory requirement to state the question of law to be argued in the petition of appeal. However, section 28 of the Land Acquisition Act could be distinguished from section 31D of the Industrial Disputes Act, in that the latter requires:-*
>
> *(1) Stating the question of law to be argued in the petition of appeal.*
> *(2) A certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal.*
>
> *Section 28 of the Land Acquisition Act, when interpreted broadly and liberally, does not confine an appellant to one single question of law but an appellant could base his appeal on several questions of law. Similarly, this provision does not stipulate that the question or questions of law should be specifically and categorically enumerated and listed in so many words in the petition of appeal. In my view, it would suffice for the question or questions of law to be stated in the averments in the petition which would be easily discernible and apparent on the face of the petition. I am satisfied that the appellant has subscribed to the above requirement for the following reasons.*
>
> *On a perusal of the petition of appeal, paragraphs 08-11 disclose the following questions of law,*
>
> *(a) The Board has erred in law as it has failed to make proper evaluation of the evidence of the valuer ...*
> *(b) ... the Board has failed to give any reason whatsoever for not accepting the evidence of Mr. Ubert (the valuer)*
> *(c) ... sufficient evidence was led on behalf of the Appellant to prove that correct date of the actual taking over of possession and that the building was in a good condition at the time of vesting and taking over, which fact the Board erred in law in not taking into consideration.*
> *(d) The Board has also erred in law in not considering the comparable sales on the ground that they are long after the relevant date.*
> *(e) the Board erred in law in considering only the previous acquisition of land for the children's park which was four fold in extent.*
> *(f) the Board has failed to make a proper analysis and judicial evaluation of the comparable sale prices of lands in the immediate neighborhood.*
> *(g) the Board has ... erred in law in not awarding costs of appeal to the Appellant"* (*vide* pages 6 – 11)

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