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LVT 7 (3/94)

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LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant ...Mr L S Lewis.....

Respondent ..Nombans Ltd & Wattsal Ltd..

RE: 18 GUBYON AVENUE, HERNE HILL, SE24

Date of Tenant's Notice: 7 April 1977

Application to Tribunal dated: 2 February 1997

Heard: 22 July 1997

Appearances: Mr L S Lewis  
Mrs C Sosna

for the Tenant

Miss C Taskis of Counsel

Ms C S Turbin, Solicitor, Southall & Co

for the Landlord

Members of the Leasehold Valuation Tribunal:

Mrs H Kelly LLB (Chairman)  
Mr P F Prior MA FRICS  
Mrs L Walter MA

Date of Tribunal's decision **13 AUG 1997**

The issue to be decided by the Tribunal is as to our own jurisdiction.

There were three notices served under section 5 of the Leasehold Reform Act 1967 to acquire the freehold of 18, Gubyon Avenue, Herne Hill, SE24, the right to acquire arising from a lease of 90 years from 25 December 1894.

The lease had been extended on 25 December 1969 for a term of 50 years from 25 December 1984, the extension being granted to K Groves and A Shutske.

The three notices were dated first, 7 April 1977, secondly, 17 October 1985 and thirdly, undated but understood to be 26 August 1995.

The Tribunal was of the opinion that the notices of 1985 and 1995 were out of time in view of the provisions of section 16(1)(a) of the Leasehold Reform Act 1967. Accordingly, the only matter for the Tribunal to decide was whether the notice served in 1977 was still effective.

Mrs Sosna for the applicant contended that the 1985 and 1995 notices were to be considered as renewing the currency of the 1977 notices, that notice having been served by the tenant on the landlord before the expiry of the original term. The notice in 1977 had been accepted by the landlord who had acknowledged the tenant's right to acquire the freehold.

The Tribunal rejected Mrs Sosna's argument on the basis that we could find no provision in the Act of 1967 permitting the renewal of an initial notice by subsequent notices, the latter having been served after the expiry of the original term.

The Tribunal decided that the notice of 1977 was now barred by limitation: See Collin v Duke of Westminster & Others [1985] 1QB 581 in the Court of Appeal at P.583, para 2 of the headnote;

"That the obligation to enfranchise under the Leasehold Reform Act 1967 stemmed not from section 5 of the Act but from section 8(1) under which the statutory rights and duties arose; that any cause of action which the applicant had under the Act of 1967 derived only from that statute and as such was a claim upon a specialty; and that accordingly the appropriate period of limitation was that of 12 years provided by section 8 of the Limitation Act 1980 and the applicant's claim [in the present case ie Collin's case] was not barred by limitation".

See also N T Hague "Leasehold Enfranchisement" para 5-11.

It therefore became unnecessary for the Tribunal to decide the interesting points of law addressed to us by both Miss Taskis and Mrs Sosna for the parties.

CHAIRMAN *Hennetta Kelly* .....

DATE *13 AUGUST 1997* .....