

28, 1960

UNIVERSITY OF LONDON
W.C.1.
- 7 FEB 1961
INSTITUTE OF ADVANCED
LEGAL STUDIES

1.

IN THE PRIVY COUNCIL

No. 39 of 1959

50925

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

THE LAND COMMISSIONER, Colombo
(Defendant) Appellant

- and -

1. M. LADAMUTTU PILLAI KATHIRKAMAN
PILLAI (Substituted Plaintiff)
- 10 2. W.A. DON ELARIS PERERA
(Added Defendant) Respondents

CASE FOR THE APPELLANT

1. This is an appeal by the Land Commissioner of Ceylon (hereinafter called "the Appellant") against the judgment and order of the Supreme Court, dated 31st January, 1958, whereby the Supreme Court (Basnayake, C.J. and Pulle, K., K.D. de Silva J. dissenting) set aside the judgment and decree of the District Court of Colombo, dated the 27th November, 1953 and directed an injunction to issue in favour of the Substituted Plaintiff Appellant Respondent (hereinafter called "the Plaintiff") restraining the Appellant from taking steps under the Land Redemption Ordinance to acquire the lands described in the schedule to the plaint in the action.

Record
pp.76-111
pp.66-69

2. Five principal questions of law arise for consideration in this appeal:-

30 (a) Whether, upon a proper interpretation of the provisions of Section 3 of the Land Redemption Ordinance No. 61 of 1942 as amended by Ordinance No. 2 of 1947 (hereinafter called "the Ordinance"), the Appellant had the power to make a decision for the acquisition of the first allotment of land described in the

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Schedule to the plaint (hereinafter called "Keeriyankalliya Estate").

- (b) Whether the legality of the Appellant's decision to acquire the estate could upon a proper construction of the provisions of the Ordinance be questioned in a Court of Law.
- (c) Whether the Land Commissioner is a quasi Corporation capable of being sued nomine officii.
- (d) Whether the Land Commissioner when exercising or bona fide purporting to exercise the power vested in him by the Ordinance is a servant of the Crown, and if so whether an injunction can properly be issued to restrain the Land Commissioner acting as such.
- (e) Whether, apart from the question in sub-paragraph (d) above, the action for an injunction was a proper remedy in the present case.

3. The action, in which this appeal arises, was instituted by the original Plaintiff who was, at the time of bringing the action, the owner of the lands described in the Schedule to the Plaint. The original Plaintiff died in the course of the action, and the Plaintiff, the administrator of his estate, was substituted in his place.

pp.17-20

4. The Plaint in the action was filed on the 23rd July, 1949, alleging that the Land Commissioner had, by a communication sent to the original Plaintiff on the 7th February, 1949, given notice of his decision to acquire the lands described in the Schedule to the Plaint under the provisions of the ordinance; that the Land Commissioner had no power under the Ordinance to acquire the said lands, and praying for an injunction restraining the Attorney-General (who was made the first Defendant in the action) and the Appellant (the second Defendant) from taking any steps to acquire the said lands.

pp.21-22

5. The Appellant and the Attorney-General filed a joint answer pleading in defence that the decision of the Appellant was to acquire only the first of the four lands described in the Schedule to the Plaint namely Keeriyankalliya Estate; that the Appellant was empowered by Section 3 of the Ordinance to acquire the said land, and that the Appellant's decision was final and conclusive under the provisions of the Ordinance.

6. The added Defendant-Respondent-Respondent (hereinafter called "the 2nd Respondent") intervened and was added as 3rd Defendant in the action. The 2nd Respondent filed answer of the 15th May, 1953 praying for the dismissal of the Plaintiff's action upon grounds substantially similar to those pleaded in the joint answer of the Appellant and of the Attorney-General.

Record
p.10, 1.24

pp.52-53

10 7. Parties went to trial upon the following issues:-

p.54, 1.28 -
p.55, 1.15
p.57, 11.1-8

(1) Is the land in question capable of acquisition under section 3 of the Land Redemption Ordinance No. 61 of 1942.

(2) Did the Land Commissioner on or about 12.5.47 make a determination under section 3(4) of the Land Redemption Ordinance No. 61 of 1942 that Keeriyankalliya Estate be acquired.

20 (3) Was the said estate on or about 12.5.47 a land of the description contained in section 3(1)(b) of the Land Redemption Ordinance No. 61 of 1942.

(4) Is the Land Commissioner's determination with regard to the acquisition of Keeriyankalliya Estate final.

(5) If so can the correctness of the said determination be questioned in these proceedings.

30 (6) Is Plaintiff entitled to proceed against the 1st Defendant as representing the Crown to obtain an order of Injunction against the Crown.

(7) Can Plaintiff maintain this action against the 2nd Defendant as the Land Commissioner without suing the officer who made the order in question by name.

Mr. Wickramanayaka objects to 6 and 7. Says the answer does not raise any of these points. They are matters of law which he is not prepared to meet today.

(8) Is the Plaintiff a bona fide purchaser for value from the original transferees of the said lands from the 3rd Defendant.

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- (9) If so, is the 2nd Defendant empowered to acquire lands from him.
8. The facts proved at the trial are not in dispute and may be briefly stated as follows:-
- (1) Upon an Application made by the 2nd Respondent for the redemption of a number of lands including Keeriyankalliya Estate, the Appellant after calling for and considering the objections of the original Plaintiff, decided on the 12th of May, 1947 to acquire one of the lands the 2nd Respondent sought to redeem, namely, Keeriyankalliya Estate. 10
- p.58, 11.13-15
- (2) The 2nd Respondent who originally owned Keeriyankalliya Estate, had mortgaged it, together with certain other lands, by three bonds:-
- (a) Mortgage bond No. 391 of the 30th September, 1925 (exhibit P.1.), a primary Mortgage in favour of three mortgagees, Meena Suna Una Sockalingam Chetty, Meena Suna Una Suppiramianu Chetty and Ana Runa Kana Uena Arunasalem Chetty; 20
- pp.125-130
- (b) Mortgage bond No. 533 dated the 8th April 1930 (exhibit P.2.), a secondary mortgage in favour of five mortgagees namely, the first and second mortgagees in the primary mortgage, Mena Choona Oona Muththiah Chettyar, Mena Choona Oona Velauthan Chettiya and Sena Kana Nana Sena Sekkappa Chettyar; and
- pp.131-142
- (c) Mortgage bond No. 2339 dated the 8th March 1931 (exhibit P.3.), a tertiary mortgage in favour of Elaris Dabarera. 30
- pp.164-170
- (3) The bonds creating the primary and secondary mortgages obliged the 2nd Respondent, in each case, to repay the loan to the mortgagees or to any one of them.
- (4) Mena Suna Una Sockalingam Chetty, as the sole Plaintiff, put the secondary bond in suit and obtained the mortgage decree dated the 23rd June, 1933 (exhibit P.4.). 40
- p.172, 1.10 -
p.171, 1.13
- (5) By deed of transfer No. 4010, dated the 4th May 1935 (exhibit P.5.), the 2nd Respondent transferred to Sockalingham Chettiya (the decree
- p.181, 1.15 -
p.188, 1.31

holder) and Sekappa Chettiyar (the fourth mortgagee in the mortgage bond sued upon) Keeriyankalliya Estate and certain other lands in the proportion of two-thirds and one-third.

(6) The consideration for the transfer P.5. was discharge of the mortgage decree P.4. and of the primary mortgage P.1.

(7) The original Plaintiff acquired title to lands dealt with in P.5. by right of purchase.

10 9. The written law relevant to the case is Section 3 of the Ordinance which, in its unamended form, reads as follows:-

"3. (1) The Land Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land, if the Land Commissioner is satisfied that the land was, at any time before or after the date appointed under section 1, but not earlier than the first day of January 1929, either -

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(a) sold in execution of a mortgage decree, or

(b) transferred by the owner of the land to any other person in satisfaction or part satisfaction of a debt which was due from the owner to such other person and which was immediately prior to such transfer, secured by a mortgage of the land.

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(2) Every acquisition of land under sub-section (1) shall be effected in accordance with the provisions of sub-section (5) and shall be paid for out of funds provided for the purposes of this Ordinance under section 4.

(3) No land shall be acquired under sub-section (1) until the funds necessary for the purpose of such acquisition have been provided under section 4.

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(4) The question whether any land which the Land Commissioner is authorised to acquire under sub-section (1) should or should not be acquired shall, subject to any regulations

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made in that behalf, be determined by the Land Commissioner in the exercise of his individual judgment; and every such determination of the Land Commissioner shall be final.

(5) Where the Land Commissioner has determined that any land shall be acquired for the purposes of this Ordinance, the provisions of the Land Acquisition Ordinance, subject to the exceptions, modifications and amendments set out in the First Schedule, shall apply for the purposes of the acquisition of that land; and any sum of money which may, under such provisions be required to be paid or deposited by the Land Commissioner or by Government by way of compensation, costs or otherwise, shall be paid out of funds provided for the purposes of this Ordinance under section 4."

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The original section was amended by Ordinance No.62 of 1947 by the addition, inter alia, of the new subparagraph 3(1)(c) which reads as follows:-

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"Transferred by its owner or his executors or administrators to any other person, at the request of a mortgagee of that land, in satisfaction or part satisfaction of a debt which was due from that owner or his predecessor in title to that mortgagee and which was secured by a mortgage of that land subsisting immediately prior to the transfer.

The preceding provisions of this sub-section shall not apply to such undivided shares of an agricultural land as were sold or transferred within the period specified in those provisions and in the circumstances and manner set out in any of the preceding clauses (a), (b) and (c), but, where those shares were converted after the sale or transfer into any divided allotment or allotments by a partition decree of any court or by a duly executed deed of partition, those provisions shall apply to such allotment or allotments, and accordingly the word 'land' occurring in this Ordinance shall be construed to include such undivided shares which have been converted after sale or transfer as aforesaid into any divided allotment or allotments."

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This amendment took effect in July 1947 after the Appellant's decision to acquire the land in question

but before that decision was communicated to the original Plaintiff in the case.

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10. In the course of the trial, counsel for the Plaintiff conceded that the Attorney-General was not properly sued in the case and that the action against the Attorney-General had to be dismissed.

p.65, 11.5-7

11. The learned District Judge, by his judgment dated the 27th November, 1953, dismissed the Plaintiff's action with costs. He answered the first three issues (the issues relating to the merits), the sixth issue (whether an injunction lies against the Attorney-General as representing the Crown), the eighth and ninth issues (whether the Ordinance affects bona fide purchases for value) in favour of the Appellant, and the remaining issues against him.

pp.66-69

12. The Plaintiff appealed to the Supreme Court from the said judgment and in his petition of appeal prayed for judgment against the Appellant but claimed no relief against the Attorney-General or the second Respondent.

pp.71-74

13. The appeal was heard by a Divisional Bench of the Supreme Court, and, at the hearing, counsel for the Plaintiff did not present any argument against the findings of the learned District Judge on the sixth, eighth and ninth issues.

14. On the 31st January, 1958, the Supreme Court, by a majority decision, (Basnayake, C.J. and Pulle, J.) allowed the appeal, holding in favour of the Plaintiff on all the questions that arise in the present appeal. K.D. De Silva J. held against the Plaintiff on the merits and did not consider it necessary to deal with the other questions argued at the hearing.

pp.76-101
pp.106-108

pp.102-105

15. Pulle J. directed that decree be entered for the Plaintiff against the Appellant as prayed for in the Plaint with costs. Basnayake, C.J. allowed the appeal with costs and directed that judgment be entered for the Plaintiff as prayed for. The decree of the Supreme Court has been entered, per incuriam, directing an injunction to issue restraining the Defendants, jointly or in the alternative, from taking steps under Ordinance No. 61 of 1942 to acquire the lands described in the Schedule.

p.108, 11.22-
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p.101, 11.27-
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pp.109-111

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16. It is respectfully submitted that, for the reasons set out below, the Supreme Court should have decided, in connection with the first question arising in this appeal, that the Appellant had the power to acquire the land in question:-

(1) Keeriyankalliya Estate was a divided allotment of land which was admittedly agricultural. It was mortgaged within the statutory period and was transferred by its owner, the 2nd Respondent, to two persons in satisfaction of two debts which were due from the owner to the two persons at the time of the transfer. The debts in satisfaction of which the land in question was transferred were debts secured by the mortgages of the land at the time of the transfer.

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pp.131-143

p.181, 1.15 -
p.188, 1.33

(2) The Mortgage debt created by the secondary mortgage P.2. subsisted up to the time of the execution of the Deed of Transfer P.5., notwithstanding the mortgage decree P.4. (Perera v. Unantenne (1953) 54 Ceylon N.L.R.457).

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(3) Under the Roman Dutch Law a mortgage is indivisible, and, for that reason, the land in question secured the whole of the debt in each mortgage, notwithstanding the fact that by the mortgage Bonds P.1. and P.2. other lands were also mortgaged.

(4) Although the only person who could, after the institution of the mortgage action, give a valid discharge due on the secondary mortgage was Sockalingam Chettiyar, yet, the mortgage debt was not extinguished and still remained a debt due to Sekappa Chettiyar, the second transferee in the Transfer Deed P.5.

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(5) Although under the Roman Dutch Law Sekappa Chettiyar could not ordinarily have given a discharge of the debt due to him under the secondary mortgage, that law did not preclude the degree holder Sockalingam Chettiyar from waiving his exclusive right to receive payment in favour of Sekappa Chettiyar to any extent that he wished.

(6) Even if the land did not fall within Section 3(1)(b) in its unamended form, it satisfied the conditions of sub-paragraph 3(1)(c) of the Ordinance. The new sub-paragraph extended the old section so as to include a transfer to a person other than the one to whom the debt was owing in a

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case where the transfer was made at the request of the person to whom the debt was due. Considering the fact that, of the two transferees in P.5., the only person who could at the time of the transfer have given a valid discharge of the debts due under P.1. or P.2. was Sockalingam Chettiyar, it may be fairly presumed that it was at his instance that a transfer of one-third of the land was effected in favour of Sekappa Chettiyar.

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10 (7) By P.5., the entirety of the land was transferred in pursuance of a single agreement evidenced by the deed itself, and the discharge of the debts effected by the said deed was indivisible. In these circumstances, the fact that the land in question was transferred to Sockalingam Chettiyar and Sekappa Chettiyar in the proportion of two-thirds and one-third does not take the transfer P.5. out of the scope of Section 3 of the Ordinance.

p.182, 11.4-9

p.188, 11.15-18

20 17. It is respectfully submitted that the learned Chief Justice and Pulle J. were wrong in holding (a) that the transfer deed P.5. transferred not the whole land but undivided shares of it and (b) that there was no debt due to Sekappa Chettiyar at the time of the transfer.

p.184, 11.13-20

p.106, 1.40 - p.107, 1.35

30 18. On the second question arising in this Appeal, namely, whether the Appellant's decision to acquire the land can be questioned in a court of law, it is submitted that this decision is a step in the process of acquisition and that the declaration of the Minister following upon the decision is equated by the provisions of the Land Acquisition Act 9 of 1950 to a declaration that the land is needed for a public purpose. Such a declaration is not susceptible to review by courts of law, and, since the machinery for acquisition and the legal effect of acquisition in so far as the title of the Crown is concerned are the same both under the Ordinance and under the Land Acquisition Act 9 of 1950, it is respectfully submitted that the principle established in cases arising under the ordinary law relating to compulsory acquisition should equally preclude a person from canvassing the decision of the Appellant under the Ordinance. It is also submitted that it is in this context that provision 3(4) of the Ordinance falls to be interpreted.

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19. The next question is whether the Land Commissioner can be regarded as a quasi-corporation capable

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of being sued nomine officii so that an order obtained in the action might be binding upon every person for the time being holding that office.

20. The Civil Procedure Code of Ceylon recognises the right of Corporations to sue and be sued but contains no provision for according such rights to persons who are not legally constituted as corporations. It is submitted that the Land Commissioner cannot properly be regarded as having any characteristic of a corporation unless the Statute creating the office, either expressly or by necessary implication, has provided for it. There is no express provision to this effect in the Ordinance. Nor are there grounds for holding that the legislature has so provided by necessary implication. On the contrary, the definition of "Land Commissioner", which includes officers empowered in writing by the Land Commissioner, leaves no room for such implication. It is respectfully submitted that the learned Chief Justice is right in holding that the law of corporations in Ceylon is the English law, but that a detailed examination of instances where in that law certain officials have been held to be corporations or quasi-corporations affords but little assistance in the interpretation of the particular statute.

p.56, 1.31
p.87, 1.1 -
p.88, 1.10

21. The fourth question arising in this appeal is whether the Land Commissioner in making his decision to acquire the land is a servant of the Crown acting as such and, if so, whether an injunction can be issued restraining him as such.

22. When the Land Commissioner decides the question whether or not the land falls within such sections (a), (b) or (c) of Section 3 of the Ordinance, he performs a quasi judicial act. He has jurisdiction to decide rightly or wrongly, and so long as he acts bona fide and confines his powers to the subject matter over which his jurisdiction extends, namely agricultural land, he cannot be regarded as acting illegally or outside his powers. It is submitted that his decision, right or wrong, is the act of a servant of the Crown as such and that, in the circumstances, no injunction can issue to restrain him.

p.90, 11.31-37

23. It is respectfully submitted that the learned Chief Justice erred in holding that the act of the Land Commissioner was a wrong in respect of which an action lay under the Civil Procedure Code.

24. The fifth question arising in this appeal is whether the action for an injunction was the proper remedy. Assuming that the Appellant's decision can be questioned in legal proceedings, it is clear that it would be only his decision on the legal question as to whether the land falls within the empowering section that could be reviewed. It is submitted that a certiorari, and not an injunction, is the proper remedy. Once the Land Commissioner makes the statutory decision to acquire the land, the statutory steps for acquisition are taken thereafter by other officers acting under the provisions of the Land Acquisition Act of 1950.

25. It is respectfully submitted that the learned Chief Justice is wrong when he states that the generality of the words in Section 3 empowering the Land Commissioner to acquire lands under this Ordinance makes the remedy available. Whatever the scope of the section may be, there is no act of the Appellant that could be restrained. Nor could the injunction issued against him in these circumstances operate so as to restrain the officers acting under the Land Acquisition Act, for the reason that they are not servants or agents of the Appellant.

p.91, 11.3-12

The Appellant respectfully submits that the appeal should be allowed with costs throughout for the following amongst other

R E A S O N S

- (1) BECAUSE the learned District Judge was right in his judgment on the merits of the case.
- (2) BECAUSE the majority decision of the Supreme Court is erroneous on all the matters arising in the appeal.
- (3) BECAUSE the judgment of K.D. De Silva J. is right.
- (4) BECAUSE the Appellant had the power under the provisions of section 3 of the Ordinance to acquire the land in question.
- (5) BECAUSE the decision of the Appellant to acquire the land in question cannot be questioned in a Court of Law.
- (6) BECAUSE the Land Commissioner is not a quasi

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Corporation capable of being sued nomine officii so as to make a decision in the action binding on successors in office.

- (7) BECAUSE the Land Commissioner in making a decision under section 3 of the Ordinance in respect of agricultural land acts as a servant of the Crown as such and no injunction can properly issue against him in respect of such decision.
- (8) BECAUSE an action for an injunction does not, in any event, lie because there is no act of the Land Commissioner that can be restrained.

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E.F.N. GRATIAEN

WALTER JAYAWARDENE

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