

The Ceylon State Mortgage Bank

v.

Ranasinghe

COURT OF APPEAL.

SOZA, J. AND ABDUL CADER, J.

CA (S. C.) NO. 3/72 (INTY).

WITH APPLICATION NO. 352/72—D. C. KANDY NO. 9588.

JANUARY 22, 1980

Jurisdiction—Powers of the District Court to grant declaration—Does the District Court exercise supervisory jurisdiction—Proper remedy where a decision of a tribunal is sought to be reviewed—Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968.

The defendant Bank was authorised by the provisions of the Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968 to acquire premises sold in execution of a hypothecary decree. The plaintiff bought such premises at a sale by public auction and the said premises were acquired by the defendant Bank after holding inquiries at which the plaintiff who attended raised objections. The plaintiff sued the defendant Bank for a declaration that its decision after such inquiry to acquire the premises was null and void.

Held

That the District Court had no jurisdiction to grant such relief. The jurisdiction to grant declaration is two fold. The original jurisdiction may be invoked for the determination of disputes of the first instance. The supervisory jurisdiction is exercised to review decisions arrived at by other bodies. The District Court cannot exercise supervisory jurisdiction where such jurisdiction is not vested in it by statute. Where the declaration is one seeking a review of a decision of a tribunal, it must be sought only in a Court vested with supervisory jurisdiction.

Per Soza, J.: "The original court cannot by means of a declaration entertain what amounts to an appeal from decisions of inferior bodies, since this power can only be given by specific statutory provisions."

Cases referred to

- (1) *Perera v. People's Bank*, (1975) 78 N.L.R. 329.
- (2) *Healey v. Minister of Health*, (1955) 1 Q.B. 221; (1954) 3 All E. R. 449.

APPEAL from the District Court, Kandy.

H. L. de Silva, for the defendant-appellant.

C. Ranganathan, Q.C., with *S. Mahenthiran*, for the plaintiff-respondent.

Cur. adv. vult.

March 6, 1980.

SOZA, J.

The plaintiff in this case has sued the defendant bank for a declaration that its decision to acquire the premises described in the Schedule to the plaint is null and void. The premises in question at one stage belonged to one Sunil Subasiri Abeysundera. The plaintiff purchased these premises at a sale by public auction held in pursuance of a hypothecary decree entered against the said Abeysundera. Abeysundera then appealed to the Peoples' Bank under the provisions of section 8 of the Finance Act, No. 11 of 1963, to have the said property redeemed in his favour.

In response to a notice that was issued on him by the Peoples' Bank the plaintiff attended an inquiry in regard to the application of the said Abeysondera and objected to the Bank proceeding to acquire the said land as Abeysondera was not qualified under section 71 (2) (b) of the said Finance Act. The Peoples' Bank thereafter took no further steps. In the plaint it is stated that the application of Abeysondera to the Peoples' Bank must be regarded as pending as the bank made no order. But before us it was submitted that the application must be regarded as having been abandoned. Thereafter in the year 1968 Abeysondera appears to have made an application to the defendant State Mortgage Bank under the provisions of the Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968. This Act amended the Ceylon State Mortgage Bank Ordinance and the Finance Act, No. 11 of 1963.

The plaintiff attended the inquiries which were held by the Board of Directors of the defendant bank and objected to the acquisition on two main grounds, namely,

- (1) that the bank was precluded from accepting the said application by the provisions of the new section 70B (2) (1) (a) ;
- (2) that the applicant was in receipt of an income of over Rs. 10,000 for the three years immediately preceding the date of the application and therefore disqualified from seeking the intervention of the defendant bank by virtue of section 70B (2) (1) (c) of the said Act.

The plaintiff complains that the inquiries which the defendant bank conducted were contrary to natural justice because the plaintiff was denied the right to obtain evidence in regard to the income tax assessments of the said Abeysondera and also material from the Ceylon Petroleum Corporation in regard to the income of the said Abeysondera and his wife. Further, he was not permitted to cross-examine Abeysondera or his witnesses. For these reasons the plaintiff contended that the decision to acquire made by the bank was bad.

Preliminary issues were raised on the question of the jurisdiction of the Court to grant the relief prayed for. The learned District Judge held against the defendant Bank in regard to the preliminary issues and decided to go on with the case. The defendant bank now appeals from this order.

The principal matter that has been argued before us is that the District Court has no supervisory jurisdiction to inquire into the propriety of the decisions made by the State Mortgage Bank.

It is true that the District Court has the right to give declarations. But it must be remembered that the jurisdiction to grant declarations is two-fold, to wit, original and supervisory. The original jurisdiction may be invoked for the determination of disputes at the first instance. The supervisory jurisdiction is exercised to review decisions arrived at by other bodies—see *Zamir ; The Declaratory Judgment* (1962) p. 69. In the instant case the jurisdiction of the District Court is being invoked not for the determination of a dispute at first instance but to review a decision arrived at by the Ceylon State Mortgage Bank. This is a supervisory jurisdiction which is not vested in the District Court. There are instances when the District Court is allowed a supervisory jurisdiction by statute. For example it can review decisions made by the Registrar of Trade Marks. But such jurisdiction is exercised only in pursuance of special powers conferred by the statute. The District Court cannot exercise supervisory jurisdiction where such jurisdiction is not vested in it. I would like to make it clear that I am here not questioning the right of the plaintiff to seek a declaration. He can seek a declaration. But if the declaration is one seeking a review of a decision of a tribunal it must be sought only in a court vested with supervisory jurisdiction. In the case of *V. I. Perera v. Peoples' Bank* (1) the Supreme Court held that the District Court has no jurisdiction to grant a declaration in a regular action where such declaration is sought as a supervisory remedy to challenge the validity of a judicial or quasi-judicial determination made by a statutory authority. Where it is sought to question such determination the proper remedy is to invoke the supervisory jurisdiction of the Supreme Court by way of a writ of certiorari. The original Court cannot by means of a declaration entertain what amounts to an appeal from decisions of inferior bodies, since this power can only be given by specific statutory provisions. As *Morris, L. J.* said in the Court of Appeal decision in *Healey v. Minister of Health* (2) at 231 :

“Questions as to which methods for determining rights are the most desirable raise issues of policy which are for Parliament to decide. But the courts cannot invent a right of appeal where none is given. The courts will not usurp an appellate jurisdiction where none is created”.

These observations apply with equal force in regard to the exercise of supervisory jurisdiction to grant declarations.

Counsel for the respondent contended that the order made by the Bank was null and void and, therefore, the plaintiff was entitled to obtain a declaration from the District Court and quoted to us section 217 (G) of the Civil Procedure Code. In the

prayer to the plaint, the plaintiff prays that the decision of the defendant-bank to acquire the land be declared null and void and a permanent injunction restraining the defendant from taking any further steps be granted. In my view this declaration can be made only by a superior court vested with that power.

I hold that the District Court has no jurisdiction to try this case. The appeal is allowed and the plaintiff's action is dismissed with costs here and in the Court below.

ABDUL CADER, J.—I agree.

Appeal allowed.
