

PERERA

v.

PEOPLE'S BANK LAND REDEMPTION DEPARTMENT
AND OTHERS

COURT OF APPEAL.

TAMBAIAH, J. AND MOONEMALLE, J.

C. A. APPLICATION No. 463/82.

SEPTEMBER 20, 1984.

Writs of Certiorari and Mandamus – Conditional transfer of undivided share of land – Application for acquisition of land by People's Bank under section 71 of the Finance Act No. 11 of 1963 – Decision of People's Bank to acquire – Will certiorari and mandamus lie?

The petitioner having failed to obtain a re-transfer of an undivided share of land conveyed by her late husband on a deed of conditional transfer to the 2nd respondent within the period stipulated in the deed, made an application to the People's Bank to have the said undivided share of the land acquired for her under the provisions of s. 71 of the Finance Act. In the meantime the 2nd respondent sold the land to the 3rd respondent. After an inquiry at which petitioner was present the Bank informed her that it had decided not to acquire the land. The reason for this decision was that as a matter of policy the Bank does not proceed to acquisition where the interests to be acquired are undivided and the applicant is not in possession.

On an application for certiorari and mandamus attacking the validity of the decision not to acquire and also alleging bias on the part of the Bank –

Held–

(1) In arriving at its decision under s. 71 of the Finance Act No. 11 of 1963 the Bank has to address itself to three questions :

- (i) Is the land one which the Bank is authorized to acquire ?
- (ii) Does s. 71 (2) restrict the right of the Bank to acquire ?
- (iii) Will the Bank in the exercise of its discretion acquire the land ?

Section 71 (3) of the Finance Act provides that the determination of the Bank shall be final and conclusive and shall not be called in question in any court but this immunity attaches only to decisions on the third question and not on the 1st and 2nd questions which involve a quasi-judicial process or a process closely analogous to the judicial and affect the rights of subjects and are accordingly subject to judicial review.

(2) The determination not to acquire involved the third question and was decided in accordance with the policy of the Bank not to proceed to acquisition where the interests involved are undivided shares in lands and the applicant is not in possession. This is a purely administrative decision guided by considerations of policy and not subject to review by way of certiorari and mandamus. Moreover the decision not to acquire had been made within jurisdiction and in terms of s. 71 (3) read with s. 22 of the Interpretation Ordinance and is final and conclusive and cannot be questioned in any court.

(3) The allegation of bias is based on the single circumstance that the 3rd respondent is an employee of the 1st respondent. This is insufficient to establish bias.

Cases referred to :

- (1) *Kanagasabapathy and Another v. The People's Bank and Two Others*. S.C. Application No. 124/75 – S.C. Minutes of 27.8.1976.
- (2) *Chandralatha Wijewardena v. The People's Bank and Two Others*. S.C. Appeal No. 3/80 C.A. Application No. 597/76.
- (3) *Simon v. Commissioner of National Housing (1972) 75 NLR 471*.

APPLICATION for writs of certiorari and mandamus.

H. M. P. Herath for the petitioner.

Dr. J. A. L. Coorey with *M. B. Peramuna* for the 1st respondent.

Faiz Mustapha for the 3rd respondent.

Cur. adv. vult.

October 8, 1984.

TAMBAH, J.

The petitioner's late husband was the owner of the land called Kongahawatta and by deed No. 6652 of 10.7.1954 transferred the land to the 2nd respondent subject to the condition that on payment of Rs. 2,000 within two years from the date of execution of the said deed, the vendee shall transfer the land to the vendor. The land was not redeemed within the said period of two years. The petitioner made an application on 14.7.1980 to the 1st respondent to acquire the

said land. The petitioner and the 2nd respondent were noticed by the 1st respondent to attend an inquiry. Meanwhile, the 2nd respondent sold the land by deed No. 1216 of 22.8.1980 to the 3rd respondent. At the inquiry, only the petitioner was present. The 3rd respondent informed the 1st respondent by letter that what he bought on deed No. 1216 is an undivided share of the land. By letter dated 27.11.1981, the 1st respondent informed the petitioner that the Board of Directors have decided not to acquire the land. It is this decision not to acquire the land that the petitioner seeks to quash on certiorari. The petitioner also wants this court to issue a writ of mandamus ordering the 1st respondent to acquire the said land.

The 1st respondent has annexed to its statement of objections the document (R 1) which gives the reason why the 1st respondent decided not to acquire the said land – "the Bank on principle does not acquire lands which are undivided when the balance portion is now owned by the claimant (2nd respondent). Further the possession of this land is with the claimants." In short, on principle, the Bank does not acquire land which is undivided and where possession is not with the applicant.

S. 71 (1) of the Finance Act No. 11 of 1963 as amended by Law No. 16 of 1973 authorises the Bank to acquire premises which were sold or transferred in circumstances set out in sub-paragraphs (a) to (d). Deed No. 6652 was a conditional transfer and the transaction falls within the scope of sub-paragraph (d). s. 71 (2) limits the authority of the Bank to acquire the premises which under s. 71 (1) it has authority to acquire. s. 71 (3) provides that "the question whether any premises which the Bank is authorised to acquire should or should not be acquired shall be determined by the Bank and every such determination of the Bank shall be final and conclusive and shall not be called in question in any court".

As was pointed out by Vythialingam, J. in *Kanagasabapathy and Another v. The People's Bank and Two Others* (1), there are three questions for the decision of the Bank, viz., (1) is the land one which the Bank is authorised by s. 71 (1) to acquire? (2) if so, does s. 71 (2) restrict the right of the Bank to acquire? (3) if so, should the land be acquired? Vythialingam, J. observed –

"While the decision on the third question whether the property should or should not be acquired and the consequent determination by the Bank to acquire the property may be a purely administrative

decision guided at that final stage by considerations of policy and expediency and cannot be questioned by a Court of Law, nevertheless, the Bank's decisions on the preliminary issues on which the final determination is based, have to be arrived at solely on the facts of the case, by an assessment and evaluation of the evidence and is a quasi-judicial process or a process closely analogous to the judicial and affects the rights of subjects and is therefore subject to review by the Courts."

Sharvananda, J. expressed the same views in *Chandralatha Wijewardena v. The People's Bank and Two Others* (2) :

"If the Bank is satisfied that sub-section (1) vests it with authority to acquire the premises and that the restrictions in sub-section (2) do not prohibit the acquisition, than the third question is whether, in the exercise of its discretion, the premises should or should not be acquired ; and if the Bank decides to acquire the premises, under sub-section (3) it makes a determination accordingly. It is that determination that the premises which the Bank is authorised to acquire under sub-sections (1) and (2) should or should not be acquired that is final and conclusive and cannot be contested in any Court. Therefore, if the Bank determines that it should acquire premises which it is not authorised to acquire under sub-section (1) which it is inhibited from acquiring by sub-section (2), the conditions of section 71 (3) are not satisfied and the determination will not be final and conclusive and no immunity will attach to such determination. The Bank can make a determination which has the stamp of finality only in respect of premises that are covered by the provisions of sub-sections (1) and (2). The preliminary question as to whether the Bank is authorised to acquire the premises in terms of section 71 (1), or even when so authorised whether it is prohibited from so acquiring by the provisions of section 71 (2) is not one for the final decision of the Bank and can properly be canvassed in a Court. Section 22 of the Interpretation Ordinance as amended by Act No. 18 of 1972 does not bar the agitation of that jurisdictional question."

The authority of the Bank to acquire premises includes the authority to acquire an undivided share of the premises (See, *Chandralatha Wijewardena's case*, supra). It is not the petitioner's case that the 1st respondent Bank had no jurisdiction to acquire the premises in question. The petitioner's application is presented on the footing that

the Bank has jurisdiction to acquire and that it must acquire the premises. The Bank has decided not to acquire as on principle it does not acquire lands which are undivided and which are not in possession of the applicant. This decision was one made under s. 71 (3), a decision entirely within the discretion of the Bank, a purely administrative decision and a decision guided by considerations of policy. As such, the decision not to acquire cannot be the subject of a writ of certiorari or of mandamus. Moreover, the decision not to acquire has been made within jurisdiction and in terms of s. 71 (3) read with s. 22 of the Interpretation (Amendment) Act, is final and conclusive and cannot be questioned in any Court.

The petition also seeks to quash the decision of the 1st respondent not to acquire the land on the ground of bias towards the 3rd respondent. The 3rd respondent, he states, is an employee under the 1st respondent.

The 3rd respondent in his affidavit admits that he is employed as a Clerk in the Chief Accountant's Department of the 1st respondent, but, states that he was unaware of any application made by the petitioner to the 1st respondent until he received a notice from this Court. He denies that the 1st respondent was biased towards him.

The 1st respondent in its statement of objections, and the Manager, Land Redemption Department in his affidavit, have both stated that the decision not to acquire the land was made in the exercise of the 1st respondent's discretion, as the premises are undivided and the possession is not with the petitioner. The 3rd respondent works in the Chief Accountant's Department of the Bank while land redemption matters are handled by the Land Redemption Department.

In *Simon v. Commissioner of National Housing* (3) it was held that a decision of the inquiring officer is not liable to be quashed on the ground merely of the reasonable suspicion of the party aggrieved unless it is proved that there was a real likelihood that the inquiry officer was biased against the party aggrieved.

The only material before this Court on which the allegation of bias is based is a single circumstance, namely, that the 3rd respondent is an employee under the 1st respondent. The 1st respondent's position is that it was guided purely by considerations of policy in making the decision not to acquire. The 3rd respondent's position is that he was

unaware of the acquisition proceedings until he received notice from this Court, and that he works in the Accounts Department which has nothing to do with land redemption matters. This single circumstance, viz., that the 3rd respondent is an employee under the 1st respondent, is insufficient to establish the allegation of bias.

The application for writs is refused. However, there will be no costs.

MOONEMALLE, J. – I agree.

Application dismissed.
