

1950

Present : Gunasekara J.

BANDIYA, Petitioner, and THE LAND COMMISSIONER,
Respondent

S. C. 259—Application for Writs of Certiorari and Prohibition

Writs of Certiorari and Prohibition—Land Redemption Ordinance, No. 61 of 1942—Section 3 (1) as amended by section 2 of Ordinance No. 62 of 1947—Land Commissioner's powers of acquisition of land—Acquisition is executive and not judicial act.

The Land Commissioner's authority under the Land Redemption Ordinance to acquire an agricultural land depends not on its having been sold or transferred in the circumstances specified in section 3 (1) but upon his being satisfied that it has been so sold or transferred. If he is so satisfied, his acquisition of the land would be an executive and not a judicial act and therefore cannot be the subject of a writ of *certiorari* or of prohibition.

APPPLICATION for writs of *certiorari* and prohibition in respect of a decision made by the Land Commissioner under the Land Redemption Ordinance.

R. S. Wanasundera in support.

Cur. adv. vult.

July 19, 1950. GUNASEKARA J.—

The petitioner alleges that the Land Commissioner, purporting to act under the Land Redemption Ordinance, No. 61 of 1942, has decided to acquire on behalf of the Government a land of which the petitioner is the owner, and he seeks to have the decision quashed and the Land Commissioner prohibited from proceeding with the acquisition on the ground that the "acquisition proceedings are illegal, without jurisdiction and void".

The Land Commissioner's powers of acquisition under the Ordinance are derived from section 3 (1) as amended by section 2 of Ordinance No. 62 of 1947. He is authorised to acquire any agricultural land if he is satisfied that that land was at any time, but not earlier than January 1, 1929—

- (a) sold in execution of a mortgage decree, or
- (b) transferred by its owner to any other person in satisfaction or part satisfaction of a debt which was due from him to that other person and which was secured by a mortgage of that land subsisting immediately prior to the transfer, or

- (c) transferred by its owner 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 to that mortgagee and which was secured by a mortgage of that land subsisting immediately prior to the transfer.

The petitioner's account of his title to the land in question is as follows:—

On March 11, 1920, the original owner, Esandu, created a usufructuary mortgage in favour of one Sinchie to secure a loan of Rs. 150 and on April 25, 1928, Sinchie assigned her rights to the petitioner. Thereafter, on February 27, 1940, Esandu transferred the land to the petitioner for a consideration of Rs. 400, but reserving a right to obtain a re-transfer on payment of a sum of Rs. 435 within a period of one month. Out of the consideration a sum of Rs. 250 was paid in the presence of the notary and Rs. 150 was set off against the sum due on the bond.

It was contended for the petitioner that his land cannot be regarded as a land that was sold or transferred in the circumstances specified in (a), (b) or (c) of section 3 (1) and that therefore the acquisition is not authorised by that provision. The Land Commissioner's authority to acquire a land depends, however, not on its having been sold or transferred in the circumstances specified in section 3 (1) but upon his being satisfied that it has been so sold or transferred. If he is so satisfied he is authorised to acquire the land and, in terms of section 3 (4), the question whether it should or should not be acquired "shall, subject to any regulations 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". The acquisition would be an executive and not a judicial act and therefore cannot be the subject of a writ of *certiorari* or of prohibition. If the decision that the land is one that is liable to be acquired is a judicial act the Land Commissioner has acted within his jurisdiction when he made that decision. The application is refused.

Application refused.

