

BAKMEEWEWA, AUTHORISED OFFICER OF PEOPLE'S BANK
V.
KONARAGE RAJA

SUPREME COURT.
ATUKORALE A. C. J.,
H. A. G. DE SILVA, J. AND
G. P. S. DE SILVA, J.
S. C. NO: 10/87.
S. C. SPL. L. A. NO: 181/86
C. A. 1070/84 (REVISION)
D. C. COLOMBO NO: 3794/ZL.
OCTOBER 17 AND NOVEMBER 21, 1988.

Finance Act S. 72 (2) and (3) — (7) and (8). Redemption under Finance Act of Mortgaged land — Vesting in the People's Bank — Order of delivery of possession — Execution by way of summary procedure under chapter 24 — Right of appeal — Application for stay of execution under S. 763 (2) of the Civil Procedure Code — Jurisdiction.

A previous owner of certain premises applied to the People's Bank for redemption of his land under provisions of the Finance Act No: 11 of 1963 as amended by the Finance and Ceylon State Mortgage Bank (Amendment) Law No: 16 of 1973. After inquiry the People's Bank determined that the premises should be acquired and upon a vesting order made by the Finance Minister under S. 72(2) the premises vested 'absolutely' in the Bank 'free from all encumbrances' S. 72 (3). The appellant being the Authorised Officer of the People's Bank being unable to obtain possession of the premises applied to the District Court under S. 72(7) for an order for delivery of possession by way of summary procedure under Chapter 24 C. P. C. as stipulated by S. 72 (8).

Accordingly the District Court entered an order nisi and despite the objections of the respondent entered order absolute on 28.11.83. The respondent appealed and pending the appeal the Bank's Authorised Officer moved for execution. The respondent filed papers for a stay of execution under S. 763 (2) C. P. C. The District Judge on 30.7.84 rejected the application for stay of execution holding (a) that there was no right of appeal and (b) that the order for delivery of possession was not a final order and leave to appeal had not been obtained.

In appeal the Court of Appeal set aside the order of the District Judge and directed him to hear the application for stay of execution.

Held

The jurisdiction exercised by the District Court under Section 72(7) and (8) of the Finance Act as amended is a special jurisdiction and there is no right of appeal from an order made in the exercise of such jurisdiction, unless a right of appeal is expressly provided for in the Act. No right of appeal is provided in the Act. Hence the District Court had no jurisdiction to entertain an application for stay of execution pending appeal under S. 763 (2) of the Civil Procedure Code.

Cases referred to:

1. *Sathir v. Najeare* (1978) 79 (2) NLR 126, 135
2. *Sangarapillai v. Chairman, Municipal Council of Colombo* 32 NLR 62.
3. *Soertsz v. Colombo Municipal Council* — 32 NLR 64.
4. *Kanagasunderam v. Podihamine* — 42 NLR 97
5. *A. G. v. Sillam* — 11 ER 1200
6. *King v. Joseph Hanson* — 106 ER 1027
7. *The Queen v. Stock* 112 ER 892
8. *Vanderpoorten v. The Settlement Officer* — 43 NLR 230
9. *Fernando v. Fernando* — 5 CWR 156
10. *Commissioner of Income Tax v. De Vos* — 35 NLR 349
11. *De Silva v. Commissioner of Income Tax* — 53 NLR 280, 282.
12. *National Telephone Co. Ltd. v. The Postmaster-General* [1913] AC 546, 552.

APPEAL from judgment of Court of Appeal.

Faiz Mustapha P.C. with Miss Arulpragasam and Nigel Hatch for Appellant.

M. Kanag-Isvaran, P.C. with S. Mahenthiran and Miss Enoka Perera for respondent.

Cur. adv. vult.

January 16, 1989.

G. P. S. DE SILVA, J.

A previous owner of premises No. 95, 3rd Cross Street, Colombo 11, made an application for redemption under the provisions of the Finance Act No. 11 of 1963, as amended by the Finance and Ceylon State Mortgage Bank (Amendment) Law No. 16 of 1973 (hereinafter referred to as the Act). The respondent to this appeal was carrying on business in these premises. After inquiry, the Bank determined that the premises should be acquired and upon a vesting order made by the Minister of Finance under section 72(2) of the Act and duly published in the gazette, the premises vested "absolutely" in the Bank "free from all encumbrances" (Section 72(3) of the Act). The appellant, who is the authorized officer of the Bank, being unable to obtain possession of the premises, made an application to the District Court in terms of section 72(7) of the Act. It is to be noted that section 72(7) enacts, inter alia, that the authorized officer of the bank, upon production of the vesting order, is "**entitled** to obtain an order for delivery of possession of such premises". Section 72(8) provides that every such application made to the District Court "shall be made, and shall be disposed of, by way of summary procedure in accordance with the provisions of Chapter 24 of the Civil Procedure Code". Accordingly, the District Court entered an order nisi, and despite the objections taken by the respondent the District Court made the order absolute on 28.11.83.

Being aggrieved by the order of 28.11.83, the respondent filed a notice of appeal on 12.12.83, and the petition of appeal on 24.1.84. On 20.2.84 the appellant made an application to execute the order pending appeal. On 29.5.84 the respondent filed petition and affidavit in terms of section 763(2) of the Civil

Procedure Code moving for a stay of execution pending appeal. The matter was taken up for inquiry on 30th July 1984 and the respondent moved to call evidence in support of his application for stay of execution pending appeal. The District Judge by his order of 30.7.84 rejected the application for stay of execution pending appeal on the grounds (a) there was no right of appeal; (b) that the order for delivery of possession of the premises was not a 'final Order' and as 'leave to appeal' had not been obtained from the Court of Appeal there was no valid appeal. Thereupon the respondent moved the Court of Appeal to revise the order of the District Court. The Court of Appeal set aside the order of the District Judge dated 30.7.84 and directed him to entertain and hear the respondent's application for stay of execution pending appeal and to permit him to lead evidence in support thereof. It is from this judgment of the Court of Appeal that an appeal has been preferred to this Court.

The principal submission of Mr. Mustapha, Counsel for the appellant, is that there is no right of appeal against the order of the District Judge made on 28.11.83 granting the relief of an order for delivery of possession of the premises. In short, Counsel urged that the Jurisdiction exercised by the District Court under the provisions of section 72(7) and 72(8) of the Act is a **special** jurisdiction and there is no right of appeal from an order made in the exercise of such jurisdiction, unless a right of appeal is expressly provided for in the Act. Admittedly, no such right is given under the Act.

The first point which arises for consideration is whether the jurisdiction exercised by the District Court in the instant case is a special jurisdiction. This has to be decided by considering the nature of the proceedings before the District Court. To my mind, the proceedings envisaged in sections 72(7) and 72(8) are clearly in the nature of execution proceedings and nothing more. Once the Minister publishes the "vesting order" in the gazette, the premises vest in the Bank "absolutely" and "free from all encumbrances" (sections 72(2) and (3) of the Act.). The effect of the "vesting order" was pithily put by Pathirana J. in his illuminating judgment in *Sathir v. Najeare*, (1).

" the vesting order in favour of the Bank snaps the link of owner-ship with persons who were entitled to the land prior to the acquisition or who claims rights thereto. It creates a new independant title in the Bank not referable to any previous ownership or right at the same time wiping out all other rights, title and interests in the land. The title of the Bank to the premises in question is **clearly a title paramount**" (The emphasis is mine)

Thus it is clear that no substantive question in regard to the right to possess the premises could arise in the proceedings before the District Court contemplated by sections 72(7) and 72(8) of the Act. What these sections provide for is a speedy mode of obtaining possession of the premises which have already vested in the Bank by virtue of the vesting order. In other words, an application is made to the District Court and the provisions of Chapter 24 of the Civil procedure Code are invoked solely for the purpose of executing an **extra judicial order**. No disputed question in regard to the right, title or interest in the premises arise for determination before the District Court. I accordingly hold that the jurisdiction exercised by the District Court is a special jurisdiction.

Mr. Mustapha next contended that there is no right of appeal from an order of a District Court exercising a special jurisdiction unless there is express statutory provision conferring such a right. In *Sangarapillai vs. Chairman, Municipal Council of Colombo* (2) it was held that where the District Court exercises a special jurisdiction conferred upon it by the Housing and Town Improvement Ordinance No. 19 of 1915, there is **no general right of appeal to the Supreme Court**. The remedy available to a party aggrieved by the decision of the District Court acting as the tribunal of appeal in terms of section 84 of the Ordinance is to apply to the District Court to state a case on a matter of law for the opinion of the Supreme Court and if it refuses may apply to the Supreme Court for an order requiring the District Court to state such a case in terms of section 92(1). In *Soertsz vs. Colombo Municipal Council* (3) Fisher C.J. had occasion to consider the question whether there is a right of appeal to the

Privy Council from a judgment of the Supreme Court on a case stated under section 92 of the Housing and Town Improvement Ordinance No. 19 of 1915. In the course of his judgment, the learned Chief Justice observed:

"The District Courts were established by Section 55 of that Ordinance (Courts Ordinance, 1889) and their civil jurisdiction was defined in section 65. The appellate jurisdiction of the Supreme Court is defined by section 21(2) and the powers of the Court on appeal are defined in Section 40, and, **so far as appeals from District Courts to the Supreme Court are concerned those provisions relate solely to the exercise by District Courts of the jurisdiction conferred upon them by the Courts Ordinance 1899**".

(The emphasis is mine)

Mr. Mustapha relied heavily on the case of *Kanagasunderam vs. Podihamine*,⁽⁴⁾ That was a case referred to a Bench of three Judges to decide the preliminary objection taken on behalf of the Crown that no appeal lies to the Supreme Court from an order of taxation of costs made under section 31(1) of the Land Acquisition Ordinance (Chapter 203 of the 1938 revised Legislative Enactments). On a consideration of a number of authorities cited by Crown Counsel Howard C. J. (with Moseley S. P. J. and Soertsz J. agreeing) affirmed the principle that the Supreme Court would have no right to entertain an appeal where that power is not **expressly** given by statute; it is not a right that can be implied or inferred. Howard C.J. referred to the case of *A. G. vs. Sillam*,⁽⁵⁾ where the Lord Chancellor (Lord Westbury) expressed himself in the following terms:

"The creation of a new right of appeal is plainly an act which requires legislative authority. The court from which the appeal is given, and the Court to which it is given, must both be bound, and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right
An appeal is the right of entering a superior Court, and invoking its aid and interposition to redress the error of the Court below"

The above dicta indicate the reason for a right of appeal being available only if it is expressly conferred by statute. Howard, C.J. also cited the principle stated by Abbot, C.J. in *King vs. Joseph Hanson*, (6) that,

"..... although a certiorari lies, unless expressly taken away, yet an appeal does not lie, unless expressly given by statute".

This dictum was affirmed in the *The Queen vs. Stock* (7).

The above authorities were considered by Keuneman J. in *Vanderpoorten vs. The Settlement Officer*, (8) where it was held that an appeal does not lie from a decision under section 20 of the Waste Lands Ordinance No. 1 of 1897, thus re-affirming the principle that a right of appeal cannot be implied, but must be given by express words. See also *Fernando v. Fernando* (9).

Mr. Kanag-Iswaran for the respondent strenuously sought to counter the submissions of Mr. Mustapha by relying heavily on the provisions of section 23 of the Judicature Act No. 2 of 1978 as amended by Act. No. 37 of 1979. This provision reads as follows: "Any party who shall be dissatisfied with any judgment decree or order pronounced by a District Court may (excepting where such right is expressly disallowed) appeal to the Court of Appeal". Counsel contended that unless the right of appeal was expressly disallowed, a right of appeal was always available against any judgment decree or order of the District Court. He maintained that the language of section 23 of the Judicature Act was wide enough to confer a right of appeal from the order of the District Court in the instant case.

Section 23 of the present Judicature Act is similar to the Provisions contained in section 73 of the repealed Courts Ordinance. Section 23 occurs in Chapter IV of the Judicature Act which spells out the civil jurisdiction of the District Courts. In my opinion section 23 of the Judicature Act provides for a right of appeal in respect of judgments or orders of the District Court made in the exercise of its ordinary, general, civil jurisdiction and

has no application to the special jurisdiction conferred on the District Court as in the instant case. As already stated, the jurisdiction exercised by the District Court in terms of sections 72(7) and 72(8) of the Act is the jurisdiction of a Court of execution in respect of an extra judicial order. It is basically not different from the jurisdiction exercised by the Magistrate's Court in proceedings for the recovery of taxes in default under the Income Tax Ordinance. It is settled law that there is no right of appeal from an order made by a Magistrate's Court in such proceedings — vide *Commissioner of Income Tax vs. De Vos* (10) and *De Silva vs. Commissioner of Income Tax*.⁽¹¹⁾ The fact that there is no right of appeal does not mean that an aggrieved party is left without a remedy, for revision is available.

At the hearing before us, we invited the attention of counsel to the principle stated by Viscount Haldane in *National Telephone Co. Ltd vs. The Postmaster General* (12):

"When a question is stated to be referred to an established Court without more, it, in my opinion imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches".

Although it appeared at first that this principle ran counter to the submissions advanced on behalf of the appellant, yet on a consideration of the context in which the principle was enunciated, I am satisfied that it has no application to the present case. The facts in the *National Telephone Co. Ltd. case* (supra) may be briefly stated as follows. By the Railway and Canal Traffic Act of 1888 the Railway and Canal Commission was established as a Court of Record and section 17 provided for a right of appeal from the Commission to the Court of Appeal except upon questions of fact or locus standi. An agreement entered into between the National Telephone Co. Ltd. and the Postmaster General provided that any dispute as to the value of the equipment should be referred to the Commission. Disputes having arisen as to the value of the equipment, the matter was

referred to the Commission. The question for decision was whether the reference to the Commission was a reference to the Commission as a Court of Record or to the Commission acting as arbitrators. It was held that the reference was to the Commission as a Court of Record and not as arbitrators. Therefore the right of appeal to the Court of Appeal which was specifically conferred by the Act establishing the Commission was available. It was in this context that Viscount Haldane stated the principle set out above.

I accordingly hold that there is no right of appeal from the order of the District Court dated 28.11.83 allowing the application for an order of delivery of possession of the premises. The District Court therefore had no jurisdiction to entertain the application made by the respondent under the provisions of section 763(2) of the Civil Procedure Code for stay of execution pending appeal. The appeal is allowed. The Judgment of the Court of Appeal is set aside, and the District Court is directed to reject the application for stay of execution pending appeal made by the respondent.

In fairness to the Court of Appeal, it is right to add that the question argued before us by Counsel for the appellant was not raised nor argued before the court. In these circumstances, I make no order for costs of appeal in the Supreme Court as well as in the Court of Appeal.

ATUKORALE, J. — I agree

H. A. G. DE SILVA, J. — I agree

Appeal allowed.