1925.

Present: Bertram C.J. and Schneider J.

NAFIA UMMA *et al. v.* ABDUL AZIZ *et al.*

178—D. C. Colombo, 9,369.

Municipal Councils Ordinance—Purchase of land by Council—Certificate of title—Conclusive evidence—Ordinance No. 6 of 1910, s. 146.

When land is purchased by the Municipal Council, a certificate issued under section 146 of the Municipal Councils Ordinance is conclusive evidence of the title of the Council to the property.

Such a certificate cannot be impugned on the ground of a fundamental infirmity attaching to it.

APPEAL from a judgment of the District Judge of Colombo. The facts appear from the Judgment.

L. M. de Silva (with him *R. C. Fonseka*), for the appellants.

Samarawickreme (with him *Croos Da Brera*), for the respondents.

February 12, 1925. BERTRAM C.J.—

This is a case which arises under section 146 of the Municipal Councils Ordinance, No. 6 of 1910. It raises in another form the question that was dealt with in *Sivacolundu v. Noormaliya*.[1] By that case it was decided that it was an essential and imperative feature of all sales under the Ordinance for the enforcement of rates that the provisions of the Ordinance, which require that any movables available should be sold before any immovables are put up for sale, should be strictly complied with. It was held with reference to section 143 that, where the section said," If land or other immovable property be sold under the warrant," while no doubt it was to be presumed that all things required by the Ordinance had been properly done, yet it was open to a person affected by the certificate to prove that the property had not been duly sold under the warrant, inasmuch as a fundamental condition had not been complied with. That was a decision under section 143.

The present case arises under section 146, and it is quite obvious that whether efficaciously or not the legislature set itself to strengthen the provisions of that section as compared with those of section 143. In the first place, instead of saying that the certificate should be sufficient to vest the property, it declared that the certificate should actually vest it. In the second place, it declared

[1] *(1921) 22 N. L. R. 427.*

that that vesting should be an absolute vesting; and in the third place, it added an entirely new provision that the certificate in the prescribed form should be received in Courts of justice in the Colony, as conclusive evidence of the title of the Council. It could hardly be made more clear that the legislature intended to put the Council itself, when purchasing at a sale under a warrant, in a stronger position than an ordinary purchaser. The only question for us is whether this intention has been effectively carried out.

If Mr. de Silva, who argued this case very ably on behalf of the appellant, is right, this subsequent and independent provision is absolute surplusage. I should be very reluctant to come to such a conclusion. No doubt it is the case that both under section 143 and under section 146, apart from this new supplementary provision, it is possible for a person affected by the certificate to impugn it by giving evidence to show that the property is not really vested in the purchaser, but is vested under another title in himself. But this is the precise point at which the new provision comes in. The expression "conclusive evidence" is an expression of recognized force. There is an equivalent expression in section 4 of the Evidence Ordinance the expression "conclusive proof." It is there enacted with reference to the use of that expression in the Evidence Ordinance itself that, where that expression is used, the Court shall not allow evidence to be given for the purpose of disproving the fact on which the evidence is conclusive. A similar principle is enacted in *Taylor on Evidence*. Enactments of this sort are in the nature of statutory conclusive presumptions, and with regard to the conclusive presumption it is laid down in *Taylor, chap. V., paragraph 71*, that where they arise all corroborative evidence is dispensed with, and all opposing evidence is forbidden. This must be, I think, the intention in the present case.

Section 146 declares that a certificate in the prescribed form shall be conclusive evidence of the title, and shall exclude all evidence setting up another title, either directly or through impugning the certificate on the ground of a fundamental infirmity. Mr. de Silva argued that though, no doubt, he would not be allowed to give direct evidence of a counter title, yet he could impugn the certificate as an invalid certificate and one that ought never to have been issued, because the proceedings to which it related had not been duly carried out. I think that to interpret the section in this way would be to go counter to the intention of the legislature. What was really intended was that when a certificate was produced substantially in the prescribed form, that certificate should have a decisive effect.

Mr. de Silva drew attention to section 9 of the Partition Ordinance, pointed out that it had been held in a previous decision of this Court that, where a partition decree was entered of consent without any preliminary investigation of title, such a decree could

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not have conclusive effect as a decree under the Ordinance, inasmuch as it was fundamentally in violation of the provisions of the Ordinance. This was so, notwithstanding the fact that under section 9 of the Partition Ordinance such a decree was declared to have a conclusive effect. One must, however, observe in that Ordinance in the section referred to the very important words, "given as hereinbefore provided." It is there made an express condition of the conclusiveness of the decree that it should be given in the manner provided by the Ordinance, and here the terms of the enactment are very different. Taking this view of the case it is not necessary for us to consider the other points dealt with by the District Judge.

I would dismiss the appeal with costs.

SCHNEIDER J.—I agree.

Appeal dismissed.