

1964

Present: H. N. G. Fernando, J., and G. P. A. Silva, J.

M. R. SINGHO MAHATMAYA, Appellant, and THE LAND COMMISSIONER, Respondent

S. C. 148/1961—D. C. Colombo, 7621

Land Redemption Ordinance—Section 3—Acquisition of land thereunder—Remedy of owner—Land Commissioner not a corporation sole—Immunity from being sued nomine officii—Certiorari.

In an action instituted against the Land Commissioner for the purpose of obtaining from the Court a declaration that a certain land was not liable to be acquired in terms of the Land Redemption Ordinance—

Held, (i) that the Land Commissioner cannot be regarded as a corporation sole and, therefore, cannot be sued *nomine officii*.

(ii) that the appropriate remedy of the plaintiff was by way of an application for *Certiorari*.

Observations on the procedural difficulties which would arise in practice if the Land Commissioner is sued in any case *eo nomine*.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *Nimal Senanayake* and *Bala Nadarajah*, for the Plaintiff-Appellant.

Mervyn Fernando, Crown Counsel, for the Defendant-Respondent.

Cur. adv. vult.

March 17, 1964. G. P. A. SILVA, J.—

The plaintiff-appellant in this case brought an action against the defendant-respondent, the Land Commissioner, for the purpose of obtaining from the Court a declaration that a certain land in Plan No. 86, dated 14th July, 1946, was not liable to be acquired in terms of the Land Redemption Ordinance. The respondent took up the position, *inter alia*, that the action could not be maintained against him, as it had been instituted against the Land Commissioner, *nomine officii*. When the case was taken up for trial, the learned District Judge, as a preliminary issue, considered the question, whether the above plea put forward by the respondent was sound, and gave his judgment, answering this issue in the negative, and dismissed the appellant's action with costs. The present appeal is from this order.

In dismissing the plaintiff's action, the learned District Judge was guided by the Privy Council decision in the case of *The Land Commissioner Ladamattu Pillai*¹ in which Their Lordships of the Privy Council took the view, disagreeing with the decision of a Divisional Bench of this Court, that the Land Commissioner cannot be regarded as a corporation sole, and that therefore he could not be sued *nomine officii*. In the Divisional Bench judgment of this Court, my Lord the Chief Justice raised a number of cogent difficulties which would arise in practice, if the Land Commissioner is sued in any case *eo nomine*. Their Lordships in the Privy Council unfortunately refrained from pronouncing upon these procedural difficulties in view of the absence of the Attorney-General as party. If I may say so with respect, the difficulties enumerated by my Lord the Chief Justice are very real difficulties, which either party would have to face in a litigation of this nature. On the one hand, the successful party will not be able to enforce a decree against the Land Commissioner in the event of the holder of the office changing, retiring or dying. On the other hand, if a successful Land Commissioner who is sued *eo nomine* and who obtains, for instance, a decree for costs after the dismissal of any action brought against him, should die after the decree, his death will leave the Government Department without any means of enforcing the decree for costs. For, there would be something inherently wrong in the legal representative of the deceased Land Commissioner recovering costs on behalf of a Government Department. If their Lordships of the Privy Council found it possible to pronounce some judgment in regard to these obvious and real difficulties, it would have been most helpful to this Court which is obliged to follow their decision in regard to their pronouncement that the Land Commissioner is not a corporation sole. For, these difficulties would equally exist whether the relief sought by a litigant is by way of a regular action or by way of Certiorari which, according to their Lordships, would be the appropriate remedy. I do not wish to say any more on this aspect of the matter, as I see that this appeal can be decided without going into that question in view of the decision of the Privy Council that, in a case of this nature, the appropriate procedure for a person aggrieved by an order for acquisition, would be by way of an application for a writ of Certiorari, as was done in the case of *Walter Leo v. The Land Commissioner*². In that case the Land Commissioner purported to acquire some land under the provisions of the Land Redemption Ordinance No. 61 of 1942 (as amended by Ordinance No. 62 of 1947), which empowered him only to acquire "agricultural land" as defined in section 8 of the Ordinance. The acquisition was resisted on the fundamental ground that it was not "agricultural land" within the meaning of the Ordinance. For the purpose of deciding whether Certiorari would lie, the question that arose was whether the commissioner's functions were of a judicial character. It was held that the decision had a judicial character and that, therefore, a writ of Certiorari lay. It is to be noted that what their Lordships said in the Privy

² (1955) 57 N. L. B. 178.

Council in *Ladamuttu's case* was that, if the authority of the Land Commissioner to make a determination under section 2 of the Land Redemption Ordinance (mistakenly called the Land Development Ordinance) is challenged the appropriate procedure was by way of an application for Certiorari. They did not say that Certiorari was the *more* appropriate remedy. It would therefore seem, in view of this decision, that the appellant would, in any event, be unable to maintain this action in the District Court for a declaration that the land in question is not liable to be acquired under the Land Redemption Ordinance and for the other remedies asked.

The appellant could not therefore have succeeded in the action even if the preliminary issue, as to whether the Land Commissioner could be sued *nomine officii*, was decided in the appellant's favour. The appeal is therefore dismissed with costs.

H. N. G. FERNANDO, J.—I agree.

Appeal dismissed.

