1975 *Present* : **Sirimane, J., Vythialingam, J., and Ratwatte, J.**

V. I. PERERA, Appellant, *and* PEOPLE'S BANK *and* two others, Respondents

S. C. 16/70 (*Inty*)—*D. C. Colombo* 1257/*ZL*

Jurisdiction—*Powers of the District Court to grant declarations—Does the District Court exercise a supervisory Jurisdiction—Appropriate remedy where a judicial or quasi judicial determination of statutory authority is challenged.*

The District Court has no jurisdiction to grant a declaration in a regular action where such declaration is sought as a supervisory remedy to challenge the validity of a judicial or quasi judicial determination made by a statutory authority. Where it is sought to question such determination, the appropriate remedy is to invoke the supervisory jurisdiction of the Supreme Court by way of a Writ of Certiorari.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan with *N. S. A. Goonetilleke* and *S. Thalayasingham* for the plaintiff-appellant.

H. L. de Silva with *J. S. B. Kitto for the* 1st and 2nd defendants-respondents.

H. W. Jayawardene with *D. C. Amerasinghe* and *Miss S. Fernando* for the 3rd defendant-respondent.

Cur. adv. vult

December 2, 1975. SIRIMANE, J.—

The plaintiff appellant who was the purchaser on 24.5.61 at a sale in execution on a mortgage decree entered in D. C. Colombo case No. 3429/MB, of the property which is the subject matter of this action, sued the 1st defendant respondent (the Peoples' Bank) for a declaration that the said property is not subject to acquisition under the provisions of the Finance Act No. 11 of 1963. The 2nd defendant respondent is the Secretary of the Land Redemption Branch of the Peoples' Bank and the 3rd defendant respondent, who was allowed to intervene in this action, is the mortgagor of the property against whom the decree referred to above was entered.

The Peoples' Bank is authorised under Section 71 of the Finance Act No. 11 of 1963, to acquire premises if it is satisfied that those premises were sold or transferred in terms of, and subject to the limitations laid down by, that section, and to notify its determination to the owner. It is on receipt of notice of such a determination that the plaintiff instituted this action for a declaration that the 1st defendant has no authority to make the proposed acquisition for the reasons stated in paragraph 12 of his plaint. A number of issues were raised at the trial but issue No. 25 was tried as a preliminary issue. That issue was as to whether the Court had jurisdiction to try the case as the remedy if any available to the plaintiff was by way of writ and not by way of regular action. The learned Trial Judge after hearing submissions on both sides answered this issue against the plaintiff appellant and dismissed his action with costs. In doing so he followed the decision in the case of *Singho Mahataya V. The Land Commissioner* (66 N.L.R. 94) which held that the appropriate remedy for the plaintiff in similar circumstances was by way of an application for certiorari. This case followed the earlier case of *Leo V. The Land Commissioner* (57 N.L.R. 178) and the case of *Ladumuthupillai v. The Land Commissioner* (62 N.L.R. 169) decided by the Privy Council. The learned Trial Judge was undoubtedly bound by the decisions in these cases and was right in answering the preliminary issue against the plaintiff appellant.

The learned Counsel for the plaintiff appellant, however, urged that the decisions in these cases should be reviewed by us as we are free to do so and submitted that though the writ of certiorari may be an appropriate remedy, it does not exclude

a regular declaratory action, and that both such remedies are available to a plaintiff. He cited certain English cases referred to by Zamir in his book, " The Declaratory Judgment " where at page 98 he says:

> " As against the last two cases, there is ample authority to support the proposition that a declaration may be made in circumstances in which a prerogative order could issue. The first clear case to this effect was *Cooper V. Wilson*. The plaintiff, a police officer, was dismissed from the police force shortly after he had handed in a resignation notice and his dismissal was approved by the local Watch Committee. He claimed a declaration that he had duly resigned, that his dismissal was therefore invalid, and that consequently he was entitled to certain payments. The defendants argued that the decision of the Watch Committee could be challenged only on appeal pursuant to the Police (Appeals) Act, 1927, or by certiorari. The majority of the Court of appeal (Greer and Scott LJJ ; Macnaghten J. dissenting) rejected this argument and made the declaration claimed. Greer L.J. in the leading judgment, said that he did not think
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> ' that the power which the plaintiff undoubtedly possessed of obtaining a writ of certiorari to quash the order for his dismissal prevents his application to the court for a declaration as to the invalidity of the order of dismissal. ' "

This was followed in the case of *Barnard V. National Dock Labour Board* (1953—2 Q.B. 18) where certain dock workers were suspended and their appeal to a statutory tribunal dismissed and they claimed a declaration that they were wrongly suspended. The defendants submitted that their only remedy was by way of certiorari, but the time for such an application had already expired. The Court of Appeal held that it had power to make the declaration. Denning L.J. stated that he did not doubt that the Court had the power to interfere with decisions of statutory tribunals not only by certiorari but also by way of declaration.

> " 'The remedy of certiorari' he then added, 'is hedged round by limitations and may not be available. Why then should not the court intervene by declaration and injunction ? If it cannot so intervene, it would mean that the tribunal could disregard the law, which is a thing no one can do in this country ".

Learned Counsel for the respondents submitted that the decisions followed by the Trial Judge were correctly decided. Learned Counsel for the 1st and 2nd respondents submitted

that the supervisory jurisdiction in this country is only exercised by the Supreme Court and where an authority empowered by statute has acted judicially and arrived at a determination any person questioning that determination must invoke the supervisory jurisdiction of the Supreme Court by way of a writ of certiorari and it is not open to such person to file a regular action. He submitted that the High Courts in England (unlike the District Court here) exercised both an original and supervisory jurisdiction. He cited from Zamir's book referred to above at page 69 :—

> " The jurisdiction of the superior courts to make declaration is two fold ; original and supervisory. The original jurisdiction may be invoked for the determination of disputes at first instance ; the supervisory juri diction is exercised to review decisions arrived at by other bodies. In many cases the courts have both original and supervisory jurisdictions. Accordingly, upon a particular issue they may be resorted to either in the first instance or, if the issue had already been decided by another authority, for the review of that decision. Furthermore, both original and supervisory jurisdictions may be exercised in one action ; the court may declare invalid a decision of an administrative authority and then proceed to declare upon the disputed right or another related right of the plaintiff."

He submitted that the case of *Cooper V. Wilson* (Supra) was distinguished in Australia as reported in Zamir at page 99 thus :

> ' The fact that in *Cooper v. Wilson* the action was not only for a declaration of invalidity, was given much weight in an important Australian case. In *Tooweemba Foundry Proprietary Ltd. V. The Commonwealth* the High Court of Australia held that the decision of an administrative tribunal acting under a statute or a regulation could not be challenged in an action claiming only a declaration that the decision was invalid, the appropriate proceedings being prohibition or certiorari. *Cooper V. Wilson* was distinguished on the ground that there the main claim was monetary and the claim for a declaration as to the invalidity of the administrative decision was only incidental."

He also referred to pages 225-226 which states:

> " In some cases a declaration of right is the only remedy claimable. This is often so when the plaintiff seeks a negative declaration or a declaration of his future right. In most cases, however, the plaintiff can claim another remedy in addition to or in lieu of declaratory relief. If in such a case

a mere declaration is sought, the court in its discretion may refuse it on the ground that the plaintiff should have proceeded for the other remedy. But the courts do not as a rule exercise this discretion so as to refuse a declaration solely because an alternative remedy—be it even as expedient as a declaratory judgment—is available. The availability of another remedy will be a sufficient ground for the dismissal of declaratory proceedings only where the court is convinced either that it is the intention of the legislature that in cases such as the one before the court that remedy should ordinarily be pursued, or that in the circumstances of the case that remedy is more appropriate than a declaratory judgment."

and at page 230:

> "It is suggested that usually the availability of a prerogative order will not be a sufficient ground for the dismissal of declaratory proceedings. There may, however, be some cases in which only a prerogative order, and not a declaration, will be considered a proper remedy."

On a consideration of the submissions made and the citations of learned Counsel on both sides it certainly appears that even in England the question is not entirely free from doubt as stated by Zamir at page 100 thus:

> "We may then conclude that it is now 'clear law that the Queen's courts can grant declarations by which they pronounce on the validity or invalidity of the proceedings of statutory tribunals'. But is it so in all cases in which certiorari can issue? The answer is not free from doubt. Differences of opinion on this question were revealed in the recent *Pyx Granite case*. There the Court was asked to declare, inter alia, that conditions imposed by the Minister of Housing and Local Government on a development permission were invalid. In the Court of Appeal Lord Denning held that a declaration was an appropriate remedy, though certiorari was probably available; Morris L.J. concurred on this point; but Hodson L.J. was of the opinion that 'It is doubtful whether at this time the Minister's decision could properly be impeached by declaration. That could have been done by certiorari.'"

It must be observed that the jurisdiction conferred on our Courts by the Civil Procedure Code to grant declaratory decrees is not as wide as that enjoyed by the English Courts whose declaratory jurisdiction is virtually unlimited. It must also be observed that the English High Court exercises both an original

and a supervisory jurisdiction as already stated and that there is a time limit within which relief by way of writ may be sought.

In view of all these differences and the somewhat doubtful state of the English cases and the different conditions prevailing in that country, I do not think that we can strictly follow the English practice in granting declaratory decrees.

In cases such as this where a statutory authority acts judicially in arriving at a determination in terms of that statute, I am of the view that where it is sought to question or challenge the validity of such determination the appropriate (and not merely the more appropriate) remedy is by way of writ of certiorari. Even apart from the fact that the Court is undoubtedly exercising a supervisory jurisdiction in such matters, the declaratory action in this country is not a procedure that is conducive to an expeditious decision of such a dispute. When the legislature entrusts a statutory authority to make determinations in accordance with that statute for the purpose of achieving the aims for which such statute was enacted, it is essential that any dispute touching such a determination should be expeditiously disposed of one way or another so that such authority may act or refrain from acting in such matters. If however such statutory determinations are made the subject of a regular declaratory action the inevitable delay in such a procedure may well completely defeat the purposes of such statute. The instant case affords a good example of such a situation. The determination that is being questioned in this case was meant by the terms of the statute under which it was made to enable a debtor in difficult circumstances to redeem through the Peoples' Bank his property that was sold against him on a mortgage decree. The property in this case was sold about 24/5/61 and in consequence of a determination under the Finance Act 11 of 1963 this action was filed in April 1964 and the preliminary issue decided in the District Court in February 1970. We are now in 1975—over 11 years after the action was instituted. The remedy by way of writ on the other hand would be much more expeditious. I am therefore in respectful agreement with the decision followed by the learned Trial Judge above referred to that the appropriate remedy of the plaintiff was by way of an application for a writ of certiorari.

The Interpretation (Amendment) Act No. 18 of 1972 which came into operation on 11th May 1972, by Section 23 now precluded a Court of original civil jurisdiction from granting the type of declaration sought by the plaintiff in this case. This does not necessarily mean that such an action was available before

this enactment but it certainly lays at rest any doubts that may have existed in the matter. Learned Counsel for the appellant while conceding that this enactment precluded actions such as the instant one from being instituted in the original courts, maintained that since that enactment would not operate retrospectively it would not affect the rights of the plaintiff appellant in this action. Learned Counsel for the 3rd respondent however submitted that it is not a question whether the enactment is retrospective or not as it is the jurisdiction of the original court that has been taken away and the instant action is therefore no longer maintainable. However that may be, it is not necessary for me to decide this question in view of my earlier conclusion that in matters such as this the appropriate remedy is by way of certiorari and not by regular action. For these reasons the appeal is dismissed with costs.

VYTHIALINGAM, J.—

I have had the advantage of reading the judgment proposed by my brother Sirimane, J. and I agree that the appeal should be dismissed with costs. But as the appeal raises a fundamental question in regard to the jurisdiction of the District Courts in this country I would like to set out my own reasons as well.

The plaintiff-appellant in this case purchased the property subject matter of this action at a sale held on 24th May 1961 in execution of a decree entered in a mortgage bond action No. 3429 MB against the third respondent who died during the pendency of this appeal and whose widow has now been substituted in his place. On an application made by the third respondent the first respondent Bank made a determination to acquire the premises under the provisions of the Finance Act No. 11 of 1963, and The Peoples' Bank Act No. 29 of 1961.

The plaintiff thereupon filed this action in the District Court of Colombo for a declaration that the property was not subject to or capable of acquisition by the Peoples' Bank and that the Peoples' Bank is not empowered in law to acquire the said property and for a permanent and interim injunction restraining the defendants from proceeding with the acquisition and from taking any steps in that direction.

The determination of the Peoples' Bank to acquire the premises in suit undoubtedly affects the plaintiff's rights in respect of his property as it is a denial of his right to it, and he therefore, has a cause of action to sue the defendants. Section 217 of the Civil Procedure Code (Cap. 101) classifies the types of decrees which a court may make and section 217 (h) sets out that it

may without affording any substantive relief or remedy declare a right or status. Ordinarily the action would have been competent.

But here the Bank claims to have acted in the exrcise of an authority vested in it by statute. Section 71 of the Finance Act 11 of 1963 empowers the Peoples' Bank to acquire any agricultural, residential or business premises which are sold in execution of a mortgage decree or was transferred in the circumstances specified in the section and subject to the limitations laid down therein. Subsection 3 sets out "that the question whether any premises which the Bank is authorised to acquire under this part of this Act 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".

The process by which the Bank arrives at this determination involves the decisions, on the existence of a number of facts and circumstances, which must necessarily be made on an evaluation and assessment of evidence. It must be satisfied firstly that the property is agricultural, residential or business premises, and thereafter that it was at any time before or after the appointed date but not earlier than the first day of January, 1956 either sold in execution of a mortgage decree by a Court against the owner of such premises or transferred in one or more of the circumstances set out in paragraphs (*b*), (*c*) and (*d*) of subsection 1, of section 71. Thereafter it must decide that the restrictions set out in sub-section 2 do not prevent the acquisition. It is only then that the Bank can determine whether the property should or should not be acquired.

While this last determination whether the property should or should not be acquired may be a purely administrative decision guided at that final stage by considerations of policy and expediency and is the determination of the Bank, nevertheless the earlier decisions on which the final determination is made have to be arrived at by a quasi judicial process or a process which is closely analogous to the judicial.

Earlier the power to acquire property in almost identical circumstances was vested in the Land Commissioner under the Land Redemption Ordinance No. 61 of 1942 as amended by Ordinance No. 62 of 1947. In *Leo V. The Land Commissioner* (57 *N.L.R.* 178) in dealing with the process by which the Land Commissioner arrives at the decision to acquire property under the Ordinance, Gratiaen, J. observed at page 186 "The preliminary issues on which the Commissioner must satisfy himself under section 3(1) have to be decided

solely on the facts of the particular case, solely on the evidence before him and apart from any extraneous considerations. In other words he must act judicially and not judiciously. Parker, J. has also explained by reference to the earlier authorities that the judicial process when invoked for the purpose of reaching a consequential administrative decision does not necessarily require that there should even be a lis (in the strict sense of the term) or a duty to hear two sides. In some contexts the tribunal has authority to act only on its own knowledge and information; in others it may act *ex parte*. The true test is whether, as Sir Hartley Shawcross argued, the tribunal must apply a legal mind in reaching a decision based solely on the facts of the particular case."

In the instant case however it would be impossible for the Peoples' Bank to act on its own knowledge or information or *ex parte* on the application of a vitally interested party, the mortgagor. For instance in regard to the limitations some of the matters on which the Bank has to be satisfied are that the average statutory income for the three years preceding the date of the application was less than ten thousand rupees, that the premises were reasonably required as a residence of the owner and that he had no other such premises, that it was *bona fide* purchased by the owner for valuable consideration and if it was agricultural premises that he had no other such premises. Obviously the Bank cannot arrive at a fair decision on any of these matters without giving an opportunity to the person whose property is sought to be acquired, to be heard in opposition.

It is true that the Act does not state that the Bank must hold an inquiry and consider evidence or representations by interested parties before making a determination under sub-section 3 of section 71. But as Byles, J. observed in *Cooper V. Wandsworth Board of Works* (1863) 14 *C.B.N.S.* 180 *at* 194 "Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature." And in regard to the very same Ordinance now under consideration after observing that there was no provision in regard to an inquiry H. N. G. Fernando, C.J. said in *Munasinghe V. The Peoples' Bank*, 73 *N.L.R.* 385 *at page* 388, "Nevertheless the rules of natural justice must be observed and the documents which I have referred to indicate that these rules are being observed by the Bank. The plaintiff had the opportunity and was in fact able to state the grounds upon which he urged that this case does not fall within the scope of section 71 (1)."

Where the repository of a power has to act in a judicial or quasi judicial manner in the exercise of that power the Courts have always claimed the right to interfere where it acts without or in excess of jurisdiction, where there is an error of law on the face of the record or on the ground of bias or in violation of the principles of natural justice. In the classic formulation of Lord Atkin in *R. V. Electrcity Commissioners* (1924, 1 *K.B.* 171 *at* 205 " whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the Kings Bench Division exrcised in these writs."

Today when there is a proliferation of governmental and other bodies or persons having power to take actions seriously affecting the subjects the reference to "legal authority", "duty to act judicially", "Questions affecting the rights of subjects" in the above passage have been considered to be unduly restrictive. Thus "Questions affecting the rights of subjects" in Lord Atkins dictum has now become "Questions affecting subjects" and "legal authority" did not have to be statutory—*R. V. Criminal Injuries Compensation Board* (1967, 2 *All E.R.* 770) a decision not viewed favourably however by Sharvananda, J. in *Fernando V. Jayaratne—S.C. Minutes of* 30.7.1974. S milarly acting in a judicial or quasi judicial capacity "has now come to mean "with a duty to act fairly" *Durayappah Vs. Fernando* (69 *N.L.R.* 265 *P.C.*) So it seems now, that any power judicial, quasi judicial, or administrative may be subject to review if its exercise might have a sufficiently serious effect on subjects and if it is a power which can be exercised only in circumstances which are specified or after some sort of factual evaluation. However for the purposes of the present case it is sufficient for me to accept Lord Atkins, formulation.

Nor will an exclusion clause such as found in Section 71 (3) which makes the determination of the Bank final and conclusive and which cannot be called in question in any Court of law exclude the jurisdiction of the Courts to review such determinations. In the case of *The Land Commissioner Vs. Ladamuthu Pillai,* 62 *N.L.R.* 169 which was also a case of an acquisition under the provisions which were somewhat similar to section 71 it was pleaded that the determination of the Land Commissioner to acquire the estate was final and conclusive and could not be questioned in the proceedings and that the court had no jurisdicion to entertain the action.

Dealing with this plea Lord Morris of Borth-Y—Guest delivering the judgment of the Privy Council said at Page 180, 181

"Their Lordships consider that any question of finality in the Land Commissioner's determination can only arise in regard to his exercise of individual judgment whether he should or should not acquire any land which he is authorised to acquire under subsection 1. His personal judgment can only be brought to bear upon the question as to whether or not he should acquire land that is covered by the wording of subsection 1. The antecedent question as to whether any particular land is land which the Land Commissioner is authorised to acquire under the provisions of subsection 1 is not one for his final decision but is one which if necessary must be decided by the Courts of Law."

So here too while the final determination whether the land should or should not be acquired is one for the Bank alone and is not questionable in a court of law yet the antecedent question as to whether it is land which it is authorised to acquire or not is a matter which, if need be, can be reviewed by a court in appropriate proceedings. The plaintiff in the instant case seeks a declaration that the property is not subject to or capable of acquisition by the Bank and that it is not in law empowered to acquire it. She has also prayed for a permanent and interim injunction restraining the defendants from proceeding with the proposed acquisition of the land and from taking any steps in connection with it.

But the Bank in coming to a decision that it has the power to acquire the property and in making the determination to acquire it was acting in pursuance of authority vested in it by statute. The court cannot issue the injunctions prayed for unless it holds that the decisions and the determination of the Bank are null and void. Nor would a naked declaration without such a finding be of any avail to the plaintiff as such decrees are not capable of execution; nor can possession be given—*M. A. Perera V. W. M. Perera et al* (68 *N.L.R.* 262) although it is true that "Courts of justice have always assumed so far without disillusionment that their declaratory decrees against the Crown will be respected", per Gratiean, J. in *Attorney-General Vs. Sabaratnam* (57 *N.L.R.* 481 *at* 485).

In effect therefore the plaintiff is challenging the act of a statutory body empowered by the legislature to act in that way on the well known grounds on which such acts are usually challenged, namely, that it did not follow the principles of natural justice that the act was not bona fide and that it was ultra vires its powers. As Zamir points out in his work on *The Declaratory Judgment* at page 67 "The jurisdiction of the superior courts to make declaration is two fold: original and

supervisory. The original jurisdiction may be invoked for the determination of disputes at first instance; the supervisory jurisdiction is exercised to review decisions arrived at by other bodies" and at page 68 "Further more both original and supervisory jurisdictions may be exercised in one action; The court may declare invalid a decision of an administrative authority and then proceed to declare upon the disputed right or another related right of the plaintiff".

Here the plaintiff has invoked both jurisdictions—the original as well as the supervisory jurisdiction and the question of fundamental importance which arises for decision in this case therefore is whether a District Court has jurisdiction to grant a declaration in cases where it is sought as a supervisory remedy to challenge the validity of judicial or quasi judicial acts. The earlier cases on this point are neither satisfactory nor conclusive as they did not deal with it in this form.

In the case of *Walter Leo V. The Land Commissioner* (57 *N.L.R.* 178) it was held that a writ of Certiorari was available against the Land Commissioner if, purporting to act under the Land Redemption Ordinance, he orders the compulsory acquisition of property which is not agricultural land within the meaning of section 3 (1) and 8 of that Ordinance. However, in that case the petitioner had moved by way of writ and the question posed here did not arise for decision.

In the case of *Fernando V. The University of Ceylon* (58 *N.L.R.* 265) the Supreme Court held that the act complained of was a purely administrative act and that the proper remedy was not by way of certiorari which did not lie to quash purely administrative actions but for a declaration that the decision was null and void. Here too the question of the jurisdiction of the District Court to make such declarations was not gone into. In appeal the Privy Counsel dealt with the case on the merits and left this question open, Lord Jenkins stating "Their Lordships conclusion on the merits of the case makes it unnecessary for them to consider the University's submission to the effect that the Court had no jurisdiction to grant the declaratory relief sought by the plaintiff—*The University of Ceylon V. E. F. W. Fernando* (61 *N.L.R.* 505)

In that case the plaintiff had brought the action in the District Court of Colombo for a declaration that a decision of the Board of Residence and Discipline of the University to suspend him from all University examinations for an indefinite period and the finding of a Commission of Inquiry set up by the Vice Chancellor, on which such decision was based, were null

and void. The case of *Ladamuthu Pillai V. The Attorney-General* (59 *N.L.R.* 313) was also an action questioning the authority of the Land Commissioner to acquire certain lands under the Land Redemption Ordinance, filed in the District Court praying for an injunction restraining the defendants from proceeding with the acquisitions. A Divisional Bench of three Judges of the Supreme Court held that the right to institute a regular action to obtain a declaratory decree and an injunction was not excluded by the fact that a writ of certiorari also may be available. The question was considered more from the point of view as to whether the availability of a writ of certiorari excluded the declaratory action and the question of the jurisdiction of the District Court to make declarations in its supervisory capacity was not considered.

The case went up to the Privy Council— *The Land Commissioner V. Ladamuthu Pillai* (62 *N.L.R.* 169) and was there decided on other grounds. But in passing, as it were the Privy Council said "..........Their Lordships consider that if the authority of a Land Commissioner to make a determination under Section 3 of the Land Development Ordinance (?) is challenged the appropriate procedure is by way of an application for Certiorari (See *Leo V. The Land Commissioner*). The Land Commissioner as the judicial tribunal the validity of whose action is being tested may then conveniently be brought before the higher Court so that if necessary his decision or order may be brought up and quashed." This was all that was said in respect of this matter and there was no detailed examination of this question.

In the case of *Singho Mahataya V. Land Commissioner* (66 N.L.R. 94) the plaintiff brought the action in the Court seeking a declaration that a land was not liable to be acquired in terms of the Land Redemption Ordinance. A preliminary objection that the action was not maintainable against the Land Commissioner nomine officii was upheld by the trial judge who dismissed the plaintiff's action. In appeal the appeal was not decided on this issue but on the question now raised in the instant case. G. P. A. Silva, J. with whom H. N. G. Fernando, J. agreed said at page 95 ".........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*........They did not say that certiorari was the more appropriate remedy (96)". At that time the Supreme Court

was bound by the decision of the Privy Council and there was no detailed examination of the decision of the Privy Council.

This was pointed out by H. N. G. Fernando, J. himself in *Munasinghe V. The Peoples' Bank* (73 *N.L.R.* 385 at page 387) when he said "Counsel for the plaintiff in appeal submitted that the decision of this Court upon which the trial judge relied should be reviewed because in his submission the decision had not correctly construed the judgment of the Privy Council in The *Land Commissioner V. Ladamuthu Pillai.* I must frankly say that although I concurred in the decision in the case reported in 66 N.L.R. 94 there appears to be some substance in the Counsel's criticism of that decision." However it was considered that the case did not provide a suitable opportunity for the review of that decision as there the plaintiff had come into Court before the Bank made its determination and it was held that the action was premature.

The question was also raised in *The Attorney-General V. Chanmugam* (71 *N.L.R.* 78) but was not decided. The plaintiff filed an action in the District Court of Colombo for a declaration that the findings of a Commission of Inquiry appointed by the Governor-General under the Commissions of Inquiry Act (Cap. 393) was null and void and that he was entitled to full emoluments during the period he was under suspension and also pension or gratuity. The District Judge entered judgment for plaintiff as prayed for. In appeal the Supreme Court decided the case on the merits on the assumption that the District Court had jurisdiction to grant the decree. Sirimane, J. after setting out the argument of the learned Crown Counsel that the jurisdiction of the District Court was statutory and conferred on it by the Courts Ordinance (Cap. 6), that it was an inferior court and that the District Court had no supervisory jurisdiction went on to point out at page 84 "There are certain decisions of this Court which favour the view that the jurisdiction of the District Court in this matter should not be restricted." But after referring to some of these cases he said "I do not propose to examine this question and express an opinion as it is unnecessary to do so in this case because the appellant must succeed on the other two grounds."

District Courts in this country are creatures of statute and their jurisdiction and powers are defined and confined by the various statutes which give them jurisdiction but principally by the former Courts Ordinance (Cap. 6) and now the Administration of Justice Law No. 44 of 1973. They have an unlimited original civil jurisdiction for actions in which the defendant

resides, or the cause of action arises, or the land involved is situated within the district. The District Court is expressly declared competent to exercise a testamentary, a revenue, a matrimonial and an insolvency jurisdiction as well as a jurisdiction over the estate of *cestui que trust* and over guardians and trustees. Nowhere are they given any general supervisory jurisdiction over statutory tribunals or other bodies or persons exercising judicial or quasi judicial functions.

Even though no such jurisdiction is given by statutes it was argued that they are superior courts and are vested with supervisory jurisdiction in the same way and to the same extent High Courts in England are vested with such jurisdiction. In England High Courts are undoubtedly superior Courts and not only exercise supervisory jurisdiction over statutory tribunals and other bodies but also have the jurisdiction to issue mandates in the nature of writs and to punish for contempts *ex facie*. This is because of their historical origin and is inherent in their constitution, as was explained by Lord Cockburn, C.J. in *Ex parte Jolliffe* (42 *L.J.Q.B.* 121).

He said in the course of his judgment in that case "There is an obvious distinction between Inferior Courts created by statute and Superior Courts of Law or Equity. In these Superior Courts the power of committing for contempt is inherent in their Constitution and has been coeval with their original institutions and has been always exercised. The origin can be traced to the time when all the Courts were divisions of the Curia Regis—the Supreme Court of the Sovereign—in which he personally, or by his immediate representative sat to administer justice. The power of the Courts in this respect was therefore an emanation from the Royal authority, which when exercised personally, or in the presence of the Sovereign made a contempt of the Crown punishable summarily and his power passed to the Superior Courts when they were created."

District Courts in our country have never been regarded as Superior Courts and it has been held that they are not. Nor have they exercised any of the powers of such courts at any time. Indeed the old Courts Ordinance in Section 7 states that The Supreme Court shall continue to be the only superior Court of record while the Administration of Justice Law states in Section 11 that the Supreme Court shall be the only superior court of record. On the other hand, the old section 62 states that the District Court shall be a court of record and the Administration of Justice Law classifies them under the head of Subordinate Courts.

In the matter of the *Application of John Ferguson* (1 *N.L.R.* 181) it was held that the District Court did not have the power to commit for contempt ex facie. Morgan A.C.J. delivering the judgment of the Full Court after setting out that this power vested only in the superior courts dealt with the question as to whether the District Court was a superior Court. He said at page 185 " Can our District Courts, then, be regarded as Superior Courts in the sense in which the word was used in the decision last referred to? (i.e. *Ex Parte Jollifee*) Superior and Inferior are relative terms, and our District Courts undoubtedly have powers much larger than those appertaining to English County Courts. It does not follow that they are Superior Courts in the sense in which the Superior Courts at Westminister and the High Court of Chancery are Superior Courts."

And again at page 187 he said "Now District Courts cannot be regarded as Superior Courts in this sense. It is true that they are Courts invested with very important functions and with an unlimited original civil jurisdiction within their own districts; but their jurisdiction is territorially very limited in all cases, and in criminal matters is confined to the trial and punishment of the higher classes of offences. Unlike the Supreme Court and the Superior Courts at Westminister a District Court has no control or superintendence over any other tribunal whatsoever." This case was decided in 1874 before the Courts Ordinance became law which was 2nd August, 1890.

But the position is no different under that Ordinance or under the New Law. In the case of *King v. Samaraweera* (*19 N.L.R 433*) it was held by a Full Bench that a District Court had no power to commit for contempt committed ex facie. Wood Renton, J. stated at page 435 " The fact that the section provides that District Courts and Courts of Requests shall be Courts of Record does not show that the Legislature intended to confer upon them unlimited jurisdiction in matters of this kind. The County Courts in England have been made Courts of Record by statute but their jurisdiction to punish for contempt does not extend to acts done ex facie curiae ". And Shaw, J. said at 437 "Yet, being Inferior Courts of Record, they had not the full jurisdiction to punish all descriptions of contempt such as is passed by the Superior Courts in England and the Supreme Court in Ceylon."

In regard to the writ of Habeas Corpus prior to 1933 although the Supreme Court was given the power to issue mandates in the nature of writs of mandamus, certiorari, procedendo and error nothing was said about writ of habeas corpus Nevertheless the Supreme Court did issue the writ though without

express authority and no other inferior court issued it. In 1835 the District Courts were given a restricted right to issue the writ. But this was only for a limited period and it lapsed in 1839. But in 1861 the District Court of Kandy issued such a writ on the basis on which the Supreme Court had issued it without authority earlier. The matter came up before the Supreme Court in *Re Application of A. R. Shaw* (1860-62 *Ramanathan's Reports* 116) and it was held that the District Court did not have the power to issue the writ.

Our District Courts are inferior courts and are in this respect on a par with the County Courts in England. Zamir points out at page 304 "At any rate this change of language makes it clearer, if any clarification was needed that declarations for annulment of illegal acts of public authorities are generally not available in County Courts" and at page 305 he states, "Perhaps the most unfortunate aspect of the limitations upon the jurisdiction of County Courts is that they are in general unable to entertain actions for declarations that administrative acts done or threatened to be done are unlawful."

I hold therefore that the District Court has no jurisdiction to grant a declaration in cases where it is sought as a supervisory remedy to challenge the validity of a judicial or quasi judicial act.

RATWATTE, J.—I agree.

Appeal dismissed.