

1970 Present: H. N. G. Fernando, C.J., Sirimane, J., and
Wijayatillake, J.

G. H. W. DE SILVA, Appellant, and TOWN COUNCIL,
DODANDUWA, Respondent

S. C. 154/69 (Inty.)—D. C. Galle, 7541/L.

Municipal or Town Council—Purchase, by Council, of land sold for non-payment of rates—Vesting certificate—Whether its validity can be challenged on ground of non-compliance with prescribed procedure—Municipal Councils Ordinance (Cap. 252), ss. 252 to 264—Town Councils Ordinance (Cap. 256), s. 169.

Where, by virtue of the provisions of section 261 of the Municipal Councils Ordinance read with section 169 of the Town Councils Ordinance, immovable property is purchased on behalf of a Town Council at a sale for non-payment of taxes, the validity of the vesting certificate issued thereafter to the Council under section 263 is not liable to be challenged on the ground that, prior to the sale, the Council did not properly authorise some officer to purchase the property in terms of section 261.

APPEAL from a judgment of the District Court, Galle.

Nimal Senanayake, with Miss S. M. Senaratne and M. W. Amerasinghe,
for the defendant-appellant.

C. Ranganathan, Q.C., with Harischandra Mendis and N. T. S. Kularatne,
for the plaintiff-respondent.

Cur. adv. vult.

July 9, 1970. H. N. G. FERNANDO, C.J.—

The plaintiff in this section, the Dodanduwa Town Council, sued the defendant for a declaration of title to certain premises situated within the administrative limits of the Council. The plaintiff claimed title by virtue of a certificate, purporting to have been issued under s. 263 of the Municipal Councils Ordinance (Cap. 252), vesting the premises in the Council. Sections 252 to 264 of that Ordinance are declared by s. 169 of the Town Councils Ordinance to be applicable for the purpose of the recovery of rates imposed by a Town Council.

Section 263 provides for the issue of a vesting certificate in a case “where land or other immovable property is purchased by a (Town) Council under s. 261”. Such a purchase can take place under the procedure set out in earlier sections of Cap. 252. If the rates due on any

premises are not duly paid, a warrant can be issued under s. 252 for the recovery of the rates by the seizure and sale of the movable and immovable property of the proprietor of the premises. Where such a warrant is issued, s. 256 authorises the property so seized to be sold by public auction after notice in the Government Gazette and in one or more newspapers. At the auction, "it shall be lawful for any person authorised by the Council in that behalf to bid at the sale for, and to purchase, such land or property on behalf of the Council" (s. 261).

In the present action, Counsel for the defendant framed certain issues (numbered 6–12) which raised questions whether in this case there had in fact been compliance with the requirements as to the issue of the warrant under s. 252, as to the seizure provided for by s. 256, as to the authorisation by the Council to bid for and purchase the premises at the sale, and as to the actual purchase at the sale in terms of s. 261. When, however, Counsel commenced to examine the plaintiff's witness concerning the facts involved in these issues, the learned District Judge upheld an objection taken by Counsel for the plaintiff on the ground that evidence of such facts is excluded by the terms of s. 263 :—

"Where land or other immovable property is purchased by a Municipal Council under the provisions of s. 261, a certificate substantially in the form set out in the Eighth Schedule, signed by the Mayor, shall vest the property sold absolutely in the Council free from all encumbrances; and such certificate shall be received in all Courts as conclusive evidence of the title of the Council to such land or other immovable property. Every certificate shall be liable to the stamp duty leviable on conveyances of immovable property and to the charges payable for the registration thereof."

The present appeal from the order of the District Judge was listed before a Bench of 3 Judges for the purpose of reviewing the correctness of the judgment in *Nafia Umma v. Abdul Aziz*¹, which construed s. 146 of the former Municipal Councils Ordinance. The present s. 263 is in identical terms. The following is the construction placed on s. 146 in that judgment :—

"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."

I must frankly state that I did entertain doubts as to the correctness of the judgment, because of my opinion that s. 146 may be capable of the construction that the vesting certificate is conclusive as to title only in a case where property is purchased by the Council *at a sale held after the procedure prescribed in the Ordinance has been duly observed*. Nevertheless, there are important considerations which compel me to the conclusion that the judgment must be followed.

¹ (1925) 27 N. L. R. 150.

Mr. Ranganathan stressed the fact that for many years persons have purchased property from Municipal Councils on the faith of the conclusiveness of the title conferred by vesting certificates under the former s. 146 and the present s. 263. The experience of my brother Sirimano in the original Courts confirms the importance of this fact. There is also the consideration that when the former Municipal Councils Ordinance of 1910 was repealed in 1947 the set of provisions which included the former s. 146 was re-enacted without change in the new Ordinance (Cap. 252). If in fact the judgment in the case of *Nafia Umma v. Abdul Aziz* had erroneously construed the intention of s. 146, the Legislature had ample opportunity to correct such error.

In view of these considerations, the rule of *stare decisis* must apply, even if we entertain some doubt as to the correctness of the judgment.

I was impressed also by Mr. Ranganathan's arguments in support of the construction which was placed on s. 146. The section concerns cases in which property is sold by a responsible public authority, and not at the instance of a private creditor, and in which property is purchased by the authority out of public funds; there is therefore much to be said in favour of the view that the Legislature firstly relied on the presumption that the sales would in fact be carried out according to law, and secondly intended to avoid the possibility of a challenge of the vesting certificate on the ground of non-compliance with the prescribed procedure. Again, the former s. 147 and the present s. 264 show that there is no question of a Local Authority making profit on property vested by the Certificate. These sections provide that upon a re-sale of the vested property, the authority will take for itself only its proper dues, and will hold any surplus for the benefit of the former owners. This safeguard has been reinforced by an amendment in 1961, under which the former owner may himself pay up the dues and redeem his property. These considerations remove to a great extent the fears that I have previously entertained of the prejudice which may be caused to owners of property if they are debarred from challenging the validity of purchases by local authorities at sales purporting to have been held under the Ordinance.

Mr. Senanayake for the defendant proposed to cite recent decisions of the English Courts in which orders or acts made or done by statutory authorities have been quashed or declared null on the ground that they have been made or done only *under colour* of statutory power or in bad faith, and not in genuine exercise of such power. We need not however proceed to consider any such decisions, for the reason that in the instant case we are satisfied that the purchase of the defendant's property by the plaintiff Council was not made under mere colour of statutory power or in bad faith. In the first place, it is not disputed that the rates due upon the property had been unpaid for a long period. Then it is clear from other proceedings in the Supreme Court to which the plaintiff and the defendant were parties, and from documents of which we take judicial notice, that the defendant's property was one of numerous properties which were included in a warrant issued under Cap. 252, and that the

sales of all these properties were advertised in accordance with the requirements of s. 256. There is thus no room even for the suspicion that this property was improperly singled out for sale. The only matter upon which there appears to be some doubt is whether the Council did properly authorise some officer to purchase this property in terms of s. 261 ; but that is not a matter which can give rise to any suspicion of colourable action or of bad faith. Indeed, although the Counsel for the plaintiff Council could give no assurance on the point, it may yet be that the defendant if he so wishes may even now be able to redeem his property by tendering to the Council the sums which the Council sought to recover by the forced sale. The defendant has only himself to blame for his own failure to make an offer of such payment before this action was instituted.

For these reasons we affirm the order under appeal and we further direct that the issues Nos. 6-12 framed at the trial be struck out as irrelevant. The appeal is dismissed with costs.

SIRIMANE, J.—I agree.

WIJAYATILAKE, J.—I agree.

Appeal dismissed.
