

1974 *Present* : **Alles, A.C.J., Perera, J., and Vythialingam, J.**

P. R. S. PEIRIS, Petitioner, and M. A. ELLEPOLA (Additional Public Trustee) and another, Respondents

S. C. 293/74—Application for a Mandate in the nature of a Writ of Certiorari under the provisions of the Administration of Justice Law, No. 44 of 1973

Administration of estates—Administration of Justice Law, No. 44 of 1973—Section 308—Applicability to testamentary proceedings which commenced prior to the Act—Section 308 (5)—Action taken by Public Trustee thereunder—Requirement of prior evidence from persons interested in the estate.

The Public Trustee has power to act under section 308 of the Administration of Justice Law, No. 44 of 1973, even in respect of estates concerning which testamentary proceedings commenced prior to the date when the Law came into operation.

When a person claims letters of administration to the estate of a deceased person, the Public Trustee has no jurisdiction to take action under section 308 (5) of the Administration of Justice Law in the absence of evidence by affidavit or otherwise from persons interested in the estate that the estate is likely to suffer as a result of a valuable asset in it being left in the possession of the applicant for letters of administration.

APPPLICATION for a Writ of *Certiorari*.

R. Manikkavasagar, for the petitioner.

S. W. B. Wadugodapitiya, Senior State Counsel, for the 1st respondent.

2nd respondent absent and unrepresented.

Cur. adv. vult.

June 28, 1974. ALLES, A.C.J.—

The petitioner in this application claims to have married the deceased G. H. Karunatileke by habit and repute and states that they were living as husband and wife for 14 years, and that there is one child by the marriage, aged 12 years. The deceased died intestate, and his estate consisted *inter alia* of a Ford Anglia motor car bearing the registration No. 4 Sri 1505, and a house and property bearing assessment No. 22, Arethusa Lane, Wellawatte in extent 29.9 perches.

The 2nd respondent who is said to be a brother of the deceased filed Testamentary Case No. 26946/T in the District Court of Colombo seeking to administer the estate of the deceased. On or about November, 1973, the petitioner too filed Testamentary action No. 27224/T in the District Court of Colombo claiming letters of administration to the estate of the deceased. In accordance with the provisions of the Administration of Justice Law, No. 44 of 1973, both these cases, i.e., 26946/T and 27224/T were transferred to the Probate Office, Colombo.

On 26th March, 1974, Attorney-at-Law Mr. Manikkavasagar appeared on behalf of the petitioner and stated to the Additional Public Trustee that his client was desirous of retaining possession of the motor car until the court determines the rights of parties. The Additional Public Trustee, who is the 1st respondent to this application, made order that the petitioner should deposit cash security in a sum of Rs. 20,000 of which a sum of Rs. 10,000 was to be deposited to the credit of the proceedings in the said case on or before the 16th of April, 1974. If this sum was deposited on the due date, she was granted time till 31st May, 1974, to deposit the balance sum of Rs. 10,000. She was also required to submit to Probate Office every month a Report from Messrs Richard Pieris & Co., Ltd., to the effect that the car had been fully serviced and maintained. The Additional Public Trustee made further order, that if she failed to deposit the two sums of Rs. 10,000 on or before the given dates, he would take steps to take possession of the vehicle.

This application in the nature of a Writ of Certiorari is in respect of order made by the 1st respondent. It was urged by counsel for the petitioner that since testamentary proceedings in this case had commenced before the Administration of Justice Law came into operation, the provisions of the Administration of Justice Law had no application to Testamentary Proceedings that were taken prior to the appointed date. State Counsel however submitted that the order of the 1st respondent was a proper order which could have been made under section 308 (5) of the Administration of Justice Law. It seems to us on a consideration of the provisions of section 308 that the law

intended that in certain circumstances the administration of estates should be undertaken by the Public Trustee. These circumstances are set out in section 308 (1), (2), (3) and (5) of the Act, and it is apparent that the intention of the legislature was to protect the estates of deceased persons for the benefit of the heirs or next of kin or other persons lawfully entitled to the property of the deceased. The Public Trustee is entitled to act under this section even in respect of estates in which Testamentary Proceedings have been taken prior to the date when the Administration of Justice Law came into operation.

Learned counsel for the State seeks to support the order of the 1st respondent under section 308 (5) of the Law that it was in pursuance of such powers that he directed the petitioner to furnish security and submit certain monthly reports to him in regard to the car. There are, however, two conditions that must be satisfied before the Public Trustee is entitled to take steps under this section. Firstly, the property of the deceased must amount to or exceed Rs. 20,000 in value, and secondly, the Public Trustee must be satisfied "that the estate is likely to be interfered or intermeddled with and that the assets of the estate are likely to be in jeopardy of being lost to the heirs or to other persons lawfully entitled to or having any interest in the estate". In this case although there can be no doubt that the assets of the deceased were over Rs. 20,000 in value, having regard to the present day value of motor vehicles, and property within the Municipal limits of Colombo, it does not appear to us that the Public Trustee was justified in taking action under section 308 (5) in the absence of evidence by affidavit or otherwise from persons interested in the estate that the estate was likely to suffer as a result of this vehicle being left in the possession of the petitioner. Therefore, in the circumstances of this case, although we hold that the Public Trustee has power to act under section 308 (5) in an appropriate case even though testamentary proceedings had been commenced before the Administration of Justice Law came into operation, nevertheless one of the conditions precedent to the exercise of that power not having been established, we hold that the Public Trustee acted without jurisdiction in making the order of 26th March, 1974.

We make order, therefore, quashing the order of the Public Trustee dated 26th March, 1974. There will be no costs of this application.

PERERA, J.—I agree.

VYTHIALINGAM, J.—I agree.

Application allowed.