1958 *Present:* **Basnayake, C.J., Pulle, J., and K. D. de Silva, J.**

THE LAND COMMISSIONER, Appellant, *and* V. P. JAYAWARDENE *et al.*, Respondents

S. C. 191—D. C. Colombo, 6499/L

Land Redemption Ordinance, No. 61 of 1942—Unlawful acquisition of land thereunder—Land Commissioner—Liability to be sued nomine officii—*Liability to be restrained by injunction—Scope of Sections 3 (1) (b) and 3 (4).*

Where the Land Commissioner, purporting to act under section 3 (1) (*b*) of the Land Redemption Ordinance, sought to acquire certain lands unlawfully—

Held (by BASNAYAKE, C.J., and PULLE, J.), (i) that an action was maintainable against the Land Commissioner *nomine officii.*

(ii) that the provision in section 3 (4) of the Land Redemption Ordinance was not a bar to the Court granting an injunction to restrain the Land Commissioner from taking steps to acquire the lands.

(iii) that a voluntary transfer of the mortgaged land by the mortgagor in favour of the mortgagee in satisfaction of a hypothecary decree entered by Court is nevertheless a transfer within the meaning of section 3 (1) (*b*) of the Land Redemption Ordinance.

(iv) (K. D. DE SILVA, J., dissenting), that where several lands are mortgaged, section 3 (1) (*b*) of the Land Redemption Ordinance does not apply to a case of a transfer of a few only of those lands.

Ladamuttu Pillai v. Attorney-General (1957) 59 N. L. R. 313 and *Perera v. Unatenna* (1953) 54 N. L. R. 457, followed.

APPEAL from a judgment of the District Court, Colombo.

Walter Jayawardene, with *V. Tennekoon*, Senior Crown Counsel, and *J. W. Subasinghe*, Crown Counsel, for the defendant-appellant.

E. B. Wikramanayake, Q.C., with *G. T. Samerawickreme* and *Lyn Wirasekera*, for the plaintiffs-respondents.

Cur. adv. vult.

February 7, 1958. PULLE, J.—

The defendant in this action, who is the appellant, is the Land Commissioner. He appeals from a decree dated 6th November, 1953, which declared that the two plaintiffs who are the intestate heirs of one Cyril Pinto Jayawardene were entitled to a permanent injunction restraining him (the Land Commissioner) from acquiring two lands called Nagahalandewatta and Mahagahalande, described in the schedule to the decree, under section 3 of the Land Redemption Ordinance, No. 61 of 1942.

The appeal raises broadly the questions :

(*a*) whether the action is properly constituted against the Land Commissioner who is sued by only his official name,

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(*b*) whether the provision in section 3 (4) is a bar to the court granting an injunction, and

(*c*) whether the conditions laid down in section 3 (1) (*b*) subject to which the Land Commissioner was empowered to acquire the lands in question were satisfied.

The answer to the last question depends on the facts special to this case and the true interpretation of section 3 (1) (*b*) of the Land Redemption Ordinance, No. 61 of 1942, which has been amended by the Land Redemption (Amendment) Ordinance, No. 62 of 1947, and the Land Acquisition Act, No. 9 of 1950. It is not necessary to have recourse to either of the amending statutes to solve the problems arising on the application of section 3 (1) (*b*) to the facts of the case.

Whether an action like the present one against the Land Commissioner *nomine officii* can be maintained was argued at length in the case of *Ladamuttu Pillai v. Attorney-General and others.*[1] My Lord, the Chief Justice, has in his judgment stated the reasons for answering the question in the affirmative. I agree with those reasons and have nothing to add to them.

The answer to the second question does not, in my opinion, admit of a doubt. Sub-section 4 of section 3 answers itself: It reads—

> "The question whether any land which the Land Commissioner is authorized to acquire under sub-section (1) should or should not be acquired shall, subject to any regulations made in that behalf, be determined by the Land Commissioner in the exercise of his individual judgment and every such determination of the Land Commissioner shall be final."

Before any finality can be claimed for a determination by the Land Commissioner to acquire a land it is essential to establish that the land comes within the provisions of section 3 (1). The plaintiffs asserted that the lands "do not fall within the description in section 3 of the Land Redemption Ordinance, No. 61 of 1942, and are not therefore subject to acquisition by the defendant under the said Ordinance".

If that be the fact the provision in sub-section 4 cannot defeat their claim to have the Land Commissioner restrained from acquiring the lands.

I come now to the last and important question, namely, whether the contention on behalf of the Land Commissioner is correct that the lands he sought to acquire fall within the description in section 3 (1) (*b*).

One Francis Suriyaperuma by a bond dated the 30th January, 1932, mortgaged the two lands sought to be acquired and three others to Cyril Pinto Jayawardene, as security for a loan of Rs. 5,500. The bond was put in suit on 3rd May, 1934, and on the 18th July, 1934, a decree was entered ordering the mortgagor to pay Rs. 7,170·62, with interest and costs of suit. The properties were declared specially bound and executable for the payment of this sum. The decree provided that the order to sell would be stayed if certain payments indicated in the decree were made. The decree was not executed.

[1] *(1957) 59 N. L. R. 313.*

By a deed dated 20th July, 1935, the mortgagor conveyed to Cyril Pinto Jayawardene in consideration of a sum of Rs. 8,000 the two lands sought to be acquired, a third land of the extent of 17A. R1. 2P. and an undivided half share of a field called Talpediwila Cumbure. In other words all the lands mortgaged were transferred by the mortgagor except his residing land called Meegahawatte and an undivided half share of Talpediwila Cumbure.

The learned trial Judge held against the defendant because in his opinion the consideration for the transfer in favour of the mortgagee was not merely the judgment debt but also the release from the mortgage of the entirety of Meegahawatte and a half share of Talpediwila Cumbure and that, therefore, the transfer could not be said, within the meaning of section 3 (1) (*b*), to be in satisfaction or part satisfaction of a debt due from the mortgagor to the transferee. If the learned Judge's interpretation of the section is that it is a condition precedent to the exercise of the power of acquisition that all the lands bound by the mortgage must be transferred, I am in agreement with him. Can it be said that the debt in question was secured by a mortgage of the lands transferred? The question cannot be answered in the affirmative because the debt was secured not only by the mortgage of the lands transferred but also by the mortgage of the entirety of Meegahawatte and the remaining half share of Talpediwila Cumbure. The security for the debt was a mortgage of all the five lands and not two lands and an undivided share of a third.

The interpretation of section 3 (1) (*b*) was the subject of a lengthy argument in *Ladamuttu Pillai v. Attorney-General and others* [1]. I adhere to the view I expressed in that case that unless all the lands mortgaged are transferred in satisfaction or part satisfaction of the debt secured there is no room for the application of section 3 (1) (*b*).

It was submitted for the plaintiffs that section 3 (1) (*b*) had no application because it could not be said that, immediately prior to the transfer, the debt created by the decree was secured by a mortgage. The correctness of the ruling in *M. S. Perera v. Unatenna* [2] was questioned before us. I concurred in the judgment in that case and, having reconsidered it, I see no reason for thinking that it was wrongly decided.

In the result the appeal fails and should be dismissed with costs.

BASNAYAKE, C.J.—

I have had the advantage of reading the judgment prepared by my brother Pulle. I am in entire agreement with it and I concur in the order dismissing the appeal with costs.

I do not propose to discuss the questions of law arising on this appeal as my judgment in the case of *Ladamuttu Pillai v. Attorney-General and others* [1] covers them all. It is sufficient to say that—

(*a*) Section 3 (1) (*b*) of the Land Redemption Ordinance applies to a case of a transfer, in satisfaction or part satisfaction of the debt, of the entire land where only one land is mortgaged and of all the lands where more than one land is mortgaged.

[1] *(1957) 59 N. L. R. 313.* [2] *(1953) 54 N. L. R. 457.*

(*b*) The Court has power to grant an injunction against the Land Commissioner restraining him from taking steps to acquire a land under the Land Redemption Ordinance.

(*c*) The Land Commissioner may be sued *nomine officii*.

(*d*) Section 3 (4) of the Land Redemption Ordinance does not preclude a person from challenging in a regular action the legality of the determination of the Land Commissioner to acquire a land.

K. D. DE SILVA, J.—

I have had the advantage of reading the judgment prepared by my brother Pulle. The main question which arises on this appeal is whether the lands sought to be acquired by the Land Commissioner, in this case, fall within the description of lands set out in section 3 (1) (*b*) of the Land Redemption Ordinance, No. 61 of 1942. It was argued on behalf of the defendant-appellant that they fell within that category of lands whereas Mr. Wickramanayake, Q.C., the counsel for the plaintiffs-respondents supported the contrary view. It was contended on behalf of the respondents that the provisions of section 3 (1) (*b*) would apply only to a case where all the lands mortgaged had been transferred by the owner to the mortgagee in satisfaction of the mortgage debt. This same question arose for decision in the case of *Ladamuttu Pillai v. Attorney-General and others*[1] and there I took the view that a transfer of all the lands mortgaged was not a condition precedent to proceedings being taken under section 3 (1) (*b*) and I still adhere to that view. If the Legislature intended to restrict the application of this provision only to cases where all the mortgaged lands had been transferred to the mortgagee it could have stated so, in clear and unambiguous terms. Without unduly straining the language of section 3 (1) (*b*), I do not think it can be said, that the Legislature contemplated the application of this provision only to cases where all the mortgaged lands have been transferred. The object of this Ordinance was to render assistance to a class of debtors who got into difficulties during an abnormal period of financial stress. If the view put forward on behalf of the respondents is to prevail that object would be defeated to a very large extent. According to that view if a person borrowed a sum of Rs. 50,000 by hypothecating ten lands—nine of which were very valuable—as security for the loan and he later transferred to the mortgagee the nine valuable lands in satisfaction of the debt he would not be entitled to obtain any relief through the intervention of the Land Commissioner even though the 10th land which he did not transfer was worth only Rs. 100. It is difficult to believe that the Legislature, in passing this Ordinance, intended to countenance such a situation.

In my view the lands in question come within the purview of section 3 (1) (*b*) and the Land Commissioner was entitled to acquire them. I would therefore allow the appeal and dismiss the plaintiffs' action, with costs in both Courts.

Appeal dismissed.

[1] (*1957*) *59 N. L. R. 313.*