

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

H. R. MUNASINGHE, Appellant, and THE PEOPLE'S  
BANK, Respondent

S. C. 551/65 (F)—D. C. Colombo, 1289/ZL

*Finance Act, No. 11 of 1963—Application for redemption of land thereunder—Acquisition by People's Bank—Right of recourse to the Courts—Scope—Section 71 (1) and (3).*

Where, in consequence of an application for redemption of land under the Finance Act No. 11 of 1963, the People's Bank proposes, but has not yet decided, to acquire certain premises in terms of section 71 (1) of the Act, the person who is the present owner of the premises is not entitled to attempt to forestall the Bank's decision by seeking an adjudication from a Court on the question whether or not the case does fall within the scope of any of the paragraphs (a), (b), (c) and (d) of section 71 (1).

**A**PPEAL from a judgment of the District Court, Colombo.

*C. Ranganathan, Q.C., with N. S. A. Goonetilleke, for the plaintiff-appellant.*

*H. W. Jayewardene, Q.C., with J. A. L. Cooray, D. C. Amerasinghe and Mrs. S. Gunasekera, for the defendant-respondent.*

*Cur. adv. vult.*

July 27, 1970. H. N. G. FERNANDO, C.J.—

The plaintiff purchased the property which is the subject of this action by a deed of 26th May 1968 for a sum of Rs. 35,000. The attestation clause states that the consideration was paid as follows :—

- (1) Rs. 8,000 by a cheque in discharge of Bond No. 5853,
- (2) by cheque for Rs. 17,700 in discharge of Bond No. 2200 and
- (3) by cash for Rs. 9,300 acknowledged to have been paid prior to the execution of the deed.

On 2nd June 1964 the Secretary of the Land Redemption Department of the People's Bank wrote a letter (P7) to the plaintiff stating that "the former owners of the land had applied in terms of s. 71 of the Finance Act No. 11 of 1963 to redeem the premises described in appended Schedule presently owned by you as they became dispossessed of such premises due to their inability to redeem a mortgage/conditional transfer to which the premises are subjected". P7 further stated that an inquiry will be held on 12th June 1964 "to decide whether these premises should be acquired by the Bank to be settled on him".



It appears that the plaintiff did attend the inquiry and made representations that the land did not appear to be covered by any of the sub-sections (a) to (d) of s. 71 (1) of the Act. Thereafter on 27th June the plaintiff's Proctor wrote the letter PS inquiring from the Bank "under what provision of the Act they are seeking to acquire my client's property". To this letter the Bank replied by P9 of 1st July 1964 informing the plaintiff "that the proposed acquisition of the premises comes under s. 71 (1) (c) of the Act".

Sub-section (1) of s. 71 of the Act provides that the Bank is authorised to acquire any premises — . . . . . " (c) if the Bank is satisfied that those premises were transferred by the owner of those premises or his heirs, executors or administrators to any other person, at the request of a mortgagee of those premises, in satisfaction or part satisfaction of a debt which was due from the original owner or his predecessor in title to that mortgagee and which was secured by a mortgage of those premises subsisting immediately prior to the transfer".

On July 8, 1964, the plaintiff's Proctor wrote to the Bank the letter P10. He there explained all the details concerning the transaction of the purchase of the land by the plaintiff. He emphatically stated that the property was not transferred to the plaintiff at the request of any mortgagee in satisfaction or part satisfaction of a mortgage. He explained also that the sum of Rs. 9,300 acknowledged to have been received prior to the execution of the deed represented money paid by the plaintiff's brother to the former owners as an advance against the purchase price of the property, and maintained that the case did not come within the scope of s. 71 (1) (c). The Proctor added a request to the Bank "to reply early and let me know what you propose to do in the matter".

On 14th July the Bank wrote the letter P11 asking for some documents referred to in certain earlier letters (which letters are not in the record). P11 had the following postscript:—

"In reply to your letter dated 13.7.1964 and the connected letters. There is nothing further than what was informed by the letter from the Bank dated 1.7.1964."

On 24th July 1964 the plaintiff instituted the present action seeking a declaration *inter alia* that the said land and premises are not premises which the Bank is authorised to acquire under the provisions of the Finance Act, and a permanent injunction restraining the Bank from acquiring or attempting to acquire the land and premises. Paragraph 7 of the plaint expressly averred that the land and premises do not fall within any of the categories of the premises which the Bank is authorised to acquire under the Finance Act of 1963, and that the Bank was wrongfully and unlawfully asserting that the premises fall within s. 71 (1) (c) of the Act.



The answer filed by the defendant Bank included denials of the averments in paragraph 7 of the claim, and denied the right of the plaintiff to seek the declaration claimed in the plaint.

At the trial Counsel for the plaintiff raised the issue "do the premises fall within the categories of premises set out in s. 71 (1) (c) of the Act?". Counsel for the defendant raised as preliminary issues the questions whether any cause of action accrued to the plaintiff and if not whether the plaintiff is entitled to seek the relief prayed for.

Accordingly the learned trial Judge tried only the preliminary issues, and having regard to the decision in *Singho Mahatmaya v. The Land Commissioner*<sup>1</sup>, held that *certiorari* is the only remedy available in the circumstances of this case. On this ground, he dismissed plaintiff's action with costs.

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. Ladumuttu Pillai*<sup>2</sup>. I must frankly say that although I concurred in the decision in the case reported in 66 N. L. R. p. 94, there appears to be some substance in Counsel's criticism of that decision. For reasons which will presently appear, however, the instant case does not provide a suitable opportunity for the review of that decision.

Counsel appearing for the Bank in appeal has maintained that in the instant case the Bank has not yet made a determination to acquire the plaintiff's land, and that the present action is premature, because the proper stage for recourse to the Courts, whether for a declaration or injunction or an order of *Certiorari*, is only after there has been a determination by the Bank under sub-section (3) of s. 71. The Bank's officer who gave evidence at the trial has categorically stated that no decision has been taken one way or another with regard to the acquisition of the plaintiff's land.

I am in agreement with the submission that when an application for redemption of land under the Act is made to the Bank, it is for the Bank to decide whether the land is one which the Act authorises the Bank to acquire, that is to say, whether the case falls within the scope of any of the paragraphs (a), (b), (c) and (d) of s. 71 (1) of the Act. Accordingly I must also agree that it is not open to a person in the plaintiff's position to attempt to forestall the Bank's decision by seeking an adjudication from a Court on the question whether or not the case does fall within the scope of any of these paragraphs.

The Act does not in terms require the Bank to hold any inquiry before reaching a determination to acquire a land; nor does the Act provide that a decision as to the applicability of s. 71 (1) in a particular case

<sup>1</sup> (1964) 66 N. L. R. 94.

<sup>2</sup> (1960) 62 N. L. R. 169



should be reached prior to and independently of a determination to acquire the land. The only provision in the Act concerning these matters is contained in sub-section (3) of s. 71.

“ 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. ”

There are really 3 questions for decision by the Bank in the case of an application for redemption. The first question is whether sub-section (1) of s. 71 authorizes the Bank to acquire the land in respect of which the application is made. The second question is whether sub-section (2) restricts the right of the Bank to acquire the land. If the Board is satisfied that sub-section (1) authorizes the Bank to acquire the land, and if the restrictions in sub-section (2) do not prevent the acquisition, then the third question is whether the land should be acquired ; and if the Board decides to acquire the land, it will under sub-section (3) make the determination accordingly. I agree with Counsel for the plaintiff that all these questions may be decided together in the discretion of the Bank, although it would be open to the Bank to consider at different stages the questions which arise.

As I have pointed out already, 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). Nevertheless the rules of natural justice must be observed, and the documents to 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 s. 71 (1). In the circumstances to which I have referred, it is clear that in law the plaintiff resorted prematurely to the Courts. If as stated by the Bank's officer at the trial, no decision has yet been reached on the question whether sub-section (1) of s. 71 applies in this case, the Court has no power to adjudicate upon that question. Indeed it may well be the case that the ultimate decision on that question which the Bank reaches may be favourable to the plaintiff. In fairness to him I should point out that it does not appear from the first paragraph of the Bank's letter P7 that the applicants for the redemption of this land have claimed that the land was transferred to the plaintiff “ at the request of a mortgagee of the land ”.

Although the plaintiff's action turns out to have been premature, the correspondence shows that he may well have been misled into the belief that the Bank had in fact decided that sub-section (c) of s. 71 (1) did apply in this case. When the plaintiff's Proctor fully explained in P10 his reasons for the claims that sub-section (c) does not apply, and requested an early reply as to the Bank's proposed action, the Bank categorically affirmed in the letter P11 of 14th July 1964 what had been

previously stated in his letter of 1st July (P9) namely that " the proposed acquisition comes under s. 71 (1) (c) ". Moreover even in the answer subsequently filed by the Bank there was a denial of the plaintiff's averments that paragraph (c) does not apply in this case. Even the first letter P7 only stated that an inquiry will be held " to decide whether the premises should be acquired ". While sub-section (3) of s. 71 did not require the Bank to state any further matter as being the subject of the inquiry, the matters stated in P7 may have created the impression that the question whether sub-section (1) authorized the acquisition of the plaintiff's land was not to be considered at the inquiry. The possibility of such an incorrect impression being formed can perhaps be avoided in future if the owner of land, in respect of which an application for redemption made, is more fully informed of the grounds of the application and of the matters to be considered by the Bank at its inquiry.

The appeal is dismissed ; but for reasons which are mentioned in the concluding part of this judgment, the decree under appeal is altered by the deletion of the order against the plaintiff for costs, and I make no order as to the costs of this appeal.

THAMOTHERAM, J.—I agree.

*Appeal dismissed.*

