

1973. Present : G. P. A. Silva, S.P.J., and Walgampaya, J.

BANK OF CEYLON, Petitioner, and BOGALA GRAPHITE LTD., Respondent

S. C. 547/71—Application for Revision in D. C. Colombo, 75221/M

Revision—Different connected cases between same parties—Validity of certain Emergency Regulations the basic issue in all the cases—Power of Court to order that one case be laid by pending the decision of the connected cases—Civil Procedure Code, s. 839—Emergency (Requisitioning of Graphite Mines) Regulations No. 1 of 1971, Regulations 3, 4, 7, 9—Public Security Ordinance (Cap. 40), as amended by Act No. 8 of 1959, ss. 5, 8, 9—Business Undertakings (Acquisitions) Act, No. 35 of 1971, s. 2.

The Emergency (Requisitioning of Graphite Mines) Regulations were made by the Governor-General in the exercise of the powers vested in him under Section 5 of the Public Security Ordinance. On the directions given by the Competent Authority appointed under those Regulations the defendant-petitioner (Bank of Ceylon) credited to the account of the Competent Authority the moneys belonging to the plaintiff-respondent (Bogala Graphite Ltd.). Thereupon the plaintiff instituted the present action to recover the aforesaid moneys. The Bank took up the position that it had acted *bona fide* and only on the orders of the Competent Authority. There were two other connected cases. In all three cases the parties were substantially the same and the basic issues were the same, namely, whether the Emergency Regulations in question and the orders of the Competent Authority based thereon were constitutionally valid.

Held, that the Supreme Court should exercise its inherent jurisdiction in revision to direct that the trial of the present case against the defendant-petitioner, the Bank of Ceylon, should be stayed pending the decision of the interlocutory appeals from the orders of the District Court in respect of the connected cases against the Competent Authority.

APPPLICATION to revise an order of the District Court, Colombo.

C. Thiogalingam, with P. A. D. Samarasekera, for the defendant-petitioner.

C. Ranganathan, with H. L. de Silva, S. C. Crosette-Thambiah and R. Sivarajasingham, for the plaintiff-respondent.

Cur. adv. vult.

July 30, 1973. WALGAMPAYA, J.—

This is an application for revision made by the defendant-petitioner in respect of two Orders made by the Additional District Judge of Colombo.

The petition and affidavit filed states *inter alia*—

1. Various regulations called the Emergency (Requisitioning of Graphite Mines) Regulations were made by the Governor-General in the exercise of the powers vested in him under Sec. 5

of the Public Security Ordinance (Chapter 40). On the directions and orders given by the Competent Authority appointed under the said regulations the defendant petitioner credited to the account of the said Competent Authority monies belonging to the plaintiff-respondent.

2. In D. C. Colombo Case No. 75221/M the plaintiff-respondent sought to recover the aforesaid monies. The plaint in this action states *inter alia* that the plaintiff-respondent had earlier filed an action in the D. C. of Colombo against the Competent Authority challenging the validity of the said Regulations and directions and that the action against the Competent Authority was pending at the date of this plaint. During the argument in this appeal it transpired that the case is D. C. 75209/M and the amended plaint is dated 25th January, 1972.

3. Subsequent to the date of the plaint aforesaid against the Competent Authority, by Sec. 2 of the Business Undertakings (Acquisition) Act, No. 35 of 1971, the Minister of Finance vested in the Government with effect from the 5th of January 1972 the Business Undertakings of the plaintiff-respondent. Before filing answer in the D. C. Case 75221 the defendant-petitioner moved court to reject the plaint or in the alternative to lay the case by pending the determination of the action challenging the validity of the aforesaid regulations and directions. The order thereon dismissing the application of the defendant-petitioner has been appealed from on the 1st of June 1972.

4. In pursuance of the order of the District Judge referred to in the last paragraph defendant-petitioner filed answer and moved that this action be laid by and stayed pending,

- (a) the decision of this court in respect of the appeal filed on 1st June 1972 by the defendant-petitioner.
- (b) the hearing and final determination of cases Nos. 75209, 75211, 75212 of the D. C. of Colombo filed by the plaintiff-respondent against the Competent Authority.

5. By his order dated 28th July 1972 the District Judge refused that application.

In this revision application the prayer is—

- (a) to call for and examine the record in D. C. Colombo No. 75221/M,
- (b) to quash the orders of the District Judge dated 19th May 1972 and 28th July 1972.
- (c) to direct that proceedings be stayed pending the decision by this court in the appeal filed by the defendant-petitioner.

- (d) to make order directing that pending the hearing and determination of this application no further proceedings be had on the footing of the said order dated 28th July 1972.

The order of the District Judge dated 19th May 1972 states *inter alia*—

“This court has without doubt the inherent power in terms of the provisions of Section 839 of the Civil Procedure Code to direct that a case before it do stand over pending the decision of a connected case. The appropriate stage at which such a direction should be made however is in my opinion only after the defendant has filed answer and all the matters on which the parties at variance have been brought out fully and clearly.”

The defendant appellant appealed from that order and prayed—

- (1) to set aside and reverse the said order,
- (2) to direct the District Court of Colombo either to reject the plaint in this case in terms of Section 46 (2) (1) of the Civil Procedure Code (Chapter 101) read with Section 9 of the Public Security Ordinance (Chapter 40) as amended by Section 4 of the Public Security (Amendment) Act, No. 8 of 1959, or in the alternative to lay this case by pending the final determination of D. C. Colombo case 75209/M filed against the Competent Authority.

The order of the District Court dated 28th July 1972 states *inter alia* “. it appears to me in the circumstances of this case the discretion that is vested in this court should not be exercised to direct that further proceedings in this case do stand over pending the decision of the said interlocutory appeal and/or the decision of any one of the 3 cases referred to earlier.”

The 3 cases referred to are D. C. Colombo 75209/M, 75211/M, and 75212/M filed by the present plaintiff against the Competent Authority. They are referred to in the answer of the defendant petitioner filed on 19.6.1972. The defendant Bank has also stated in that answer that it at all times acted in good faith in compliance with the directions given and orders made under the Emergency Regulations.

The plaint in the action No. 75221/M questions—

- (a) the validity of the Emergency Regulations,
- (b) appointment of a Competent Authority thereunder,
- (c) directions issued by the said Competent Authority to the Bank of Ceylon.

The position of the defendant is that under Sections 3, 6, 7 and 8 of the Public Security Ordinance (Chapter 40) the plaint referred to is barred by a positive rule of law from canvassing the legality and correctness of—

- (a) The Emergency Regulations,
- (b) the appointment of a Competent Authority thereunder,
- (c) the directions issued by the said Competent Authority to the Bank.

In 68 N.L.R. page 361 the question whether the Governor-General had the right to make the regulations under Section 5 of the Public Security Ordinance was considered and Sansoni, C.J. held that "Section 5 of the Public Security Ordinance certainly purports to vest legislative authority in the Governor-General to make such regulations as appeared to him to be necessary or expedient in the interest of Public Security and the preservation of public order and the suppression of mutiny, riot or civil commotion or for the maintenance of supplies and services essential to the life of the community. Two conditions are laid down by the Ordinance for the exercise of this authority by the Governor-General. One is 'the existence or imminence of a state or public emergency' of which the Governor-General is the sole Judge; and the other is that the Regulations he makes must be such as appear to him to be necessary or expedient."

The Emergency (Requisitioning of Graphite Mines) Regulations No. 1 of 1971 made by the Governor-General in the exercise of the powers vested in him under Section 5 of the Public Security Ordinance (Chapter 40) and the said regulations were published in the Ceylon Government Gazette Extraordinary No. 14958/34 dated 17th May, 1971.

Section 3 of those regulations (which were made upon the recommendation of the Prime Minister) states the Prime Minister may appoint a Competent Authority for the purpose of these regulations.

Section 4 empowers the Competent Authority by a notice of requisition addressed to a person or persons in possession or control of any graphite mine whether such mine be in operation or not to requisition of such graphite mine.

Section 7 empowers the Competent Authority by the notice of requisition issued under paragraph 4 or by a subsequent notice to direct

(a)

(b) that no person who at the time of requisition has in the possession, custody or control any stocks of graphite already mined shall remove or cause or permit to be removed such

stocks without the permission in writing of the person specified in the notice of requisition.

(c)

(d)

Paragraph 9 of the said regulations states “ it shall be the duty of the person who is in possession or control of the graphite mine which is requisitioned to make available to the Competent Authority or to the person mentioned in the notice of requisition all books and documents relating to the sale and export of graphite of that mine.

Section 8 of the Public Security Ordinance reads as follows :—

“ No Emergency Regulation and no order, rule or direction made or given thereunder shall be called in question in any Court. ”

Section 2 of the Interpretation (Amendment) Act, No. 18 of 1972 (enacted on 11.5.1972) states that “ where there appears in any enactment whether passed or made before or after the commencement of this Ordinance the expression ‘ shall not be called in question in any court ’ ”

This section appears to apply to section 8 of the Emergency Regulations referred to above.

Under Section 9 of the Public Security Ordinance (as amended by Act 8 of 1959) the defence should be available to the defendant Bank to state that it is not liable for acts done by it in good faith in obedience to the Emergency Regulations Orders and directions given thereunder especially because there is no express averment of *mala fides* in the plaint.

The only order asked for is for a stay of proceedings. The reversal, if any, of the District Judge’s orders is a matter for the appeal pending in this court. The position of the Bank is that the plaint discloses no cause of action and is barred by a positive rule of law.

In the present case an important question that comes up for consideration is the validity of the Emergency Regulations and the right of the Competent Authority to act in the way it acted. The defendant Bank has merely acted on the directions given by the Competent Authority and to be asked to defend the validity of such directions is tantamount to defending the acts of a third party.

If it be that the Bank has acted in good faith in acting on the directions given by the Competent Authority the question that

must be decided first is the validity of the Emergency Regulations, the appointment of the Competent Authority and the directions given by it.

These 3 matters will come up for decision in the 3 cases against the Competent Authority. In all those cases the parties are the same and the issues are the same.

I consider that it will be appropriate that one of those cases should be decided first. I agree with Counsel who appeared for the defendant Bank that multiplicity of actions in reference to a single constitutional issue would be undesirable and that the appropriate action in which this matter could be properly decided would be one against the Competent Authority. It is therefore desirable that this case should await the decision of any one of the cases filed against the Competent Authority. Had this case been confined to a claim against the Bank of Ceylon without any involvement regarding the validity of the said Regulations the position would have been different.

This is therefore an appropriate case where the court should exercise its inherent jurisdiction in revision to direct that the trial of this case against the defendant petitioner, the Bank of Ceylon, should be stayed pending the decision of the interlocutory appeals filed against the decisions of the learned District Judge dated 19.5.1972 and 28.7.1972.

The application in revision is allowed with costs.

G. P. A. SILVA, S.P.J.—I agree.

Application allowed.