
**SIVAYANAMA AND ANOTHER
VS
PEOPLE'S BANK AND OTHERS**

COURT OF APPEAL.
BALAPATABENDI, J. (P/CA).
IMAM, J.
CA 592/2000(F).
DC MATALE 4349/L.
AUGUST 23, 2004.
FEBRUARY 28, 2005.

Finance Act, No. 11 of 1963, sections 72 (2), 72 (3) - Property vested in Bank - State Mortgage and Investment Bank, sections 70 (B), (5), (6) - Finality Clause Ouster- Interlocutory order - Final Order - Interpretation Ordinance, section 22 - Civil Procedure Code, section 754 (5).

The plaintiff-appellants instituted action praying *inter alia* for a declaration against the 1st defendant Bank, that the property in suit is not liable to be acquired under the provisions of the Finance Act.

The defendant Bank contended that once a property is so vested with the Bank the said vesting cannot be called in question in any Court of Law and moved for a dismissal of the action. This issue was taken as a preliminary issue and the trial Judge answered the said issue in favour of the Defendant Bank and dismissed the action.

The plaintiffs appealed against the said order.

At the hearing of the appeal, the Respondent Bank contended that the order of the trial Judge was not a final order but only an interlocutory order and hence the appeal is misconceived in law.

HELD:

- (1) Applying the principles laid down in *Siriwardane vs. Air Ceylon Ltd*, the plaintiff's appeal is not misconceived in law, the impugned order is a final order.

HELD FURTHER:

- (2) The plaintiff cannot have and maintain this action in the District Court in view of the finality clause read with section 22 of the Interpretation Ordinance. Declaratory relief is available against the Bank where there is a total lack of jurisdiction only.

APPEAL from the District Court of Matale.

Cases referred to :

1. *Ranasinghe vs. Ceylon State Mortgage Bank* 1981 1 Sri. L. R. 121 (distinguished)
2. *Ranjit vs. Kusumawathie and Others* 1983 Sri L. R. 232
3. *Siriwardane vs. Air Ceylon Ltd.* 1984 1 Sri L. R. 286
4. *White vs. Brunton* (1984) 2 ALL E. R. 606

A. R. Surendran, PC with Ms. Safana Gul Begum and Nadaraja Kandeepan for 1st and 2nd plaintiff-appellants.

Manohara R. de Silva, PC with David Weeraratne for 1st and 2nd defendants - respondents.

Cur. adv. vult.

July 31, 2006.

IMAM, J.

The Plaintiffs-Appellants (hereinafter referred to as the ("Appellants") filed this Appeal in this Court seeking to set aside the judgment of the learned District Judge of Matale delivered on 20.06.2001 in case No. 4349/L and *inter alia* other reliefs as sought for in the prayer to the Petition.

The facts of the case are briefly as follows: The 'Appellants' filed this action in the District Court of Matale praying *inter alia* for a declaration against the 1st Defendant Bank that the property in suit is not liable to be acquired under the provisions of the Finance Act No. 11 of 1963 as amended.

The 1st and 2nd Defendant-Respondents filed Answer, and took up the position that—

- (i) the said property was vested with the Bank by the order published in the Government Gazette bearing No. 44/11 dated 11.7.1979 published in terms of section 72 (2) of the Finance Act as amended ;
- (ii) once the property is so vested the 1st Defendant Bank becomes the lawful owners of the said property without being subject to any encumbrances ;
- (iii) in terms of section 72 (3) of the said Act once a property is so vested with the Bank, the said vesting cannot be called in question in any Court of Law ;
- (iv) accordingly that the Plaintiffs-Respondents have no right to have and maintain this action in the District Court, Matale and in the circumstances to dismiss the action filed by the Plaintiffs.

When this case came up for trial on 20.6.2001, 07 admissions were recorded, and the following 03 issues were raised as preliminary issues of Law by the Defendants :—

- (1) Whether the property in question is vested with the People's Bank in terms of a decision taken by the People Bank in terms of section 70 (B) (5) and (6) of the State Mortgage and Investment Bank as amended.
- (2) Whether the said decision taken in terms of the provisions of the State Mortgage and Investment Bank Act cannot be called into question in any Court of Law.
- (3) If the answers to the aforesaid questions are answered in the "affirmative" whether the Plaintiff can have and maintain this action.

Both parties tendered their written submissions in respect of this matter, and the learned District Judge made order on 20.6.2001 answering the said preliminary issues in favour of the 1st Defendant-Respondent and

dismissed the action with costs. Being aggrieved by the said order the Plaintiffs-Appellants have filed this Appeal.

When the Appeal came up for hearing before this Court on 23.08.2004, Counsel for the Respondent raised a preliminary objection that the order against which this Appeal has been lodged is not a final order, but only an interlocutory order. He further submitted that thus the Appellants could not have lodged this Appeal against the aforesaid order. This Court directed the parties to tender written submissions on the aforesaid preliminary objections. The 1st Defendant Peoples Bank in its answer took up the position that the decision made by the Bank was final and conclusive, and that the same could not be challenged in a Court of Law.

It was submitted on behalf of the Plaintiffs-Appellants that the decision made by the People's Bank could be challenged in a Court of law, and cited in support of their position the judgment of the Supreme Court in *Ranasinghe vs. Ceylon State Mortgage Bank*⁽¹⁾ where His Lordship Neville Samarakoon CJ with their Lordships Ismail, J, Sharvananda, J and Wanasundara, J agreeing held that a decision made by the People's Bank under Act No. 33 of 1968 could be challenged in a Court of law. However the learned District Judge did not follow the judgment in the aforesaid case on the purported basis that the facts pertaining to Ranasinghe's case were different from the facts in this case. Consequently the learned District Judge answered the issues in favour of the 1st and 2nd Defendants-Respondents, and dismissed the 1st and 2nd plaintiffs-Appellants action. The Plaintiffs-Appellants lodged this Appeal mainly on the basis that the failure of the learned District Judge to follow the Judgment of the Supreme Court in the case of *Ranasinghe Vs Ceylon State Mortgage Bank*(*supra*) was erroneous in as much as the learned District Judge was not entitled to ignore a binding judgment of the Supreme Court merely on the purported basis that the facts of the instant case were different from the facts of *Ranasinghe Vs. Ceylon State Mortgage Bank*.(*supra*)

The Appellants aver that the learned District Judge was in grave error in not following the judgment of Their Lordships Neville Samarakoon CJ, Ismail, J, Sharvananda, J and Wanasundara, J who have clearly held that a decision made by the People's Bank under the provisions of the State Mortgage and Investment Bank Act, No. 33 of 1968 could be challenged in

a Court of law. The Appellants contend that consequent to the erroneous decision of the learned District Judge, the Plaintiffs action had been dismissed solely on the basis that the decision made by the People's Bank was final and conclusive without an adjudication on the merits of the Plaintiffs case.

Hence the Plaintiffs-Appellants have challenged the judgment of the learned District Judge on substantial grounds, namely that the failure of the learned District Judge to follow a binding judgment of the Supreme Court was fundamentally erroneous and therefore should be set aside. It was contended on behalf of the "Respondents" that the order of the learned District Judge dated 20.06.2001 was not an appealable order. Counsel for the Respondents cited the case of *Ranjit Vs. Kusumawathie and Others*⁽²⁾ in which case Dheeraratne, J had held that an order would be considered as a final order only where it could be shown that which ever way the order went, it would finally dispose of the matter in dispute.

In *Siriwardena Vs. Air Ceylon Ltd.*⁽³⁾ His Lordship Sharvananda, J (as he then was) with Their Lordships Parinda Ranasinghe, J. and Collin Thome, J. agreeing, in this landmark judgment of the Supreme Court concluded that the test to be applied in order to determine whether an order is an appealable order or not, in order to be treated as an Appealable order, it must be an order finally disposing of the rights of parties.

I have examined the preliminary objections of the Defendants-Respondents and the Appeal of the Appellants in detail. Section 754 (5) of the Civil Procedure Code provides as follows:-

"Notwithstanding any thing to the contrary in this Ordinance for the purposes of this Chapter "Judgment" means any judgment or order having the effect of a final judgment made by any Civil Court and "Order" means the final expression of any decision in any civil action, proceeding or matter, which is not a judgment.

His Lordship Sharvananda J (as he then was) in his judgment in *Siriwardena Vs. Air Ceylon (supra)* having analyzed many cases concluded that "The Test of finality is whether the order finally disposes of the rights of parties." In my view the decision in *Siriwardena Vs Air Ceylon (supra)*

sets out the correct test to be applied in determining whether an order is an appealable order or not.

The Order dated 20.06.2001 of the learned District Judge of Matale has answered the preliminary issues, with the answer to the 3rd Preliminary Issue being that the plaint should be dismissed. In any event the impugned order in this case being an order made on a preliminary issue a right of Appeal against such order is available to the Plaintiffs-Appellants as held in the case of *White vs. Bruntons* where it was held that "Since a Preliminary Issue, on a true Analysis-p. 606, is the first part of a final hearing, and not an issue preliminary to a final hearing, it follows that any party may appeal without leave against an order or judgment on the preliminary issue if he could have appealed without leave against the order or judgment, if that issue had been heard as part of the final hearing and the order or judgment on the preliminary issue had been made at the end of the complete hearing." In the present case too the question whether the decision of the People's Bank was final and conclusive so as to oust the jurisdiction of a Court of law was tried as a preliminary issue. On the basis of the decision in *White vs. Brunton (supra)* the Plaintiffs-Appellants were entitled to a right of appeal from the order made by the learned District Judge without obtaining the leave of Court.

However in view of the finality clause in section 71 (3) of the Finance Act it is not possible for the Plaintiff to have and maintain this action. The finality clause reads as follows;- " The question whether any premises which the bank is authorized 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 into question in any Court of Law."

In this context section 22 of the Interpretation Ordinance is relevant. It states "Where there appears in any enactmentthe expression" shall not be called in question in any Court" or any other expression of similar import whether or not accompanied by the words "whether by way of Writ or otherwise" in relation to any order, decision or determination, direction or finding which any person, Authority or Tribunal is empowered to make or issue under such enactment, no Court shall in any proceeding or and upon any such ground whatsoever have jurisdiction to pronounce

upon the validity or legality of such order, decision and determination, direction or finding made or issued in the exercise or the apparent exercise of the power conferred on such person or Tribunal.

Thus the Plaintiff cannot have and maintain this action in the District Court in view of the aforesaid finality clause read with section 22 of the Interpretation Ordinance, and the learned District Judge has correctly dismissed the action.

In *Ranasinghe Vs State Mortgage Bank (supra)* the Court held that notwithstanding the provisions of the Interpretation Ordinance, declaratory relief is available against the Bank where there is a total lack of jurisdiction. Hence the learned District Judge's decision is correct in law. It is my view that the order made by the learned District Judge on 20.06.2001 is a final order as it finally disposed of the rights of parties. Although on a preliminary issue there exists a right of appeal, an Appeal would be futile for the aforesaid reasons. Hence for the aforesaid reasons I see no reason to interfere with the order of the learned District Judge dated 20.06.2001, and hence I dismiss the Appeal filed by the Appellants without costs.

BALAPATABENDI, J.—I agree.

Appeal dismissed.
