

SATCHITHANANDASIVAM
v
PEOPLE'S BANK

COURT OF APPEAL
UDALAGAMA, J. (P/CA)
C.A. NO. 655/2003
NOVEMBER 4, 2003
JANUARY 30, 2004

People's Bank Act, No. 2 of 1961 — section 290 — Parate execution — Finality clause — Does writ lie? — Mortgage bond — Does it secure future loan facilities only? — Interpretation Ordinance, section 22 — Courts Ordinance, section 42 — Constitution, Article 140

Held:

- i) On a perusal of the Mortgage bonds it is apparent that the bonds were valid as security for all loan facilities past and future.

Per Udalagama, J.

“In the exercise of the writ jurisdiction of the Court of Appeal a resolution of a respondent bank could not be challenged unless it was *ex facie* apparent on the application that the body or authority who made the direction or order had acted *ultra vires* the powers that had been conferred upon such body or was acting contrary to rules of natural justice or had not complied with the mandatory provision of the law.”

APPLICATION for writs, of *certiorari* and prohibition.

Case referred to:

1. *Wettesinghe v People's Bank* – CA 981/2002 – CAM 3.11.2003.

A.R. Surendran for petitioners

Navin Marapana for respondents

Cur.adv.vult

February 25, 2004

UDALAGAMA, J. (P/CA)

Admittedly the 1st respondent-Bank granted loan facilities to the petitioners purportedly to expand the business of the latter in purchase, storing and selling of paddy. Also admittedly the said loans were secured by the stocks of paddy held by the petitioners up to the time of rescheduling of the loan at which time security by way of a mortgage specifically by mortgage bonds, bearing Nos. 197 and 198 dated 21.5.2002 had been tendered by the petitioners and accepted by the 1st respondent-Bank. 01

In default of payment by letter dated 11.12.2002 (P11) the 1st respondent-Bank appears to have informed the petitioners of a resolution passed by the Directorate of the Bank authorizing the auctioning of the mortgaged property to recover sums owing to the bank. It is observed that a copy of the aforesaid resolution (P11) had been sent to the petitioners and the said resolution admittedly published in the Ceylon Daily News of 04.01.2003 and the Dinakaran of 03.01.2003. 10

It is the submission of the learned Counsel for the petitioners that the 1st respondent-Bank is not entitled in law to parate execution in respect of the properties the subject matter of the aforesaid mortgages and morefully described in the 1st and 2nd schedules to the petition. 20

The petitioners seek *inter alia* by this application a writ in the nature of *certiorari* to quash the aforesaid resolution and a writ in the nature of prohibition restraining the 12th respondent from auctioning the aforesaid properties morefully described in schedules 1 and 2 of the petition.

Learned Counsel for the 1st respondent-Bank at the out set raised a preliminary objection that this court has no jurisdiction to hear and determine this matter in view of the provisions of section 29D of the People's Bank Act, No. 29 of 1961 as amended. 30

Importantly and significantly the petitioners have admitted both the mortgage bonds referred to above tendered as security for monies lent or to be lent on a future date. Contrary to the submissions on behalf of the petitioners clause (c) of both mortgage bonds 197 and 198 referred to above specifically refer to monies lent or to be lent rendering nugatory the argument by the learned Counsel for the petitioners that the mortgage bonds were valid as security only for future loan facilities.

Clause (c) of the aforesaid mortgage bonds by which the petitioners are legally bound to the 1st respondent-Bank unequivocally refers to all loan facilities past and future as stated above thereby rendering invalid the argument on behalf of the petitioners that the 1st respondent-Bank acted *ultra vires* to the powers of the Bank. 40

Learned Counsel for the respondent-Bank had referred this court to a judgment of this court decided on 03.11.2003 in the case of *Wettesinghe v People's Bank*⁽¹⁾ C.A. 981/2003 where in identical circumstances this court held that the respondent-Bank in that case too had the jurisdiction to pass such resolutions relevant to parate execution.

This court in the case cited above dealt with the provision of section 22 of the Interpretation Ordinance together with the provisions of section 42 of the Courts Ordinance and held *inter alia* that in the 50

exercise of the writ jurisdiction of the Court of Appeal a resolution of a respondent-Bank could not be challenged unless it was *ex facie* apparent on the application that the body or Authority who made the direction or order had acted *ultra vires* the powers that had been conferred upon such body or was acting contrary to rules of natural justice or had not complied with the mandatory provisions of law.

Whilst concurring with the *dicta* of this court as stated above and applying criteria appearing in that case to the present application it is apparent to this court that the petitioners in this application admittedly owes the Bank a sum as stated in the resolution referred to above.

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There is not even a suggestion in the averments of the petitioners that the respondent-Bank had violated any rule of natural justice.

I am inclined to the view in the absence *ex facie* of even an allegation of non conformity to the mandatory provisions of law by the respondent-Bank or any violation of natural justice or for that matter the Bank had acted in excess of its powers specifically considering the manner the petitioners bound themselves to the Bank vide the covenants in Mortgage Bonds Nos. 197 and 198, that the petitioners are not entitled to the relief claimed in this application.

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For the aforesaid reasons the petitioners are also denied relief under the provisions of Article 140 of the Constitution.

In the aforesaid circumstances the petitioners are not entitled to relief by way of prerogative writ and this appeal is dismissed.

Application dismissed.