RANASINGHE

v.

THE CEYLON STATE MORTGAGE BANK

SUPREME COURT.
SAMARAKOON, C. J., ISMAIL, J., SHARVANANDA, J., WANASUNDERA, J. AND WIMALARATNE, J.
S.C. No. 46/80—C. A. (S.C.) APPLICATION 325/72—D.C. KANDY 9588/L.
APRIL 6, 7, 1981.

Declaratory Judgement—Determination by bank to redeem property sold under hypothecary decree—Vesting order published by Minister of Finance—Declaration sought challenging power of bank to make determination—Objection to jurisdiction of District Court—Whether it has jurisdiction to review order of inferior tribunal—Determination by a statutory authority—Whether District Court empowered to make such a declaration under section 217 (G) of Civil Procedure Code—Objections to application for redemption taken under section 70 (B) (5) of Act No. 33 of 1968 and section 23 of Interpretation (Amendment) Act, No. 18 of 1972—Whether Courts precluded from questioning bank's determination—Ceylon State Mortgage Bank Act, (Cap. 398) as amended by Act No. 33 of 1968, sections 10 (B) (2) (1) (a), 70 (B) (2) (1) (a), 71 (2) (b).

The plaintiff purchased at a public auction held in execution of a hypothecary decree entered against one A, the premises described in the schedule to the plaint. An application was made for the redemption of the property by A to the State Mortgage Bank under the provisions of Act No. 33 of 1968 which amended the State Mortgage Bank Act (Cap. 398). Despite objections taken by the plaintiff on the ground that the bank was precluded from entertaining the application for redemption by reason of the provisions of section 70 (B) (2) (1) (a) and section 10 (B) (2) (1) (a) a determination to redeem the property was made by the bank. The plaintiff's objection was based on the fact that A was disqualified from obtaining relief under the act as his income exceeded that laid down in the section.

This action was filed by the plaintiff in the District Court challenging the power of the bank to make such a determination. A preliminary issue was heard as regards the jurisdiction of the District Court to hear and determine this action and the learned District Judge held that he had jurisdiction. On appeal, the Court of Appeal holding that the District Court had no supervisory jurisdiction over a determination by the bank and that the proper remedy was to invoke the jurisdiction of the Appellate Court by way of writ of certiorari, allowed the appeal. The Court of Appeal took the view that the original Court cannot by means of a declaratory order review the decisions of inferior bodies unless such power is expressly conferred by statute.

Held (Wimalaratne, J. *dissenting*)
(1) The plaintiff was entitled in law to maintain an action for a declaration. Section 217 (G) of the Civil Procedure Code permits a declaratory judgment without granting any substantive relief for remedy and a declaration granted under these provisions cannot correctly be termed a "supervisory order" inasmuch as there is no order in the first place; and secondly it is not a judgment that the machinery of the law could

enforce. If the term "supervisory" in reference to a declaratory judgment is intended to describe the function of review which is a process that must necessarily take place before a Court pronounces upon the legality or otherwise of a decision of a body such as an inferior tribunal, then such exercise is not forbidden by law.

(2) An objection taken on behalf of the Bank under the provisions of section 70 (B) (5) of the amending Act No. 33 of 1968 that clauses (a) and (b) precluded the District Court from entertaining this action could not be sustained, as the proceedings before the Bank were now complete and clause (a) did not therefore apply; and as far as clause (b) was concerned the matter that now arises for decision was the fundamental question as to whether the property was one which the bank was authorised to acquire and if the bank had no power to make such a determination acquisition would be of no effect in law to vest title in the bank. Further the validity of the acquisition could only be questioned in a properly constituted action to question the vesting order made by the Minister of Finance.

(3) The provisions of section 23 of the Interpretation (Amendment) Act, No. 18 of 1972, do not prohibit the District Court from making a declaration such as that sought by the plaintiff as his attack is on the very jurisdiction of the bank to make the determination and that the bank was not empowered to make the impugned order. If this was so, the order of the Bank is a nullity.

Cases referred to

(1) *Thiagarajah v. Karthigesu, (1966) 69 N.L.R. 73.*
(2) *Perera v. The People's Bank, (1975) 78 N.L.R. 239.*
(3) *Leo v. Land Commissioner, (1955) 57 N.L.R. 178.*
(4) *The Land Commissioner v. Ladamuttu Pillai, (1960) 62 N.L.R. 169; (1960) 3 W.L.R. 626*
(5) *Singho Mahatmaya v. The Land Commissioner, (1964) 66 N.L.R. 94.*
(6) *Healey v. Minister of Health, (1955) 1 Q.B 221; (1954) 3 W.L.R. 222; (1954) 2 All E.R. 580.*
(7) *Barnard v. National Dock Labour Board, (1953) 2 Q.B. 18; (1953) 1 All E.R. 1113; (1953) 2 W.L.R. 995.*
(8) *Ibeneweka v. Egbuna, (1964) 1 W.L.R. 219; 108 Sol. Jo. 114.*
(9) *Imperial Tobacco Co. Ltd. v. Attorney-General, (1979) 2 W.L.R. 805; (1979) 2 All E.R. 592.*
(10) *Attorney-General v. Sabaratnam, (1955) 57 N.L.R. 481.*
(11) *Anisminic v. Foreign Compensation Commission, (1969) 2 A.C. 147; (1969) 2 W.L.R. 163; (1969) 2 All E.R. 1128.*
(12) *Ex parte Jolliffe, (1873) 42 L.J.Q.B. 121; 28 L.T. 132; (1873) L.R. 8 Q.B. 134.*
(13) *Application of A.W. Shaw (1860-62) Ram. Reps. 118.*
(14) *In the matter of the application of John Ferguson, (1874) 1 N.L.R. 181.*
(15) *King v. Samaraweera, (1917) 19 N.L.R. 433.*
(16) *Attorney-General v. Chanmugam, (1967) 71 N.L.R. 78.*
(17) *Dyson v. Attorney-General, (1911) 1 KB 410.*

APPEAL from a judgment of the Court of Appeal reported in (1980) 2 Sri L.R. 11.

V. S. A. Pullenayagam, with *F. Mustapha*, *Miss M. Kanapathipillai* and *Miss D. Wijesundera*, for the plaintiff-appellant.

H. L. de Silva, with *S. Sivarasa*, *J. Joseph* and *A. D. de Alwis*, for the defendant-respondent.

Cur. adv. vult.

July 7, 1981.

SAMARAKOON, C. J.

This Court has granted the plaintiff-appellant leave to appeal on a question of law. The facts are as follows:

One Sunil Subasiri Abeysundera was at one time the owner of the premises described in the schedule to the plaint. It was sold in execution of a hypothecary decree entered against him and was purchased by the plaintiff at the public auction held in execution of the decree. Subsequently Abeysundera made an application to the People's Bank requesting the bank to acquire the property under the provisions of Part VIII of the Finance Act, No. 11 of 1963. The plaintiff objected to this application on the ground that the bank was not empowered to acquire the property and therefore such acquisition would contravene the provisions of section 71 (2) (*b*) of the said Act. We are informed that thereafter the bank took no steps to proceed with the matter. In the year 1968 Abeysundera took advantage of the provisions of Act 33 of 1968 which amended the State Mortgage Bank Act, No. 16 of 1931 (Cap. 398), and made an application for the redemption of the said property. The plaintiff objected to this application too, stating that the bank was precluded from entertaining the said application by reason of the provisions of section 70 (B) (2) (1) (*a*) of the Act and the provisions of section 10 (B) (2) (1) (*a*) of the Act because Abeysundera was in receipt of an income of over ten thousand rupees during the 3 years immediately preceding his application, which fact disqualified him from relief under the Act. Nevertheless the bank made a determination to redeem the property. The plaintiff then instituted this action in the District Court against the bank challenging its power to make such a determination. An issue which challenged the jurisdiction of the District Court to hear and determine this action raised by the bank was taken up for hearing as a preliminary issue and the District Judge ruled against the bank. On appeal to the Court of Appeal that Court held that the District Court had no supervisory jurisdiction over the decision of the bank and allowed the appeal. The Court of Appeal was of opinion that the proper remedy was to invoke the supervisory jurisdiction of the Supreme Court by way of writ of certiorari as the original Court cannot by means of a declaratory order review the decisions of inferior bodies unless such power is expressly conferred by statute.

At the hearing counsel for the bank submitted that the provisions of section 70 (B) (5) of the Amending Act No. 33 of 1968 precluded the District Court from entertaining the action. That section reads as follows:

> "(5) No civil court shall entertain any action—
>
> (*a*) in respect of any matter which is pending before the bank relating to any acquisition to be made under this Chapter; or
>
> (*b*) in respect of the validity of the procedure followed by the bank relating to such acquisition, or to the validity of such acquisition."

Sub-section 6 of this section provides that the question whether any premises which the bank is authorized to acquire should or should not be acquired shall be determined by the bank which determination is final and conclusive and shall not be called in question in any court. We are not called on at this stage to decide any question with regard to the finality of the decision of the bank. The submission of counsel of the bank only involves the application of sub-sections (*a*) and (*b*) of the section. It is common ground that pursuant to the determination of the bank the Minister of Finance by Vesting Order No. 9 of 14.07.1970 published in Government Gazette No. 14,914/9 of 16.07.1970 vested the property in the bank. At date of action proceedings before the bank were complete and the matter was not pending before the bank. The provisions of section 70 (B) (5) (*a*) are therefore not relevant now. The provisions of section 70 (B) (5) (*b*) are also not applicable. The validity of the acquisition can only be questioned by a properly constituted action to question the vesting by the Minister of Finance. The bank took no action to, and in fact, could not, vest the property in itself. Furthermore the question that arises now for decision is not a matter concerning procedure but a fundamental question as to whether the property was one which the bank was authorized to acquire. If the bank had no power to determine to acquire the property in question acquisition is of no effect in law to vest title in the bank. The provisions of section 70 (B) (5) cannot avail the bank now.

Counsel for the respondent contended that the District Court had no jurisdiction to entertain this application as it invoked an

appellate jurisdiction which the District Court clearly did not possess. Section 217(G) of the Civil Procedure Court permits a District Court to "declare a right or status", "without affording any substantive relief or remedy". Jurisdiction is conferred by the provisions of the Courts Ordinance (Cap. VI). Section 62 of that Ordinance, which is only a re-enactment of the Charter of 1833, confers on District Courts "original jurisdiction in all civil..... matters.....and in any other matter in which jurisdiction has heretofore been, is now, or may hereafter be given to the District Courts by law". This dispute in this case is purely a civil matter concerning a dispute arising out of a denial of a right to property which gives a cause of action within the meaning of section 5 of the Civil Procedure Code. The District Court therefore had rightly entertained this application. Whether it should grant such a declaration is quite another matter. The limitations upon such declaratory power are dealt with in the judgment of Fernando, S. P. J. in *Thiagarajah v. Karthigesu* (1).

Lastly it has been contended that the District Court cannot grant the declaration prayed for in the plaint because it has no supervisory jurisdiction to seek to remedy a judicial or quasi judicial determination made by a Statutory Authority—in this case the bank. The Court of Appeal has upheld this contention. It has followed the decision in *Perera v. The People's Bank*(2). The facts of the case are as follows: The plaintiff-appellant in that case was the title-holder by purchase of a land sold on a hypothecary decree against the 3rd defendant-respondent. The 2nd defendant-respondent was the Secretary of the Land Redemption Branch of the People's Bank. The bank acting under the provisions of section 71 of the Finance Act, No. 11 of 1963, was satisfied that the land was sold or transferred in terms of, and subject to the limitations laid down by, that section. It therefore notified the plaintiff-appellant of its decision. The plaintiff-appellant instituted an action in the District Court of Colombo praying for a declaration that the bank had no authority to make the proposed acquisition. A preliminary issue had been raised as to whether the Court had jurisdiction to try the case because the remedy was by way of writ and not by way of declaration in a regular action. The trial Judge had decided against the plaintiff-appellant. The appeal was heard by three Judges of the Supreme Court. Sirimane, J. was not disposed to follow the English practice. He held that the "appropriate remedy (was) by way of certiorari and not by regular action". His reasoning is as follows:

"In cases such as this where a statutory authority acts judicially in arriving at a determination in terms of that statute, I am of the view that where it is sought to question or challenge the validity of such determination the appropriate (and not merely the more appropriate) remedy is by way of writ of certiorari. Even apart from the fact that the Court is undoubtedly exercising a supervisory jurisdiction in such matters, the declaratory action in this country is not a procedure that is conducive to an expeditious decision of such a dispute. When the legislature entrusts a statutory authority to make determinations in accordance with that statute for the purpose of achieving the aims for which such statute was enacted, it is essential that any dispute touching such a determination should be expeditiously disposed of one way or another so that such authority may act or refrain from acting in such matters. If however such statutory determinations are made the subject of a regular declaratory action the inevitable delay in such a procedure may well completely defeat the purposes of such statute. The instant case affords a good example of such a situation. The determination that is being questioned in this case was meant by the terms of the statute under which it was made to enable a debtor in difficult circumstances to redeem through the People's Bank his property that was sold against him on a mortgage decree. The property in this case was sold about 24.05.61 and in consequence of a determination under the Finance Act 11 of 1963 this action was filed in April 1964 and the preliminary issue decided in the District Court in February 1970. We are now in 1975— over 11 years after the action was instituted. The remedy by way of writ on the other hand would be much more expeditious. I am therefore in respectful agreement with the decision followed by the learned Trial Judge above referred to that the appropriate remedy of the plaintiff was by way of an application for a writ of certiorari."

From this statement I deduce two basic reasons:

(1) The District Court is "undoubtedly exercising a supervisory jurisdiction".

(2) A declaratory action causes undue delay and therefore prevents expeditious disposal of the dispute. The remedy by way of writ of certiorari "would be much more expeditious".

For these two reasons he concludes that the remedy by way of certiorari is the appropriate (and not merely the more appropriate) remedy. In this context the use of the word "appropriate" can only mean "proper" or "suitable". One cannot but concur with the second reason in the light of the facts of that case. But is it not a statement of policy? I know of no law in Sri Lanka which states that the expeditious disposal of a case should guide a litigant in deciding the form in which and the Court in which his action should be filed. Nor does the law state that such considerations should guide a court in deciding whether it is to entertain an action or not. If prudence be the guide, then no doubt such considerations will hold sway. The law does not however lay down such a condition. This second reason of Sirimane, J. is therefore a statement of policy applicable to the administration of justice. It is not a statement of the law.

The first reason given by Sirimane, J. has not been amplified and we do not therefore have the benefit of the reasoning behind it. However there is a clue to it in that he states the District Judge was "right in answering the preliminary issue against the plaintiff-appellant" following the decisions in three earlier cases. It is necessary therefore to examine these earlier cases.

The first of these cases is the case of *Leo v. Land Commissioner* (3). There the Land Commissioner purporting to act under the provisions of the Land Redemption Ordinance, No. 61 of 1942, which empowered him to redeem agricultural property sold on a hypothecary decree, sought to acquire premises which consisted of "a substantial dwelling house, a brick wall, a temporary latrine and a garden containing 181 coconut trees and several plantain bushes." The purchaser had made considerable improvements to the premises at a cost of Rs. 20,000 to render it fit for residence by him. The Supreme Court held that it was manifestly not agricultural land and therefore the Land Commissioner had acted in excess of his jurisdiction. The order was quashed by writ of certiorari. The application in *Leo's case* was for a writ of certiorari which is clearly a supervisory jurisdiction. There is no statement in the judgment which categorically deals with the applicability or availability of a mere declaratory decree nor even a discussion of the subject. However I find a statement which seems to suggest that another remedy has to be resorted to when the dispute evolves round a question of fact about which there is a conflict of evidence. Gratiaen, J. states at page 182:

"If upon the facts, the excess of jurisdication is manifest, or if the evidence before the superior Court is plainly insufficient to justify a conclusion that the limited jurisdication has not been exceeded, *certiorari* will lie. On the other hand, the dispute may turn on a question of fact about which there is a conflict of evidence: in that even the Court will generally decline to interfere by way of *certiorari* leaving it open to the aggrieved party to challenge the jurisdication of an inferior tribunal in a regular action where the issue can be more conveniently disposed of."

He does not however refer to a declaratory decree.

The next case is the Privy Council decision in *Ladamuttu Pillai v. The Land Commissioner* (4). The plaintiff in this case sought a declaration in the District Court of Colombo that the Land Commissioner had no power to acquire the land which was the subject of the dispute as he was a bona fide purchaser for value. He also asked for an injunction restraining the Land Commissioner from acquiring the land. The District Judge has in his answer to issue 4 stated that "the question of law whether the Land Commissioner had authority to acquire a particular land is subject to review by the District Court but his decision on facts is final". The Privy Council ordered the restoration of the Order of the District Court and the dismissal of the action because it held that on the facts established the land could be acquired under the provisions of the Land Redemption Ordinance. In regard to the constitution of the action it had this to say:

"While their Lordships must reserve their opinion upon the question (which in view of the conclusions reached by their Lordships does not immediately arise) as to whether in circumstances such as those in the present cause any injunction against the Attorney-General could or ought to be granted their Lordships consider that if the authority of a Land Commissioner to make a determination under section 3 of the Land Development Ordinance is challenged the appropriate procedure is by way of an application for certiorari (see *Leo v. Land Commissioner* (1955) (57 N.L.R. 178)). The Land Commissioner as the judicial tribunal the validity of whose action is being tested may then conveniently be brought before the higher Court so that if necessary his decision or order may be brought up and quashed. If in some particular case it can be shown that

a determination has not been within the competence of a Land Commissioner and if an application is made which results in an order to bring up and quash his determination then the difficulties which the present proceedings bring into relief are avoided. It was Mr. Amarasinghe who was the Land Commissioner in July, 1949, when these proceedings began and whose proxy was filed and on whose behalf an answer was presented. If a declaration were now to be made—who would be bound? If an injunction were to be granted—who would be enjoined?"

The case of *Leo v. The Land Commissioner* has been cited as an example of "appropriate procedure". As stated above that case did not decide that certiorari was the only procedure or that an action for a declaratory judgment was not open to the plaintiff. The Privy Council refers to the fact that an injunction or declaration would be of no value due to the fact that the incumbent in the office of Land Commissioner had changed since the action was instituted, and therefore if it became necessary to bring up and quash the decision or order of the Land Commissioner the only way it could conveniently have been done was by way of a writ of certiorari as was done in the case of *Leo v. Land Commissioner.* The decision of the Privy Council is no authority for the proposition that it cannot in a case such as this adopt a supervisory jurisdiction by way of a declaratory decree.

The third case is the case of *Singho Mahatmaya v. The Land Commissioner* (5). This was also instituted against the Land Commissioner seeking a declaration that a land depicted in Plan No. 86 dated 14.7.1946 was not liable to be acquired in terms of the provisions of the Land Redemption Ordinance. The District Judge upheld an objection taken by the respondent that the action cannot be maintained as it had been instituted against the Land Commissioner *nomine officii.* The Supreme Court approved of this ruling but decided the appeal on another matter which quite apparently was not the matter on which the appeal was made to the Supreme Court. G. P. A. Silva, J. in delivering the judgment of the Court stated that in *Ladamuttu's case* the Privy Council had ruled that "if the authority of the Land Commissioner to make a determination under section 3 of the Land Redemption Ordinance (mistakenly called the Land Development Ordinance) is challenged the appropriate procedure was by way of an application for certiorari. They did not say that certiorari was the more

appropriate procedure". Silva, J. therefore concluded that the appellant could not in any event maintain the action. As pointed out earlier, this is an erroneous view as the Privy Council did not in *Ladamuttu's case* say that the *only* course open to an aggrieved party was by writ of certiorari. It only pointed to the most convenient course that could be adopted for the purpose of achieving an effective order leading to a finality in the dispute. In view of what I have stated above I am unable to agree with the contention that the authorities cited support the proposition that only a remedy by certiorari is available to the plaintiff.

The Court of Appeal does not deny the plaintiff's right to seek a declaration but states the declaration sought by him cannot be granted because it seeks to review a decision of a Statutory Tribunal. Such a supervisory power, in the opinion of the Court of Appeal, can only be exercised if expressly conferred by "specific statutory provision". The dictum of Morris, L. J. in the case of *Healey v. Minister of Health* (6) at 231 is cited as authority for the proposition. The facts of the case are as follows: By a letter dated December 31, 1952, written by the Minister of Health to the plaintiff, who was a shoemaker employed by the Morgannwg Hospital Management Committee, the Minister determined, pursuant to Regulation 60 of the National Health Service (Superannuation) Regulations, 1950 that the plaintiff was not a mental health officer within the meaning of the regulations. The plaintiff in his action sought from Court a declaration "that he was, and at all times had been, a mental health officer within the meaning of the regulations". The Court held that what the plaintiff was seeking to do was to induce the Court to substitute its declaration in place of the declaration made by the Minister. All three Judges were clearly against making such a declaration. Denning, J. at page 227 stated—

> "The plaintiff's object is clear: he is seeking in these proceedings to get the court to say that the Minister's decision was wrong. It was wrong, he says, either in law or in fact or in both, but it was certainly wrong; and that is a ground for the court making a declaration saying what the right order should have been."

At page 228 he gave his reasons as follows:

> "The relief which is sought does not include a declaration that the Minister's determination was invalid. It seeks only a

declaration that the plaintiff is and was a mental health officer. It is obvious that if the court were to consider granting this declaration it would have to hear the case afresh. The plaintiff would have to give evidence showing how he spent his time and the Minister would have to be allowed to give evidence in answer to it. In short the court would have to re-hear the very matter which the Minister has decided. If the court were to embark on a re-hearing of this sort there is no telling where it would stop. Every person who was disappointed with a Minister's decision could bring an action for a re-hearing. That would be going much too far. Suppose that the court did re-hear the matter and decide in the plaintiff's favour, and did grant the declaration for which he asks, what would happen to the Minister's decision? So far as I can see, it would still stand unless the Minister chose of his own free will to revoke it. There would then be two inconsistent findings, one by the Minister and the other by the court. That would be a most undesirable state of affairs. In my opinion, if the court were to entertain this declaration, it would be going outside its province altogether. It would be exercising a jurisdiction to "hear and determine" which does not belong to it but to the Minister."

Morris, J. expressed himself thus at page 230:

"It seems to me clear that what is claimed in the statement of claims is a review, by way of appeal, of the decision of the Minister. The court is being asked to decide a question which by regulation 60 is to be determined by the Minister. The court is not asked to revoke the Minister's determination and if the court made a declaration as asked then the fate of the Minister's determination might remain obscure. In substance what is undoubtedly sought, however, is a declaration binding on the Minister which would reverse his previous decision. This can only mean that the plaintiff is seeking to appeal from the Minister. His action and his claim can have no other significance or intention."

Parker, J. pointed out at page 232 that the "issue to be tried is whether, the Minister having made a determination, this court has jurisdiction by declaration, not to declare that his determination is null and void or that it should be quashed, but to make another determination and one in the opposite sense to that made by the Minister." He held that the court had no such jurisdiction. He added—

"To hold otherwise would be to invest the court with an appellate jurisdiction, as opposed to a supervisory jurisdiction, which it certainly has not got. A right of appeal is the creature of statute, and the regulations give no right of appeal."

Parker, J. makes a clear distinction between an appellate jurisdiction and a supervisory jurisdiction. He was there not dealing with a supervisory jurisdiction and the case is therefore not of any assistance in deciding the present case in which the sole contention is that the District Court of Kandy had no jurisdiction to make a supervisory order by way of a mere declaration. There is no doubt that our District Courts do not have a general appellate jurisdiction from a decision of a tribunal. Such a jurisdiction can be exercised only if granted by Statute. Instances of such appellate jurisdiction are to be found in section 41 of the Rural Courts Ordinance (Chapter 8), section 12 (5) of the Trade Marks Ordinance (Chapter 150), section 16 of the Trade Unions Ordinance (Chapter 138) and section 30 of the Estate Duty Act, No. 13 of 1980.

Sirimane, J. states that the law in England on this matter is not clear, and he therefore steered clear of English precedent. The High Court in England possesses both an original and a supervisory jurisdiction. However the law in England does recognise a naked declaratory order. Denning, L. J. in *Barnard v. National Deck Labour Board* (7) had no doubt that the English Courts did have the power "to interfere with the decisions of Statutory Tribunals" by way of declaration. At page 41 he states thus:

"I think that there is much force in Mr. Paull's contention; so much so that I am sure that in the vast majority of cases the courts will not seek to interfere with the decisions of statutory tribunals; but that there is power to do so, not only by certiorari, but also by way of declaration, I do not doubt. I know of no limit to the power of the court to grant a declaration except such limit as it may in its discretion impose upon itself; and the court should not, I think, tie its hands in this matter of statutory tribunals. It is axiomatic that when a statutory tribunal sits to administer justice, it must act in accordance with the law. Parliament clearly so intended. If the tribunal does not observe the law, what is to be done? The remedy by certiorari is hedged round by limitations and may not be available. Why then should not the court intervene by declaration and injunction? If it cannot so intervene, it would

mean that the tribunal could disregard the law, which is a thing no one can do in this country."

In the case of *Ibeneweka v. Egbuna* (8), the plaintiffs asked for a declaration of title to land against defendants who, until the suit was instituted, had done nothing to dispute that title. They however put the plaintiff to proof of his title and the trial Judge found, that they were championing the rights of those not represented, on which basis the case was fought, and that the unrepresented parties were in reality fighting the suit. The Privy Council held that a declaration of title in plaintiff's favour was properly entertained and granted. At page 224 the Privy Council stated—

> "The general theme of judicial observations has been to the effect that declarations are not lightly to be granted. The power should be exercised "sparingly", with "great care and jealousy", with "extreme caution", with "the utmost caution". These are indeed counsels of moderation, even though as, Lord Dunedin once observed, such expressions afford little guidance for particular cases. Nevertheless, anxious warnings of this character appear to their Lordships to be not so much enunciations of legal principle as administrative cautions issued by eminent and prudent judges to their, possibly more reckless, successors. After all, it is doubtful if there is more of principle involved than the undoubted truth that the power to grant a declaration should be exercised with a proper sense of responsibility and a full realisation that judicial pronouncements ought not to be issued unless there are circumstances that call for their making. Beyond that there is no legal restriction on the award of a declaration. "In my opinion", said Lord Sterndale M. R. in *Hanson v. Radcliffe U.D.C.* (1922) 2 Ch. 490, 507; 38 T.L.R. 667, CA.) "under Order 25 r.5, the power of the court to make a declaration, where it is a question of defining the rights of two parties, is almost unlimited; I might say only limited by its own discretion. The discretion should, of course, be exercised judicially, but it seems to me that the discretion is very wide."

In the case of *Imperial Tobacco Co. Ltd. v. Attorney-General* (9) it transpired that the plaintiff had started a "Spot Cash" advertising scheme to promote the sale of their cigarettes. Prizes were offered to be won. The Director of Public Prosecutions

launched a prosecution against the plaintiff on the basis that the scheme was an unlawful lottery. The plaintiff sought a declaration from Court that it was not a lottery. The Court of Appeal held that such a declaration was rightly granted in spite of the pending prosecution as there was "a really debatable question of construction on which it is desirable that an authoritative ruling should be speedily obtained". In England the power to grant declarations is contained in Order XXV Rule 5 of the Rules of the Supreme Court 1883. It reads as follows:

> "No action or proceeding shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not."

Section 217 (G) of the Civil Procedure Code enacted in 1889 permits a declaratory judgment without granting any substantive relief or remedy. Both provisions permit a naked declaratory judgment. There is no doubt, as pointed out by Fernando, S.P.J. in *Thiagarajah v. Karthigesu* (1) at 79, that our legislature intended to adopt the English Law contained in Order XXV Rule V. In that case a mere declaration of status was granted to plaintiff. Declaratory actions are common in modern times. Such an action was the only remedy available against the Crown in imperial times and is so, with some limitation, against the State today, "and Courts of Justice have always assumed so far without disillusionment that their declaratory decrees against the Crown will be respected"—per Gratiaen, J. in *Attorney-General v. Sabaratnam* (10). "The essence of a declaratory judgment is that it states the rights or legal position of the parties as they stand, without changing them in any way; though it may be supplemented by other remedies in suitable cases." (Wade, *Administrative Law,* Ed. 4, page 499). "A declaratory judgment merely states in authorative fashion the legal position of the parties in a given situation, without any order to do or not to do anything. Since there is no demand for obedience, no execution can ensue; the declaration is a basis for future action by the parties. Each of them is free to disregard it, though in practice, in most cases, if a party does not conform his conduct to it, he will lay himself open to some coercive remedy at the instance of the other party. Yet a declaratory judgment cannot be executed as such because there is nothing in it to execute." (*Remedies of English Law* by Lawson, page 30). Such judgments and orders bear fruit only if those who are adversely

affected by them choose to respect them and act accordingly. Besides certain limitations that Judges usually observe, and should observe in exercising their discretion to make a declaration, (vide *Thiagarajah v. Karthigesu (supra)*), there are no other limitations that can be considered. It is now stated that there is a limitation in that "supervisory orders" cannot be made because a District Court has no jurisdiction to do so. "Supervisory Orders" is not a legal term but a convenient expression used by lawyers and Judges alike to denote cases where orders are made invalidating the order or judgment of another tribunal such as quashing orders by way of writ of certiorari or prohibition. "Supervisory Order" is not a term that can be applied to a declaration under the provisions of section 217 (G) Civil Procedure Code because there is no order in the first place, and secondly, it has no teeth and is therefore not one that the machinery of the law could enforce. "Supervisory" in reference to a declaratory judgment is a loose term to describe the function of review which is a process that must necessarily take place before a court pronounces upon the legality or otherwise of a decision of a body such as an inferior tribunal. Such an exercise is not forbidden by law.

Vythialingam, J., while agreeing with Sirimane, J. in *Perera v. Peoples' Bank (supra),* has advanced an additional reason. He states that District Courts have not been granted supervisory jurisdiction because they are courts of record and not superior courts. Supervisory jurisdiction if granted to District Courts are granted by means of an appellate jurisdiction expressly provided for in the statute, even though they are not superior courts of record. No other supervisory jurisdiction is granted either expressly or impliedly in law. If however he intended to refer to "supervisory" in the sense of "review" which is a preliminary step to a naked declaration, I need only say that the law does not either expressly or impliedly prohibit it.

An argument was addressed to us based on the provisions of section 23 of the Interpretation (Amendment) Act, No. 18 of 1972. It was contended that the District Court was prohibited from making the declaration sought by the plaintiff on the ground that the dispute arises "out of or in respect of or in derogation of any order, decision, determination, direction or finding which any person, authority or tribunal is empowered to make or issue under any written law". The attack in this case is on the very jurisdiction of the bank and hence that is was not empowered to make the

impugned order. If that be so the order of the bank is a nullity. *Anisminic v. Foreign Compensation Commission* (11).

I am of opinion that the appellant is entitled in law to maintain this application for a declaration. The appeal is allowed with costs.

ISMAIL, J.—I agree.

SHARVANANDA, J.—I agree.

WANASUNDERA, J.—I agree.

WIMALARATNE, J.

I regret that I have to dissent from the conclusion arrived at by My Lord the Chief Justice on the answer to the question as to whether our District Courts have jurisdiction to declare the decision of a statutory body null and void. The statutory body in this case is the State Mortgage Bank, and the decision is one made by it by virtue of powers vested under section 70B (1) of the Ceylon State Mortgage Bank and Finance (Amendment) Act, No. 33 of 1968. That section authorised the bank to acquire any agricultural, residential or business premises if the bank was satisfied that those premises were, at any time not earlier than 1.1.52, sold in execution of a mortgage decree or were transferred in the circumstances specified in the section, and subject to the limitations laid down therein. The circumstances under which the bank made the decision to acquire the premises belonging to the plaintiff are set out in the judgment of the Chief Justice, and it is unnecessary for me to repeat them.

The plaintiff is seeking in these proceedings before the District Court to get that Court to say that the bank's decision was wrong, either in law or in fact or in both, and that that is a ground for the court making a declaration saying that the decision has no force or effect in law. For this purpose the plaintiff, invokes the provisions of section 217 (G) of the Civil Procedure Code, which reads as follows:

"217. A decree or order of court may.....without affording any substantive relief or remedy—

(G) declare a right of status."

The learned District Judge answering a preliminary objection to jurisdiction, held that he had the jurisdiction to grant the decree

asked for. The Court of Appeal by its judgment dated 6.3.80 in setting aside that finding, has taken the view that only a court which exercises supervisory jurisdiction has the power to declare the decision of a statutory body null and void: and that as our District Courts are not vested with supervisory powers over statutory tribunals, they have no power to grant the declaration asked for. In reaching this conclusion the Court of Appeal has been guided by a decision of the former Supreme Court in *V. I. Perera v. The People's Bank* (2). In the course of his judgment in that case D. Q. M. Sirimane, J. observed (at p. 244) that "where a statutory body acts judically in arriving at a determination in terms of the statute, I am of the view that where it is sought to question or challenge the validity of such determination, the appropriate (and not merely the more appropriate) remedy is by way of certiorari". Vythialingam, J. in the course of his judgment, expressed the same view thus (at p. 253): "The District Court has no jurisdiction to grant a declaration in cases where it is sought as a supervisory remedy to challenge the validity of a judicial or quasi judicial act."

It does not appear from the proceedings that leave to appeal to the Supreme Court was asked for from the Court of Appeal, nor does it appear that that Court has granted leave to appeal. It was by petition and affidavit dated 23.3.80 that the plaintiff asked for special leave from the Supreme Court. The Supreme Court has granted special leave by order dated 11.6.80.

In challenging the correctness of this decision, learned Counsel for the plaintiff appellant has contended before us that both the Court of Appeal in the present case and the former Supreme Court in Perera's case (above) have fallen into the error of classifying the jurisdiction exercised by the District Court as supervisory. He submits that when a District Court enters a decree declaring a right or status it exercises an original jurisdiction, even though in the process the Court may have to "review" the correctness of the determination of a statutory body or tribunal. The only limitation to the granting of such a declaration is the discretion vested in the Court. Such a declaration is a harmless one, and is one made in the exercise of the Court's original civil jurisdiction.

Learned counsel for the respondent bank has contended, on the other hand, that the District Court would be exercising a supervisory, and not an original jurisdiction when it declares the

decision of a statutory body null and void, and that our District Courts have not been vested with such supervisory jurisdiction. He submits that to ascertain the jurisdiction of an inferior court one has to look at the founding statute, in this case the former Courts Ordinance (Cap. 6). Section 62 gave the District Court unlimited original civil jurisdiction, the only limitation being a territorial one. Nowhere were they given a supervisory jurisdiction over statutory tribunals or other bodies exercising judicial or quasi judicial functions. In contrast, section 7 of the same founding statute designated the Supreme Court as the *only* superior court of record, and by section 42 gave it full power to grant and issue according to law mandates in the nature of writs of mandamus, quo warranto, certiorari, procedendo, and prohibition, against any District Judge, Commissioner (of Requests), Magistrate or other person or tribunal. The only superior court being the Supreme Court, the District Court in his submission, is an inferior court as far as jurisdiction is concerned, and an inferior court can never exercise supervisory jurisdiction except when the legislature specifically provides for it. It is only a superior court that has inherent jurisdiction. An inferior Court has no inherent jurisdiction; its only jurisdiction is that vested in it by the statute creating it.

In the case of *Ladamuttu Pillai v. The Land Commissioner* (4), the Privy Council observed that "if the authority of the Land Commissioner to make a determination under section 3 of the Land Redemption Ordinance is challenged the appropriate procedure is by way of an application for certiorari". Sirimane, J. has accepted that as a correct statement of the law. My Lord the Chief Justice in his judgment, however, takes the view that "that decision of the Privy Council is no authority for the proposition that it (the District Court) cannot in a case such as this adopt a supervisory jurisdiction by way of a declaratory decree". In disagreeing with Vythialingam, J., the Chief Justice takes the view that the law does not expressly or impliedly prohibit the District Court from exercising a power of review. I regret I have to disagree for the reason that section 217(G) of the Civil Procedure Code does not, in my view, empower a District Court, to "review" and/or declare as null and void the decision of a statutory body.

In this connection some important and fundamental distinctions between superior and inferior courts have at the inception to be noted. A superior court is a court having inherent jurisdiction to exercise a power, whereas an inferior Court is a court whose

jurisdiction and powers are limited to those matters or things which are expressly deputed to it by its document of foundation or by legal custom—*Stroud's Judicial Dictionary* (1974), Vol. 5, p. 2685, 6. The presumption against ousting the jurisdiction of a court is applicable only to a superior court—*Maxwell—Interpretation of Statutes* (12th Ed.) 153; *S. A. de Smith—Judicial Review of Administrative Action* (4th Edition) 358. The reverse applies to an inferior court, that is that you must conclusively establish that the Court is vested with jurisdiction over the matter in question. Consequently it follows that a court has no power to make a declaration on a subject relief in respect of which is beyond the jurisdiction of that court—*Halsbury's Laws of England* (4th Ed.) p. 171 para 185. When our Civil Procedure Code, by section 839, saved the inherent powers of the District Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court, it did not vest any additional power to act in excess of the District Court's jurisdiction as laid down in the founding statute.

Both Sirimane, J. and Vythialingam, J. have, in support of their opinions, made several references to Dr. I. Zamir's work on *"The Declaratory Judgment* (1962)". In the case of *Thiagarajah v. Karthigesu* (1), H. N. G. Fernando, S. P. J. (as he then was) has "freely borrowed" extracts from Zamir, which he has categorised as *"a comprehensive and very helpful study of English cases"*. This work of Zamir has been referred to by such eminent jurists as S. A. de Smith and F. H. Lawson. This is what Zamir has to say, at p. 69:

"The jurisdiction of the superior courts to make a declaration is two fold: Original and supervisory. The original jurisdiction may be invoked for the determination of disputes at first instance; the supervisory jurisdiction is exercised to review decisions arrived at by other bodies. In many cases the Courts have both original and supervisory jurisdictions. Accordingly, upon a particular issue they may be resorted to either in the first instance, or if the issue had already been decided by another body, for a review of that decision". As there has been some criticism of this statement, it is necessary, in order to test its correctness, to trace in brief outline the history of the development of the declaratory judgment in English Law.

The declaratory judgment had its origin in the Chancery Court in the middle of the 19th Century as a means of construing wills

and trust deeds. It gained full recognition in the field of *private law* in the early part of the 20th century, and today declarations are issued concerning matters of personal status, title to property, construction of contracts and other written documents. Its entry into the field of *public law* has been comparatively recent and it has been utilised by the citizen as a means of challenging administrative acts and decisions which he claims to be unlawful. It would seem that both the Court of Chancery as well as the Court of Exchequer had always had, as part of their inherent powers, the jurisdiction to make declarations of right not followed by consequential relief. The reluctance of the courts to promote the development of the declaratory order led Parliament to enact the Chancery Act of 1850 and the Chancery Procedure Act of 1852, which made it lawful for the High Court of Chancery to make binding declarations of right without granting consequential relief. As a result of the narrow interpretation of these statutes by the Courts, the declaratory relief was still unavailable where it was most needed, namely, where no other remedy was available. The extension of the scope of the declaratory order by the Supreme Court of Judicature Act, 1873, was therefore a notable landmark. This Act transferred the jurisdiction of the superior courts of common law and equity to the High Court, and empowered a Rule Committee to make rules regulating the practice and procedure of the Court. It is to be noted that the Rule committee had no powers to extend the jurisdiction of the Court—*de Smith*, p. 481. It had, by virtue of sections 16 and 23 of the Judicature Act, only the power to make rules for practice and procedure with respect to all matters over which the Supreme Court had jurisdiction. By virtue of such powers, Rules were made in 1883. Several orders made provisions for relief by way of declaratory orders, the most important of which was Order 25 R5, which was in the following terms: "No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not". This order was revoked in 1962 and was replaced by Order 15 R 16 with only a minor rearrangement of the wording.

The limits of the declaratory power are not laid down in this rule and the extent of the power was left to the discretion of the High Court. Now, the High Court was a superior court having an inherent jurisdiction, both original and supervisory. The landmark in the use of the declaration in public law is the case of *Dyson v.*

Attorney-General (17). Under an Act of 1910 the Commissioner of Inland Revenue was empowered to demand from landowners, under threat of penalty, factual information which could be used in valuing their lands. The notices sent out, however, demanded additional information. A declaration was claimed in the King's Bench against the Attorney-General. The Court of Appeal held that the demand was wholly ineffective in law and that the land owner was entitled to the declaration. The court in granting the declaration was there exercising its *original jurisdiction.* Since *Barnard* v. *National Dock Labour Board* (7), it is clear law that the Queen's Courts can grant a declaration by which they pronounce on the validity or invalidity of proceedings of statutory tribunals as well. A declaration so made would be in the exercise of the courts inherent *supervisory jurisdiction.* I am fully in agreement with the statement that declaratory actions are common in modern times and that the scope of the declaration has been extended to great lengths, as would be seen from the judgments referred to by the Chief Justice. But it has to be remembered that the progressive extension of the scope of the declaratory order was possible in England because the High Court to which resort had to be had was a superior court and was vested with inherent jurisdiction, both original and supervisory.

Proceedings in which declaratory relief is claimed under Order 15 R16 may be instituted in any Division of the High Court before a single judge. Alternatively, a declaration to determine a matter of public law may be brought either alone or in combination with certiorari, prohibition, mandamus or a claim for damages in an application for judicial review under Order 53 rr 1 (2), 2. The application for leave to apply and the application itself must normally be brought in the Divisional Court of the Queen's Bench Division— *de Smith,* p. 523.

County courts, unlike the High Court, have no general jurisdiction to grant either declarations or injunctions except in respect of disputes relating to land whose net value for rating falls within the monetary limits of their jurisdiction, or as ancillary relief when the principal claim otherwise falls within their jurisdiction— *de Smith,* p. 524.

It will thus be seen that the development of the declaratory judgment in England to the extent it has reached, enabling the review of decisions of statutory bodies, was possible by reason of

the inherent original and supervisory jurisdiction exercised by the High Courts as superior courts. Dr. Zamir's statement of the law referred to earlier therefore sets out the correct position as far as the English Law is concerned.

We may now compare the jurisdiction of our District Courts with the jurisdiction of the High Court in England. The founding statute, the Charter of 1833, by section 24, as well as its successor, the Courts Ordinance, No. 1 of 1889, by section 62, vested in the District Court only an unlimited *Original* Civil Jurisdiction. The jurisdiction referred to in section 217(G) of the Civil Procedure Code was already in existence immediately before the Courts Ordinance came into operation on 2.8.1890. In conferring that declaratory jurisdiction the legislature seems to have adopted the English *procedure* contained in Order 25 r 5 of the English Rules of the Supreme Court 1883.

Like the emphasis on the word "original" in relation to this jurisdiction placed by H. N. G. Fernando, S. P. J. in *Thiagarajah's case* (above at p. 76), one has to keep in mind that the declaratory decree can be entered by the District Court only in the exercise of its "original" jurisdiction. Nowhere is there any investment of a "supervisory" or "appellate" Civil Jurisdiction. The Supreme Court being designated the only superior court of record, it follows that the District Courts are inferior courts of record. Unless it is conclusively established that they are vested with a certain jurisdiction it cannot be presumed that they have that jurisdiction. The declaratory decree which the District Court is empowered to enter is, therefore, one which can be entered only in the exercise of its "original" jurisdiction. It is similar to the jurisdiction conferred on the County Courts to make declaratory orders within the limits of their monetary and territorial jurisdiction, or as ancillary relief to the principal claim made within jurisdiction. Nowhere have our District Courts been given supervisory declaratory jurisdiction. They have been vested with wide powers of original civil jurisdiction, and are thus able to enter declaratory judgments within the scope of that jurisdiction, especially in the field of private law. The case of *Thiagarajah v. Karthigesu* (above), is typical of the wide extent of the jurisdiction of the District Court, in the exercise of its original jurisdiction, to declare a status. But where the District Court is called upon to declare the decision of a statutory tribunal a nullity it is called upon to exercise a supervisory jurisdiction which, in my view, it does not have.

The next contention of learned Counsel for the plaintiff has been that even if the view be taken that District Courts are not invested by any statute with supervisory jurisdiction, yet they do have an inherent jurisdiction to review the decisions of inferior statutory tribunals, like the inherent jurisdiction exercised by the High Court in England. It would, I think, be wrong to compare the High Court in England with our District Courts in this respect, because historically the supervisory jurisdiction was inherent in the High Court by virtue of its designation as a superior court. This is made clear in the judgment of Cockburn, C. J. in *ex parte Jolliffe* (12): "It is laid down in Hawkins (pleas of the Crown) and other writers of authority that the power of committing for contempt committed in the face of the courts is given to inferior courts, but it is nowhere said that they have the power so to punish contempts committed out of courts.

> "There is an obvious distinction between Inferior Courts created by statute and superior courts of law and equity. In these superior courts the power of committing for contempt is inherent in their constitution and has been coeval with their original institutions, and has been always exercised. The origin can be traced to the time when all the courts were divisions of the Great Curia Regis – the Supreme Court of the Sovereign – in which he personally, or by his immediate representative, sat to administer justice. The power of the courts in this respect was therefore an emanation from the Royal authority, which when exercised personally, or in the presence of the Sovereign made a contempt of the Crown punishable summarily, and this power passed to the superior courts when they were created."

When the District Court of Kandy attempted in 1851 to issue a writ of habeas corpus without having statutory jurisdiction to do so, the Supreme Court held, in the *Application of A. W. Shaw* (13), that the District Court did not have inherent power to issue the writ. On the other hand although prior to 1833 the Supreme Court did have statutory powers to issue mandates in the nature of writs of mandamus, certiorari, procedendo and error, it did not have statutory power to issue writ of habeas corpus. But it did issue writs of habeas corpus by virtue of its inherent powers, powers inherent only in Superior Courts.

Again when the District Court of Colombo established under the Charter of 1833 attempted to commit for contempt *ex facie,*

a Collective Court considered the jurisdiction of our District Courts in the *Application of John Ferguson* (14), and Morgan A.C.J. had this to say (at pp. 185, 187):

> "Can our District Courts, then, be regarded as Superior Courts in the sense in which the word was used in the decision last referred to? (i.e. *Ex Parte Joliffe*) Superior and inferior are relative terms, and our District Courts undoubtedly have powers much larger than those appertaining to English County Courts. It does not follow, however, that they are Superior Courts in the sense in which the Superior Courts at Westminster and the High Court of Chancery are Superior Courts."

> "Now District Courts cannot be regarded as Superior Courts in this sense. It is true that they are Courts invested with very important functions, and with an unlimited original civil jurisdiction within their own districts; but their jurisdiction is territorially very limited in all cases, and in criminal matters is confined to the trial and punishment of the lighter classes of offences. Unlike the Supreme Court and the Superior Courts at Westminister, a District Court has no control or superintendence over any other tribunal whatsoever".

The Charter of 1833 was replaced by the Courts Ordinance, No. 1 of 1890. The place of the District Courts established thereunder was considered in *King v. Samaraweera* (15), where they were held to be 'Inferior Courts of Record' and thus not having full jurisdiction to punish all descriptions of contempt such as the Supreme Court could exercise.

It is significant that when the legislature considered it necessary to vest in the District Court a right of appeal or a right of review it has always done so by legislation. A good illustration is provided by the repealed Rural Courts Ordinance (Cap. 8). A right of appeal from the decision of a Rural Court was given to the District Court by section 41 (1) and a power of review was given by section 41 (6). So that unless Parliament by legislation vests in the District Court a power of review, that Court has in my view no inherent jurisdiction to review the decision of a statutory tribunal. If it does so, it would be acting in excess of its jurisdiction.

When we are called upon to decide whether the District Court has jurisdiction with regard to any matter we cannot assume the

power of *making* law for that purpose. It is the function of Parliament to apportion jurisdiction to the several courts set up by legislation. We can only interpret what we find made, and interpret it in the sense we believe it to have been framed. Let me give an illustration which will make this clear. Section 13 of the Citizenship Act (Cap. 349) empowers the Minister, if he is satisfied that an applicant for citizenship has rendered distinguished public service or is eminent in professional, commercial, industrial or agricultural life, to decide that he be registered as a citizen of Sri Lanka. It is permissible to institute an action in the District Court seeking a declaration of a status. Can it be said that a person would have a right to institute an action for a declaration that he is a citizen, and in the process seek a review of the decision of the Minister not to grant him citizenship? I do not for a moment accept that the legislature ever intended that District Courts should exercise such supervisory jurisdiction, and if we were to say that our District Courts are empowered to do so, we would be making law in a sense never intended by the legislature.

Vythialingam, J. in *Perera's case* (above) after analysing the earlier case law on the subject of the jurisdiction of the District Court to exercise a supervisory jurisdiction had come to the conclusion that the earlier decisions were not conclusive on the matter. A. L. S. Sirimane, J. in *Attorney-General v. Chanmugam* (16), appears also to have had doubts about the conclusiveness of the earlier decisions; so that Perera's case was the law when the legislature enacted recently the Judicature Act, No. 2 of 1978, and the Code of Civil Procedure Act, No. 20 of 1977. If Perera's case was not in accord with the intention of the legislature there was ample opportunity for the legislature to have made its intention clear when it enacted the recent legislation vesting jurisdiction in the several courts of first instance. It may be inferred, therefore, that the legislature has accepted that the decision in Perera's case, delivered just two years earlier, had interpreted the law correctly with regard to this limitation in the jurisdiction of the District Court.

The answer to the question as to which of the courts of Sri Lanka had or has the jurisdiction to declare the decision of a statutory tribunal null and void is, in my view, contained in section 42 of the former Courts Ordinance, and now in Article 140 of the Constitution of 1978. The former Supreme Court had, as much as the present Court of Appeal has, the power to issue

according to Law orders in the nature of writs of Quo Warranto against the judge of any Court, tribunal or other institution, or any other person. Now, Quo Warranto has been replaced by Declaration and Injunction in England by Section 9 of the Administration of Justice (Miscellaneous Provisions) Act of 1938. In Sri Lanka, therefore, it is the Court of Appeal that now has the jurisdiction to grant declarations annulling the decisions of statutory tribunals, both by virtue of the Constitution as well as by virtue of the inherent powers vested in it as a Superior Court.

I must not be understood as saying that the scope of the declaratory judgment cannot be developed in this country. It can and ought to be so developed to the extent it has developed in England. There seems to be no obstacle to its development in the District Court, but only in the exercise of its original civil jurisdiction. The forum in which it has a bright future is the Court of Appeal, which by virtue of its powers is vested with the necessary jurisdiction to review the decisions of statutory bodies, and grant declarations in the process.

For these reasons I am of the opinion that although our District Courts, in the exercise of their unlimited original Civil jurisdiction have wide powers to enter declaratory decrees or orders in terms of section 217 G of the Civil Procedure Code, especially in the field of private law, they have no jurisdiction, statutory or inherent, to review, and/or to declare null and void, the decisions of statutory tribunals. Such powers of review of the decisions of statutory tribunals have always been exercised by the Superior Courts, namely, the Supreme Court under the Courts Ordinance and the Administration of Justice Law, and now by the Court of Appeal (subject, of course, to the appellate jurisdiction of the Supreme Court).

I would, accordingly, dismiss this appeal with costs.

Appeal allowed.