

**EMALIYANA PERERA**

v.

**PEOPLE'S BANK LAND REDEMPTION DEPARTMENT AND OTHERS**

SUPREME COURT.

WANASUNDERA, J., L.H. DE ALWIS, J. AND H. A. G. DE SILVA, J.

S.C. No 12/85.

S.C. SPECIAL LA/131/84.

C.A. APPLICATION No. 463/82.

OCTOBER 24, 1986.

*Land Redemption – Acquisition of land under Finance Act No. 11 of 1963 – People's Bank – Finance Act, s. 71 – Writs of Certiorari and Mandamus.*

Where the People's Bank declined to acquire land which a party wanted acquired for purpose of redemption (under s. 71(1) of the Finance Act, No. 11 of 1963 as amended by Law No. 16 of 1973) as it was really an undivided land though purported to be divided on a plan to which however the other co-owners had not consented and the claimant was now in possession of the balance portion rendering handing over of possession by the Bank in the event of acquisition inexpedient, the Court will not interfere with the decision of the Bank.

**Cases referred to:**

- (1) *Kanagasabapathy and Another v. The People's Bank and Two Others – S.C. Application No. 124/75, S.C. Minutes of 27.8.1976.*
- (2) *Chandralatha Wijewardene v. The People's Bank and Two Others – S.C. No. 3/80–S.C. Minutes of 20.5.1981.*

APPEAL from the decision of the Court of Appeal.

*H. M. P. Herath* for petitioner-appellant.

*Dr. J. A. L. Cooray* with *M. B. Peramune* for the 1st respondent.

*Faiz Musthapa* for 3rd respondent.

December 19, 1986.

**H. A. G. DE SILVA, J.**

The petitioner's late husband, one Madanayake Arachchige Don Pediris was the owner of a land called Kongahawatta, Wewelduwa on deed No. 4572 of 16.04.1931. He by deed No. 6652 dated 10.07.1954 transferred the said property to the 2nd respondent subject to the condition that on payment of Rs. 2,000 within 2 years from the execution of the latter deed, the vendee shall retransfer it to the vendor. The vendor failed to redeem the land within the stipulated period and on 10.7.1956 the 2nd respondent purported to lease the same land to the vendor for one year. Further leases of this land were given to the vendor for one year to 2 years on 10.2.1958, 15.6.1962 and 24.09.1965. The vendor died on 3.1.1966 and the 2nd Respondent instituted action No. 12295/21 in the District Court of Colombo for a declaration of title and ejection of the petitioner, the widow of the deceased vendor. Judgment was entered for the plaintiff and unsuccessful attempts were made by the petitioner to appeal from the said judgment to the Court of Appeal and to this Court.

The petitioner then applied to the 1st respondent to have the land acquired under the provisions of the Finance Act No. 11 of 1963 on 14.07.1980. The 1st respondent entertained the said application and the notice of acquisition (A) was registered with the Registrar of Lands on 6th August 1980. The petitioner filed the caveat (B) with the Registrar of Lands. Thereafter the parties were summoned for an inquiry. Meanwhile the 2nd respondent transferred the land to the 3rd respondent by deed of transfer No. 1216 of 22nd August 1980 and the 3rd respondent purchased the land with notice of the application for acquisition made by the petitioner. At the inquiry only the petitioner was present. Thereafter the 1st respondent by its letter of 27.11.1981(C) informed the Petitioner that its Board of Directors had decided not to acquire the said land for the petitioner.

The petitioner thereupon filed an application in the Court of Appeal seeking a Writ of Certiorari to quash the said decision of the 1st respondent and also a Writ of Mandamus on the 1st respondent to acquire the said land for her. The Court of Appeal by its judgment of 08.10.1984 dismissed the petitioner's application and it is from this judgment that the petitioner has appealed to this Court.

The Court of Appeal following the decision of the Supreme Court in *Kanagasabapathy and Another v. The People's Bank and Two Others* (1) and the views of Sharvananda, J. (as he then was) in *Chandalatha Wijewardene v. The People's Bank and Two Others* (2) held that the decision not to acquire premises, which it is authorized by section 71(1) of the Finance Act to acquire is to be determined by the Bank and every such determination shall be final and conclusive and shall not be questioned in any court and accordingly dismissed the application of the petitioner.

According to the memorandum to the Board of the 1st respondent submitted by the Manager of the Land Redemption Department "the land in question is an undivided 1/3rd of a sixteenth share of the land called Kongahawatta although the applicant has tendered a plan which has been made on 25th July 1980 and bears No. 151. As the land is undivided we are of the view that plan No. 151 cannot divide a land without the consent of all the parties who own the land in question. Although the Prohibitory Notice was sent describing this land as a divided land, on perusing the documents we note that the land is undivided. The Bank on principle does not acquire lands which are undivided when the balance portion is now owned by the claimant. Further the possession of this land is with the claimant. Therefore in view of the above we recommend that a determination be made not to acquire the land".

Learned counsel submits that both reasons given for the decision not to acquire the land are untenable and are bad in law. He submitted that the first reason given, viz. that the land is undivided has been held by this Court not to be a bar to an acquisition. In the case of *Chandalatha Wijewardene v. The People's Bank and Two Others* (*supra*) (2) Sharvananda, J. has stated on page 5 of the judgment—

"In my view, authority to acquire the whole or any part of premises in section 71(1) (of the Finance Act No. 11 of 1963 as amended by Law No. 16 of 1973) included authority to acquire an undivided share of land in circumstances provided by that section."

In that case one of the submissions made was that the Bank had made order to acquire the whole land referred to in the Schedule whereas the premises sold in execution of the mortgage decree and purchased by the petitioner-appellant was only 11/12 share and as such the Bank had no jurisdiction to acquire an undivided share of a land.

In the instant case in addition to the ground that the land is undivided there is the further ground that the balance portion of the land is now owned by the 3rd respondent and he is in possession of the land.

In the judgment which is being appealed from, Thambiah, J. cites from the judgment of Vythialingam, J. in *Kanagasabapathy and Another v. The People's Bank and Two Others (supra)* (1) wherein Vythialingam, J. says that—

“Basically there are three questions for the decision of the Bank in the case of an application for redemption, viz. —

- (1) Is the land one which the Bank is authorised by s. 71 (1) to acquire?
- (2) If so, does section 71 (2) restrict the right of the Bank to acquire the land? and
- (3) If not, should the land be acquired?”

He further held:

“While the decision on the third question whether the property should or should not be acquired and the consequent determination by the Bank to acquire the property may be a purely administrative decision guided at the final stage by considerations of policy and expediency and cannot be questioned by a Court of Law (vide s. 71 (3) of Finance Act No. 11 of 1963), nevertheless, the Bank's decisions on the preliminary issues on which the final determination is based have to be arrived at solely on the facts of the case, by an assessment and evaluation of the evidence and is a quasi-judicial process or a process closely analogous to the judicial and affects the rights of subjects and is therefore subject to review by the Courts”. Similar views were expressed by Sharvananda, J. in the case referred to above.

Learned counsel for the 1st respondent submitted that if the Bank acquired the land, it would have to give possession to the petitioner and since the land itself is in the possession of the 3rd respondent, who was the claimant, and he held the balance extent of the land, there was the practical difficulty with which the Bank would be faced in implementing its own order and in these circumstances the policy adopted by the Bank was the most expedient and this decision was

final and conclusive. It was not a decision taken capriciously. I tend to agree with this submission that it is not possible for us to gainsay the decision arrived at which has been dictated by grounds of expediency.

As further pointed out by learned counsel for the 3rd respondent, though the prohibitory notice registered with the Registrar of Lands stated that it was a divided land, in truth and in fact, as the Bank found, it was undivided. Plan No. 151 submitted by the petitioner to the Bank showed a division of the land which had not been consented to by the co-owners.

I would therefore affirm the judgment of the Court of Appeal and dismiss this appeal with costs fixed at Rs. 1,050.00 payable to each of the 1st and 3rd respondents.

WANASUNDERA, J. – I agree.

L. H. DE ALWIS, J. – I agree.

*Appeal dismissed.*

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