

NANDAWATHIE

v.

RAJAKARUNA AND OTHERS

SUPREME COURT.

SHARVANANDA, C.J., COLIN-THOMÉ, J. AND ATUKORALE, J.

S.C. APPEAL No. 37/85.

C.A. APPLICATION No. 2045/80.

C.A. L.A. (S.C.) No. 8/85.

FEBRUARY 13, 1986.

Writ of Certiorari – Section 71 (S. 71 (2) (c)) of the Finance Act, No. 11 of 1963 as amended by Law No. 16 of 1973 – Determination to acquire by People's Bank on application of transferor of a land on a conditional transfer and vesting order by Minister – Statutory income – Jurisdictional error.

Where on an application made on 16.3.1976 to the People's Bank by the transferor of a land upon a conditional transfer the Bank at the inquiry held by it on 5.3.1977 being satisfied that the applicant's statutory income did not exceed Rs. 10,000 in view of the certificate issued by the Inland Revenue Department, recommended that determination be made to acquire the land whereupon the Minister sanctioned a vesting order –

Held –

(1) The Court of Appeal erred in basing its decision on a certificate of 21.12.1977 issued by the Assessor of the Department of Inland Revenue, Regional Office, Kurunegala stating the assessable income, as that could not have been the certificate of the Inland Revenue Department on which the People's Bank acted on 5.3.1977.

(2) The relevant years of assessment were 1974/75, 1973/74 and 1972/73 and the average statutory income of the applicant being less than Rs. 10,000 per annum, she was eligible to make the application and there was no jurisdictional error vitiating the determination of the People's Bank or the vesting sanctioned by the Minister.

APPEAL from judgment of the Court of Appeal reported at – [1985] 1 SLR 393 (*Rajakaruna v. R.J. G. de Mel, Minister of Finance and Another*).

J. W. Subasinghe, P.C. with *Miss B. G. S. J. Nandadasa* and *G. D. S. de Silva* for 3rd respondent-appellant.

P. A. D. Samarasekera, P.C. with *Miss k. Kumaratne* and *K. Abeypala* for petitioner-respondent.

February 27, 1986.

SHARVANANDA, C.J.

Arnolis Appuhamy, the father of the 3rd respondent-appellant transferred a paddy field to the petitioner-respondent, subject to the condition that it would be retransferred to Arnolis Appuhamy on payment of a certain sum of money within ten years as stated in the Deed of Transfer No. 8827 dated 14.6.1952. Arnolis Appuhamy failed to repurchase the paddy field within the period of 10 years and died on or about 1972 leaving the appellant as sole heir. Thereafter on 16th March 1976 the appellant made an application to the 2nd respondent, the People's Bank, in terms of section 71 of the Finance Act, No. 11 of 1963 as amended by Law No. 16 of 1973 for the acquisition of the said field. The People's Bank held an inquiry into the application and made determination on 25.3.1977 to acquire the said field. At the inquiry the petitioner-respondent objected to this acquisition on the ground that the applicant's income exceeded Rs. 10,000. per annum. This objection is based on section 71 (2) (c) of the Finance Act as amended by Law No. 16 of 1973. This section reads thus:

"No premises shall be acquired under sub-section (1) unless the Bank is satisfied that the average statutory income of the person making the application and of the other members of the family of which he is the head, computed under the provisions of the written law relating to the imposition of income tax, for the three years of assessment immediately preceding the date on which such application was made by him, does not exceed a sum of ten thousand rupees."

At the inquiry held on 5.3.1977 into this objection, the inquiring officer has recorded that –

"according to certificate issued by the Inland Revenue Department submitted by the applicant her average statutory income does not exceed Rs. 10,000. I disallow his objection and recommend that determination be made to acquire the property."

Thereafter the respondent-Bank made determination to acquire the field and notified the determination to the 1st respondent, the Minister of Finance and the latter made Vesting Order and caused it to be published in the Gazette of 11.7.1979.

The petitioner-respondent by his application dated 29.9.1980 to the Court of Appeal sought a Writ of Certiorari to quash the Vesting Order dated 11.7.1979 on the ground that the 3rd respondent was receiving an income in excess of the amount stipulated in section 71 of the Finance Act, and that the Vesting Order was illegal and *ultra vires*. The petitioner-respondent in his application did not give any precise facts to substantiate his application that the 3rd respondent-appellant was in receipt of an income exceeding Rs. 10,000 per year. The 3rd respondent in her affidavit dated 20.1.1981 filed in the proceedings stated "that the entire income does not exceed the statutory income stated in the Finance Act No. 11 of 1967 as amended by Act No. 16 of 1973 and therefore the third respondent is both eligible and is entitled to make this application in terms of the relevant provisions of the said Act". There is no counter affidavit by the petitioner-respondent to these averments of the appellant in her affidavit. At the argument on 11.2.1985, before the Court of Appeal it is recorded that "at the hearing before us the document upon which the second respondent-Bank was 'satisfied' that the applicant's statutory income did not exceed a sum of ten thousand was produced. This was a document dated 21.12.77 issued by the Assessor of the Department of Inland Revenue, Regional Office, Kurunegala. This document sets out the 'assessable income' and the 'taxable income' of the 3rd respondent for the years of assessment 1975/76, 1974/75 and 1973/74. There is not one word in that document to indicate what the 'statutory income' of the 3rd respondent was for the relevant years of assessment. 'Statutory Income' is a concept which is different from 'Assessable Income' and 'Taxable Income' in terms of the scheme of the Inland Revenue Act No. 4 of 1963 as amended Having regard to this document both Dr. Cooray, Counsel for the 2nd respondent-Bank and Mr. Premaratne, Deputy Solicitor-General, Counsel for the 1st respondent, very properly conceded that the 2nd respondent-Bank had, while taking into account an irrelevant matter, namely the 'Assessable Income' or the 'Taxable Income' failed altogether to consider the relevant matter, namely, 'Statutory Income' of the 3rd respondent. In other words, the 2nd respondent-Bank had failed to consider a matter which the statute itself directed it to take into account and the result is that the purported determination of the 2nd respondent-Bank is a nullity. There is little doubt that the error is one which goes to the jurisdiction of the tribunal (Bank).

This conclusion of the Court of Appeal is vitiated by the fact the document referred to in the order on which the Court held that there was jurisdictional error..... could not *ex facie* have been the certificate referred to by the Officer who held the inquiry into the 3rd respondent's application on 15.3.1977. This document is dated 21.12.77 and hence it could not have been the certificate which was produced before the inquirer on the 15.3.1977. It is surprising as to how all parties concerned had overlooked this vital fact. The Court had been induced to accept this document by the concession made by Counsel for the Bank and by the Deputy Solicitor-General. The Court had erred in holding that the document dated 21.12.77 was the certificate on which the inquirer acted on 15.3.77 in overruling the petitioner-respondent's objections.

Further in terms of section 71(2)(c) of the Finance Act No. 6 of 1963 as amended by Act No. 16 of 1973 the relevant years of assessment for consideration are the years of assessment 1974/75, 1973/74 and 1972/73 as the application of the appellant to the Peoples' Bank in terms of section 71 of the Act is dated 16.3.1976. The Court of Appeal was in error in taking into account in computing the statutory income of the appellant the year of assessment 1975/76.

The appellant has filed with his petition of appeal, the relevant notices of assessment for the year of assessment 1974/75, 1973/74 and 1972/73. They show that the appellant's statutory income was Rs. 9,332, Rs. 4,590 and Rs. 14,471 respectively for those years of assessment. Thus it will appear that the average statutory income of the appellant for the relevant period according to section 71(2)(c) of the aforesaid Act was less than Rs. 10,000 and that it was competent for the appellant to make the application for relief.

The objections of the petitioner-respondent that the average income of the appellant exceeded Rs. 10,000 per year cannot be sustained. There is no jurisdictional error which would vitiate the determination of the 2nd respondent-Bank or the vesting order sanctioned by the 1st respondent-Minister.

I set aside the order of the Court of Appeal and allow the appeal of the 3rd respondent-appellant. The appellant is entitled to the costs in this Court and in the Court of Appeal.

COLIN-THOMÉ, J. – I agree.

ATUKORALE, J. – I agree.

Appeal allowed.