

1975 Present : Pathirana, J., Wijesundera, J., and Ismail, J.

B. D. P. GOONESEKERA, Appellant and K. D. LEELARATNE,  
Respondent

S. C. 20/72 (F)—D. C. Panadura 8830

*Registration of Documents Ordinance—Sections 7 (1) and 8(b)—Certificate of Acquisition issued under Section 12 (1) of the Land Acquisition Ordinance—Is such certificate an instrument affecting land within the meaning of Section 8 (b) of the Registration of Documents Ordinance.*

A certificate of Acquisition issued under Section 12 (1) of the Land Acquisition Ordinance (Chapter 203 of the Revised Legislative Enactments 1938) is not an instrument affecting land within the meaning of Section 8(b) of the Registration of Documents Ordinance.

“The vesting of land in the Crown under Section 12 (1) of the Land Acquisition Ordinance absolutely free of all encumbrances snaps the link of ownership with any persons who were entitled to the land prior to the acquisition or claimed rights thereto and creates a new title in the Crown not referable to any previous ownership wiping out all other titles. The question of competing deeds duly registered from the same source or from any other source in respect of the same land to defeat the rights of the Crown to the land acquired under the Land Acquisition Ordinance by reason of due and prior registration will not therefore arise for consideration.”

**A** PPEAL from a judgment of the District Court Panadura.

*H. W. Jayawardene* with *N. R. M. Daluwatte*, for the defendant-appellant.

*D. R. P. Goonetilleke* with *Mohan Pieris*, for the plaintiff-respondent.

*Cur. adv. vult.*

September 3, 1975. PATHIRANA, J.—

At the conclusion of the argument we dismissed the appeal with costs. We now give our reasons.

By Certificate of Acquisition No. 255 dated 7.3.1934 (P8) the Crown acquired and became the lawful owner of the land called Ralahamigewatte described in the schedule to the plaint in extent 0A. 0R. 6.1P. The Crown by its Grant dated 29.5.1961 (P9) which was registered on 29.7.1961, conveyed the said premises to one Don Gilbert Wijemanne, who by deed P10 of 20.7.1961 conveyed it to the plaintiff. The plaintiff instituted this action for a declaration of title to an extent of 0A. 0R. 05.8P. described as lot 1 in Plan No. 770 filed of record marked P1. The learned District Judge entered judgment for the plaintiff as prayed for.

The land in dispute is covered by the corpus in the Crown Grant. The defendant claimed title from one Sallima Lebbe Omer Lebbe Hadjiar, whose title devolved on one Cissy Dias, who along with her husband by deed D7 of 1933 transferred the land to one John Gunesekera. John Gunesekera died intestate and his rights devolved on his parents Haramanis Gunesekera and Meenona Gunesekera who by deed No. D10 of 1943 transferred the said land to Eliyas Gunesekera, who in turn transferred the same by deed D11 of 1916 to the defendant.

The only ground urged in appeal before us by Mr. Jayewardene, appearing for the defendant-appellant, was that the deeds and documents relied on by the defendant were entitled to priority over the plaintiff's deeds and documents by virtue of due and prior registration. His contention was that under Section 7 (1) of the Registration of Documents Ordinance, read with Section 8 of the same Ordinance, the Certificate of Acquisition (P8) of the land was an instrument affecting land within the meaning of Section 8 (b) of the Ordinance. This instrument P8 not having been registered was therefore void against the defendant's deeds which have been duly registered.

Assuming that the Crown is bound by the provisions of the Registration of Documents Ordinance, the first question we have to decide is whether the Certificate of Acquisition P8 issued under Section 12 (1) of the Land Acquisition Ordinance—Revised Legislative Enactments of Ceylon 1938—Chapter 203, "shall be deemed" to be an instrument affecting land within the meaning of Section 8 (b) of the Registration of Documents Ordinance.

Mr. Jayewardene's argument is that it is an order of an authority which purports or operates to create, confer, declare and transfer the right, title or interest in or over land and as such unless duly registered under the Registration of Documents Ordinance was void against the deeds of the defendant. In order to test the soundness of Mr. Jayewardene's argument, it would be useful to consider Section 12 (1) of the Land Acquisition Ordinance which reads :—

"At any time after the Government Agent has made an award under Section 9, or a reference to the Court under Section 11, and has notified the same to the Governor, it shall be lawful for the Governor to direct that the land be taken possession of by some officer of the Crown for and on behalf of His Majesty. And the said officer shall sign a certificate substantially in the form 'A' in the schedule and the said land shall thereupon vest absolutely in His said Majesty free from all encumbrances."

This Section empowers the Governor, later delegated to the Executive Committee of the Local Administration, to direct that the land be taken possession of by some officer of the Crown for and on behalf of His Majesty at any time after the Government Agent has made an award under Section 9 or a reference to the Court under Section 11 and has notified the same to the Executive Committee. It will therefore be seen that even the direction to take possession of the land by some officer of the Crown for and on behalf of His Majesty is not on a document or instrument but is a direction given by the Statute. Once that is done the said officer shall sign a Certificate substantially in form 'A' in the schedule. Once the Certificate has been signed the land shall thereupon vest absolutely in His Majesty free from all encumbrances.

It will be next necessary to consider the form 'A' in the schedule :—

"I hereby certify that I have this day taken possession, for and on behalf of His Majesty under and by virtue of the provisions of the Land Acquisition Ordinance \_\_\_\_\_ of \_\_\_\_\_, entitled \_\_\_\_\_, of the land and premises situated at \_\_\_\_\_, and bounded on the \_\_\_\_\_, and more particularly described in the annexed survey thereof."

The Certificate merely states that some officer of the Crown for and on behalf of the Crown had on a certain date taken possession of the land and premises. The certificate in form 'A' does not vest title in the Crown and it is therefore not an instrument which creates, confers, declares, transfers any right, title or interest in or over the land for the purpose of Section 8 (b) of the Registration of Documents Ordinance. The relevant words in my view are "and the said land shall thereupon vest absolutely in His Majesty free from all encumbrances." The land will vest in His Majesty free from encumbrances not on the certificate in Form 'A' or by reason of such certificate, but by operation of law after the certificate which is only evidence that possession has been taken of by an officer, has been signed. For these reasons we hold that the vesting of the lands in the Crown under the Land Acquisition Ordinance is not by an instrument affecting land within the meaning of Section 8 of the Registration of Documents Ordinance, but by operation of law. The provision of the Registration of Documents Ordinance which renders any

unregistered instrument void as against any instrument duly registered has therefore no application to lands acquired by the Crown under the Land Acquisition Ordinance.

Mr. D. R. P. Goonetilleke for the plaintiff-respondent, however, submitted that even if the Registration of Documents Ordinance applies to the Certificate of Acquisition as an instrument affecting land, nevertheless, the land having vested absolutely in the Crown free from all encumbrances under Section 12 (1), a new title is created in the Crown which extinguishes all previous titles by operation of law and so good against all persons. Such a title was not dependent on any transmissible interest which the proprietor of the land or other persons of the land had immediately prior to the acquisition. In support of his argument he cited the case of *Vellaithamby v. The Attorney-General*—58 NLR—489. It was held in this case that :—

“Where land sold under the Irrigation Ordinance for non-payment of irrigation rates due in respect of it is purchased by the Crown and a Certificate is thereafter issued vesting title in the Crown, all previous titles to the land must, by virtue of Sections 2 and 66 (2) of the Ordinance, be regarded as wholly extinguished or suspended, by operation of law, and a new title is created in the Crown which is good against all persons. Accordingly, a subsequent transferee from the original owner of the land cannot claim title to it by priority of registration as against the Crown.”

Weerasooriya J., held in this case that on the issue of the Certificate under the Irrigation Ordinance there came into existence an entirely new title in the Crown to the lands in suit which was not dependent on any transmissible interest which the proprietor of the land or other person had in them immediately prior to the sale. He therefore held :—

“In my opinion, as long as the title to the lands in suit remains vested in the Crown all previous title must be regarded as wholly extinguished, or suspended, by operation of law, and a new title created in the Crown which is good against all persons. The position appears to be no different from a decree for partition of land which, it was held in *Bernard v. Fernando*—16 NLR—438, creates a new title in the parties and which, though unregistered, prevailed over a subsequent registered conveyance by which one of the co-owners sold his undivided interests in the land prior to partition.”

The vesting of the land in the Crown under Section 12(1) of the Land Acquisition Ordinance absolutely free of all encumbrances snaps the link of ownership with any persons who were

entitled to the land prior to the acquisition or claimed rights thereto and creates a new title in the Crown not referable to any previous ownership wiping out all other titles. The question of competing deeds duly registered from the same source or from any other source in respect of the same land to defeat the rights of the Crown to the land acquired under the Land Acquisition Ordinance by reason of due and prior registration will not therefore arise for consideration.

The decisions of this Court cited at the argument *vis.*, *De Silva v. Weerappay Chettiar*—43 NLR 566 . *Kanapathipillai vs. Mohamadutamby Levai*—15 NLR—177; *Mohamed Ali vs. Weerasuriya*—17 NLR— 417, have therefore no application to the question in issue in this case.

The appeal is dismissed with costs.

WIJESUNDERA, J.—I agree.

ISMAL, J.—I agree.

*Appeal dismissed.*

