

1978 Present : Samarakoon, C.J., Vythialingam, J. and
Wanasundera, J.

P. D. EDIRISINGHE, Appellant

and

THE COMMISSIONER OF NATIONAL HOUSING, Respondent
S. C. 290/73 (Inty.)—D. C. Colombo 226/NH

National Housing Act (Cap 401) as amended by Acts, No. 42 of 1958 and No. 36 of 1966, sections 2, 4, 9, 44(1), 63(3), 76, 76 (A), 85(1), 86(1), 100(1)—Loan granted by Commissioner of National Housing on mortgage of premises—Default—Sale ordered under section 76—Purchase by officer of such Department for and on behalf of Commissioner—Whether Commissioner entitled to delegate power to bid for and purchase the property—Delegatus non potest delegare—Validity of such purchase—Observations as to whether Commissioner a corporation sole.

The Commissioner of National Housing who was the respondent to this appeal sued the appellant *nomine officii* for ejectment from certain premises. These premises had earlier been mortgaged to the Commissioner and on default being made in payment of the loan which was secured by such mortgage, he had ordered a sale of these premises under section 76 of the National Housing Act. At the sale by public auction the premises were purchased by one L "for and on behalf" of the Commissioner. Thereafter certificate of sale was issued in terms of section 85(1) of the Act vesting the property absolutely in the Commissioner. Proceedings for ejectment of the appellant who was in occupation of a separate and distinct portion of the premises were instituted thereafter, it being averred that he had failed to vacate the said land and premises though required to do so. It was submitted on behalf of the appellant that the Commissioner could not maintain these proceedings for ejectment *inter alia* as—

the purchase by L for and on behalf of the Commissioner was invalid as the Commissioner could not validly delegate the power vested in him by statute to bid for and purchase the property.

Held: (1) That the Commissioner of National Housing could not validly delegate the power to bid for and purchase the mortgaged property to L and that the purchase by L for and on behalf of the Commissioner did not make the Commissioner the purchaser. A certificate of sale could therefore not issue vesting the property in the Commissioner. Accordingly the present application for ejectment under section 86(1) of the National Housing Act could not have been made by the Commissioner of National Housing as he was not the purchaser.

(2) That inasmuch as the definition of Commissioner in the Act included a Deputy Commissioner and an Assistant Commissioner such an official could therefore have been the purchaser. There was nothing on record in the present case however to show that L fell into this category of official.

Per Vythialingam, J. (obiter) :

That in regard to the submissions made on the basis that the Commissioner was not a corporation sole or juristic person, on a consideration of the laws relating to the powers, duties and functions of the Commissioner of National Housing, the legislature did intend to create the office as a corporation sole or at least to make it a quasi corporation sole with all the attributes of a corporation sole.

Cases referred to :

- Carltona Ltd. v. Commissioners of Works*, (1943) 2 All E.R. 560.
The Range Forest Officer, Ratnapura v. P. A. D. Nandasena, S.C.
 969/73—M.C. Ratnapura 82530, S.C. Mts. 27.2.1975.
- Allingham et al v. Minister of Agriculture and Fisheries*, (1948)
 1 All E.R. 780.; 64 T.L.R. 290.
- Huth v. Clarke*, (1890) 25 Q.B.D. 391 ; 63 L.T. 348 ; 6 T.L.R. 373.
- Metropolitan Borough et al v. Roberts*, (1949) 2 K.B. 608.
- Inland Revenue Commissioners v. Bew Estates Ltd.*, (1956) 2 All
 E.R. 210 ; (1956) 3 W.L.R. 139 ; (1956) Ch. 407.
- Samarasekera v. Secretary, D.C. Matara*, 51 N.L.R. 90 ; 39 C.L.W.
 108.
- Salih v. Valliyammai Atchi*, 63 N.L.R. 73 (P.C.); (1961) A.C. 778 ;
 (1961) 2 W.L.R. 969.
- The Land Commissioner v. Ladamuttu Pillai*, 62 N.L.R. 169 ;
 (1960) A.C. 854.
- Mackenzie Kennedy v. Air Council*, (1927) 2 K.B. 517 ; 138 L.T. 8 ;
 43 T.L.R. 733.
- Hayley et al v. Nugawela*, 35 N.L.R., 157.
- Silva v. The Commissioner of National Housing*, 70 N.L.R. 573.
- Beatrice Perera v. The Commissioner of National Housing*, 77
 N.L.R. 361.
- Rajapakse v. The Commissioner of National Housing*, 74 N.L.R. 236.
- Simon v. The Commissioner of National Housing*, 75 N.L.R. 471.
- Lewis v. Ukkua Dureya*, 11 N.L.R. 33.

A PPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with J. W. Subasinghe and Lakshman Perera, for the appellant.

S. C. Dickens, State Counsel, for the respondent.

August 15, 1978. SAMARAKOON, C.J.

I have had the advantage of reading the judgment of my brother Vythialingam, J. I express no opinion on the question as to whether the Commissioner of National Housing is a corporation sole or not. However, I agree with his order that the Commissioner could not validly delegate to P. K. Liyanage his power to bid for and purchase the mortgaged property. The Commissioner therefore, had no title vested in him to maintain this application. I agree with the order proposed by my brother Vythialingam, J.

VYTHIALINGAM, J.

In this case the Commissioner of National Housing sued, *nomine officii* the respondent and those claiming under him for ejection from the premises set out in the petition and in the schedule to the affidavit in terms of section 86 (1) of the National Housing Act (Cap. 401). *Order Nisi* under section 377 (a) of the Civil Procedure Code was issued and the respondent duly appeared and showed cause. The District Judge after inquiry rejected the submissions on behalf of the respondent and made the *Order Nisi* absolute and directed that writ be issued for the delivery of possession to the petitioner. The respondent has appealed from that order.

The case for the Commissioner was that certain premises had been mortgaged to him by one Ansel May Dharmaratne by deed No. 342 dated 29th June, 1956, in respect of a loan of Rs. 100,000 granted to her by the Commissioner. It was subsequently transferred by her to one A. D. J. P. Jayasuriya upon deed No. 889 dated 21st March, 1961. Default was made in the payment of a sum of Rs. 115,152.68 cts. and the Commissioner in terms of section 76 ordered the premises to be sold by public auction. At the sale by public auction the premises were purchased by T. K. Liyanage "for and on behalf" of the Commissioner for Rs. 116,000.

The certificate of sale in terms of section 85(1) as amended by Act No. 36 of 1966 was issued by him vesting the property absolutely in the Commissioner of National Housing. He averred that the respondent who is in occupation of a separate and distinct portion of the said premises had failed to vacate the said land and premises though thereto often demanded. It was in these circumstances that he came to make this application to Court under section 86(1).

Mr. Jayewardene for the respondent-appellant argued that :

(1) the Commissioner of National Housing was not a corporation sole and therefore could not sue *nomine officii* but could only sue in his personal capacity ;

(2) the Commissioner not being a juristic person could not have title to the property vested in him as the Commissioner and that the title under the certificate of sale vested only in the person then holding the office of Commissioner of National Housing, namely, Duraisamy Rajendra ; and

(3) that he could not validly delegate the power vested in him by statute, to bid for and purchase the property, to Liyanage and that the purchase by Liyanage for and on behalf of the Commissioner was therefore not valid in law.

He, therefore, contended that the petitioner could not maintain this action.

I will deal with the third submission first, since if Mr. Jayewardene succeeds in this submission, it would not be necessary to consider the other two submissions. For this purpose it is necessary to notice some of the sections which are relevant for the consideration of this submission. A fund called the National Housing Fund is established by section 4 for the purposes of the Act. Section 6(1) empowers the Minister under the authority of a resolution of the House of Representatives (now the National State Assembly) to raise a loan for the purposes of the Fund. Section 7(1) as amended by Act No. 36 of 1966 sets out what moneys are to be paid into the Fund and section 7(2) as well as other sections of the Act set out what moneys are to be paid out of the Fund. Moneys to be paid into the Fund include moneys voted by Parliament and moneys to be paid out of the Fund includes all loans granted by the Commissioner under the Act.

Section 44(1) empowers the Commissioner to grant loans from the Fund to any person for the carrying out of any housing object in accordance with regulations made for that purpose. In part IX of the Act the term "appropriate authority" with reference to a loan granted by the Commissioner means the Commissioner (section 63(3) (b)). Where in terms of section 76 the "appropriate authority" orders the sale by public auction of land mortgaged to that authority, section 76(A) as amended by Act No. 42 of 1958 sets out that "the appropriate authority may at a sale by public auction of any land mortgaged to him as security for any loan, bid for and purchase that land." The money required for the purchase would come from the Fund.

The term Commissioner is defined in section 100(1) as the Commissioner of National Housing and includes a Deputy Commissioner and an Assistant Commissioner. I take it therefore that a Deputy Commissioner or an Assistant Commissioner of National Housing can also bid for and purchase such property. In the performance or discharge of their powers, functions or duties they are subject to the general or special directions of the Commissioner. In the instant case there is nothing in the record to show that T. K. Liyanage was a Deputy Commissioner or an Assistant Commissioner. He is described in the certificate of sale under section 85(1) as "a duly authorised officer of the Department of National Housing." He is apparently one of "such number of other officers and servants" authorised to be appointed under section 9(1) (c).

Mr. Jayewardene's submission was that the power to bid for and purchase the property was vested by Parliament in the Commissioner of National Housing and it is he who must exercise that power. There is no power vested in him either expressly or by necessary implication to delegate that power to anyone else and on the basis of the maxim *delegatus non potest delegare* (or *delegari*) he could not validly delegate that power to anyone else. We are here not concerned with a grant of legislative, judicial or disciplinary power, in which case there is a strong presumption against construing a grant of such power as impliedly authorising sub-delegation.

We are concerned in the instant case with the power conferred on a person by his proper style and title. There is in the Act no express authorisation to delegate that power. Is there then an implied power to delegate such a power? And the central question as always, is what Parliament intended to do. In this context the maxim *delegatus non potest delegare*, like so many other rules of administrative law, turns out to be no more than a qualified rule for the interpretation of the statute to ascertain Parliament's intention. Where a statute provides that a named official may do this or that Parliament intends that he alone may do so and not that anyone else may do it. This is more so where the power is coupled with a duty and/or discretion.

However, "the maxim *delegatus non potest delegare* does not enunciate a rule that knows no exception; it is a rule of construction to the effect that 'a discretion conferred by statute is prima facie intended to be exercised by the authority on which the statute has conferred it and by no other authority, but this intention may be negated by any contrary indications found in the scope or object of the statute'." S. A. de Smith, *Judicial Review of Administrative Action*, 2nd Edition, p. 284.

In the instant case the Commissioner of National Housing "may bid for and purchase" the mortgaged property which he has directed to be sold by public auction. There is a discretion vested in him to purchase or not. In making his decision he has to have in view the housing objects as set out in section 2(a) to (h). For otherwise he need not purchase the property at all. In directing that the mortgaged property be sold by public auction he may fix an upset price below which the land mortgaged to him as security for the loan shall not be sold to any person other than that authority. The upset price will generally be in excess of the balance sum due on loan with interest and expenses. So that the Commissioner stands to lose nothing by not purchasing the property if the bids are above the upset price. The decision as to

whether the purchase of the property is for carrying out the housing objects is undoubtedly an important one or he may also decide not to purchase the property having regard to the condition in which it is.

Equally important is the decision as to the price at which he is going to purchase the property. This involves the expenditure of large sums, in the instant case Rs. 116,000 from public funds, for the purchase money has to come from the National Housing Fund. If the bids are too high he may consider that it is more advantageous to have the purchase price credited to the National Housing Fund than to spend money out of it for the purchase of the property. These are important decisions which are entrusted to a responsible official like the Commissioner of National Housing. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion he must exercise that power personally, unless he has been expressly empowered to delegate it to another. There is no such express provision in the Act. Nor do I see any contrary intention indicated in the language, scope or object of the statute.

Mr. Charles Dickens, State Attorney, for the Commissioner of National Housing submitted that the Commissioner of National Housing is a busy official and that he cannot be expected to go all over the country to bid for and purchase mortgaged property which he has directed to be sold by public auction. He submitted that considerations of administrative and practical convenience would justify his entrusting the power to an authorised officer of his department. Much of the force of this contention is lost owing to the fact that the term 'the Commissioner' includes a Deputy and Assistant Commissioner and he could therefore validly entrust this power to his deputy or one of his assistant Commissioners.

In support of his contention he relied very strongly on the oft quoted passage of Lord Greene, M. R. in the case of *Carltona v. Commissioner of Works*, (1943) 2 A.E.R. p. 560 at 563, that "In the administration of Government in this country the functions which are given to Ministers (and constitutionally properly given to Ministers because they are constitutionally responsible) are functions so multifarious that no Minister could ever personally attend to them. To take the example of the present case no doubt there have been thousands of requisitions in this country by individual Ministries. It cannot be supposed that this regulation meant that in each case the Minister in person should direct his mind to the matter. The duties imposed on Ministers and

the powers given to Ministers are normally exercised under the authority of the Ministers by responsible officials of the department. Public business could not be carried on if that were not the case."

The position has been accepted as far as our country is concerned by this Court in the case of *The Range Forest Officer Ratnapura v. P. A. D. Nandasena*, S.C. 969/73—M.C. Ratnapura 82530 ; S.C. Mts. 27.2.1975, overruling a decision of a single Judge of the former Supreme Court in a case on the same point and under the same regulation S.C. 1238-9/68 M.C. Badulla—7280 ; S.C. Mts. 8.5.1970. In that case the Minister was given the power to prohibit the transport of specified species of timber within or out of any area. By regulation the Minister vested that power in the Conservator of Forests. In holding that the Minister had the power to do so Walpita, J. with Ismail, J. agreeing after quoting the above passage from Lord Greene's judgment and other passages from S. A. de Smith and Wade said : " One cannot expect the Minister in the midst of his manifold duties, to take upon himself the task of specifying or demarcating the areas or the species of timber to which the prohibition applies. This is an administrative matter that has to be passed on to his departmental officials for whose actions he is responsible to Parliament."

This is because " A civil servant is his Minister's alter ego, and a decision taken by a civil servant in the name of the Minister or the department is not open to objection as a form of unauthorised sub-delegation, provided at least that the servant has actual or implied authority so to act and the matter is not so important as to demand the Minister's personal attention,"—Halsbury, *Laws of England*, 4th Edition, Vol. 1 p. 34, para 32. Generally such officials cover themselves up by using some such formula as " I am directed by the Minister," or " the Minister is of the opinion " or " the Minister has decided." and so on. Government officials on whom Parliament has vested powers which involve duties and/or the exercise of discretion do not stand on the same footing as Ministers; because *prima facie* Parliament intended that they alone and no one else should exercise those powers.

Thus in the case of *Allingham et al. v. Minister of Agriculture and Fisheries*, (1948) 1 All E. R. 780, the Minister was given power to give such directions with respect to the cultivation, management or use of land for agricultural purposes as he thinks necessary by notice relating to the land specified therein to the person by whom the direction shall be complied with. He had the authority to, and did delegate his powers in this respect to

the War Agricultural Executive Committee. The War Agricultural Executive Committee came to the conclusion that eight acres of sugar beet should be grown by the appellants for the 1947 season and gave them notice that this sugar beet was to be grown on a field to be named by their executive officer and he accordingly did so. It was held that the committee could not delegate the power to determine the land to be cultivated to its executive officer and therefore the notice was ineffective and non compliance with it was not an offence.

In the course of his judgment Lord Goddard, C.J. pointed out at page 781, "In other words they delegated to the executive officer the task of deciding the land which was to be the subject of the notice to be served. I can find no provision in any order having statutory effect or regulation which gives the executive committee power to delegate that which the Minister has to decide and which he has power to delegate to the committee to decide for him. If he has delegated, as he has, his power of making decisions to the executive committee, it is the executive committee that must make the decision, and, on the ordinary principle of *delegatus non potest delegare* they cannot delegate their power to some other person or body."

Mr. Dickens next submitted that here there was no delegation of the power vested in the Commissioner but that Liyanage was simply acting as his agent. The relation of agency arises whenever one person called the agent has authority to act on behalf of another called the principal and consents so to act. It is true that in administrative law the concepts of delegation and agency have sometimes been treated as being virtually indistinguishable. Thus in *Huth v. Clarke*, 25 Q.B.D. 391 at 395, Wills, J. said "Delegation as the word is generally used does not imply a parting with powers by the person who grants the delegation but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

But in the case of agency, also "Delegation by an agent, that is the entrusting to another person by an agent of the exercise of a power or duty entrusted to him by his principal is in general prohibited, under the maxim *delegatus non potest delegare*, without the express authority of the principal or authority of the principal or authority derived from statute. Where there is personal confidence reposed in, or skill required from the agent there normally may be no delegation, however, general the nature of the duties, unless urgent necessity compels the handing over of the responsibility to another."—Halsbury, *Laws of*

England, 4th Edition, Vol. 1, page 448, para 747. As I have endeavoured to show Parliament has vested the discretion to bid for and purchase the mortgaged property in a responsible official like the Commissioner of National Housing and he cannot delegate that function to anyone else. There is also, in the instant case no urgent necessity compelling him to do so.

An agent is also usually capable of being given detailed directions by his principal and does not usually have a wide area of personal discretion. A delegate on the other hand to whom discretionary powers are delegated has a substantial measure of freedom in exercising them. Where there are effective powers of control retained by the delegating authority the Courts will more readily uphold the validity of the delegation, generally by denying that there has been any delegation at all, usually on the ground that in substance the authority in which the discretion has been vested by statute continues to address its own mind to the exercise of the powers.

In the case of *Metropolitan Borough et al v. Roberts*, (1949) 2 K.B. 608, a departmental official one Mr. O'Gara delegated the task of requisitioning certain property which earlier had been derequisitioned to the town clerk of the borough, who proceeded to do so. In an action by him to recover possession of the premises pursuant to the requisition it was argued *inter alia* that the official could not have delegated the power to the town clerk. It was held that he could do so. Bucknill, L.J. said at page 691 : "The question whether in this case the Minister, acting through O'Gara lawfully delegated his powers of requisitioning the ground floor of this house to the town clerk must be considered in the light of the particular circumstances of this case. In this case no discretion was left to the town clerk whether he should again requisition the ground floor or not. All the facts were placed before the Minister and under the special circumstances he delegated his powers to requisition the property to the town clerk."

And Denning, L.J. pointed out at page 621 : "When the Government department delegates its functions to a town clerk under regulation 51 (5) it is only putting someone in its place to do the acts which it is authorised to do. The town clerk is so to speak an agent of the department and a sub-agent of the Crown. The delegation to the town clerk is simply administrative machinery so as to enable the administrative function of requisitioning to operate smoothly and efficiently."

Such is not the case here. There is no evidence that the Commissioner gave any directions to Liyanage or that he retained any control over him in the matter of bidding for and purchasing

the property, which would indicate that the decisions were really his. The entire discretion was delegated by the Commissioner to Liyanage. In the lower Court counsel who appeared for the Commissioner stated that Liyanage "was authorised in writing by the Commissioner to bid for and purchase the property. But no such writing has been produced. Nor is there any evidence in regard to what the terms of that authorisation were. The certificate of sale describes Liyanage only as a duly authorised officer of the department. It is true that the certificate of sale states that the property was bought by Liyanage "for and on behalf of the Commissioner of National Housing." They do not indicate that the decision to purchase the property and the limit to which Liyanage could go in the bidding at the auction were made by the Commissioner and not by Liyanage.

I hold therefore that the delegation of the power to bid for and purchase the mortgaged property vested in him by the statute was not validly delegated to Liyanage by the Commissioner and that the purchase by Liyanage for and on behalf of the Commissioner did not make the Commissioner the purchaser of the property to whom the appropriate authority could have issued the certificate of sale vesting the property in him. Under section 86 (1) only the purchaser could have made this application to Court and the Commissioner not being the purchaser, in the instant case, it was not competent for him to have made this application. This is sufficient to dispose of the appeal.

However, since the other two points were argued before us and they were indeed Mr. Jayewardene's main submissions I would like to express my view in regard to them without, however, deciding them. Mr. Jayewardene's contention was that the Commissioner of National Housing was neither a Corporation sole nor a legal persona and could not therefore have property vested in him or sue or be sued *nomine officii*. Our law in regard to corporations is the English law as would be administered in England at the corresponding period—section 3, Civil Law Ordinance (Cap. 79). In English law corporations are divided into two main classes, namely, Corporations aggregate and Corporations sole. We are here concerned with a corporation sole which is "a body politic having perpetual succession, constituted in a single person who in right of some office or function has a capacity to take, purchase, hold or demise (and in some particular instances, under qualifications and restrictions introduced by statutes, power to alienate) real property, and now, it would seem, also to take and hold personal property, to him and to

his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous; that is, there may be, and often are, periods in the duration of a corporation sole, occurring irregularly in which there is a vacancy, or no one in existence in whom the Corporation resides and is visibly represented.”—Halsbury, Laws of England, 4th Edition, Vol. 9, page 719, para 1206.

Unlike a corporation aggregate, a corporation sole has a double capacity, namely, its corporate capacity and its natural and individual capacity. So that there may be changes in the individuals holding the office or performing the function but the corporation goes on for ever. This is best exemplified in the proclamation which is made when the reigning British Monarch dies which is “The King is dead. Long live the King.” At present under the law of England a corporation is created by one or other of two methods (1) by royal charter of incorporation from the Crown, or (2) by the authority of Parliament, that is to say, by or by virtue of the statute. There are in addition corporations known to the common law, as for example, the Sovereign, parsons, bishops and so on.

The Commissioner of National Housing has not been created a corporation sole by express enactment. However, “To constitute creation it is not necessary that any particular form of words should be used in the statute: it is sufficient if the intent to incorporate is evident.” Halsbury, Laws of England, 4th Edition, Vol. 9, page 742, para. 1246. Mr. Jayewardene argued that no such intent to create the Commissioner as a corporation sole or a legal persona was evidenced by Parliament in the provisions of the National Housing Act. It becomes necessary therefore to consider these provisions with a view to ascertaining whether there is any such intention or not.

One may begin with the provisions relating to this application. Under section 44 (1) the Commissioner may grant loans from the National Housing Fund for the purposes of the Act in accordance with the regulations made under the section. But no such loan shall be granted unless its repayment (a) is secured by a mortgage of immovable property in Ceylon, or (b) is secured by the transfer or assignment of a policy of life insurance, or (c) is guaranteed by a commercial bank as defined in the Monetary Law Act and which is approved by the Minister—Regulation 3. (National Housing (No. 1) Regulations of 1954;

Subsidiary Legislation Vol. VII, p. 83.) All such mortgages shall be executed in favour of the appropriate authority who is the Commissioner and shall be in such one of the prescribed forms as may be appropriate in that behalf—Section 71 (1) as amended by Act No. 42 of 1958, and Act No. 36 of 1966.

Where there is default in the repayment the Commissioner may order the sale of the property mortgaged to him and he may bid for and purchase the property. These are wide discretionary powers which under the ordinary law a mortgagee can do only on the orders of a Court. When the property is purchased by the Commissioner he signs a certificate of sale and “thereupon all the right, title and interest of the borrower to and in the land shall vest in the purchaser,” i.e., the Commissioner—Section 85 (1) as amended by Act No. 16 of 1936. I emphasise these words of the section that “all the right, title and interest in the land shall vest in the purchaser.” That is, the Commissioner. And finally the purchaser, that is the Commissioner, may make an application to Court to obtain delivery of possession of the land.

Then there are the provisions of Part VIII of the Act dealing with the compulsory acquisition of land for carrying out housing objects and disposition of Crown land. A disposition of any Crown land as is set out in section 50 (1) may be made for that purpose under the Act by the appropriate authority with the prior approval of the Minister, and subject to such conditions as the Minister may determine and to such further conditions as are or are required to be imposed by or under the Act. Such a disposition shall be effected by an instrument of disposition signed and executed by the appropriate authority—sub-section 5. Section 61 provides that “For the purposes of this Part, the expression “appropriate authority” means the Commissioner or any officer authorised by him in that behalf.”

By section 31 (1) the Commissioner is empowered to provide houses for occupation by any person whether upon payment of rent or not. Sub-section (2) declares that where a house is provided by the Commissioner for occupation by any person then with reference to that house the expression “landlord” in this part means the Commissioner. Where such occupier does not vacate the house after the date of the lawful termination of his occupation thereof it shall be lawful for the landlord that is to say the Commissioner, to file in the appropriate Court of

Requests an application for recovery of possession and for the ejectment of the occupier and his dependants—Section 33.1 as amended by Act No. 36 of 1966. Section 37 provides that no action for the recovery of the possession of any house to which this Part applies or for the ejectment of the occupier from the land or premises in which the house is situated shall be taken except under the provisions of this part.

The Commissioner is also vested with certain powers, duties and functions under other laws as well. Section 47 of the Ceiling on Housing Property Law (Law No. 1 of 1973) sets out that unless the context otherwise requires the term “Commissioner” in that law means the Commissioner of National Housing. Under section 11 (1) and (2) all houses owned by a person in excess of the number of houses permitted under that Law shall vest in the Commissioner and under section 12 (1) he may transfer such house to any local authority, Government Department or public Corporation and he has the power under that law to sell such houses, but under section 12 (2) he must in the first instance offer it for sale to the tenant. Then section 15 (2) provides that “Where any house is vested in the Commissioner under this law the Commissioner shall have absolute title to such house and free from encumbrance and such vesting shall be final and conclusive for all purposes against all persons whomsoever, whatever right or interest they have or claim to have to, or in, such house” subject to certain liens in certain persons on the purchase price to be paid to the owner.

Where any house or flat or tenement is vested in the Commissioner there shall be vested in him also such extent of land and such other rights as in his opinion are reasonably appurtenant to such house, flat or tenement—Section 16 (1). Where a tenant makes an application under section 13 for the purchase of house let to him, on the Commissioner being satisfied of the matters set out in section 17 (1) the Minister may vest such house in the Commissioner. Section 18 makes provision for the Commissioner to take possession of a house vested in him.

It will be seen that in these laws power is vested in the Commissioner to enter into contracts or agreements and title to and interests in immovable property are vested in the Commissioner of National Housing. If the contention here advanced is correct then such title and interests are vested in and the person who may enforce rights under the contracts or agreements will be, the individual for the time being holding the office and will remain in him even when he goes on transfer, retires or ceases

to hold office. In such a case there will be no way of controlling him. Nor can the Minister give him any general or special directions under section 8 (2) in respect of these interests for the purpose carrying out the objects of the laws. Nor will such individual be able to carry them out even though these interests are still vested in him as he is no longer the Commissioner of National Housing. In the instant case at the time the Certificate of Sale was issued the Commissioner was D. Rajendra, while at the time the application was made it was I. A. E. Fernando and the present holder of the post is M. D. G. Jayawardene. This indicates how the individual holding the post changes from time to time.

The position is worse when such person dies for the property will then pass to his heirs subject of course to any equities, in terms of section 21 (1) of the Matrimonial Rights and Inheritance Ordinance (Chapter 57). Any rights under any contracts or agreements entered into by him will also pass to his heirs. The legislature could not have intended this to be so in respect of properties and interests acquired with public funds and for public purposes. I think that there is here a manifest intention on the part of the legislature if not to create the Commissioner of National Housing as a corporation sole, at least to make him a quasi corporation sole having all the attributes of a Corporation sole as are necessary for the proper discharge of his functions under the laws. To hold otherwise would be to render these laws practically unworkable.

Such quasi corporations are well known to the English law. Halsbury points out—Laws of England, 4th Edition, Vol. 9, page 716, Para. 1201—"There are many associations and bodies of persons that are not corporations. Some of these such as registered friendly societies may be regarded as quasi corporations as they have some of the usual attributes of a corporation sole such as the possession of a name in which they may sue or be sued and the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions." In the case of *Inland Revenue Commissioner v. Bew Estate Ltd.* (1956) 2 All E. R. 210, it was held that the War Damage Commission was a quasi corporation. Roxburgh, J. said at page 213 "Parliament has recently shown an increasing fondness for creating quasi corporations, i.e., bodies different from the aggregate of members, e.g., a members club, and yet not corporations in the language of jurisprudence. In my judgment the War Damage Commission is such a quasi Corporation."

The fact that certain offices are quasi corporations sole has been well-established in our country. Under section 520 of the Civil Procedure Code when there is no fit and proper person to be appointed as an administrator the District Court has power to appoint the secretary of that Court as the administrator and it has been held that in such a case the secretary qua administrator is a quasi corporation sole. In the case of *Samarasekera v. Secretary D.C. Matara*, 51 N.L.R. 90, Basnayake, J. in so holding said at page 93 "Although the secretary of the Court is not a corporation sole in the true sense of the term, having regard to the fact that the Civil Procedure Code provides for the appointment of the secretary of the Court as administrator it may safely be assumed that the legislature intended that the secretary of the Court should possess all such attributes of a corporation sole as are necessary for the proper discharge of his functions qua administrator. Such offices fall into the category of quasi corporations sole."

The judgment was expressly approved by the Privy Council in the case of *Salih v. Valliyammai Atchi*, 63 N.L.R. 73, Lord Radcliff said at page 80: "The sum of their judgment was expressed in their holding that the Civil Procedure Code intended the Secretary of the Court to possess 'all such attributes of a corporation sole as are necessary for the proper discharge of his functions qua administrator.' Their Lordships accept this as the correct position." They did this, "Despite the difficulties created by the wording of certain sections and of the prescribed forms" for the reason that "..... having regard to the functions to be performed by the secretary of the district court and the evident intention that his office should carry a continuing responsibility for the property to be administered, it must have been intended that the Code should create the holder of the office a corporation sole for this purpose." These observations apply with even greater force to the Commissioner in this case for the reasons set out by me earlier.

In support of his contention that the Commissioner in the instant case was not a corporation sole or a legal persona Mr. Jayewardene relied on the decision of the Privy Council in the case of *The Land Commissioner v. Ladamuthu Pillai*, 63 N.L.R. 169, in which it was held by the Privy Council that the Land Commissioner was not a corporation sole. It was so held on a consideration of the definition of Land Commissioner in the Land

Development Ordinance (Cap. 464) and on a consideration of its provisions and the functions, powers and duties entrusted to him. That case however is easily distinguishable from the facts of the instant case. The powers, duties and functions of the Land Commissioner under that Ordinance are nowhere analogous to the powers, duties and functions of the Commissioner of National Housing. He does not acquire property in his name. He is not empowered to sue or be sued. He makes no disposition of property in the sense in which the Commissioner of National Housing does. He does not enter into contracts or agreements. He merely makes decision on behalf of the Crown.

So Lord Morris said. "It was sought to be said that the Land Commissioner is a corporation sole. Their Lordships do not find support for this view in the provisions of the Land Development Ordinance of 1935. The Land Commissioner is not expressly created a Corporation sole by any legislative enactment nor is it laid down that he may sue or be sued in a corporate name. Furthermore no legislative enactment seems to reveal any intention to incorporate. If following upon a determination by the Land Commissioner (which if made within his powers is made 'in the exercise of his individual judgement') land is acquired such land does not vest in the Land Commissioner."

Mr. Jayewardene also relied on the case of *Mackenzie Kennedy v. Air Council*, (1927) 2 K. B. 517. I do not think that the decision in that case is a satisfactory authority in support of the contention urged by Mr. Jayewardene. It was an action founded in tort and the main decision in that case was that the Air Council being a statutory body performing duties assigned to them by the Crown, no proceedings to enforce a remedy for tort would lie against the Crown or its delegates as the Crown can do no wrong. On the question as to whether the Air Council was a corporation aggregate or not Bankes, L. J., merely said that it was not a corporation and that even if it was treated as one it would be of no avail to the plaintiff as a wrongful act cannot be done for the Crown and such a corporation is not capable of doing such a wrongful act in its corporate capacity. Scrutton, L. J., made no reference to this question and rested his decision on the fact that an earlier decision was *res judicata* between the parties.

It was only Atkin, L. J., who rested his decision on the fact that the Air Council was not a corporation aggregate. He was of

the view that an action would lie against a statutorily incorporated body for though an action in tort will not lie against a servant of the Crown in a representative capacity yet in a private capacity the liability could extend to a juristic person, the corporation, as well as the individual. He then went on to consider the question as to whether the Air Council was a corporation and held that it was not although it had most if not all of the characteristics of a corporation, namely it had a name, it could sue and be sued by that name, it had a seal which had to be judicially noticed and it could hold property.

The reason why he held that it was not a corporation was that the Air Council consisted of individual members to whom separate duties and responsibilities were assigned. Subject to the private capacity the liability could extend to a juristic person, the powers and duties of the Air Council could be exercised and performed by any three members. Lord Atkin pointed out at page 531: "But, unless incorporated, the Air Council is but a name for several important officials, who have administrative duties assigned to them on behalf of the Crown." In other words, it was not a corporation aggregate, distinct from the aggregate of individuals composing it. So he was not prepared to assume any intention to incorporate in the absence of "express words of incorporation and express definition of the purposes for which the department was incorporated."

But quite apart from this Parliament, without creating a corporation or quasi corporation sole may enable an official either expressly or by necessary implication or intent to sue or be sued in that capacity. Thus section 30 of the Buddhist Temporalities Ordinance (Cap. 318) enables a trustee under that Ordinance to sue and be sued as trustee. But it was held in the case of *Hayley et al v. Nugawella*, 35 N.L.R. 157, that such a trustee was not a corporation. In the instant case section 33 (1) and 86 (1) enable the Commissioner of National Housing to make applications to Court as the landlord or purchaser respectively. There are several cases in which the Commissioner of National Housing has sued *nomine officii* without objection—see *G. P. N. Silva v. The Commissioner of National Housing*, 70 N.L.R. 573, as landlord, *Beatrice Perera v. The Commissioner of National*

Housing, 77 N.L.R. 361, under the Protection of Tenants Act, *Rajapakse v. The Commissioner of National Housing*, 74 N.L.R. 236, where mortgaged property was bought by him and given to the respondent for occupation and *W. D. Simon v. The Commissioner of National Housing*, 75 N.L.R. 471, also under the Protection of Tenants Act. I do not say that merely because the objection was not taken in these cases the objections cannot be taken in the instant case. I refer to them merely for the purpose of showing the practice that has been developed and had been accepted.

Similarly Parliament can either expressly or by implication provide that the holders of any office will have perpetual succession. Mr. Jayewardene referred us to the case of *Lewis v. Ukkua Dureya*, 11 N.L.R. 33, in which it was held that the Fiscal is not a corporation sole with the right of perpetual succession, and that the successor in office of a Fiscal in whose favour an obligation is created by bond has no right to maintain an action on such bond even where the obligation is created in favour of the said Fiscal and his successors. That decision was handed down on the 11th February, 1908 and on 18th November, 1908. The Fiscal Ordinance was amended to provide for this by the addition of section 83A, now section 15. Similar provision is made in respect of bonds made in favour of secretaries of District Courts by section 751 of the Civil Procedure Code.

I am therefore of the view that, on a consideration of the laws relating to the powers, duties and functions of the Commissioner of National Housing, Parliament did intend to create the office as a corporation sole or at least to make it a quasi corporation sole with all the attributes of a corporation sole. However, as I said I do not base my decision on this appeal on this ground but on the ground that the Commissioner could not validly delegate the power to bid for and purchase the mortgaged property to a third person. No title therefore vested in him and he could not have made this application.

The appeal is accordingly allowed, the order absolute entered by the District Judge set aside and the application of the Commissioner is refused with costs both here and in the Court below.

WANASUNDERA, J.

I am of the view that there has been an improper delegation of his powers by the Commissioner of National Housing, and accordingly he had no title to maintain this application.

I am therefore in agreement with the order proposed by my brother Vythialingam, J.

Appeal allowed.

