

[IN THE PRIVY COUNCIL]

1960 *Present* : Lord Tucker, Lord Keith of Avonholm, Lord Jenkins,
Lord Morris of Borth-y-Gest, Mr. L. M. D. de Silva

THE LAND COMMISSIONER, Appellant, *and* V. P. JAYEWARDENE
and another, Respondents

PRIVY COUNCIL APPEAL No. 26 OF 1959

S. C. 191—D. C. Colombo, 6499/L

Land Redemption Ordinance, No. 61 of 1942 (as amended by Ordinance No. 62 of 1947)—Acquisition of lands by Land Commissioner—Section 3 (1) (b)—Construction.

Where several lands are mortgaged, and the mortgagor transfers to the mortgagee some but not all of the lands in satisfaction of the mortgage decree

¹ (1927) 2 K. B. 517.

entered against him, section 3 (1) (b) of the Land Redemption Ordinance is applicable if the Land Commissioner subsequently makes a determination to acquire a part of the lands conveyed.

APPPEAL from a judgment of the Supreme Court reported in (1958) 60 N. L. R. 265.

E. F. N. Gratiaen, Q.C., with *Walter Jayawardene*, for the defendant-appellant.

Sirimevan Amerasinghe, for the plaintiffs-respondents.

Cur. adv. vult.

July 27, 1960. [*Delivered by LORD MORRIS OF BORTH-Y-GEST*]—

This appeal is brought against the Judgment and Order of the Supreme Court of Ceylon dated the 7th February, 1958 (Basnayake, C.J., and Pulle, J., K. de Silva, J., dissenting) affirming a Judgment and Decree of the District Court of Colombo dated the 6th November, 1953. By such Judgment the District Court directed that an injunction should issue in favour of the plaintiff in the action restraining the Land Commissioner from acquiring certain lands under the Land Redemption Ordinance. The principal issue which is raised in the appeal is one of the construction of that Ordinance (No. 61 of 1942).

The facts which gave rise to the proceedings are not in controversy. One Suriyapperuma owned certain lands which by Bond No. 1987 dated the 30th January, 1932, he mortgaged to one Cyril Pinto Jayewardene as security for the repayment of a sum of Rs. 5,500 which had been lent to Suriyapperuma. Jayewardene put the mortgage bond in suit and obtained a mortgage decree dated the 18th July, 1934. Thereafter by deed dated the 20th July, 1935, Suriyapperuma conveyed to Jayewardene some but not all of the hands which had been mortgaged. The conveyance was in satisfaction of the amount due on the mortgage decree. Possession of the lands conveyed was taken. Jayewardene died in August, 1937, and his widow and child who were the plaintiffs in the action which was later brought acquired title to the lands conveyed as heirs of Jayewardene. At a much later date (the 31st December, 1950) the Land Commissioner made a determination to acquire two lands being part of the lands conveyed by the Deed of the 20th July, 1935. The determination was made under section 3 (1) (b) of the Land Redemption Ordinance. Notice was given by the Land Commissioner to the two plaintiffs who in 1952 commenced proceedings against the Land Commissioner. By their Plaint dated the 24th March, 1952, they stated that the two lands did not fall “ within the description in section 3 of the Land Redemption Ordinance No. 61 of 1942 ” and that they were not therefore subject to acquisition by the Land Commissioner under the Ordinance. The plaintiffs claimed an Injunction restraining the Land Commissioner “ from the acquisition

of” the two lands. In the Answer of the Land Commissioner it was pleaded that his determination was final and could not be canvassed in a court of law and it was further pleaded that the action was wrongly constituted against the Land Commissioner inasmuch as any steps for the acquisition of the lands would be taken by the Minister and not by the Land Commissioner.

As mentioned above the claim succeeded and it was directed that an Injunction should issue. At the trial of the action issues were framed and were answered as follows :—

<i>Issue</i>	<i>Answer</i>
“1. Are the lands in question capable of being acquired under section 3 of the Land Redemption Ordinance? (It is admitted that the Land Commissioner made a determination under section 3, sub-section 4, of the Land Redemption Ordinance.)	No.
2. Even if issue 1 is answered in favour of the plaintiff is the plaintiff entitled to an injunction restraining the Land Commissioner from taking steps to acquire them?	Yes
3. Is the action properly constituted as against the Land Commissioner?	Yes
4. Is the Land Commissioner’s determination final and conclusive?	No
5. If issue 4 is answered in the affirmative, can the said determination be canvassed in a Court of law?”	Does not arise

In the Supreme Court the majority upheld the decision of the District Court. In regard to procedural issues and in particular to the question whether such an action as that which was brought could be maintained against the Land Commissioner *nomine officii* the majority made reference to the case then recently decided in the Supreme Court of *Ladamuttu Pillai v. Attorney-General and others*¹. In regard to the construction of the Land Redemption Ordinance Pulle, J., expressed himself as follows :—“ If the learned Judge’s interpretation of the section is that it is a condition precedent to the exercise of the power of acquisition that all the lands bound by the mortgage must be transferred I am in agreement with him ”. The learned Judge rejected a submission that had been made that section 3 (1) (b) had no application because it could not be said that immediately prior to the transfer the debt created by the decree was secured by a mortgage. He added :—“ The correctness of the ruling in *M. S. Perera v. Unantenna*² was questioned before us. I concurred in the judgment in that case and having reconsidered it I

¹ (1957) 59 N. L. R. 313.

² (1953) 54 N. L. R. 457.

see no reason for thinking that it was wrongly decided". The learned Chief Justice summarised his conclusions as follows :—

" (a) Section 3 (1) (b) of the Land Redemption Ordinance applies to a case of a transfer, in satisfaction or part satisfaction of the debt, of the entire land where only one land is mortgaged and of all the lands where more than one land is mortgaged.

(b) The Court has power to grant an injunction against the Land Commissioner restraining him from taking steps to acquire a land under the Land Redemption Ordinance.

(c) The Land Commissioner may be sued *nomine officii*.

(d) Section 3 (4) of the Land Redemption Ordinance does not preclude a person from challenging in a regular action the legality of the determination of the Land Commissioner to acquire a land."

K. D. de Silva, J., was of a different opinion and in his Judgment he said :—

" Without unduly straining the language of section 3 (1) (b), I do not think it can be said, that the legislature contemplated the application of this provision only to cases where all the mortgaged lands have been transferred. The object of this Ordinance was to render assistance to a class of debtors who got into difficulties during an abnormal period of financial stress. If the view put forward on behalf of the respondents is to prevail that object would be defeated to a very large extent. According to that view if a person borrowed a sum of Rs. 50,000 by hypothecating ten lands—nine of which were very valuable—as security for the loan and he later transferred to the mortgagee the nine valuable lands in satisfaction of the debt he would not be entitled to obtain any relief through the intervention of the Land Commissioner even though the 10th land which he did not transfer was worth only Rs. 100. It is difficult to believe that the Legislature, in passing this Ordinance, intended to countenance such a situation.

In my view the lands in question come within the purview of section 3 (1) (b) and the Land Commissioner was entitled to acquire them. I would therefore allow the appeal and dismiss the plaintiffs' action, with costs in both Courts."

Their Lordships have had occasion in dealing with the case of *Ladamuttu v. Attorney-General*¹ to consider the provisions of section 3 of the Land Redemption Ordinance.

Section 3, sub-section 1, of the Ordinance (No. 61 of 1942) as amended by Order No. 62 of 1947 is in the following terms :—

" 3.—(1) The Land Commissioner is hereby authorised to acquire on behalf of the Government the whole or any part of any agricultural

¹ (1960) 62 N.L.R. 169.

land, if the Land Commissioner is satisfied that that land was, at any time before or after the date appointed under section 1, but not earlier than the first day of January, 1929, either—

(a) sold in execution of a mortgage decree, whether or not that land was subject to the mortgage enforced by that decree, or

(b) transferred by its owner or his executors or administrators to any other person or the heirs, executors or administrators of any other person in satisfaction or part satisfaction of a debt which was due from that owner or his predecessor in title to that other person and which was secured by a mortgage of that land subsisting immediately prior to the transfer, or

(c) transferred by its owner or his executors or administrators to any other person, at the request of a mortgagee of that land, in satisfaction or part satisfaction of a debt which was due from that owner or his predecessor in title to that mortgagee and which was secured by a mortgage of that land subsisting immediately prior to the transfer.

The preceding provisions of this sub-section shall not apply to such undivided shares of an agricultural land as were sold or transferred within the period specified in those provisions and in the circumstances and manner set out in any of the preceding clauses (a), (b) and (c), but, where those shares were converted after the sale or transfer into any divided allotment or allotments by a partition decree of any court or by a duly executed deed of partition, those provisions shall apply to such allotment or allotments, and accordingly the word "land" occurring in this Ordinance shall be construed to include such undivided shares which have been converted after sale or transfer as aforesaid into any divided allotment or allotments."

The lands which were transferred to Jayewardene by the Deed of the 20th July, 1935, were agricultural. The Land Commissioner made a determination to acquire two of the lands, i.e. a part of the land transferred. The lands were transferred by Suriyapperuma in satisfaction of a debt due from him to Jayewardene. The lands were secured by a mortgage which was subsisting immediately prior to the transfer. It would follow therefore that section 3 (1) (b) applied and in their Lordships' view it matters not that there was additional land covered by the mortgage which was not included in the transfer. Their Lordships cannot agree with the view that section 3 (1) (b) only applies (where several lands are mortgaged) if all the mortgaged lands are transferred in satisfaction or part satisfaction of the debt.

Before their Lordships' Board it was contended that after a mortgage decree has been directed the debt is not secured by a mortgage of the land. It was said that thereafter it is the decree of the Court that secures the

land. Their Lordships cannot accept this view and they see no reason to differ from the conclusion reached in *M. S. Perera v. Unantenna*¹.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be allowed and that the action should be dismissed. The respondents must pay the costs both before their Lordships' Board and the costs in the District and Supreme Courts.

Appeal allowed.

