

1958 Present : K. D. de Silva, J., and Sansoni, J.

THE LAND COMMISSIONER, Petitioner, and KATHIRKAMAN PILLAI and another, Respondents

S. C. 72—*Application for Conditional Leave to Appeal to the Privy Council in S. C. 457/D. C. Colombo 288Z*

*Privy Council—Application for conditional leave to appeal—Acquisition of land by Land Commissioner under section 3 (1) (b) of Land Redemption Ordinance, No. 61 of 1942—Valuation of matter in dispute—“Great general or public importance”—Appeals (Privy Council) Ordinance (Cap. 85), Schedule, Rule 1 (a) (b).*

In an application made by the Land Commissioner for conditional leave to appeal to the Privy Council in an action in which he seeks to justify acquisition of land by him under section 3 (1) (b) of the Land Redemption Ordinance, he is entitled to avail himself of the latter part of rule 1 (a) of the Schedule to the Appeals (Privy Council) Ordinance. In such a case, the determining factor is the value of the land in question. The fact that the Land Commissioner has to pay compensation to the owner is immaterial in deciding whether or not he is entitled to appeal to the Privy Council as of right.

Leave to appeal granted also on the ground that the question involved in the appeal was one of great general or public importance within the meaning of rule 1 (b).

**A**PPPLICATION for conditional leave to appeal to the Privy Council.

V. Tennekoon, Crown Counsel, with H. L. de Silva, Crown Counsel, for the Defendant Respondent-Appellant.

H. V. Perera, Q.C., with H. Wanigatunga, for the substituted Plaintiff-Respondent.

*Cur. adv. vult.*

August, 8, 1958. K. D. DE SILVA, J.—

This is an application by the Land Commissioner who is the 2nd defendant respondent for conditional leave to appeal to Her Majesty the Queen in Council against the judgment of this Court dated January 31, 1958, in the District Court Colombo case No. 288/Z. The substituted plaintiff objects to the application being granted firstly on the ground that no appeal lies as of right in that (a) the matter in dispute on the appeal does not amount to and/or is not of the value of Rs. 5,000 or more (b) the appeal does not involve directly or indirectly a claim or question to or respecting property or any civil right of the value of Rs. 5,000 or more. Secondly, it is contended on his behalf that no appeal lies at the discretion of the Court in that the question involved in the appeal is not one which by reason of its general or public importance or otherwise ought to be submitted to Her Majesty in Council for decision.

Before proceeding to consider these objections it is necessary to refer concisely to the relevant facts in the case. One Elaris Perera the 3rd added defendant respondent by bond No. 391 dated September 30, 1925 (P1) hypothecated a number of lands one of which is called Keeriyankalliya Estate, to secure a sum of Rs. 50,000 which he borrowed from three Chettiars, namely, Sockalingam, Subramaniam and Arunasalam. He executed a secondary mortgage of the same lands to secure another loan of Rs. 25,000 which he obtained from five Chettiars two of whom were Sockalingam one of the mortgagees on P1 and Sekappa Chettiar. Elaris Perera then executed the tertiary bond No. 2339 dated March 8, 1931 (P3) for Rs. 20,000 in favour of one Elaris Dabrera. According to the terms of bonds P1 and P2 the loans due on them were repayable to any one or more of the mortgagees. Sockalingam put the bond P2 in suit and obtained the decree P4 on June 22, 1933. Thereafter Elaris Perera by deed No. 4010 of May, 1935 (P5) transferred Keeriyankalliya Estate and some of the other lands mortgaged on P1 and P2 to two of the mortgagees namely Sockalingam and Sekappa in the proportion of 2/3 to the former and 1/3 to the latter and their interests passed to the original plaintiff by right of purchase. The substituted plaintiff is the administrator of the estate of the original plaintiff. The consideration appearing on deed P5 is Rs. 75,000 and this amount was set off in full satisfaction of the claim and costs due on the decree P4 and the principal and interest due on bond P1. Thereafter the Land Commissioner at the request of Elaris Perera made his determination under section 3 (4) of the Land Redemption Ordinance No. 61 of 1942 that Keeriyankalliya Estate be acquired. The plaintiff then instituted this action against the Attorney-General and the Land Commissioner praying for an injunction restraining them from acquiring the land, on the ground that the Land Commissioner had no right to acquire it under the provisions of the Land Redemption Ordinance. The Attorney-General and the Land Commissioner filed a joint answer stating, *inter alia*, that (a) the land in question came within the description contained in section 3 (1) (b) of the Land Redemption Ordinance and (b) that the Land Commissioner's determination to acquire the property could not be questioned in this action and that the District Court had no jurisdiction to entertain it. The learned District Judge dismissed the action whereupon the plaintiff appealed to this Court. The appeal was argued before a Bench of three Judges one of whom was My Lord the Chief Justice. The majority of the Court held in favour of the plaintiff and allowed the appeal. The Land Commissioner now seeks to appeal from that decision to Her Majesty the Queen in Council. The right to appeal to the Privy Council is governed by rule 1 in the schedule to the Privy Council Appeals Ordinance (Chapter 85).

This rule reads as follows :—

1. Subject to the provisions of these rules, an appeal shall lie—

(a) as of right, from any final judgment of the Court where the matter in dispute on the appeal amounts to or is of the value of five thousand rupees or upwards, or where the

appeal involves directly or indirectly some claim or question to or respecting property or some civil right amounting to or of the value of five thousand rupees or upwards; and

- (b) at the discretion of the Court from any other judgment of the Court whether final or interlocutory, if, in the opinion of the Court, the question involved in the appeal is one which, by reason of its great general or public importance or otherwise, ought to be submitted to His Majesty in Council for decision.

Mr. H. V. Perera, Q.C., who appeared for the substituted plaintiff submitted that the value of the matter in dispute must be looked at from the point of view of what it is worth to the appellant. He argued that the Land Commissioner does not derive any pecuniary benefit if he is permitted to acquire this land as he has to pay compensation to the owner at the market value. He further submitted that the object of the Land Commissioner in acquiring this land was to give it over to Elaris Perera the original owner. In regard to that argument it must be observed that the Land Commissioner in the event of acquiring the land is not legally bound to give it over to Elaris Perera although in all probability he would do so.

Mr. Tennekoon, C.C., who appeared for the Land Commissioner stated that he relied on the second limb of rule 1 (a). He submitted that the appeal involved directly or indirectly a question respecting property of the value of Rs. 5,000 or upwards. Admittedly the original plaintiff valued Keeriyankalliya Estate in his plaint at Rs. 75,000. The fact that the Land Commissioner has to pay compensation he submitted was immaterial in considering the applicability of the latter part of rule 1 (a). In support of his argument he relied on the judgment of the Privy Council in *Meghji Lakhamshi & Brothers v. Furniture Workshop*<sup>1</sup>. That was an action brought by certain landlords to eject their tenants from the leased premises situate in East Africa. The action was dismissed whereupon the plaintiffs appealed to the Privy Council. The respondents raised the preliminary objection that no appeal lay as of right because the matter in dispute on appeal was less than £500 sterling in value. The corresponding rule regarding appeals as of right to the Privy Council from East Africa is substantially the same as our rule 1 (a). In that case the respondents contended that the true test as to how much the matter in dispute was worth to the appellants if they succeeded in the appeal was to be measured by deducting from the value of the land with vacant possession its value to the owners subject to the statutory tenancy. Their Lordships agreed that the "value" must be looked at from the point of view of the appellant and that therefore an appeal might sometimes lie where the landlord was the appellant although there would be no appeal by the tenant or vice versa. Then they proceeded to observe "Whatever the result might be in the present appeal if the words 'where the matter in dispute on the appeal amounts to or is of the value

<sup>1</sup> (1954) 1 A. E. R. 273.

of £500 or upwards' stood alone, their Lordships are of the opinion that the case falls within the latter part of the article which deals with 'some claim or question to or respecting property . . . of the said value or upwards, and that, on the true construction it is the value of the property, not the value of the claim or question, which is the determining factor. The presence of the word 'indirectly' seems to require this construction." Mr. H. V. Perera, too, relied on this decision but in my view it lends support to Mr. Tennekoon's contention that he is entitled to avail himself of the latter part of rule 1 (a). The fact that the Land Commissioner has to pay compensation to the owner is immaterial in deciding whether or not he is entitled to appeal to the Privy Council as of right, in this case. If the Land Commissioner sought to acquire a limited right over this property the position would be different. The point in issue is whether or not the Land Commissioner is entitled to acquire the full ownership of this estate which admittedly is worth Rs. 75,000. Therefore the proposed appeal involves directly or indirectly a question respecting property of the value of over Rs. 5,000. Hence, rule 1 (a) applies and the Land Commissioner is entitled to appeal to the Privy Council as of right.

Mr. Tennekoon also contended that the question involved in this appeal is one of great general or public importance and that therefore he was entitled to ask the Court in terms of rule 1 (b) to exercise its discretion in his favour. He stands on very sure ground in relation to rule 1 (b). Not one but, several questions of law came up for decision when the appeal was argued before this Court. Those are questions which would readily fall within the description of "great general or public importance or otherwise". One such matter was the interpretation of section 3 (1) (b) of the Land Redemption Ordinance but it was not possible to reach a unanimous decision on it. Another question was in regard to the legal effect of the Land Commissioner's determination made under section 3 (4) of that Ordinance. It is not necessary to enumerate here all the matters of importance which came up for decision. My Lord the Chief Justice opened his judgment with the words "Many questions of great public importance arise on this appeal". I respectfully agree with that observation. I would therefore exercise the discretion in favour of the Land Commissioner under rule 1 (b).

Accordingly I grant conditional leave to appeal to Her Majesty the Queen in Council on condition that the appellant complies with the necessary requirements set out in rule 3 within one month of this date. The substituted plaintiff will pay the costs of this inquiry to the Land Commissioner.

SANSONI, J.—I agree.

*Application allowed.*