

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF  
SRI LANKA

In the matter of an application for Mandates  
in the nature of a Writ of Certiorari and  
Prohibition and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Dadallage Herbert de Silva Senadheera,  
"Dhammika Nivasa",  
Telwatta.

Court of Appeal Application No:  
CA (WRIT) 08/2012

**RESPONDENT-PETITIONER**

Vs.

1. Mathara Gunasinghe Arachchige  
Premalathe Samarathna,  
No.232, Horana Road,  
Piliyandala.

**APPLICANT-1<sup>st</sup> RESPONDENT**

2. Sarojini Gabadage,  
Inquiring Officer  
Land Redemption Department  
People's Bank,  
No.220, Deans Road,  
Colombo 10.
3. People's Bank,  
People's Bank Head Office,  
No.75, Sir Chittampalam A Gardiner  
Mawatha  
Colombo 2.
4. Hon. Mahinda Rajapakse,  
Minister of Finance  
Ministry of Finance and Planning,  
The Secretariat Building,  
Colombo 1.
5. Dr. P.B. Jayasundera,  
Secretary, Ministry of Finance and Planning,  
The Secretariat Building,

- Colombo 1.  
6. Mr. Don David Jagoda,  
No.73/14, Sri Dharmarama Road,  
Ratmalana.

**RESPONDENTS**

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Geoffrey Alagaratnam PC, with Manju Sithambaram  
for the Petitioner.

R.Suwandarathne  
for the 1<sup>st</sup> Respondent,

Kushan D' Alwis PC  
for the 3<sup>rd</sup> Respondent

Argued on : 11.03.2013

Written Submission on : 29.04.2013 (Petitioner),(1<sup>st</sup>,2<sup>nd</sup> and 3<sup>rd</sup> Respondent)

Decided on : 18.07.2013

**S.Sriskandarajah, J**

The Petitioner in this application had purchased the premises in issue from the 6<sup>th</sup> Respondent by a transfer deed No.177 dated 14<sup>th</sup> September 1994, attested by W.P. Rajapaksa, Notary Public. The 6<sup>th</sup> Respondent had obtained title from the 1<sup>st</sup> Respondent under a conditional transfer Deed No.852 dated 7<sup>th</sup> July 1993, attested by M.M. Sandanayake, Notary Public. As the 1<sup>st</sup> Respondent has transferred the said property on a conditional transfer, he remained in possession of the said premises and, as the Petitioner has now got the title transferred in his name, he had filed an action in the District Court of Panadura in Case No.1506/L, praying for a declaration of title and possession. While the case was pending before the District Court of Panadura, the 1<sup>st</sup> Respondent, by an application dated 10/05/2004, to the Department of Land Redemption of the People's Bank under the Finance Act No.11 of 1973, sought to redeem the said premises, claiming that her family income was less than Rs.100,000/-

for the past 3 years. After the receipt of this application, the 3<sup>rd</sup> Respondent Bank, as provided by the Finance Act, held an inquiry to determine whether the said premises has been transferred by the owner of such premises to any other person after receiving from such other person a sum of money as consideration for such transfer and upon the condition that on the repayment by the transferor of that sum, with or without interest thereon, within a specified period such other person will re-transfer those premises to the original owner. This is provided under Section 71(1) of the said Act. In determining this issue, an application has to be made by the original owner within 10 years from the date of the period specified for the repayment of the sum to retransfer the premises to the original owner, and for the retransfer, the Applicant's annual average income and other members of the Applicant should not exceed a sum of Rs.100,000/- for the 3 years immediately preceding the date on which the application was made by the original owner. These aspects have to be considered by the Bank in the said inquiry.

In view of ascertaining the above facts, an inquiry was held by the 2<sup>nd</sup> Respondent and, in the said inquiry, the Petitioner and the 1<sup>st</sup> Respondent participated and led evidence and submitted documents. In the said inquiry the Petitioner raised a preliminary objection stating that the 1<sup>st</sup> Respondent cannot make an application for the redemption of the said land to the 3<sup>rd</sup> Respondent as an action had already been filed by the Petitioner in the District Court of Panadura for declaration of title and possession. This preliminary objection was over-ruled by the Inquiring Officer on the basis that the jurisdiction of the 3<sup>rd</sup> Respondent Bank is vested by the provisions of the Finance Act and, therefore, the Inquiring Officer is not barred from going into the application of the Petitioner and making a recommendation. The Petitioner did not challenge the said order, but participated in the said inquiry, led evidence and made submissions. At the conclusion of the inquiry, the 2<sup>nd</sup> Respondent recommended to the 3<sup>rd</sup> Respondent that the annual average income of the Applicant and other members of the family do not exceed a sum of Rs.100,000/- for the last 3 years immediately preceding the date on which the application was made and recommended that the said premises be vested in the Bank.

It is the submission of the Petitioner that before the recommendation of the 2<sup>nd</sup> Respondent was made to the Bank, the District Court of Panadura had delivered its judgment

on 16/05/2006, delivering the judgment in favour of the Petitioner and as the effective date of the judgment of 16/05/2006 would be the 5<sup>th</sup> of May 2000, which is the date of filing of the plaint, as the case is decided on the rights of the parties at the time of filing the action. Therefore, the Petitioner claimed that the 1<sup>st</sup> Respondent's application under the Finance Act, which is after the effective date of the judgment cannot be entertained.

The provisions of Part VIII of the Finance Act contains the statutory provisions for the acquisition by the 3<sup>rd</sup> Respondent Bank of certain premises and the disposal of such premises, in terms of Section 71(1) read in conjunction with Section 71(d) of the Finance Act. In view of these Sections the 3<sup>rd</sup> Respondent Bank is authorized to acquire the whole or part of any agricultural, residential or business premises if the 3<sup>rd</sup> Respondent Bank is satisfied that these premises were transferred by the owner of such premises to any other person after receiving from such other person a sum of money as consideration for such transfer and upon the conditions that on the repayment by the transferor of that sum, with or without interest thereon within a specified period, such other person will retransfer those premises to the original owner. The function of the 3<sup>rd</sup> Respondent is limited by laying down a procedure whereas an application for the redemption of a property has to be made by an applicant who is the owner of the property within 10 years from the date of the period specified for the repayment of the sum to retransfer the premises to the original owner, and that the annual average income of the original owner and the other members of the family do not exceed a sum of Rs.100,000/- for the 3 years immediately preceding the date on which the application was made by the original owner.

The authority of the 3<sup>rd</sup> Respondent Bank to redeem a property is only limited to the above provisions, and it is not debarred from exercising its jurisdiction by a party filing an action in the District Court. In this instant application, the application of the 1<sup>st</sup> Respondent was not made out of time, and the 1<sup>st</sup> Respondent has established before the 2<sup>nd</sup> Respondent Inquirer that his income do not exceed a sum of Rs.100,000/-. In these circumstances the 2<sup>nd</sup> Respondent has made a recommendation to the 3<sup>rd</sup> Respondent Bank for the redemption of the said property.

The Respondents have raised a preliminary objection in this application stating that the said recommendation cannot be challenged by a writ of certiorari because the writ of certiorari could only be issued against a final order or determination, and it cannot be issued against a recommendation. In this instant case the recommendation of the 2<sup>nd</sup> Respondent has now been submitted to the 3<sup>rd</sup> Respondent Bank for its determination, and the Board of Directors of the said Bank has to make a determination and the 3<sup>rd</sup> Respondent Bank, after making the determination, would be notifying to the Minister. The Minister may, by order published in the gazette, vest in the 3<sup>rd</sup> Respondent Bank the premises to which the said determination relates. Thereafter the Chairman of the Bank could authorize any person to take possession of the premises for the 3<sup>rd</sup> Respondent Bank. In the above circumstances the final decision is made by the Board of Directors of the Bank and in this case, the 2<sup>nd</sup> Respondent, the Inquiring Officer, has only made a recommendation to the 3<sup>rd</sup> Respondent Bank, and this is not a final decision or determination for the Petitioner to challenge by way of a writ of certiorari and, as this application is premature, this Court upholds the preliminary objection of the Respondents.

Even on the merits of this application, the Respondents have satisfied that the application is made within time and the Inquiring Officer who is empowered to determine the question of fact has come to the finding that the 1<sup>st</sup> Respondent's income during the preceding 3 years immediately preceding the date on which the application was made was less than Rs.100,000/-. As this is a question of fact and this question of fact was determined by the 2<sup>nd</sup> Respondent after receiving the documentary and oral evidence, in these circumstances the Petitioner cannot claim that he was not given a fair hearing in the said proceedings. In the given circumstances the Petitioner has not established any illegality or irrationality or procedural irregularity in the proceedings before the 2<sup>nd</sup> Respondent. Therefore, this Court, for the reasons aforesaid dismisses this application without costs.

President of the Court of Appeal