

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCALIST REPUBLIC OF SRI LANKA**

In the matter of an application for Mandates in the nature of Writs of *Certiorari*, *Mandamus* and Prohibition and under Article 140 of the Constitution.

Senanayake Arachchilage
Lionel Kithsiri,
No.191, Nawagamuwa
Ranala.

PETITIONER

C.A. (Writ) Application No. 254/2014

Land Redemption No. DR 2930

VS.

01. People's Bank
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 2
02. Gamini Senarath
Chairman
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 2
03. Jehan P. Amaratunga
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 02.

04. Lakshmi Kumari Sangakkara
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawatha.
Colombo 02
05. Dharma N. Gammampila
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 02.
06. Pawara Dassanayake
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 02.
07. G.K.D. Amarawardena
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 02
08. R.M.P.Ratnayake
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawstha,
Colombo 02
09. Piyadasa Kudabalage
Board of Director
No.75,
Sir Chittampalam S. Gardiner
Mawatha,
Colombo 02

10. K.B.M.J. Senadeera
Inquiring Officer,
Land Redemption Department
No. 220, Deans Rd.,
Maradana, Colombo 10.
11. Gnanaprakasham Jaan
No.83, Nawagamuwa
Ranala

RESPONDENTS

BEFORE : **M. M. A. GAFFOOR, J.**

COUNSEL : S.N. Vijithsingh for the Petitioner.
Sunil Abeyratne for the 1st to 10th
Respondents.
Parakrama Agalawatta for the 11th
Respondent.

**WRITTEN SUBMISSIONS
TENDERED ON** :

21-09-2018 (by the Petitioner)
30-07-2018 (by the 11th Respondent)
18-09-2018 (by the 1st- 10th Respondents)

DECIDED ON : 14th January 2019

M. M. A. GAFFOOR, J.

The Petitioner in this application instituted this instant action to challenge the decision of the 10th respondent (Inquiring officer) who finally recommended that the Board of Directors of the 1st Respondent Bank acquire the property relating to the application made by *Gnanaprakasham Esther*, the original applicant (deceased sister of the 11th respondent). The Petitioner states that this decision is arbitrary, capricious and irrational.

According to the petition of appeal the facts of this case are that the original applicant, *Gnanaprakasham Esther*, by Deed of Transfer No.11983, marked **P1** dated 04.07.2002 had transferred the land called "*Siyambalagahawatta*, bearing an extent of 3.45 perches for a consideration of Rs. 60,000/- to the Petitioner, S. A. Lionel Kithsiri. At the time of the execution of the said Deed, the original applicant had agreed to redeem the said property within 1 ½ years from the date of execution by paying Rs.60,000/- together with 24% interest per annum, and if the 11th Respondent failed to redeem the said property within 1 ½ years, the Petitioner would become the lawful owner of that property, which are conditions as contained in the said deed.

In the mean time, the original applicant *Gnanaprakasham Esther*, had made an application dated 11.05.2004 marked **P2** to the Land Redemption Department of the People's Bank in terms of Part VII of the Finance Act No. 11 of 1963 (as amended) to have the said property redeemed and the Petitioner was served with notice of the said application. Then the Petitioner raised objections seeking *inter alia*, a dismissal of the said application, in which it was sought to have the said property acquired by the 1st Respondent. Thereafter, written submissions were tendered on behalf of both parties and the application was taken up for inquiry. At the inquiry, both parties have adduced their respective evidence. During the pendency of said inquiry, the original applicant *Gnanaprakasham Esther* had passed away and an application was made to substitute the 11th respondent, *Gnanaprakasham Jaan* (brother of the deceased original applicant, *Gnanaprakasham Esther*) in the room of the deceased original applicant. Though the Petitioner objected to that application for substitution, the said substitution was allowed by the 10th respondent and upon conclusion of the inquiry, written submissions were tendered by both parties. Thereafter, the 10th Respondent, the

Inquiring Officer made his recommendation dated 26.05.2014 to the Board of Directors of the 1st Respondent People's Bank to acquire the property in question which is marked as **P8(C)**.

Against that recommendation, the Petitioner made this application seeking *inter alia* to quash the same. The main grievance of the Petitioner is whether the recommendations made by the 10th respondent are outside the authority vested on him under Section 71 of the Finance Act No. 11 of 1963. It is to be noted that the said Act has been repealed by Finance and Ceylon State Mortgage Bank (Amendment Act) No. 16 of 1973 and subsequent amendments. Therefore, I am of the view that the Petitioner cannot maintain and bring an action before this Court seeking remedies in the nature of Writ of *Certiorari* and *Mandamus* under the repealed provisions of law as pleaded in his petition.

The second matter which requires to be determined in respect of his application is whether the People's Bank had jurisdiction to entertain the application of *Gnanaprakasham Esther*. The jurisdiction of the People's Bank to acquire certain properties is conferred by the Finance Act No. 11 of 1963 and amended by several amending statutes. Section 71(1)(d) of the Finance Act (as amended) Reads as follows:-

“Subject to the provisions of subsection (2), the Bank is hereby authorized to acquire the whole or any part of any agricultural, residential or business premises, if the Bank is satisfied that those premises were, at any time before or after the appointed date but not earlier than the first day of January, 1952.

(d) 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 (hereafter in this Part of this Act referred to as the “original owner”) of that sum with or without interest thereon within a specified period, such other person will re-transfer those premises to the original owner.”

Furthermore, in terms of Section 71(2) (c) of the Finance Amendment Act No. 36 of 2000 reads as follows:-

(2) No premises shall be acquired under subsection (1) –

“(c) Unless the Bank is satisfied”

(i) in the case of an application made by the original owner, that the annual average statutory income of the original owner and the other members of the family of which he is the head; or

(ii) in the case of an application made by the spouse or any descendant of the original owner, that the annual average statutory income of such spouse and the other descendants of the original owner,

computed under the provisions of the written law relating to the imposition of income tax for the three years immediately preceding the date on which the application was made by such original owner, spouse or descendant, as the case may be does not exceed one hundred thousand rupees;”

Accordingly, the Applicant original owner had to satisfy the Bank on the following three matters:-

- (i) that she had transferred the premises to the present Petitioner after receiving from him a sum of money as consideration and upon the condition of re-transfer on the repayment by her of the said sum with or without interest within a specific period;
- (ii) That the assessed average annual statutory income of the original and the family of which she is the head for the three years of assessment immediately preceding the application does not exceed Rupees One Hundred Thousand (Rs.100,000/=) ; and
- (iii) That the premises are reasonably required by her (original owner) or any member of the family for residence or for the purpose of any trade, profession , vocation or employment of the original owner or any member of the family and that such original owner or member of the family has no other premises which could be used for the purpose.

The first matter of the said jurisdictional facts has been satisfied by the production of Deed No.11983 marked **P1**- which is a Conditional Transfer. Secondly, the Applicant original owner had supplied proof as certified by the Grama Niladhari that her average annual assessable income during the three years immediately preceding the application was Rs. 36,000/=. As defined in Section 7(2) of the Statute for the purpose of computation of her annual assessable income.

According to the above section, the Bank has the responsibility to inquire into whether the Applicant's annual salary does not exceed Rs.100,000/= per annum. Accordingly, the inquiring officer had found based on the evidence produced by the Gramasevaka on behalf of the applicant that late *Gnanaprakasham Esther's* annual salary doesn't exceed Rs.100,000/- three years of assessment immediately preceding the date on which such application was made (documents marked **A5** and **A6** of the case record)

The Petitioner has challenged that along with the said applicant, some other relatives are living in the premises and their income should calculate. The Section 71(2) (c) (i) of the Act specifically states *that the average statutory income of the person making the application and of the other members of the family of which he is the head, have to be considered.* According to the application marked **P2** the applicant was unmarried and there were no dependants.

Thirdly, she has established that the premises were used by her, both for residential purposes as well as to operate a small boutique selling pottery items, and that she had no other premises which she could use for the said purposes. Thus, it is submitted that the Applicant original owner had satisfied the jurisdictional requirements.

Furthermore, the Petitioner challenged the substitution of the 11th Respondent on the basis that no proper nexus had been established between the original Applicant and the party sought to be substituted. However, Section 71(2) empowers a successor to make an application if he fell within the category of the "specified heirs". According to the above section, *spouse or any descendent of such person, or if there is no surviving spouse descendent of such person, by a parent, brother or sister*

of such person comes under the category of the “specified heirs”. In the case of **Atapattu and Others vs. People’s Bank and Others** [(1997) 1 S.L.R. 208] it was also decided that:

“Upon the death of an applicant for the acquisition of a land under Section 71 of the Finance Act No. 11 of 1963 as amended, there can be substitution of a “specified heir” viz a person mentioned in section 71(2)(a) – in the prescribed order of priority – as well as of the testate heir. Whether the application was duly constituted, or whether the Bank ought to exercise its discretion to vest the premises in favour of the substitute should not be considered at the stage of substitution but only after a substitute has stepped into the shoes of the deceased and has acquired the necessary status to present his case”

The present 11th respondent, *Gnanaprakasham Jaan* established that he is the brother of the Applicant original owner by producing the Birth Certificates of both. The said certificates as well as the Death Certificate of the Applicant are marked as R12 (a) to R12 (c). Therefore, the 10th respondent, Inquiring Officer had correctly allowed the substitution of the 11th respondent.

Finally it is to be noted that the final decision is made by the Board of Directors of the Bank and in this case the 10th respondent, the Inquiring Officer, had only made a recommendation to the 1st respondent Bank. Therefore, this application is premature, for the reason that the above recommendation is not a final decision or determination for the Petitioner to challenge by way of a Writ of *Certiorari*.

Accordingly, I am of the considered view that there is no legitimate ground for the Petitioner to challenge the conduct and recommendation of the 10th respondent in this regard. Hence, I dismiss this application without Costs

Application dismissed.

JUDGE OF THE COURT OF APPEAL