

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 Writs of Certiorari and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Ratnasabapathy Thiruarudchelvam,
"Pilawady",
Puloly South, Puloly,
Point Pedro.

PETITIONER

CA (Writ) Application No. 242/2017

Vs.

1. Murugupillai Sinnarajah,
625/1, Hospital Road, Jaffna.
2. People's Bank,
Sir Chittampalam A Gardiner Mawatha,
Colombo 2.
3. Hemasiri Fernando,
Chairman, People's Bank.
4. Jehan Prasanna Amaratunga,
Director - People's Bank,
5. Gabadage Dona Chandra Ekanayake,
Director - People's Bank,
6. Kalpage Felician Joseph Ceaser

Weerasekara Perera,
Director - People's Bank,

7. Krish Rajendran,
Director - People's Bank,

8. Thanthiri Mudalige Don Anton
Saliya Hemantha,

9. Mohamed Hisham Jamaldeen
Director - People's Bank,

10. Dr. Aminda Methsila Perera,
Director - People's Bank,

11. Chinthaka Samarawickrama Lokuhetti,
Director - People's Bank,

12. Kariyawasam Gonapinuwala
Gamage Ranjan Mohan Wijesinghe,
Director - People's Bank,

13. Mrs. K.W.M. Jesmin Senadheera,
Deputy Chief Legal Officer,
People's Bank,

14. N. Vasanthakumar,
General Manager,
People's Bank,

All of Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.

15. Hon. Ravi Karunanayake,
Former Minister of Finance
Presently Minister of Foreign Affairs,

Republic Building, Colombo 1.

16.Hon. Mangala Samaraweera,
Minister of Finance,
Ministry of Finance,
The Secretariat, Colombo 1.

17.Hon Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: G. Jeyakumar for the Petitioner

S. Kumarasingham for the 1st Respondent

Sunil Abeyratne for the 2nd – 8th and 10th – 14th
Respondents

Manohara Jayasinghe, Senior State Counsel for the
15th – 17th Respondents

Written Submissions: Tendered on behalf of the Petitioner on 4th January
2019

Tendered on behalf of the 1st Respondent on 18th
February 2019

Tendered on behalf of the 2nd – 8th and 10th – 14th
Respondents on 25th February 2019.

Decided on: 22nd July 2019

Arjuna Obeyesekere, J

When this matter was taken up on 3rd May 2019, the learned Counsel appearing for all parties moved that this Court pronounce its judgment on the written submissions that have already been filed by the parties.

The issue that arises for determination in this application involves the legality of the acquisition of a land belonging to the Petitioner by the 2nd Respondent, People's Bank under and in terms of Part VIII of the Finance Act No. 11 of 1963, as amended by the Finance and Ceylon State Mortgage Bank (Amendment) Law No. 16 of 1973, the Finance (Amendment) Act No. 19 of 1984 and the Finance (Amendment) Act No. 36 of 2000 (the Act).

Prior to considering the facts of this application, it would be appropriate for this Court to consider the provisions of Part VIII of the said Act titled 'The acquisition by the People's Bank of certain premises and the disposal of such premises', which Part consists of Sections 69 – 91, and more particularly Sections 71 and 72 thereof that empowers the People's Bank to acquire property.

Section 71 (1) authorises the Bank to acquire premises which were sold or transferred in the circumstances contemplated in sub-paragraphs (a) - (d) thereof. Paragraph (d) of Section 71(1), which is the sub-paragraph applicable to this application, reads as follows:

“Subject to the provisions of subsection (2), the Bank is hereby authorised 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."

Once the initial threshold in Section 71(1) is met, Section 71(2) of the Act sets out several conditions that the Peoples Bank must be satisfied of, if it is to acquire a property falling within Section 71(1)(d). Section 71(2) reads as follows:¹

"No premises shall be acquired under subsection (1):

- (a) unless an application in that behalf has been made to the Bank by the original owner of such premises or, where such original owner is dead or is of unsound mind or otherwise incapable of acting, by the spouse or any descendant of such person, or if there is no surviving spouse or descendant of such person, by a parent, brother or sister of such person; or

¹ Section 71(2)(b) has been repealed by Amendment Act No. 19 of 1984.

(aa) unless such application is made within ten years

(iii) from the date of the expiry of the specified period referred to in paragraph (d) of subsection (1); or

(c) unless the Bank is satisfied 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, computed under the provisions of the written law relating to the imposition of income tax, for the three years of assessment immediately preceding the date on which such application was made by him, does not exceed a sum of twenty five thousand rupees;² or

(d) if the Bank is satisfied that the premises to which the application relates are reasonably required for occupation as a residence for the owner of those premises or any member of the family of such owner or for the purposes of any trade, business, profession, vocation or employment of such owner or any member of his family and that such owner or member of his family has no other premises which could be used for the purpose for which the premises to which the application relates are being used; or

(e) unless, in the case of an application relating to any agricultural premises, the Bank is satisfied that the applicant is not the owner of any other agricultural premises exceeding ten acres in extent.

² Section 71(2)(c) of the Act has been amended by Section 2(1) of the Finance (Amendment) Act, No. 36 of 2000. However, the said amendment does not apply to this application as the application by the 1st Respondent has been made on 18th August 1999.

For the purposes of paragraph (d) of this subsection, "member of the family", when used in relation to any person means the spouse of that person or any son or daughter of that person over eighteen years of age, or any parent, brother or sister dependent on that person.';"

Having laid out the applicable law, this Court would proceed to briefly examine the facts of this matter.

Seenian Murugupillai and his wife, Kunchipillai had purchased the land that is the subject matter of this application by way of Deed No. 11227 attested by R.R.Dharmaratnam, Notary Public. They had thereafter executed Deed of Transfer No. 11228 dated 11th August 1986 in favour of Krishnar Thangavelautham. This Court has examined an English translation of the said Deed, which has been annexed to the petition marked 'P3(a)' and observes that even though the first paragraph describes the said transaction as an outright sale, it is in fact a conditional sale of the said property. The second paragraph of 'P3(a)' reads as follows:

"We declare that out of the two the property described in the schedule is in our control in terms of outright deed of transfer No. 11227 attested by this Notary and the condition is that we or the successors should tender to him or to his successors, the said consideration of Rs. 25,000 with one year interest at the rate of 136% percent within three years from today to him or to his successors as consideration, in which event he or his successors should retransfer the property in the name of the second person or her successors, expenses to be incurred by us or our successors

and in the event of failure to tender the money to obtain outright retransfer of the property, after the period of three years mentioned above, this deed should be treated as an outright deed without any restriction and during the said period of three years, we declare that the said property will be in our control.”

It is not in dispute that Seenian Murugupillai did not pay the money as stipulated in 'P3(a)' within the three year period nor is there any evidence that either Murugupillai, his wife or children ever attempted to make the payment stipulated in 'P3(a)' to Thangavelautham and seek to have the property re-transferred to them. Although the reason given by the 1st Respondent, who claims to be a son of Seenian Murugupillai and Kunchipillai for the failure to seek a re-transfer is the death of his parents, this Court must observe that no material has been adduced to show that either the 1st Respondent or his parents sought a re-transfer of the property.

The 1st Respondent had made an application under the provisions of Part VIII of the Finance Act to the Peoples Bank on 24th June 1999. A copy of the said application has been annexed to the petition marked 'P1'. There is no dispute between the parties that the application made by the 1st Respondent falls within the provisions of Section 71(1)(d) of the Act and that the People's Bank was empowered to accept the said application.

Once an application is made and is accepted by the Bank, the Bank is required under Section 71(2A) of the Finance Act to issue a prohibitory notice with respect to the said land.

Section 71(2A) of the Act reads as follows:

“Where the Bank entertains an application for the acquisition of any premises referred to in subsection (1), the Bank shall-

- (a) cause notice of the fact to be sent by registered post to the owner of the premises: and
- (b) cause a copy of such notice to be delivered or transmitted to the proper Registrar of Lands for registration, setting out the prescribed particulars relating to such premises and stating that such premises may be acquired under this part of this Act.

Every notice under paragraph (b) shall be registered by the Registrar of Lands in the manner prescribed in the Registration of Documents Ordinance for the registration of an instrument affecting or relating to land and shall be deemed for such purposes to be an instrument affecting or relating to premises the prescribed particulars of which are set out in such notice:

Provided that if the Bank determines that such premises shall not be acquired for the purposes of this Part of this Act, the Bank shall forthwith cancel such notice and give written information of the cancellation to the Registrar of Lands who shall register such cancellation.”

After the receipt by the Bank of the application made by the 1st Respondent but prior to the issuance of the prohibitory notice, Thangavelautham had

transferred the said property to the Petitioner by Deed of Transfer No. 1199 dated 18th August 1999. An English translation of the said Deed has been annexed to the petition marked 'P2(a)'.

The validity of an alienation of a land after the issuance of a prohibitory notice is dealt with in Section 71(2B) of the Finance Act, which reads as follows:

- (a) Where the owner of any premises receives a notice under subsection (2A) relating to an application in respect of the premises, such owner shall not sell, gift, transfer, lease, mortgage or otherwise alienate the premises unless or until such application is dismissed by the Bank;
- (b) Any sale, gift, transfer, lease mortgage or other alienation of any premises in contravention of the provisions of paragraph (a) of this subsection shall be null and void.

Relying on the provisions of Section 71(2B), the Respondents raised a preliminary objection before this Court that the Petitioner does not have the *locus standi* to have and maintain this application, as:

- (a) the acquisition of the property by the Petitioner had taken place after the filing of the application with the Bank; and
- (b) the registration of the Deed 'P2a' had taken place after the registration of the Prohibitory Notice.

This Court, having considered the submissions of all parties, by its Order delivered on 5th December 2017 overruled the said objection, having held as follows:

“The registration of the notice is a legal requirement that has been inserted into the Act for the purpose of giving information to the bona fide purchasers. Registering the notice prior to the registration of the transfer deed will not make the transfer invalid. In case of competing transfer deeds, the prior registration may have an effect. Otherwise the transfer of the ownership will take effect at the time of executing the deed. In the present case, the deed was attested on 18th August 1999 and the prohibitory notice was issued on 11th November 1999.”

This Court would now proceed to consider the steps that the People’s Bank took on the application ‘P1’.

Section 71(3) of the Act provides as follows:

“The question whether any premises which the Bank is authorized to acquire under this Part of this Act should or should not be acquired shall be determined by the Bank and every such determination of the Bank shall be final and conclusive and shall not be called in question in any court.”

The Supreme Court in Kanagasabapathy and Another v. The People's Bank and two others⁴ summarised in the following manner the requirements that the Bank must consider prior to making a determination to acquire a land:

"Basically there are three questions for the decision of the Bank in the case of an application for redemption, viz.-

- (1) Is the land one which the Bank is authorised by Section 71 (1) to acquire?
- (2) If so, does Section 71 (2) restrict the right of the Bank to acquire the land? and
- (3) If not, should the land be acquired?"

Section 71(3) makes it clear that even if the conditions set out in Section 71(2) have been satisfied, the Bank still has discretion whether to make an order for acquisition. This position has been clearly laid down by the Supreme Court in Atapattu and others vs People's Bank and others⁵ where it was held that, "Section 71 does not compel the Bank to acquire premises simply because the pre-conditions in subsection (2) are satisfied, and the fact that the Bank has a discretion has been recognised in *Emaliyana Perera v. People's Bank*⁶."

⁴S.C Application No. 124/75, S.C. Minutes of 27.8.1976; referred to in *Emaliyana Perera v. People's Bank Land Redemption Department and Others* (1987) 1 Sri LR 181 at page 184.

⁵ (1997) 1 Sri LR 208 at page 220.

⁶ (1987) 1 Sri LR 181.

Provisions with regard to the holding of an inquiry have been introduced by way of the Amendment Act No. 36 of 2000.⁷ Even though the said provisions did not apply to the application made by the 1st Respondent, it is agreed between the parties that the 13th Respondent conducted an inquiry into the said application where an opportunity was afforded to the Petitioner as well as to the 1st Respondent to present their respective cases.

By an Order delivered on 15th May 2015, annexed to the petition marked 'P10', the 13th Respondent Inquiry Officer had recommended that a determination be made by the Board of Directors of the People's Bank to acquire the property owned by the Petitioner. As noted above, the question whether any premises which the Bank is entitled to acquire should or should not be acquired shall be determined by the Bank. This Court observes that although the recommendation of the Inquiry Officer has been filed by the Petitioner, the decision of the Board of Directors of the Bank has not been tendered to this Court by any of the parties, including the Bank itself, thereby giving rise to a doubt whether the Board of Directors of the Bank had in fact made a determination in this regard.

The consequential steps that the Bank must take once a determination is made are set out in Section 71(4), which would be discussed later, and Section 72(1) and (2), which reads as follows:

⁷ Section 71(3A) of the Act reads as follows: "for the purposes of making a determination under subsection (3), the Bank shall cause an inquiry to be held into the application by an inquiring officer appointed by the Bank. The inquiring officer appointed by the Bank shall give the owner of the premises to which the application relates and the person making the application, an opportunity of being heard either in person or by an agent authorized in that behalf"

- “(1) Where the Bank has determined that any premises shall be acquired for the purposes of this Part of this Act, the Chairman of the Board of Directors of the Bank shall cause such determination to be notified to the Minister;
- (2) Upon being notified of the determination of the Bank in respect of any premises, the Minister may, by Order (hereafter in this Part of this Act referred to as a " vesting Order") published in the *Gazette*, vest in the Bank, with effect from such date as shall be specified in the Order, the premises to which such determination relates.”

The Minister of Finance had accordingly proceeded to make a vesting order, which had been published in the Extraordinary Gazette Notification No. 2004/31 dated 31st January 2017. While the entire Gazette has been marked ‘P12’, the portion thereof which relates to the property in question has been marked ‘P12a’.

This Court must observe at this stage that the communication made by the Bank to the Minister, and evidence that the Minister addressed his mind to the said communication prior to making a decision in terms of Section 72(2) has not been produced before this Court.

Dissatisfied with the decision of the Inquiry Officer and the Minister, the Petitioner filed this application seeking *inter alia* the following relief:

1. A Writ of Certiorari to quash the order of the 13th Respondent dated 15th May 2015, marked ‘P10’;

2. A Writ of Certiorari to quash the vesting order contained in **'P12'** and **'P12a'**.

The complaint of the Petitioner to this Court with regard to the decision of the Inquiry Officer is twofold.

The first complaint is that the decision to acquire the said property is unreasonable, as the 1st Respondent had not satisfied the requirements set out in Section 71(2)(a) and (c). Before considering this complaint, this Court must observe that the People's Bank must ensure that there is strict compliance by the applicant of the requirements laid down in Section 71(1) and 71(2). This is because an Order of the Bank to acquire a property has very serious consequences that affect the proprietary rights of the owner of the property.

In fact, in **Atapattu and Others v. People's Bank and Others**⁸, the Supreme Court made the following observation on the right of redemption provided in Section 71:

"Section 71 creates a (contingent) right of redemption in favour of a transferor of land. Such a right seriously derogates from the contractual and proprietary right of the transferee. However, such statutory interference with common law rights is by no means unique. Sometimes the law allows one person to enjoy a right in derogation of the legal rights of another. Thus a beneficiary under an express or constructive trust has

⁸ Supra.

rights in respect of property vested in another because the statute considers it equitable.”

The necessity to comply with the mandatory provisions of the Act was considered by the Supreme Court in People’s Bank vs. Hetti Kankanamlage Gunasingha⁹ where it was held as follows:

“The Finance Act Part VIII seems to have made special provisions for a special purpose with regard to the rights of persons who transfer their land on conditions and failing to perform that condition, lose their land to others. The law has granted seemingly very special powers to the People’s Bank. The procedure is specifically provided and each step in the course of the way up to taking possession of the land from the person in whose ownership the land remains, has been laid down. The provisions of law which are mandatory in nature have to be complied with.”

As noted earlier, once the initial threshold set out in Section 71(1)(d) is met, the Bank must be satisfied of the following four matters, if a decision is to be made that the property must be acquired:

- 1) The application must be made by the original owner of such premises or, where such original owner is dead or is of unsound mind or otherwise incapable of acting, by the spouse or any descendant of such person.
- 2) The application must be made within ten years from the date of the expiry of the period specified for the re-transfer to be effected;

⁹ SC Appeal No. 77/15; SC Minutes of 13th July 2017.

- 3) The average statutory income of the person making the application and of the other members of the family of which he is the head, computed under the provisions of the written law relating to the imposition of income tax, for the three years of assessment immediately preceding the date on which such application was made by him, does not exceed twenty five thousand rupees;
- 4) The premises to which the application relates are not reasonably required for occupation as a residence for the owner of those premises or any member of the family.

While there is no dispute that the application has been made within time, the Petitioner has not taken up the position that the premises are required for his family. The Petitioner's first complaint to this Court is that items 1 and 3 above, which is a reiteration of the provisions of Section 71(2)(a) and (c) have not been satisfied by the 1st Respondent and therefore the Inquiry Officer could not have made a recommendation to acquire the property.

The Petitioner has produced with the petition the proceedings before the Inquiry Officer, marked 'P4' – 'P9'. This Court has examined the proceedings of 5th October 2007 marked 'P4' and observes that the 1st Respondent has not produced any proof to support his position that he is the son of Murugupillai. The evidence in chief had proceeded on the basis that he is in fact the son of Murugupillai. Although the 1st Respondent has not been cross examined on this issue, it had been raised in the written submissions filed on behalf of the

Petitioner, and therefore, this Court is of the view that the Bank should have satisfied itself of this issue.

This Court has examined the Order 'P10' and notes that the Inquiry Officer has not addressed this issue. In other words, even though the 1st Respondent claims that he is the son of Murugupillai, no documentary evidence has been produced before the Inquiry Officer. This is a matter that should have been addressed by the Inquiry Officer as it is one of the conditions precedent that must be satisfied by an applicant. Even after this issue was raised before this Court, neither the 1st nor the 2nd Respondents filed any documents in proof of this fact.

Section 71(2)(c) requires the Bank to be satisfied that the average statutory income of the applicant as well as his family, computed under the provisions of the written law relating to the imposition of income tax, for the three years of assessment preceding the date of the application, does not exceed Rupees Twenty Five Thousand. The only evidence with regard to the income of the 1st Respondent is at page 5 of 'P4' where, in response to the question, 'At the time you made this application, what was your income,' the 1st Respondent had stated that it was Rs. 4000. The record does not bear out:

- a) whether it was the monthly income, the annual income or the average income for a period of three years; or
- b) whether the 1st Respondent was married and if so, what was the income of the family members of the 1st Respondent;

c) the manner in which the said income was computed.

This Court cannot ignore the failure on the part of the 1st Respondent to adduce evidence with regard to his income, as this is one of the matters on which the Bank must be satisfied of, if it is to make a determination that the property be acquired. Furthermore, this Court cannot ignore the requirement that the income be computed under the provisions of the written law relating to the imposition of income tax, even though the 1st Respondent was a labourer and was therefore not a tax payer.

This Court has examined the Order of the Inquiry Officer marked 'P10' and finds that the issue of income has been addressed in the following manner:

"The applicant in his evidence has stated that his annual income at the time of his application is Rs. 4000/-. According to Section 71(2)(b) of the Finance Act, No. 11 of 1963 and subsequent Finance (amendment) Act No. 19 of 1984 Section 71, an application for redemption of a land cannot be entertained by the bank, unless the bank is satisfied that the average statutory income of the applicant and members of his family immediately preceding the date of application does not exceed Rs. 25,000/-. The applicant has submitted a letter dated 04.05.1999 issued by the Grama Niladhari of the relevant Gramasevaka division **confirming his income**. But the respondent has not submitted any evidence to prove that the applicant's annual statutory income exceeds the stipulation of the Finance Act."

The above passage demonstrates that the Inquiry Officer has committed several errors when addressing the issue of the income of the 1st Respondent. The first is by assuming that the 'annual' income was Rs. 4000 whereas the evidence of the 1st Respondent was that his 'income' was Rs. 4000. The second is, the Inquiry Officer failed to ascertain the income of the family members of the 1st Respondent. The third is that the Inquiry Officer has placed the burden of establishing the income of the 1st Respondent on the Petitioner, whereas it is the view of this Court that in terms of Section 71(2)(c), the burden is on the Inquiry Officer to satisfy himself of the income of the applicant, which means that the evidence must be forthcoming from the applicant and not the respondent before the Inquiry. The fourth is with regard to the manner of ascertaining the income of the 1st Respondent by relying on the certificate issued by the Grama Niladhari which incidentally is not before this Court.

It is therefore the view of this Court that the 1st Respondent failed to produce any evidence before the Inquiry Officer with regard to the matters set out in Section 71(2)(a) and (c) of the Act, and that the Inquiry Officer failed to appreciate the absence of evidence to establish the conditions precedent set out in Section 71(2)(a) and (c).

Whether a Court can intervene when there is 'no evidence' to support the finding of the administrative body has been discussed in Administrative Law by Wade and Forsyth¹⁰ in the following manner:

"No evidence" does not mean only a total dearth of evidence. It extends to any case where the evidence, taken as a whole, is not reasonably

¹⁰ 11th Edition; page 227.

capable of supporting the finding; or where, in other words, no tribunal could reasonably reach that conclusion on that evidence. This 'no evidence' principle clearly has something in common with the principle that perverse or unreasonable action is unauthorised and *ultra vires*. It also has some affinity with the substantial evidence rule of American law, which requires that findings be supported by substantial evidence on the record as a whole."

In Samarakoon Jayasundera Mudiyansele Kiri Banda vs. A.H. Irangani Samaraweera and Others¹¹, this Court held as follows:

"Generally, courts exercising judicial review do not review errors of fact made by administrative bodies/officials, unless those errors of fact are linked to the assumption of the administrative body's jurisdiction i.e. jurisdictional errors of facts.¹² [R v. Fulham, Hammersmith and Kensington Rent Tribunal (1951) 2 K. B. 1 at 6; Walter Leo v Land Commissioner 57 NLR 178]. One exception to this general principle is the 'no evidence rule'."

This Court, having referred to the above passage from Wade, went on to state as follows"

"The observations made by the text writers about this ground of judicial review have been adopted and endorsed by the Supreme Court in

¹¹CA (PHC) 98/2007; CA Minutes of 19th October 2018.

¹² See Barnett H, Constitutional and Administrative Law, 3rd Edition, Routledge 2014 at page 763 where it is stated that a court will be reluctant to review a non-jurisdictional error of fact because it is presumed that administrative decision makers have all the factual information on hand and are best equipped to make factual determinations.

Kiriwanthe v Navaratne [(1990) 2 Sri LR 393 at 409] and in Nalini Ellegala v Poddalagoda [(1999) 1 Sri LR 46 at 52].

In Hasseen v Gunasekara and others [CA Application No. 128/86 C.A.M. 02.10.1995] this court considered an order of the Rent Board of Review, affirming an order of the Rent Board which had been "arrived at without an adequate evaluation of the evidence and by failing to take into consideration relevant items of evidence which could have influenced the finding" and held the Rent Board as well as the Board of Review had "erred in law by failing to take into account relevant items of evidence in arriving at the finding" and therefore quashed the orders of the Rent Board as well as of the Board of Review.

Therefore, when a factual finding by an administrative body is not supported by the evidence on record, or has been made ignoring relevant and established evidence on record, the court has the ability to exercise judicial review."

It is the view of this Court that to arrive at a decision which is not supported by the material placed before the Inquiry Officer is irrational and unreasonable.

As pointed out by Lord Diplock in Council of Civil Service Unions vs Minister for the Civil Service¹³, "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it" is both irrational as well as unreasonable.

¹³ 1985 AC 374.

In the above circumstances, this Court is of the view that the recommendation of the Inquiry Officer that the property belonging to the Petitioner be acquired when no evidence has been led to satisfy the conditions precedent set out in Section 71(2)(a) and (c) is unreasonable and irrational and therefore, it is the view of this Court that the said decision is liable to be quashed by a Writ of Certiorari.

The second complaint of the learned Counsel for the Petitioner is that the Bank has not complied with the procedure laid down in Section 71(4). Section 71(4) sets out the steps that should be taken once a determination has been made by the Bank in terms of Section 71(3), and reads as follows:

“Where the Bank has determined that any premises shall be acquired for the purposes of this Part of this Act, the Bank shall-

- (a) Notify such determination to the owner of such premises; and
- (b) Cause a notice to be delivered or transmitted to the proper Registrar of Lands for registration, setting out the prescribed particulars relating to those premises and stating that those premises are to be acquired under this Part of this Act.

Every notice under paragraph (b) shall be registered by the Registrar of Lands in the manner provided in the Registration of Documents Ordinance for the registration of an instrument affecting or relating to land and shall be deemed for such purposes to be an instrument affecting

or relating to the premises the prescribed particulars of which are set out in such notice.”

It is the position of the Petitioner that the Bank failed to notify him of the determination, as required by Section 71(4). This Court must observe that the People’s Bank did not file before this Court the notice that it ought to have sent in terms of Section 71(4) nor has the People’s Bank satisfied this Court that it complied with the provisions of Section 71(4).

This Court is of the view that compliance with Section 71(4) is a vital step in the acquisition process stipulated in Part VIII of the Act and that this is the only opportunity that a person affected by the said determination would have, of being informed of the reasons for the decision of the Bank, prior to the Minister making a vesting order in terms of Section 72. As held by Lord Diplock, susceptibility to judicial review under the head 'procedural impropriety' covers the failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.¹⁴ Therefore, non-compliance with such a step would render the entire process illegal and liable to be quashed by way of a Writ of Certiorari.

In the above circumstances, this Court is of the view that this is a fit case in which the jurisdiction conferred on this Court by Article 140 of the Constitution should be exercised. This Court accordingly issues a Writ of Certiorari in terms of paragraphs (d) and (e) of the prayer to the petition, quashing the decision of the 13th Respondent marked 'P10' and the Vesting Order applicable to the

¹⁴ Supra.

property in question, marked 'P12a'. The 2nd Respondent shall accordingly take steps to cancel the prohibitory notice that it has registered in respect of the said land. This Court makes no order with regard to costs.

Judge of the Court of Appeal