

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

In the matter of an application for the issue of a Writ of Certiorari.

1. S. S. A. U. S. A. C. Udayar  
No. G 13, Getaberiya, Aranayaka.
2. S. S. A. U. S. Razik Udayar  
No. G 13, Getaberiya, Aranayaka.

**Petitioners**

**Case No: C. A. (Writ) 106/2012**

**Vs.**

1. Mohamed Subir Mohamed Kiyas Marikkar  
No. 325, Dippitiya, Aranayaka.
2. People's Bank  
No. 75, Sri Chittampalam A. Gardnier Mawatha,  
Colombo 02.
3. Inquiring Officer/Senior Legal Officer  
Land Redemption Department,  
People's Bank,  
No. 220, Deans Road, Colombo 10.

**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

Mahanama De Silva with N. Senanayake for the Petitioner

M.N.M. Hafeel for the 1<sup>st</sup> Respondent

Kushan De Alwis P.C. with Prasanna De Silva for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

**Argued On:** 08.05.2019

**Written Submissions Filed On:**

Petitioner on 13.02.2019 and 03.07.2019

1<sup>st</sup> Respondent on 16.07.2018 and 14.06.2019

2<sup>nd</sup> and 3<sup>rd</sup> Respondents on 31.07.2018 and 08.02.2019

**Decided On:** 22.06.2020

**Janak De Silva J.**

The 1<sup>st</sup> Respondent made an application to the Land Redemption Department of the 2<sup>nd</sup> Respondent under and in terms of the provisions of the Finance Act No. 11 of 1963 as amended (Finance Act) for the redemption of the land described therein as Mahalindawatte.

The 3<sup>rd</sup> Respondent was appointed by the 2<sup>nd</sup> Respondent to conduct an inquiry into the said application. The inquiry was conducted with the participation of the Petitioners and the 1<sup>st</sup> Respondent. At the conclusion of the inquiry the 3<sup>rd</sup> Respondent made a recommendation (Y4) to the Board of Directors of the 2<sup>nd</sup> Respondent that the land forming the subject matter of this application be acquired in terms of the Finance Act.

The Petitioners are seeking a writ of certiorari quashing the said "order" made by the 3<sup>rd</sup> Respondent (Y4) and a writ of prohibition prohibiting the 2<sup>nd</sup> Respondent from vesting in it the said land called Mahalindawatte as more fully described in P1.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have raised the following preliminary objections:

- (1) The application is futile, inasmuch as the relief sought for in this application does not finally adjudicate the rights of the Petitioners and dispose the matter in relation to the redemption of the land and premises forming the subject matter of this application.
- (2) The writ of certiorari sought in this application is not against a determination, but only against a recommendation, which is not subject to the writ jurisdiction.

- (3) The Petitioners have failed to bring before Court necessary parties for the adjudication and the granting of the substantive reliefs prayed for in the petition.

I will address the first and second objections first but not in the same order.

The legal provisions governing land redemption by the 2<sup>nd</sup> Respondent Peoples Bank is contained in Part VIII of the Finance Act and the same provisions are also contained in the People's Bank (Acquisition of Premises) Act, which is a reproduction of sections 69 to 98 of the Finance Act.

Section 71(3) of the Finance Act clearly states that it is the 2<sup>nd</sup> Respondent Bank which is authorized to determine whether to acquire the whole or any part of any agricultural, residential or business premises. Hence it is clear, that the final decision as to whether the land forming the subject matter of this application must be acquired or not is with the 2<sup>nd</sup> Respondent Bank.

Several previous judicial decisions have recognized that it is the Peoples Bank that is authorized to make this determination [*Munasinghe v. People's Bank* (73 N.L.R. 385), *Perera v. People's Bank* (1985) 1 Sri.L.R. 39, *Fernando v. Illukkumbura and Another* (1987) 2 Sri.L.R. 8].

Yet the Petitioner contends that section 3A of the Finance Act, which was brought in by Act No. 11 of 1963 requires the holding of an inquiry and that the inquiry in this case conducted by the 3<sup>rd</sup> Respondent is a statutory inquiry and the report Y4 affects the proprietary rights of the Petitioners and as such is liable to be quashed by a writ of certiorari.

Lord Atkin in *R. v. Electricity Commissioner ex parte London Electricity Joint Committee Company Ltd.* [(1924) 1 KB 171 at 205] held:

"Wherever any body of persons having legal authority to *determine questions affecting the rights of subjects*, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these Writs". (Emphasis added)

In my view, Lord Atkin's formulation is still a good benchmark in deciding whether certiorari lies although the phrase "affecting the rights" has been liberalized so that they need not be legally enforceable rights but a step as a result of which legally enforceable rights may be affected [*R. v. Liverpool Corporation ex parte Taxi Fleet Operators Association* [(1972) 2 Q.B. 299, *R. v. Criminal Injuries Compensation Board ex parte Lain* (1967) 2 All.E.R. 770 at 777-778], *In Re. Pergamon Press Ltd.* (1970) 3 All.E.R. 535 at 539].

There is a long line of judicial authority which unequivocally states that a writ of certiorari will issue only where the decision-maker has determined questions affecting the rights of the subject and will not issue against recommendations that do not have any force *proprio vigore*. [*De Mel v. De Silva* (51 N.L.R. 105), *Dias v. Abeywardena* (68 N.L.R. 409), *Fernando v. Jayaratne* (78 N.L.R. 123), *G.P.A. Silva and Others v. Sadique and Others* [(1978-79) 1 Sri.L.R. 166]. However there has been a shift in judicial thinking on this area.

It is now sufficient if the recommendation or decision of the authority has the effect of potentially jeopardizing the rights of persons. The fact that the recommendation does not affect the rights of a person *proprio vigore* or that a decision must be made by another authority after considering the recommendation does not necessarily preclude judicial review.

According to Article 140 of the Constitution this Court must exercise judicial review *according to law* which has been held by judicial decisions to mean English common law.

In England a patient may be not detained in a hospital for medical treatment under the Mental Health Act 1983 unless there are written recommendations from two doctors. The recommendations may be reviewed to ensure that the statutory criteria have been properly observed [*R. v. Hallstrom Ex.p. W.* (1986) Q.B. 1090]. Similarly a person convicted of a crime becomes liable for deportation if the court makes a recommendation to that effect. These recommendations are reviewable even though the Home Secretary is not obliged to implement them and even though other grounds for deportation may exist [*R. v. Secretary of State for the Environment Ex. p. North Herfordshire DC* (1989) H.L.R. 588].

In the present case, the Finance Act requires the 2<sup>nd</sup> Respondent Bank to cause an inquiry to be held for the purpose of making a determination to ascertain whether the statutory requirements are met. Where the inquiring officer makes any error of law in that inquiry, courts will be more inclined to grant judicial review. Therefore, I reject the contention advanced on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that the "recommendation" of the 3<sup>rd</sup> Respondent is not subject to judicial review. If the Petitioner can establish any illegality, unreasonableness or procedural impropriety in the recommendation, I would have been inclined to exercise judicial review.

However, I need not venture into that examination in view of the first preliminary objection that has been raised namely that this application is futile.

This objection is based on the fact that the Board of Directors of the 2<sup>nd</sup> Respondent, having considered the recommendation made by the 3<sup>rd</sup> Respondent (Y4) made a determination accepting the recommendation of the 3<sup>rd</sup> Respondent.

The Petitioner has failed to challenge this determination in this application. It is true that when the Petitioners came to Court no such determination had been made. But it was made after the Court allowed the 2<sup>nd</sup> Respondent to do so on 11.02.2014. Thereafter the Petitioners moved to amend the petition to plead these facts which was refused by a previous bench.

Thereafter, the Petitioners have filed a fresh application bearing no. CA (Writ) 117/2015. However, even in that application the Petitioners have not sought a quashing of the determination made by the Board of Directors of the 2<sup>nd</sup> Respondent so that even if a writ of certiorari is issued quashing the recommendation made by the 3<sup>rd</sup> Respondent, the determination made by the 2<sup>nd</sup> Respondent survives. The accepted view is that no administrative order bears the seal of invalidity on its forehead and that it is valid until declared invalid by a court of law [Lord Radcliffe in *Smith v. East Elloe Rural District Council* (1956) A.C. 736, 769-770, Lord Diplock in *F Hoffmann-La Roch and C AG v. Secretary for Trade and Industry* (1975) AC 295 at 366, Lord Hoffmann in *R v. Wicks* (1998) AC 92 at 115, Lords Irvine LC and Steyn in *Boddington v. British Transport Police* (1999) 2 AC 143 at 156 and 161, and 173-4, Wade and Forsyth, *Administrative Law*, 9<sup>th</sup> Ed., Indian Edition, 281].

The learned Presidents Counsel for the Petitioner cited *Sideek v. Jacolyn Seneviratne and Others* [(1984) 1 Sri.L.R. 83] where the petitioner sought to quash two subsequent orders of the Rent Board without quashing the first erroneous order of the Rent Board and Soza J. held inter alia that a writ of certiorari will not issue where it would be vexatious or futile.

I hold that the application of the Petitioners is futile as they have failed to assail the determination made by the Board of Directors of the 2<sup>nd</sup> Respondent.

For all the foregoing reasons, the application of the Petitioner is dismissed without costs.

Judge of the Court of Appeal

**N. Bandula Karunarathna J.**

I agree.

Judge of the Court of Appeal