

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

In the matter of an appeal with Leave of the Supreme Court first had and obtained in terms of section 5C of the High Court of the Provinces (Special provisions) (Amendments) Act No 54 of 2006 read with Article 127 and 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal 96/2013
SC /HCCA/LA No. 519/12
SP/HCCA/Galle No. 9/10/RA

Senok Trade Combines (Pvt) Ltd.
03, R.A. De Mel Mawatha,
Colombo 05.

Petitioner-Petitioner-Appellant

Vs.

Mirama, Beach Hotel Limited
137, Vauxhall Street,
Colombo 02.

Respondent-Respondent-Respondent

Before : Jayantha Jayasuriya, PC, CJ
L.T.B. Dehideniya, J
Murdu N.B. Fernando. PC, J.

Counsel : Kuvera de Zoyza PC with Shabry Haleemdeen instructed by
M.J.S. Fonseka for the Petitioner-Petitioner -Appellant.

Uditha Egalahewa PC, with Nisal Kohona for the Respondent-
Respondent-Respondent.

Written submissions

filed on : 11.09.2013 and 19.01.2022 by the Petitioner.
07.10.2013 by the Respondent.

Argued on : 01.12.2021

Decided on : 24.03.2022

Jayantha Jayasuriya, PC, CJ

The petitioner-petitioner-appellant (hereinafter called the “appellant”) invoked the jurisdiction of the District Court seeking an order under section 29P of the People’s Bank Act No 29 of 1961 as amended by Act No 32 of 1986. The appellant sought an order for delivery of possession against the respondent-respondent-respondent (hereinafter referred to as the “respondent”) as provided under the aforesaid section. The appellant *inter alia* prayed for an order to eject the respondent together with his servants and agents from the property described in the schedule to the petition and affidavit and hand over the possession of the said property to him. The District Court refused to issue notices on the respondent and rejected the application. The appellant’s application to the Civil Appellate High Court to revise the aforesaid Order of the District Court was dismissed.

This Court having considered the leave to appeal application of the appellant had granted leave on the following questions of law:

- (i) Is the said judgment of their Lordships in the Civil Appellate High Court of Galle contrary to the express provisions of the People's Bank (Amendment) Act No 32 of 1986?
- (ii) Had their Lordships in the Civil Appellate High Court of Galle had erred in law in interpreting 'the purchaser' as contemplated in the People's Bank (Amendment) Act No 32 of 1986?
- (iii) Have their Lordships in the Civil Appellate High Court of Galle failed to appreciate that the Petitioner comes within the ambit of 'the purchaser' as contemplated in section 29P of the People's Bank Act as amended?
- (iv) Have their Lordships in the Civil Appellate High Court of Galle failed to appreciate 'the purchaser' as contemplated in section 29P of the People's Bank (Amendment) Act No 32 of 1986 is the 'purchaser for the time being'?
- (v) Have their Lordships in the Civil Appellate High Court of Galle given the wrong interpretation to the other provisions of the People's Bank Act?
- (vi) Had their Lordships in the Civil Appellate High Court of Galle erred in holding that only the person holding a Certificate of Sale is entitled to invoke the said provision 29P of the People's Bank Act?
- (vii) Was the scheme set out in section 29A-29R of the People's Bank Act as amended, intended to cover the purchaser, other than the purchaser referred to in section 29N?

Before this Court, there is no dispute on the manner in which the appellant obtained the title of the land in question. The appellant had purchased the property in question from one Vidanelage Krishantha Ruwan De Mel on 19th November 2004, as described in the deed of transfer No. 1281, attested by M.P.C. Joseph Notary Public. Furthermore, there is no dispute on the following facts: Mercantile Credit Limited at one time placed the property in question as security and obtained a financial facility from the People's Bank. The Directors of the People's Bank acting in terms of the People's Bank Act as amended adopted a resolution to sell the property in question at a public auction as the said Mercantile Credit Limited defaulted the repayment. The

People's Bank itself purchased the said property, as there were no bidders at the public auction and the certificate of sale No 1215 attested by W.A.R.S.Abeyratne Notary Public on 31st December 2003 was issued as provided by law. Thereafter on 19th November 2004, Vidanelage Krishantha Ruwan De Mel bought the said property from the People's Bank and the resale endorsement No 1397 of 19th November 2004 attested by W.A.R.S.Abeyratne Notary Public, was issued accordingly. There is also no dispute on the legality of the aforementioned transactions.

The main contention in this matter is whether the appellant who purchased the property from aforesaid V.K.R.De Mel on 19th November 2004 is entitled to invoke the jurisdiction of the District Court and obtain an 'Order for delivery of Possession' as provided under section 29P of the 'People's Bank Act, as amended' (hereinafter referred to as the 'Act').

Section 29P(1) of the Act reads as follows:

"The purchaser of any immovable property sold in pursuance of the preceding provisions of this Act shall, upon application made to the District Court of Colombo or the District Court having jurisdiction over the place where that property is situated and upon production of the certificate of sale issued in respect of that property under section 29N, be entitled to obtain an order for delivery of possession of that property".

Section 29P(2) provides that an application under the aforesaid provision be made and disposed of by way of summary procedure in accordance with the provisions of Chapter XXIV of the Civil Procedure Code.

The learned District Judge refused the application made on behalf of the appellant mainly on two grounds. First, the court observed that the right to invoke the jurisdiction of the court under section 29P of the Act vests on a person in whose name a certificate of sale has been issued under the Act. Secondly, the Act does not make provision to invoke the aforesaid provision to a person who had obtained the title of the property through an ordinary deed of transfer.

The learned President's Counsel for the appellant before this Court submitted that the aforesaid findings of the Learned District Judge are contrary to the intention of the legislature namely not to limit the benefit of the special procedure provided under the scheme introduced through sections 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29J, 29K, 29L, 29M, 29N, 29P, 29Q, 29R, 29S, and 29T of the People's Bank Act as amended by Act No 32 of 1986. Furthermore, it was contended that the restrictive interpretation of section 29P by the learned District Judge makes the provisions of section 29R redundant. It was further submitted that the decisions in People's Bank v Hewawasam, 2000 (2) SLR 29, Chandrasena v Leela Nona and others, 1997 (3) SLR 373 and Dassanayake v Sampath Bank Ltd 2002 (3) SLR 268 supports the appellant's case.

The main contention of the learned President's Counsel for the respondent is that the appellant does not come within the ambit of 'the purchaser' as contemplated in section 29P of the Act. It was further contended that the provisions relating to '*parate execution*' in the People's Bank Act have to be given a restrictive interpretation. It was contended that the term 'purchaser' in section 29P cannot be interpreted to include a 'purchaser' who had acquired the title of the property through deed of transfer executed under the general law even though the property concerned was subjected to '*parate execution*' process provided under the Act, at a prior stage.

It is pertinent to observe that section 29P has been introduced to the People's Bank Act by the People's Bank (amendment) act No 32 of 1986. By this amendment *inter alia* a series of sections namely 29A, 29B, 29C, 29D, 29E, 29F, 29G, 29H, 29J, 29K, 29L, 29M, 29N, 29P, 29Q, 29R, 29S, and 29T were introduced after section 29 of the Act. Through these provisions, a new

scheme was introduced in relation to situations where a party defaults in the payment of any sum due on a loan. Section 29D makes provision for the Board of the Bank, by resolution, to authorize a person to sell by public auction any property mortgaged to the Bank as security for any loan in respect of which default has been made and recover the dues. Sections 29F to 29M make provision relating to matters arising from the adoption of a resolution under section 29D and the recovery of dues by the Bank through a public auction of the property concerned.

It is also pertinent to observe that section 29N requires the Board of the Bank to issue a certificate of sale to the purchaser who purchases a property at an auction contemplated under the aforesaid provisions and all rights, title and the interest of the debtor to and in the property so auctioned shall vest on the purchaser. Such certificate will be issued to the Bank if the Bank purchased the said property at the auction. However, in situations where the Bank purchased the property and a certificate of sale is issued in the Bank's name, the Board, as provided under section 29R, is entitled to resell the property and transfer the property by endorsement on a certified copy of the 'certificate' so issued and transfer to a new purchaser, all the rights, title and interests which would have been acquired by him if he purchased the property at the initial sale.

Examination of these sections reveal that either any person or the bank can purchase the mortgaged property on which the Board had adopted a resolution to sell a mortgaged property due to the default on the payment by the borrower. In either of the two situations when a property is sold under such circumstances, a duty is cast on the Board of Directors to issue a 'certificate of sale' and such certificate of sale stands as conclusive proof with respect of the sale of the property and of all provisions of the Act relating to such sale having been complied with. Furthermore, all the rights, title and interest of the debtor to and in the property concerned vests in the purchaser, upon the issuance of such certificate.

It is in the backdrop of this legislative scheme, that section 29P makes provision for the purchaser to invoke jurisdiction of the District Court by way of summary procedure and move

for an order of delivery of possession of such property sold upon the resolution adopted by the Board of the Bank. The object and purpose of section 29P is to make provision to ensure that all the rights derived by the purchaser through the provisions of the Act are further strengthened by granting him a further right to invoke jurisdiction of the District Court by way of summary procedure and obtain possession of the property, through a judicial order. Such a deviation from the normal practice and procedure relating to delivery of possession of a property through judicial process under the law available to any other purchaser of any other property, encourages a person to purchase property sold through this special scheme as the legislative scheme provided in the Act ensures an efficient mechanism to obtain possession. The Court of Appeal in Chandrasena (supra) when considering provisions in the State Mortgage and Investment Bank Law No 13 of 1975 which are similar to the relevant provisions in the Act, observed that,

“The sale had to carry with it a reasonable security that it would recover what had been lent. To achieve this result it provided for sale by public auction and an adequate guarantee for the buyer to recover possession of the property sold.An ordinary action by way of regular procedure is not unknown to be a cumbersome process. No buyer is going to invest money to purchase a property without possession being guaranteed” (at 376-377).

The Court of Appeal further observed that

“The thinking of the legislature in my view has been to see that the State Mortgage & Investment Bank which is a State Lending Institution recovered amounts lent by it with interest. In order to do so it assured the buyer by legislation a quick and effective method of recovery of possession. If not for such provisions no prospective buyers would dare bid at a public auction held under the provisions of the State Mortgage and Investment Bank Law No 13 of 1975 and the Bank would not be able to recover what it had lent.” (at 377).

In Dassanayaka (supra) the Court of Appeal in examining provisions in the Recovery of Loans by Banks (Special Provisions) Act No 4 of 1990 observed that,

“it provides for expeditious mode of recovery of the property, which has already been vested in the purchaser by an issuance of a certificate of sale in terms of the provisions of the said Act” (at p 270).

However, it is also pertinent to observe that this Court in its’ determination on “Recovery of loans by Banks (Special Provisions) (Amendment Bill)” (SC SD 22/2003 - Decisions of the Supreme Court of the Republic of Sri Lanka Under Articles 120, 121 and 122 of the Constitution of the Democratic Socialist Republic of Sri Lanka for the Years 1991 to 2003 – Vol VII, page 427 at 429) observed:

“The enforcement of a right as against another by seizure and sale of property without the intervention of a Court, is described as “parate execution”. The Roman Dutch Law being our common law, has looked upon this process described as “parate execution” with extreme disfavor. The preceding analysis of judicial power, its scope and exercise demonstrates that our constitution frame-work is set against any recourse to “parate execution”, in our law. The Constitution positively assures to every person the protection, vindication and enforcement of his rights by an institution established or recognised by law for the administration of justice. Since any transaction which may result in a dispute, involves rights and duties of parties inter se, the constitutional guarantee is a two-way process which should ensure equally to the benefit of both parties”.

Therefore, these judicial pronouncements in my view, support the proposition that, an interpretation of the provisions in the Act that grants rights and benefits to any person arising through the ‘parate execution’ and the connected provisions recognised therein should not extend the rights and benefits other than to an extent that is necessary to give effect to the statutory scheme provided by the provisions of the Act. In my view this Court should desist from adopting an interpretation that would have an effect of perpetuating such special rights to all subsequent

persons who purchase a property outside the special scheme envisaged under the Act, even though such property was subject to '*parate execution*' process at a prior point of time. Therefore, in interpreting the relevant provisions of this Act the court should desist from adopting an interpretation that would extend the rights and benefits of a person who purchases a property within the scheme provided under the Act, which is a special law, to a person who acquires rights as a purchaser, under the normal law, subsequently.

The learned President's Counsel for the appellant relied on the judgment of this Court in Bakmeewewa, Authorised Officer of People's Bank v Konarage Raja [1989] 1 SLR 231 to substantiate his submission that the right, title and interest created and vested through the statutory scheme of the Act is a "new independent statutory title and is a Title Paramount".

This court in Bakmeewewa (supra) considered the provisions in Finance Act No 11 of 1963 as amended by the Finance and Ceylon State Mortgage Bank (Amendment) Law No 16 of 1973 in deciding the effect of the vesting order made by the Minister. Under the statutory scheme that was considered the Court observed that "Once the minister publishes the "vesting order" in the gazette, the premises vest in the Bank "absolutely" and "free from all encumbrances" (sections 72(2) and (3) of the Act)" (at p 234). It is in this context that the court cited with approval the decision of this Court in Sathir Najeare (1978) 79 (2) NLR 126 at 135 where it was held that "The title of the Bank to the premises in question is clearly a title paramount". (at p 235). However, according to the statutory scheme of the Act under consideration in these proceedings, the effect of a certificate of sale is set out in Section 29N. According to section 29N(1) it is "all the rights title and interest of the debtor to and in the property" that vests in the purchaser. Therefore, in my view Bakmeewewa (supra) cannot be relied upon, in determining the issues that are raised in these proceedings.

The transaction between the appellant and the seller in relation to the property concerned in these proceedings, in their respective capacities as 'vendor' and 'purchaser' is aptly described in the

deed No 1281, executed by M.P.C.Joseph on 19th November 2004. The execution of the said deed is completely outside the scope of the provisions in the Act relating to '*parate execution*'. The fact that the 'vendor' had been the 'purchaser' of the said property when the Bank resold the property and transferred all the right, title and interest of the property by endorsement on the certificate of sale, as provided under section 29R of the Act, in my view does not give rise to the appellant exercising any rights other than rights accrued under the common law. Therefore, the appellant cannot exercise any rights assigned to a purchaser under the Act, as the process of '*parate execution*' envisaged by the Act is complete with the resale of the property by the Bank to the purchaser who had become a vendor, subsequently.

In view of foregoing findings all questions of law on which leave was granted are answered in the negative and the appeal is dismissed.

Chief Justice

L.T.B. Dehideniya. J.

I agree.

Judge of the Supreme Court

Murdu N.B. Fernando, PC. J.

I agree.

Judge of the Supreme Court