

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

**In the matter of an Appeal  
from the Civil Appellate  
High Court.**

1. People's Bank, No. 75, Sir  
Chittampalam A Gardiner  
Mawatha, Colombo 2.
2. Don Wimalasiri  
Dissanayake,  
No. 177 G, Maya Avenue,  
Colombo 5.

Petitioners

**SC APPEAL NO. 77/15**  
SC/HCCA/LA No.427/14  
WP/HCCA/GPH/70/2009(F)  
D.C. Gampaha Case No. 3823/SPL

Vs

Hetti Kankanamlage Gunasi-  
Nga, Wanuwagalawatta,  
Haggala, Ellakala.

Respondent

AND BETWEEN

Hetti Kankanamlage Gunasi-  
Nga, Wanuwagalawatta,  
Haggala, Ellakala.

Respondent Appellant

1. People's Bank, No. 75, Sir Chittampalam A Gardiner Mawatha, Colombo 2.
2. Don Wimalasiri Dissanayake, No. 177 G, Maya Avenue, Colombo 5.

Petitioner Respondents

**AND NOW BETWEEN**

Hetti Kankanamlage Gunasingha, Wanuwagalawatta, Haggala, Ellakala.

**Respondent Appellant Appellant**

Vs

1. People's Bank, No. 75, Sir Chittampalam A Gardiner Mawatha, Colombo 2.
2. Don Wimalasiri Dissanayake, No. 177 G, Maya Avenue, Colombo 5.

**Petitioner Respondent Respondents**

BEFORE

**:S. EVA WANASUNDERA PCJ,  
PRIYANTHA JAYAWARDENA J. &  
ANIL GOONERATNE J.**

COUNSEL

: Ms. Sudarshani Cooray for the Respondent Appellant Appellant.

Sunil Abeyrathne with Thashira Gunathilaka  
for the 1<sup>st</sup> Petitioner Respondent  
Respondent.

ARGUED ON : 02.06.2017.

DECIDED ON : 13.07.2017.

**S. EVA WANASUNDERA PCJ.**

This Court has granted leave to appeal in this matter on the following questions of law to be decided by Court contained in paragraphs 11 (i) to (v) and (viii) of the Petition dated 28<sup>th</sup> August, 2014 and the other two questions of law, as suggested by Counsel for the 1<sup>st</sup> Petitioner Respondent Respondent:-

1. Did the learned High Court Judge err in deciding that although the determination was published in Gazette Notification dated 09.07.2001, there is no mention in respect of notifying of such determination to the owner of such premises under Sec. 71(4) (a) of Finance Act No. 11 of 1963?
2. Did the learned High Court Judge err in deciding that although the determination was published in Gazette Notification dated 09.07.2001, there is no mention in respect of directing every person who was interested ( for compensation ) of such premises immediately before the date on which such premises were so vested to make within a period of one month to make a written claim under Sec. 73 of Finance Act No. 11 of 1963?
3. Did the learned High Court err in deciding that High Court has no jurisdiction to question the validity of the procedure taken by the Respondent Bank , when the Respondent Bank acting contrary to Finance Act can be also interpreted in the same context?
4. Did the learned High Court err in deciding that the District Court was correct in making absolute order nisi when the procedure adopted by the Respondent Bank is against the Finance Act itself?
5. Did the learned High Court err in deciding that the Appellant Petitioner has filed this Appeal in the High Court on the basis that it will take a long time for compensation to be paid to him.

6. Did the learned High Court err in deciding that although ‘ compensation should be paid to the Appellant Petitioner without delay ‘ there is no provision for the Appellant Petitioner to make a claim for compensation at this stage?
7. In terms of the Finance Act No. 11 of 1963 (as subsequently amended) whether a right of appeal lies?
8. Whether the learned District Judge has jurisdiction to enter order absolute without the 1<sup>st</sup> Petitioner Respondent Respondent Bank complying with the provisions of Sec. 73 of the above Act?

The background facts of the case should be noted before the questions of law are considered. One lady by the name Thanthirige Piyaseeli Somalatha had transferred the property which is the subject matter of this case, of an extent of OA 3R 37.2P in Walpola, Gampaha by Deed of Transfer No. 1887 dated 14.07.1987 attested by D.S.Jayakody Notary Public to the Respondent Appellant Appellant ( hereinafter referred to as the Appellant ) , Hetti Kankanamalage Gunasinghe for a sum of Rs. 15000/- . This was a **Conditional Transfer** with the condition that, if the Rs, 15000/- and interest thereon is paid within one year from the date of execution, the property shall be transferred back to the said Somalatha. The money and the interest thereon was not paid within one year and the position was that Gunasinghe then became the owner of land. After about 8 years, Somalatha made an application to the People’s Bank, the 1<sup>st</sup> Petitioner Respondent Respondent ( hereinafter referred to as the 1<sup>st</sup> Respondent or the Bank ) **in terms of Sec. 71 of the Finance Act No. 11 of 1963.**

Sec. 71 of the Finance Act No. 11 of 1963 was amended by Finance and Ceylon State Mortgage Bank ( Amendment ) Law No. 16 of 1973, by Finance (Amendment) Act No. 19 of 1984 and Finance (Amendment) Act No. 36 of 2000. Part VIII of the Finance Act deals with ‘ the acquisition by the People’s Bank of certain premises and the disposal of such premises ‘. This Part of the Finance Act contains Sections 69 to 98. According to Sec.71, the People’s Bank is authorized “to acquire the whole or any part of any agricultural, residential or business premises, if the Bank is satisfied that those 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 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.” The application has to be within ten years. In the case in hand Somalatha had informed the Bank within time.

The main grievance of the Appellant in this Appeal is that the **Bank has failed to adhere to the mandatory provisions of the Finance Act and thereby not taken steps to afford an opportunity to the Appellant to submit his claim for compensation.** Furthermore the Appellant claims that he did not have the opportunity to submit his claim **within one month** from the date of notice under Sec. 73. Therefore the owner had not been able to place his claim or hand over his claim to the Bank. Then Bank officers had come to the land to take possession of the land after informing him that they are coming to do so. As alleged by the Appellant, due to the reason that he was not given the opportunity to make his claim, due to the Bank not having complied with the provisions of the Finance Act, on the day that the Bank had tried to take possession of the land, the Appellant had been present on the premises and he had submitted a **written objection and refused to hand over the premises to the Bank.**

In this case, when Somalatha made an application to the People’s Bank under Sec. 71 of the Finance Act, the Bank had issued to the Appellant, an order restraining the selling of the land or transferring the land to any other person and after an inquiry, **had decided to acquire the land.**

Sec. 71(4) (a) reads:

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 the 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.

The Bank had informed the owner Gunasinghe by registered post about the application of Somalatha on 13.05.1996. The next communication from the Bank to the Appellant Gunasinghe was on 05.07.1996 giving notice to him that a restraining order has been made directing him not to sell or transfer the land to any other person. According to Sec. 71(3) and Sec. 71(3A) the Bank had caused to hold an inquiry with both parties being heard and finally determined that the land in question should be acquired. Where the Bank has determined that any premises shall be acquired, the Bank should notify such determination to the owner of such premises according to Sec.71(4)(a).

The Bank acquired the same having followed the procedure laid down by Sec. 72 and then the Minister to whom the subject or function of the People's Bank is assigned, vested the premises with the Bank by notice published in the Gazette No. 1192/5 dated 09.07.2001. **According to Sec. 73**, the Bank should give notice to persons entitled **to make claims** to the compensation payable under Part VIII of the Finance Act, in respect of any premises vested in the Bank.

Sec. 73 reads:

Where **any premises are vested in the Bank**, the **Chairman** of the Board of Directors of the **Bank shall**, by notice published in the Gazette **and** in such other manner as may be determined by him **direct every person** who was interested in such premises immediately before the date on which such premises were so vested, to make, **within a period of one month** reckoned from the date specified in the notice **a written claim** to the whole or any part of the compensation payable under this Part of this Act in respect of such premises, and specify in the claim,

- a. His name and address,
- b. The nature of his interest in such premises,
- c. The particulars of the claim, and
- d. How much of such compensation is claimed by him.

Then, by letter dated 23.04.2002, the Bank had informed the Appellant, Gunasinghe that the land had been acquired and that the possession should be handed over to the Bank on 29.05.2002. The Appellant was present at the premises on the said date and submitted a written objection and refused to hand over the premises to the Bank. The Bank had then made an application to the District Court dated 28.05.2003 under Sections 72(7) and 72(8) of the Finance Act

praying for an order nisi directing the Appellant to hand over possession of the premises to the Bank.

The Bank has not placed before the District Court in the Petition made to court, between the date of the acquisition i.e. 09.07.2001 and the date of visiting the land to take over possession i.e. 29.05.2002, whether the provisions of Sec. 73 were complied with or not.

In the Application to Court to get possession of the land, there is no mention at all about the procedure taken by the Bank under Sec. 73 of the Finance Act. In paragraph 4(g) of the said Petition regarding the Application, which is at page 32 of this brief, it is briefly mentioned that an inquiry was held by the Bank with regard to compensation and that the Appellant had made lengthy written submissions at the inquiry. However, the Petition does not indicate when the Appellant, Gunasinghe made the claim, whether there were no others who made claims and when the inquiry was held and under what provisions it was held etc.

The Bank has not brought forward before this Court or any other lower Court any submission or any other evidence to demonstrate that provisions of Sec. 73 had been complied with before making the Application to Court to get an order nisi to get possession of the land from the Appellant, Gunasinghe. I have gone through the Petition by the Appellant filed in the District Court under Sec. 72(7) and 72(8) dated 28.05.2003 praying for a decree nisi granting the possession of the premises. The said Petition contains 9 paragraphs and the prayer and the Schedule which describes the land. The land is almost one acre, i.e. 3 Roods and 37.2 Perches with a right of way as described in the second schedule. The value of the case has been placed in the caption as only Rs. 15000/- and the number is 3823/Spl and the procedure is summary in accordance with Chapter XXIV of the Civil Procedure Court. It is **not mentioned anywhere** in the Petition filed in Court to take possession of the premises **whether Sec. 73 has been complied with** by the Bank.

I am of the opinion that Sec.73 does not only affect the Appellant, Gunasinghe but it also affects others who would have had a claim of the land itself or any claim regarding improvements on the land or anything pertinent to the said land for the purpose of claiming compensation from the Bank. That is the reason why the draftsman of that Section has deliberately drafted it that way, for the Chairman of the Bank to be responsible to get the same published in the gazette and in such

other manner that the Chairman thinks fit so that all other parties who need to make whatever claim can make the claim as prescribed by Sec. 73 with the name, address, the amount claimed etc. During the period between the date of the acquisition and the date of taking over possession, the Sec. 73 notice should have been published by the bank and the same notice should have been sent to the owner of the land, Gunasinghe and more over the Bank should have pasted a notice under Sec. 73 on the land on a tree or trees or any other place on the land so that all parties who claim compensation could make a claim. The wording in the section is **mandatory** and the Bank having gone **to the next step without having complied with the provisions of Sec. 73 of the Act is a fatal irregularity done by the Bank.**

The Bank is at liberty to correct the procedure, comply with the provisions and take over possession of the acquired land as provided by law. Even at present there is no impediment for the Bank to commence the duty of complying with Sec. 73 of the Finance Act.

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. Since it is summary procedure which is adopted when the Bank makes the application to the District Court to take over possession from the owner and/or any other possessor the procedure which is made mandatory with the word "shall" being included, the legislator has had the wisdom to make sure that no party would get any injustice. The provisions of law which are mandatory in nature have to be complied with.

The claim for compensation has to be made within one month from the notice given and/ or the publication of the notice in the gazette inviting any person interested in getting compensation, under Sec. 73 and the Appellant has not been able to forward his claim for compensation as provided by law due to the Bank not having complied with the legal provisions. I find that in the Petition of Objections by the Appellant filed in the District Court dated 23.11.2006, he has prayed **to grant him an opportunity for him to place a claim for compensation to the Bank** while submitting to court that he had not been even given the

amount of money he paid to Somalatha, the complainant to the Bank, i.e. Rs. 15000/-. He had prayed that he be given the said money and interest from 14.07.1987. He had claimed for improvements of the land as well. The Appellant had begged Court not to make the order nisi, absolute.

It is interesting to note what the Bank had mentioned in the Counter Objections filed by the Bank dated 21.02.2007 in reply to non compliance with Sec. 73. Paragraph 11 of the said counter objections the Bank has interpreted Sec. 73 and stated that the Chairman of the Bank is given the discretion “ to publish a notice in the Gazette **or** to give notice in such other manner as may be determined by him” and the discretion was used to develop the form named “ eee bay de “ form. The statement of counter objections state that “therefore the Chairman using his discretion has directed the authorized officer of the Bank , the 2<sup>nd</sup> Respondent, to give a form on paper named “ eee bay de No. 20” to whoever claims any compensation. The authorized officer gives them 30 days to bring it back with the claim to him. The Appellant had not handed over possession of the premises and that is the reason why he was not given the said ‘form’. It will be handed over to the Appellant only after the possession has been surrendered to the Bank.”

The said paragraph 11 is totally distorting the provisions of law contained in Sec.73. The Section does not give any discretion to the Chariman to decide on the mode of notifying the owner and the public but stipulates in plain language that “ the Chariman **shall** by notice published in the Gazette **and** in such other manner as may be determined by him ”. The Chairman has a discretion to decide, in what other manner he should notify others **after publishing the notice in the Gazette**. It may be that the Chairman can decide to send a letter by post or send a notice by courier or paste a notice on the trees or fence or the parapet wall of the premises etc. I hold that the Bank has in fact admitted in their statement of counter objections that the Bank has failed to act in accordance with Sec. 73.

The other sections from Sec. 74 to 90 provide for a compensation tribunal, to hold an inquiry, to call for witnesses, consider documents etc. prior to granting compensation.

In the Petition filed by the Bank dated 28.05.2003, there is no mention that the owner of the premises was notified of the said determination of the land being acquired and vested with the Bank under Sec. 73 to prefer a claim for

compensation. The matter had been heard by Court and the order nisi had been granted. Thereafter only, the order nisi was served on the Appellant to hand over the premises to the Bank and he was directed to show cause as to why the said order should not be made absolute. Upon the summons being served on the Appellant, he had appeared before Court and filed his objections and stated to Court that the Bank had not adhered to the mandatory provisions in terms of the law and that he was not given the opportunity to submit his claim for compensation. Accordingly the Appellant prayed that he be given an opportunity to submit his claim for compensation. After the submissions the District Judge had delivered order making the order nisi as absolute.

Both the District Judge and the High Court Judges have taken the view that any Court has no jurisdiction to hear and determine the procedures adopted by the Bank and that the court has no jurisdiction to refrain from making an order nisi which is already in place as absolute.

Sec. 72(8) of the Finance Act provides for hearing the matter under summary procedure. Summary procedure is regulated by Chapter XXIV of the Civil Procedure Code. The owner of the land or any person claiming any interest on the land has a right to file objections and adduce evidence to prove the facts stated in the objections, according to Sec. 384 of the Civil Procedure Code. Thereafter, according to Sec. 387 of the Civil Procedure Code, upon the Respondents presenting their case, the Court is obliged to consider the same and make a final order. Natural Justice should be followed and that is the reason for court to hear both parties and their evidence. The Court has a duty to see whether the proper procedure has been followed ' in the back drop of facts complained and natural justice to be done according to the injustice if any ', and if it is not done properly, court shall not proceed to hear the matter with such defects in the procedure. There is no compulsion on Court as alleged to make an order nisi absolute without hearing the parties.

The High Court judge had quoted the judgment in **Bakmeewewa, Authorised Officer of the People's Bank Vs Konarage Raja 1989 1SLR 231** and held that in view of that decision , no person can file action

challenging the acquisition of land / premises acquired under Sec. 72 of the Finance Act and therefore the Appellant had **no right to challenge the procedure adopted by the Bank with regard to taking over possession and claim for**

**compensation.** In the case in hand the Appellant is not challenging the acquisition or the procedure regarding the acquisition. He is challenging the **procedure laid down regarding the claims for compensation.** His grievance is that the Bank has not given notice under Sec. 73 which has shut him out, from getting any compensation as he could not have made the claim within the one month's time as provided by law. In **Bakmeewewa , Authorised Officer of the People's Bank Vs Konara Raja (supra) ,** it was held by Justic G.P.S. De Siva that ' The jurisdiction exercised by the District Court under **Sec.72(7) and (8)** of the Finance Act as amended is a **special jurisdiction** and there is **no right of appeal** from an order in the exercise of such jurisdiction, unless a right of appeal is expressly provided for in the Act. No right of appeal is provided in the Act. Hence the **District Court had no jurisdiction to entertain an application for stay of execution pending appeal under Sec. 763(2) of the Civil Procedure Code.'**

Accordingly, that authority cannot be quoted to reject the arguments taken up at the hearing in the case in hand and to dismiss the Appellant's application, with regard to non compliance of Sec.73 of the Finance Act. Bakmeewewa case is with regard to the order of acquisition of the land; the non existence of a right of appeal therefrom and no right for a stay of execution pending appeal under Sec. 763(2) of the Civil Procedure Code.

I answer the questions of law enumerated above in favour of the Respondent Appellant Appellant and against the Petitioner Respondent Respondent, the People's Bank. The Appeal is allowed. However I am not inclined to grant costs.

Judge of the Supreme Court

**Priyantha Jayawardena PCJ**

I agree.

Judge of the Supreme Court

**Anil Gooneratne J**

I agree.

Judge of the Supreme Court