

**IBRAHIM RAHUMATHUMA**  
**v.**  
**PEOPLES BANK AND OTHER**

COURT OF APPEAL

S. N. SILVA J,

C. A. APPLICATION NO. 1187/85.

FEBRUARY 21, DECEMBER 03 AND 12, 1991, May 13 AND July 23, 1992.

*Certiorari and Prohibition – Conditional Transfer – Lapse of terminal date for retransfer – application for Acquisition by Bank – Applicability of time limit to pending applications to the Bank introduced by Act No. 19 of 1984 certified on 02 May 1984 amending Finance Act No. 11 of 1963 – Sections 71, 71(2) 71(2) sub paragraph (aa) of Finance Act – Reprospective operation of amending act – Rule of literal Construction.*

The 3rd respondent executed a conditional transfer of the land and premises described in the schedule to the petition to the petitioner subject to the right to obtain a re-transfer on re-payment of the consideration with interest in two years. The deed was executed on 12.01.1964 and the time limit for obtaining the re-transfer ended on 12.01.1966. The 3rd respondent defaulted and the petitioner sued her in D. C. 803/L Katmunai for declaration of title and ejectment and obtained judgment which was affirmed by the Court of Appeal on 18.7.1985.

While the appeal to the Court of Appeal was pending, the 3rd respondent on 10.7.1979 applied to the Peoples Bank for acquisition by the Bank of the land and premises in question. The Act No. 19 of 1984 amending the Finance Act newly introduced a time limit of ten years from the date of expiry of the time limit fixed in the deed, for such applications to the Bank. Hence such period of ten years lapsed on 12.01.1976 with the amending Act of 1984 fixing the time bar of ten years applying retrospectively to pending applications made after ten years from the date of expiry of the period for obtaining the retransfer.

**Held :**

1. Although the amendment made by the Finance Act No 19 of 1984 to the Finance Act No. 11 of 1963 (as amended by Law No. 16 of 1973) introduced subparagraph (aa) to section 71(2), as a fetter on the jurisdiction of the Bank to acquire premises, the subparagraph in effect operates as a time bar, within which an application for acquisition may be made by a person seeking relief from the Bank.
2. The proper focus of section 71(2)(aa), as amended, is not to the time at which a decision is made by the Bank for acquisition but to the time at which an application is made by a person seeking such acquisition.

3. The provisions of section 71(2)(aa) introducing the time bar will apply in respect of any application that is made to the Bank for acquisition after 02.5.1984 being the date on which the amending Act No. 19 of 1984 came into force. However, the period of time that has lapsed prior to the amendment coming into force will be taken into account in computing the time bar in respect of such applications.
4. The provisions of section 71(2)(aa) will not apply in relation to any application made prior to 2nd May 1984 in respect of which no decision had been made by the Bank for acquisition as at that date.

**Per S. N. Silva J.**

".....the new paragraph (aa) has been inserted to an existing provision which deals with a variety of matters that have to be satisfied as pre-requisites to the exercise of jurisdiction of the Bank to acquire land and premises in respect of which an application is made. These pre-requisites range from a description of the applicant, his income, the extent of other land owned by him in the case of agricultural premises and whether the present owner is in occupation of the premises to be acquired, in the case of residential premises. I have to observe that the insertion of a time bar into an existing provision dealing with such a wide array of matters, some of which have to be necessarily considered at an inquiry on material adduced by the other party, is most inappropriate. Ordinarily a time bar is placed as fettering the right of an applicant or a party instituting proceedings."

2. " There are two main aspects of .....(this definition of a retrospective statute). The first is in relation to vested rights acquired under existing law, that is taken away or impaired by the retrospective statute. Here we are not concerned with this aspect, since limitation of time within which a proceeding may be instituted is a matter of procedure and no vested right may ordinarily be acquired in relation to procedure. The second aspect deals with transactions or considerations already past. A retrospective statute, attacks a new obligation or new duty or new disability, in respect of such past transactions or considerations ".

**Cases referred to :**

1. *Supramaniam Chettiar v. Wahid* 58 NLR 140.
2. *R. V. Inhabitants of Christ Church* (1848) 12 QB 149.
3. *Premasiri v. University of Sri Lanka* 78 NLR 505.

Application for writs of certiorari and prohibition.

*Faiz Mustapha, P. C.* with *H. Withanachchi* for petitioner.

*N. R. M. Daluwatte, P. C. with Miss S. Abeyjeewa* for 1st and 2nd respondents.

*S. Mahenthiran* for 3rd respondent.

*Cur.adv.vult.*

October 02, 1992.

**S. N. SILVA J.**

The 3rd respondent to this application transferred the land and premises described in the schedule to the petition, to the Petitioner upon deed 5977 dated 12-01-1964 attested by Mr. K. Thambapillai, Notary Public. The transfer was subject to a condition that if the consideration with interest is repaid within a specified period, the Petitioner will re-transfer the land to the 3rd Respondent (conditional transfer). The 3rd Respondent defaulted in making payment on the conditional transfer and the Petitioner filed action in District Court Kalmunai (case number 803/L) for declaration of title and possession. Decree was entered in favour of the Petitioner which was affirmed by this Court in appeal on 18-07-1985. Whilst the appeal was pending, the 3rd Respondent made an application to the 1st Respondent (Peoples Bank) that the premises be acquired by the Bank in terms of section 71 of the Finance Act No. 11 of 1963 as amended by Law No. 16 of 1973. When the inquiry into the application was pending before the Bank, the Finance Act was further amended by Act No. 19 of 1984 which was certified on 2-5-1984. By this Act, section 71(2) was amended by the addition, inter alia of, subparagraph (aa) which provides that no premises shall be acquired by the Bank unless an application for such acquisition is made within ten years of certain operative dates (time bar). In relation to a conditional transfer the operative date is the date of expiry of the period within which a retransfer may be secured upon payment. According to deed No. 5977 a retransfer may have been secured within two years. Therefore, the operative date is 12-1-1966 and the period of ten years lapsed on 12-1-1976. The application was made by the 3rd respondent to the Bank on 10-7-1979. However, as noted above, the amending Act No. 19 of 1984 which introduced the time bar of ten years was certified on 2-5-1984, when the inquiry was pending.

The application of the 3rd Respondent came for inquiry before Mr. Rohan Sahabandu, the then Manager of the Land Redemption

Branch of the Bank, on 16-9-1985. An objection was raised by counsel appearing at the inquiry for the Petitioner, on the ground that the application was not made within the period of ten years stated in the amending Act. Having considered submissions of both counsel, Mr. Sahabandu overruled the objection on the basis that there is no specific provision in the amending Act that gives it retrospective effect and that the time bar will apply only in relation to applications made after the date of certification namely 2-5-1984. He accordingly decided to proceed with the inquiry. The Petitioner thereupon filed this application for a Writ of Certiorari to quash the said order and for a Writ of Prohibition to restrain the Bank from proceeding to grant relief on the application of the 3rd Respondent.

The principal issue that comes up for consideration in this application is whether the time bar imposed by the amending Act No. of 19 of 1984 will affect pending applications made previous to the amending Act coming into operation. The same issue arises in other applications before this Court and it was submitted that a large number of applications have been laid by at the Bank pending a final decision regarding this issue. In the circumstances I permitted counsel appearing in the other applications as well to make submissions on this issue. Accordingly, Mr. S. Sivarasa, Senior Counsel for the Bank in other applications and Mr. Jayantha Almidea Gunaratne also made submissions regarding this matter.

Mr. Faiz Musthapa, President's Counsel, appearing for the Petitioner submitted that he is not contending that the amending Act of 1984 should be given retrospective effect. He submitted that if the amendment is construed prospectively, it will affect pending applications, since the power of the Bank to acquire premises, where the application is not made within the period of ten years from any of the operative dates is removed with effect from the date of operation of the amendment viz, 2-5-1984. He also submitted that such a construction will advance the legislative purpose of the amendment which is to prevent the Bank from acquiring premises upon applications that have become stale. Learned Counsel for the Respondents on the other hand submitted that if such a construction is given the amendment will necessarily have retrospective effect since it will deprive the applicants who made their applications at a time when there was no such time bar, from securing relief on their applications. It was submitted that such a construction will result in manifest

injustice to that class of applicants. Therefore, the amendment should not be held to apply in relation to pending applications in the absence of express statutory provision to that effect.

The submissions of learned President's Counsel is based on the premise that the amendment of 1984 introduced the time bar, by way of an additional subparagraph to section 71(2). Therefore the new subparagraph (aa) has to be read together with the existing provisions of section 71(2). When the amendment is inserted to the existing provisions, the relevant portions of section 71(2) will read as follows:

- " 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 .....
  - or
  - (aa) unless such application is made within ten years –
    - (i) from the date on which such premises was sold in execution of a mortgage decree.....; or
    - (ii) from the date on which such premises were transferred by the original owner of such premises in any of the circumstances referred to in paragraph (b) or paragraph (c) of subsection (1); or
    - (iii) from the date of the expiry of the specified period referred to in paragraph (d) of subsection (1) ;
  - (b) if an application in that behalf had earlier been made to the Ceylon State Mortgage Bank under Chapter 5(a) of the Ceylon State Mortgage Bank Ordinance..... ;
  - 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 computed under the provisions of the written law does not exceed a sum of 25,000 Rupees (this sum was increased from 10,000 by the amending Act of 1984 ; 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 .....; 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 10 acres in extent. ....".

It is thus seen that the new paragraph (aa) has been inserted to an existing provision which deals with a variety of matters that have to be satisfied as pre-requisites to the exercise of the jurisdiction of the Bank to acquire land and premises in respect of which an application is made. These pre-requisites range from a description of the applicant, his income, the extent of other land owned by him in the case of agricultural premises and whether the present owner is in occupation of the premises to be acquired, in the case of residential premises. I have to observe that the insertion of a time bar into an existing provision dealing with such a wide array of matters, some of which have to be necessarily considered at an inquiry on material adduced by the other party, is most inappropriate. Ordinarily, a time bar is placed as fettering the right of an applicant or a party instituting proceedings. For instance, in the Prescription Ordinance, the provisions of sections 5,6,7,8,9 and 10 begin with the words "no action shall be maintainable". Thereby a party instituting proceedings is precluded from maintaining an action unless the action is brought within the specified period of time. Similarly section 31 (b) (7) of the Industrial Disputes Act, as amended by Law No. 53 of 1973, provides that every application to a Labour Tribunal shall be made within a period of six months from the date of termination of the services of a workman. In this instance although subparagraph (aa) has the familiar words "unless such application is made within .....", the opening words of subsection (2) read as "no premises shall be acquired under subsection (1)". It is in view of these opening words that have to be read with subparagraph (aa), learned President's Counsel submits that the time bar is simply a fetter on the jurisdiction of the Bank to acquire premises and that it should be applied prospectively to all applications, considered after the amendment comes into force, whether or not they have been made prior to the amendment. The submission of Counsel for Respondents is that such a construction gives subparagraph (aa)

retrospective operation, which is not warranted in the absence of express statutory provision to that effect. Thus learned President's Counsel relies upon the primary rule of interpretation being the rule of literal construction supported by the legislative purpose in effecting the amendment whereas learned Counsel for Respondents rely on a specific rule of interpretation that retrospective effect should not be given unless it is clearly intended by the legislature. Hence, the first aspect to be considered is whether the submission of learned President's Counsel results in the amendment of Act No. 19 of 1984 introducing subparagraph (aa) to section 71(2) being given retrospective effect.

The basis rule of interpretation governing the retrospective operation of statutes is stated in Maxwell on Interpretation of Statutes (12th Edition page 215) as follows:

"Upon the presumption that the legislature does not intend what is unjust rests the learning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication."

The learned Editor of Maxwell has observed that this statement of law has been "so frequently quoted with approval that it now itself enjoys almost judicial authority". (P 216). Thus an amendment will ordinarily apply "in cases or on facts which come into existence after the amendment is passed. In this instance, the application of the 3rd Respondent was in existence before the appropriate authority, the Bank, before the amendment was passed. Therefore, the amendment will not ordinarily operate in relation to it, if the amendment is applied prospectively.

Learned President's Counsel focussed on the time at which the appropriate authority, the Bank, exercises its jurisdiction. But, the primary fact in subparagraph (aa) is the date of making the application and what has to be considered is whether that date is within ten years of any of the operative dates. Therefore the proper focus should

not be to the time at which the appropriate authority, the Bank, exercises its jurisdiction but the time at which the primary fact came into existence i.e., the date on which the application is made. Here, the primary fact was in existence at the time the amendment was passed. If the rule of interpretation stated in Maxwell is applied, section 71 (2) (aa) will operate only in relation to applications made after the amendment No. 19 of 1984 was certified namely 2-5-1984 unless retrospective effect to the amendment is clearly intended by the legislature. Therefore, the submission of learned President's Counsel that if the amendment is construed prospectively it will operate in relation to applications that are pending, is without basis.

In the preceding paragraph I considered the submission of learned President's Counsel in relation to the rule of prospective operation of statutes and expressed the view that the construction contended for by learned Counsel cannot be given if the amendment is applied prospectively. The fact that learned Counsel is in effect seeking to apply the amendment retrospectively is seen from what is generally considered as the attributes of a retrospective statute. Craies on Statute Law (7th Edition p387) states the attributes of a retrospective statute as follows:

" A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing. "

The foregoing statement of Craies may be considered a useful definition of a retrospective statute. It is also cited in Maxwell (12th Edition p216). There are two main aspects of this definition. The first is in relation to vested rights acquired under existing law, that is taken away or impaired by the retrospective statute. Here, we are not concerned with this aspect, since limitation of time within which a proceeding may be instituted is a matter of procedure and no vested right may ordinarily be acquired in relation to procedure. The second aspect deals with transactions or considerations already past. A retrospective statute, attaches a new obligation or new duty or new disability, in respect of such past transactions or considerations. In



this instance, the transaction or consideration, understood in the sense of an event, to which subparagraph (aa) is focussed, is the making of an application to the Bank. If the submission of learned President's Counsel is adopted, a new duty is imposed in respect of this past event, on the applicant; that he should have made the application within ten years of the operative date. If it has not been so made, a new disability is attached in respect of that past event for then, the applicant is precluded from obtaining relief on that ground alone. Thus it is seen, that from whatever perspective the submission of learned President's Counsel is examined, the inescapable inference is that, the submission if adopted, results in the amendment being given retrospective effect.

I will now examine the position as to the extent to which new legislation will ordinarily affect pending proceedings. In the case of *Supramaniam Chettiar vs. Wahid* <sup>(1)</sup> T. S. Fernando J considered the question whether the inclusion of section 218(m) to the Civil Procedure Code made by Act No. 20 of 1954 will affect execution, in a proceeding that was pending at the time the amendment was passed. The amendment exempted from seizure, the salary and allowances of an employee in a shop or office, if such salary and allowances do not exceed Rs. 500/- per mensem. The action was pending at the time the amendment was passed and the original court ruled that the plaintiff had not acquired a right to seize the salary under existing law. T. S. Fernando J held that this conclusion was erroneous. He held that the presumption that the legislature intends a statute to be prospective only, has not been rebutted. On that basis, it was held that the exemption from seizure will not operate in relation to a pending action. T. S. Fernando J cited a passage from Maxwell which deals with the effect of alterations in the law in relation to pending actions. It is seen that the passage cited by T. S. Fernando J is modified in the current edition of Maxwell. In the current edition, the effect of alterations in the law in relation to pending actions is dealt with under two limbs. Firstly, in relation to substantive law, the position is stated as follows (Maxwell on Interpretation of Statutes, 12th Edition at p 220) :

" In general when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights."

Secondly, as regards procedural statutes the position is stated as follows (p22) :

" The presumption against retrospective construction has no application to amendments which affect only the procedure and practice of the courts. No person has a vested right in any course of procedure. "

" The limitation of time within which a proceeding may be instituted, is generally regarded as a matter of procedure and not of substantive law. (Bindra on Interpretation of Statutes. 7th Edition p888). As observed by Lord Denman CJ in the case of *R vs. Inhabitants of Christ Church (2)*, " a statute of limitation or prescription is not classed as retrospective mainly because the space of time which is essential for its operation may consist in part of time passed before the statute comes into force. However, the statute is applied only in respect of proceedings instituted after it comes into force. This position is made clear by Bindra in the following passage (p888 & 889) :

" As a rule statutes of limitation being procedural laws must be given a retrospective effect in the sense suits filed after they came into force. "

The word 'retrospective' is used in relation to the period of time that has lapsed prior to the statute coming into force. This use of the word may be inappropriate considering the view expressed by Denman CJ in the case cited above and the definition of a retrospective statute as given by Craies. Whatever be the word used, the effect of the new legislation goes only so far as to take into account the period of time that has lapsed prior to its coming into force but the firm view is, that it will be applied only to suits filed after the legislation comes into force.

Learned author has made a further clarification in the following form:

" This general rule has got to be read with one important qualification and that is that if the statute of limitation, if given retrospective effect, destroys a cause of action which was vested in a party or makes it impossible for that party for the exercise of his vested right of action, then the courts would not give

retrospective effect to the statute of limitation ". The reason for this qualification is that it would inflict such hardship and such injustice on parties that the courts would hesitate to attribute to the legislature an intention to do something which was obviously wrong ". (p889)

In the case of *Premasiri Vs University of Sri Lanka* <sup>(3)</sup> the Supreme Court held that the period of limitation within which an application may be filed in the Labour Tribunal, as introduced by law No. 53 of 1973, will not affect applications that were instituted prior to the amendment coming into force. Learned President's Counsel sought to distinguish this decision on the basis that section 31 B(7) of the Industrial Disputes Act introduced by the amendment is worded as a bar to the making of an application and not as a fetter on the exercise of jurisdiction. That, there are also provisions of the amendment which support the view that the time bar should be applied prospectively to applications filed after the amendment comes into force. However, as a general proposition of interpretation, the decision of the Supreme Court is consistent with the views expressed by the learned authors referred above.

On the basis of the preceding review of the rules of interpretation and the authorities cited, I am of the view, that where legislative provision is made introducing a period of limitation within which an application may be made or a proceeding instituted, in a court or before any other authority, such limitation will apply only in relation to applications made or proceedings instituted after the legislation comes into force. However, in computing the period of limitation, time that has lapsed prior to the legislation coming into force, will in the absence of provision to the contrary, be taken into account. This being the general rule of interpretation, the period of limitation introduced by new legislation will be held as affecting proceedings that are pending at the time the legislation comes into force only if that consequence is clearly intended by such legislation.

I will now move over to a consideration of the submissions of learned Counsel with regard to the specific words used in the relevant provisions. Learned President's Counsel for the Petitioner submitted that subparagraph (aa) to section 71(2) introduced by the amendment No. 19 of 1984 should be construed as being applicable to pending applications in view of the words "unless an application in that behalf

has been made to the Bank". appearing in sub-paragraph (a). He submitted that the past participle used in subparagraph (a) is carried over to sub-paragraph (aa) as well, since the words " such application" are found in subparagraph (aa). Thus it was submitted that subparagraph (aa) will apply in relation to an application that has been made, at the time the subparagraph came into force.

In considering these two subparagraphs, it has to be borne in mind that they are linked with a disjunctive "or". Subparagraph (a) gives a description of the persons who may make an application to the Bank for acquisition. The words " such application " are used in the the new subparagraph (aa) as a method of drafting, to incorporate in subparagraph (aa) the description of persons who may make an application in terms of subparagraph (a). Subparagraph (aa) uses the words " unless such application is made within ten years .....". Therefore, the words " such application " as appearing in subparagraph (aa) does not have the effect of introducing to subparagraph (aa) the past participle used in subparagraph (a). I am inclined to accept the submission of learned Counsel for the Respondents that the operative tense in subparagraph (aa) is the present tense which is specifically used and on a proper grammatical construction, the subparagraph will apply prospectively, to any application that is made after the amendment comes into force. The words used in subparagraph (aa) when read in the context of the provisions of section 71(2) do not yield to the subparagraph being applied retrospectively nor does such construction arise by necessary and distinct implication.

The submission of learned President's Counsel for the Petitioner as regards the legislative object of the amendment is well founded. Undoubtedly, the legislature introduced the amendment with a limitation of time within which an application may be made for acquisition, to prevent applications from being made beyond the period of ten years, of any of the operative dates. However, as submitted by learned Counsel for the Respondents there was no limitation of time within which an application may have been made prior to the amendment introduced by Act No. 19 of 1984. The only limitation was contained in section 71 (1) which authorized the Bank to acquire premises sold in execution of a mortgage decree or transferred in the manner provided, not earlier than 01-01-1952. Therefore, I am inclined to agree with the submission of learned Counsel for the Respondents

that if the construction advanced by learned President's Counsel for the Petitioner is given it would cause serious injustice and hardship to persons who had made applications in the full belief that there was no time limit within which such application may be made to the Bank. The legislative purpose of introducing a time bar can well be achieved by giving a prospective construction to sub-paragraph (aa) so that it will apply in relation to applications that are made after the amending Act No. 19 of 1984 comes into force. Thereby, the injustice and hardship referred above, could well be avoided.

Submissions of learned Counsel also dealt with certain other aspects of injustice and hardship that may be caused, if the interpretation contended for by learned President's Counsel is given to the amendment in question. The 3rd Respondent made her application to the Bank on 10-07-1979, nearly five years before the amendment of 1984 came into force. There was a delay in processing her application and by the time the matter finally came up for inquiry, the amendment of 1984 had come into force. This delay, enabled the Petitioner to raise the objection of time bar. If the application had been processed expeditiously, a decision to acquire may have been made prior to the amendment coming into force. In these circumstances, it would surely be an injustice, to strike down the application of the 3rd Respondent on the basis of a new factor in the form of an amendment, which came into force during the period of delay, for which the 3rd Respondent was not responsible. On the other hand, if there was another applicant, who was similarly circumstanced as the 3rd Respondent but whose application was expeditiously processed and a decision made to acquire prior to the amendment; would not such an applicant have an undue advantage over the 3rd Respondent? In my view law should be interpreted so that its application will avoid such injustice and discriminatory treatment amongst persons, similarly circumstanced. These matters too, weigh against the interpretation contended for by learned President's Counsel for the Petitioner.

For the reasons stated above, I hold

(I) that although the amendment made by the Finance Act No. 19 of 1984 to the Finance Act No. 11 of 1963 (as amended by Law No. 16 of 1973) introduced subparagraph (aa) to section 71 (2), as

a fetter on the jurisdiction of the Bank to acquire premises, the subparagraph in effect operates as a time bar, within which an application for acquisition may be made by a person seeking relief from the Bank ;

(II) that the proper focus of section 71(2) (aa), as amended, is not to the time at which a decision is made by the Bank for acquisition but to the time at which an application is made by a person seeking such acquisition ;

(III) that the provisions of section 71(2) (aa) introducing the time bar will apply in respect of any application that is made to the Bank for acquisition after 02-05-1984 being the date on which the amending Act No. 19 of 1984 came into force. However, the period of time that has lapsed prior to the amendment coming into force will be taken into account in computing the time bar in respect of such applications ;

(IV) That the provisions of section 71(2)(aa) will not apply in relation to any application made prior to 02-05-1984 in respect of which no decision had been made by the Bank for acquisition as at that date.

In view of the foregoing findings I do not see any error in the order made by the 2nd Respondent and accordingly the application of the Petitioner is dismissed. The Petitioner will pay a sum of Rs. 1500/- as costs to the 1st and 2nd Respondents and a sum of Rs. 1000/- as costs to the 3rd Respondent.

*Application dismissed*