

1969 *Present*: H. N. G. Fernando, C.J., and Weeramantry, J.

G. H. WILBERT DE SILVA, Petitioner, *and* THE TOWN COUNCIL
DODANDUWA and another, Respondents

*S. C. 468/68—Application for a Mandate in the nature of a Writ
of Certiorari*

*Municipal Councils Ordinance—Sections 261 and 263—Non-payment of rates or taxes—
Purchase of immovable property by Municipal Council or Town Council—
Certificate issued by Council—Whether its validity can be questioned by way
of Certiorari—Validity of the certificate if the purchase was irregular.*

The Mayor of a Municipal Council or the Chairman of a Town Council does not perform a quasi-judicial function when he signs a certificate under section 263 of the Municipal Councils Ordinance in respect of property purchased in terms of section 261 for non-payment of rates or taxes. Accordingly, *Certiorari* does not lie to quash the certificate.

Quære, whether the conclusive effect of a certificate issued under section 263 of the Municipal Councils Ordinance attaches in a case where a property is shown to have been purchased by a person who was not duly authorised by the Council in terms of the provisions of section 261.

APPPLICATION for a writ of *certiorari* on the Town Council, Dodanduwa, and its Chairman.

Nimal Senanayake, for the petitioner.

Harischandra Mendis, with *Gemunu Seneviratne*, for the respondents.

June 2, 1969. H. N. G. FERNANDO, C.J.—

This is an application for a writ of *Certiorari* to quash a certificate purporting to have been issued under section 263 of the Municipal Councils Ordinance in its application to property alleged to have been sold for non-payment of rates due to a Town Council. Having regard to the provisions of sections 261 and 263, it does not appear to us that the Mayor of a Municipal Council or the Chairman of a Town Council in signing a certificate referred to in section 263 performs a quasi-judicial function and we doubt for that reason whether *certiorari* will lie to quash the certificate.

The complaint of the petitioner in the present case is that the alleged purchase by the Town Council was not a purchase *under the provisions of section 261 of the Ordinance*, for the reason *inter alia* that the property was not bid for and purchased by a person authorised for that purpose by the Council. There appears to be substance in the argument that a resolution of the Town Council is necessary to authorise a person to bid for and purchase property as provided in section 261. If this argument be sound, then the certificate signed under section 263 would be ineffective to vest the property in the Council for the reason that there was not the requisite authority for its purchase. We think that there is good reason for the opinion that the conclusive effect of a certificate issued under section 263 only attaches in a case where a property is shown to have been purchased *duly* under the provisions of section 261.

We are met however by a decision of this Court in the case of *Nafia Umma v. Abdul Aziz*¹ where the directly opposite conclusion has been upheld.

In regard to the very property which is the subject of the present application, the Town Council has instituted an action for ejection of the petitioner from this land and the ground for that action is that title to that land was vested in the Council in terms of section 263. We are informed by Counsel for the petitioner that an application was made in that action to lead evidence to establish that there was non-compliance with the

¹ (1925) 27 N. L. R. 150.

provisions of section 261 of the Municipal Councils Ordinance, and that order on the application to lead such evidence has been reserved by the District Judge. It seems to us that when the order of the District Judge is made there will be a suitable opportunity for a review of the decisions in the case reported in 27 N. L. R. if either of the parties to the pending action appeals against the order of the District Judge. In the event of any such appeal being filed, it will be open to Counsel for either party to bring this matter to the notice of the Registrar, in order that the Chief Justice may consider whether the former decision should be reviewed by a Bench of greater strength. The application is refused; we make no order as to the costs.

WEERAMANTRY, J.—I agree.

Application refused.
