

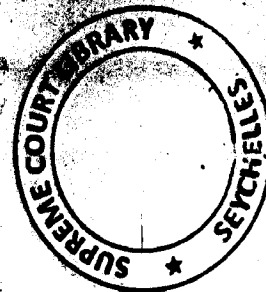
IN THE SEYCHELLES COURT OF APPEAL

The Crown, however, shall APPELLANT
Barclays Bank PLC privilege to the detriment of rights previously
vested in third parties
v/s

1. Controller of Taxes

2. Saminathan Thangarasu

RESPONDENTS



Civil Appeal No.11 of 1989

Mr. K. Shah for the Appellant

Mrs. M. Twomey for the Respondent (Controller of Taxes)

JUDGMENT OF FLOISSAC J.A.

The Government of Seychelles and the appellant are both judgment creditors of Saminathan Thangarasu whose movables were seized by the Government and sold by public auction. The judgment debt owed to the Government is in respect of turnover taxes and the judgment debt owed to the appellant is in respect of overdraft and other banking facilities.

The issue in this appeal is whether the Government enjoyed a privilege over the appellant in relation to the movables and therefore enjoys a correlative privilege in relation to the proceeds of sale now being held by the court usher pending the outcome of the appeal. That issue is required to be resolved by reference to the Civil Code of Seychelles which deals exhaustively with the subject of privileges or priorities in regard to the payment of debts and which binds Government by virtue of the Civil Code of Seychelles Ordinance No.13 of 1975

The key to the determination of that issue is Article 2098 of the Civil Code which provides as follows:

"The privileges in favour of the Crown and the order in which they are enforced are governed by such laws as are enacted from time to time.

The Crown, however, shall not acquire a privilege to the detriment of rights previously vested in third parties."

Article 2098 accordingly expresses or implies that Government has no privileges under the Code and can only rely on privileges previously or subsequently conferred by other statutes. The reason for this codal policy was explained in the Supreme Court of Mauritius in the case of The Colonial Government v. Wdw. Labonde & ors. (1902) M.S.C.R. 19. There Brown J. said at page 26:

"Though, as a matter of convenience, the framers of the Code abstained from detailing and classing the various special privileges of the Treasury under special Treasury laws, it was their evident intention to limit the priorities of the Treasury to such Privileges as existed or might be brought into existence by special laws dealing with the various fiscal matters, and they were careful in the second paragraph of Art.2098 to enact that no such laws should interfere with rights acquired by other parties at the date of their publication."

The first question which therefore arises is whether Government was entitled to any statutory privilege in 1976 when the Code was revised and re-enacted. In answer to that question, counsel for the appellant stated and counsel for the Government did not deny that the only statutory privilege which Government enjoyed at that time was the privilege conferred by the Privilege of Treasury for Costs Ordinance (Arrete of 21st April 1808) reproduced in Title VB Chapter 76. The relevant extracts of section 1 of that Ordinance are as follows:

(1) In consequence of article 2098 of the Civil Code, the privilege of the public treasury shall be regulated in the following manner,

and so far as regards the reimbursement of the costs for which it has obtained a judgment in criminal and correctional cases, and in police cases."

- (2) The privilege of the public treasury on the furniture and movable property of persons condemned shall only be exercised after the other privileges and rights hereinafter mentioned, namely

That Ordinance therefore confers upon Government a specific privilege with regard to "the reimbursement of the costs for which it has obtained a judgment in criminal and correctional cases, and in police cases." Incidentally, it elucidates the 6th paragraph of article 2101 of the Code which provides as follows:

"The privilege of the Crown on the furniture and movable property of persons condemned shall only be exercised after the privileges and rights referred to in the article."

Since the 6th paragraph of article 2101 refers to a specific privilege of Government and since the statutory privilege conferred by the said Ordinance was the only privilege which Government enjoyed at the time of the revision and re-enactment of the Code, the sixth paragraph is clearly a reference to that statutory privilege. The phrase "persons condemned" appearing in the 6th paragraph was therefore intended to refer to persons against whom the Government had obtained judgments for reimbursements of costs in criminal, correctional and police cases.

It is regrettable that the said Ordinance was not drawn to the attention of the learned Chief Justice. He certainly would have found that the Ordinance illuminated the 6th paragraph and made it unnecessary to determine whether the word "condemn" is a concept of the civil or criminal law.

The second question which arises is whether any statute confers upon Government any privilege for the benefit of turnover tax. The Turnover Tax Act 1985 itself creates no such privilege. Section 30 of the Act declares that "All amounts due as tax and additional tax by an operator of a specified business shall be deemed to be held in trust by the operator for and on behalf of the Government
....." But the Act does not further protect these amounts due as tax by creating a privilege upon properties of the taxpayer with respect thereto. And no other statute conferring such a privilege has been identified.

The net result is that the judgment debts in favour of Government and the appellant are both unprivileged debts which rank "pari passu" with each other.

I would accordingly allow the appeal and order that those judgment debts be paid from the proceeds of the sale on the basis that they are both unprivileged debts.

Dated at *Victoria* this *14th* day of *Nov.* 1990



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JUSTICE OF APPEAL