

1957

Present : Weerasooriya, J., and Sansoni, J.

M. SIVANATHAN (Assistant Government Agent), Appellant,  
and J. V. VANDERPOORTEN *et al.*, Respondents

S. C. 99—D. C. (Inty.) Batticaloa, S4/L. A.

*Land acquisition—Decision of Land Commissioner to acquire a land under Land Redemption Ordinance—Jurisdiction of District Court to question its validity—Land Redemption Ordinance, No. 61 of 1942, s. 3 (1) (4) (5)—Land Acquisition Act, No. 9 of 1950, ss. 5, 10.*

Having regard to the limited and special jurisdiction of a District Court in land acquisition proceedings under the Land Acquisition Act, a District Court is not the proper forum to adjudicate on the validity of a determination made by the Land Commissioner that a particular land which is sought to be acquired by him is of the description contained in section 3 (1) of the Land Redemption Ordinance.

**A**PPEAL from an order of the District Court, Batticaloa.

M. Tiruchelvam, Deputy Solicitor-General, with V. Tennekoon and J. W. Subasinghe, Crown Counsel, for the plaintiff-appellant.

T. P. P. Goonetilleke, for the 1st defendant-respondent.

Walter Jayawardene, with M. Shanmuganathan, for the 2nd defendant-respondent.

*Cur. adv. vult.*

June 18, 1957. WEERASOORIYA, J.—

This is an appeal by the plaintiff, as the acquiring officer, from a preliminary order of the District Judge in the course of proceedings initiated on a reference made to the District Court of Batticaloa under section 10 (2) of the Land Acquisition Act, No. 9 of 1950 (hereinafter referred to as "the Act").

The reference came to be made as one of the steps taken under the Act for the acquisition of certain portions of a land called Mankai Mariamman Estate situated in the Batticaloa District. The plaint constituting the reference recites that at the inquiry held by the acquiring officer (under section 9 of the Act) the 1st and 2nd defendants, who are the only respondents who were represented at the hearing before us, between them claimed the entirety of the extent sought to be acquired while the 3rd and 4th defendants claimed  $\frac{3}{20}$  and  $\frac{1}{20}$  shares respectively and the 5th and 6th defendants by their attorney the 7th defendant, together claimed  $\frac{2}{20}$  shares; that the acquiring officer at the conclusion of the said inquiry made a decision in regard to these claims, and that the 1st and 2nd defendants applied in terms of section 10 (2) of the Act for a reference to Court of the dispute between them and the other claimants.

It would appear from the document P 10, which is the statutory notice of the decisions made by the plaintiff, that he allowed in full the respective claims of the 3rd, 4th, 5th and 6th defendants amounting to 6/20 shares, and that the balance shares were allotted among the 1st and 2nd defendants in the proportion of 9/20 to the 1st defendant and 5/20 to the 2nd defendant. The only matter, therefore, that arose for the determination of the Court on the reference before it was whether the 1st and 2nd defendants were between them entitled to the entirety of the land sought to be acquired to the exclusion of the other claimants.

While appropriate issues relating to this dispute were raised at the trial, counsel appearing for the 1st and 2nd defendants also raised certain other issues the effect of which was to question the validity of the declaration made by the Minister under section 5 of the Act, the steps taken by the acquiring officer under the Act pursuant to that declaration and also the jurisdiction of the Court to entertain the reference. These issues are numbered (1) to (4), and it was in view of them that counsel for the plaintiff framed the additional issues numbered (16) to (18) relating to the competency of the Court to go into those matters.

It is common ground that the acquisition proceedings commenced as a result of a determination made by the Land Commissioner, purporting to act under the provisions of the Land Redemption Ordinance, No. 61 of 1942, that the land should be acquired for the purposes of that Ordinance. From the terms of issue No. 1 it may be gathered that the declaration of the Minister under section 5 of the Act is being challenged on the ground that the purported determination made by the Land Commissioner under the Land Redemption Ordinance is invalid for the reason that the land to which that determination relates does not fall within paragraphs (a) and (b) of section 3 (1) of that Ordinance. In the order appealed from the learned District Judge held that while the Court was precluded from reviewing the merits of the investigation made by the Land Commissioner in arriving at his determination it could, nevertheless, ascertain, by hearing evidence if any is adduced, whether the land is of the description contained in section 3 (1) as a matter affecting the jurisdiction of the Court to take cognizance of the reference.

Section 3 (5) of the Land Redemption Ordinance provides that when the Land Commissioner makes a determination for the acquisition of any land which he is empowered to acquire under that Ordinance, the provisions of the Act subject to certain exceptions, substitutions and modifications, shall apply for the purposes of the acquisition of that land. One of the exceptions is that sections 2, 3 and 4 of the Act, which provide for the taking of certain preliminary steps before the Minister makes a declaration under section 5, shall not apply. Section 5 (as modified) provides in sub-section (1), *inter alia*, that where the Land Commissioner determines that any land shall be acquired for the purposes of the Land Redemption Ordinance the Minister shall make a written declaration that such land is needed for a purpose which is deemed to be a public purpose and will be acquired under the Act, and in sub-section (2) that such declaration shall be conclusive evidence that the land referred to in it is needed for that purpose.

The greater part of the arguments addressed to us in appeal on both sides revolved on the question as to the exact significance of the conclusive effect given to the Minister's declaration under section 5 (2) of the Act, but in the view that I have taken of this case, as will presently appear, it is not necessary that I should discuss the numerous authorities that were cited to us in that connection.

Immediately prior to the coming into operation of the Act the law relating to the compulsory acquisition of land by the Crown was contained in the Land Acquisition Ordinance (Cap. 203). That Ordinance provided for the Surveyor-General or an officer authorised by him making a preliminary report as regards the suitability of the land for the purpose for which it was sought to be acquired and on receipt of the report, whatever may have been its terms, the Governor was empowered, if he considered it fit to do, to direct the Government Agent to take steps for the acquisition of the land. Then follow the provisions relating to the giving of public notice of the proposed acquisition, the preferring of claims by persons having interests in the land, the holding of an inquiry into the value of the land and the compensation to be paid therefor, and the reference for determination by a District Court or Court of Requests of disputes as to the amount of compensation or questions respecting the title to the land or any rights thereto or interests therein arising between, or among two or more persons.

In the case of *The Assistant Government Agent, Kalutara v. Wijeysekere*<sup>1</sup>, in dealing with the question whether it was open to a defendant on a reference to Court under that Ordinance to question the statement in the Governor's mandate that the land was needed for a public purpose, de Sampayo, J., observed that the nature and purpose of the reference to Court precluded the raising of such question. "The Court's jurisdiction", he said, "is limited by the Ordinance; it is either to make an award of compensation where the claimants and the Government Agent are disagreed on that point or to decide the question of title to the land where there is any dispute among the claimants or where all the parties interested have not appeared before the Government Agent". Accordingly he held that the Court has no right to decide that the Governor had exercised a wrong discretion in considering that the land was needed for a public purpose and on that ground to decline jurisdiction on a reference made to it by the Government Agent. He also rejected the argument that because the corresponding Indian Act contained a provision giving conclusive effect to the statement in the statutory declaration that the land was needed for a public purpose therefore under the Ceylon Ordinance, which contained no such provision, it was open to a party to question the decision of the Governor that it was needed for such a purpose and to lead evidence to the contrary. An appeal was unsuccessfully taken before the Judicial Committee of the Privy Council from the decision of this Court in that case. In dismissing the appeal their Lordships observed<sup>2</sup> that the "nature of the objection raised is such that it would be obviously unsuitable for the District Court, which is concerned with the question of compensation which would arise if the land is to be taken". They also

<sup>1</sup> (1917) 4 C. W. R. 251.

<sup>2</sup> (1919) A. C. 646 at 649.

approved an earlier decision of this Court on the same point in the case of *The Government Agent v. Perera*.<sup>1</sup>

Ever since the decision of these cases the question whether on a reference under the Land Acquisition Ordinance the Court can go behind the Governor's mandate that the land was needed for a public purpose and decline jurisdiction on the ground that it was not so needed has been regarded as effectively settled. It seems to me that the same question is now sought to be raised under the guise of the provisions of the Act, which replaced that Ordinance only comparatively recently. Before the Act came into operation the procedure for the acquisition of land in respect of which the Land Commissioner had made a determination under the Land Redemption Ordinance was that contained in the Land Acquisition Ordinance. We were referred to the case of *Perera v. Unantenna et al.*<sup>2</sup> where, on a determination having been made by the Land Commissioner, proceedings were taken for the acquisition of the land and a reference made to Court under the Land Acquisition Ordinance. While the judgment in that case does appear to contain certain observations which suggest that on a reference so made it was competent for the Court to entertain an objection to the validity of the reference on the ground that the Land Commissioner had acted in excess of jurisdiction in making his determination, there is nothing in the judgment to indicate that the effect of the earlier decisions to which I have referred had been considered. I do not think, therefore, that the last mentioned case can be regarded as in any way affecting the authority of the earlier decisions, one of which is a decision of the Privy Council.

Of the many arguments addressed to us with great persuasive force by Mr. Jayewardene who appeared for the 2nd defendant-respondent one was that a valid determination by the Land Commissioner is a condition precedent to the Minister's exercise of his powers under section 5 (1) of the Act to make a declaration that the land to which that determination relates is needed for a purpose deemed to be a public purpose, and that it is only in such a case that conclusive effect given in section 5 (2) applies to the declaration. But conceding that to be so, I do not think that it is competent to the Court to which a dispute is referred for determination under the Act to decline jurisdiction on some ground affecting the validity of the Land Commissioner's determination. No doubt, when a question is raised as to the jurisdiction of a Court or other tribunal, it has always the power to decide it, but the authority of the Court or tribunal to decide that question must necessarily be circumscribed by the very nature of the jurisdiction conferred on it in regard to the particular matter submitted to it for adjudication. The limits of this jurisdiction are to be looked for in the statute under which the Court or tribunal is constituted, and may be either as to the kind and nature of the action or proceeding of which the Court so constituted has cognizance or as to the area over which its jurisdiction shall extend. A comparison of the provisions of the Land Acquisition Ordinance relating to the steps to be taken subsequent to the Governor's mandate and leading up to the reference to Court, with the corresponding provisions in the Act consequent on the Minister's declaration under section 5 (2), would show

<sup>1</sup> (1903) 7 N. L. R. 313.

<sup>2</sup> (1953) 54 N. L. R. 457.

that the provisions in the two enactments are not substantially different. Furthermore, it would appear that where the Land Commissioner, in the purported exercise of his powers under the Land Redemption Ordinance, makes a determination that a land should be acquired for the purposes of the Ordinance and that determination is communicated to the Minister, the latter is called upon under section 5 (1) of the Act (as modified) to make his written declaration that the land is needed for a purpose deemed to be a public purpose and will be acquired; and the conclusive effect referred to in section 5 (2) would apply to that declaration. The communication of the Land Commissioner's determination to the Minister is a purely administrative act and no authority is conferred on the Minister to inquire into the validity of the determination before he makes his declaration.

Section 10 of the Act provides what matters may be referred by the acquiring officer to the determination of a Court, namely, every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired, and every dispute that may have arisen between any claimants as to any such right, title or interest. The acquiring officer may in the first instance refer such claim or dispute to Court without making his decision thereon. Or where he has made his decision, any party to the dispute or a claimant whose claim is wholly or partly disallowed may apply to him for the reference of the claim or dispute to Court. The section also contains provision that the reference shall be to the District Court or the Court of Requests having jurisdiction over the place where the land which is to be acquired is situated according as the total amount of the claims for compensation for the acquisition of the land exceeds or does not exceed three hundred rupees.

It would undoubtedly be open to a Court before which a reference is pending to inquire into and decide objections to its jurisdiction on the ground that the reference has not been made by the proper authority or that by reason of the situation of the land which is to be acquired or over which a servitude is to be acquired, or of the total amount of the claims for compensation for the acquisition of the land or servitude, the Court is not the appropriate Court to which the reference should be made. But a consideration of section 10 and the preceding provisions of the Act lead me to the conclusion that it is not open to the Court to consider objections to the reference on the ground of the invalidity of either the Minister's declaration or the Land Commissioner's determination and decline jurisdiction on that ground. I am fortified in this view by the decisions to which I have already referred. Especially do I consider that the observations quoted earlier from the judgment of de Sampayo, J., in *The Assistant Government Agent, Kalulara v. Wijeyesekera* (*supra*) are equally applicable to a reference to Court under the Act as they are to a reference under the Land Acquisition Ordinance.

If the view that I have taken is right a question may arise as to what legal remedy is available to a party against the determination of the Land Commissioner that a land should be acquired for the purposes of

the Land Redemption Ordinance. The Ordinance itself does not provide for an appeal from the Land Commissioner's determination, and it may well be that no remedy is available. Where, however, the Land Commissioner has acted in excess of his jurisdiction in making the determination I do not see that the remedy of *certiorari* would not be available to quash it even in a case where the Minister has in pursuance of the determination made his declaration under section 5 (1) of the Act. It is well established that the conclusive effect given in a statute to an act or declaration, whether of an administrative, judicial or quasi-judicial body, will not by itself exclude the remedy of *certiorari*. As, however, the question did not directly arise in this appeal and was not fully argued before us, it is not necessary that I should express a definite opinion on it.

For the reasons already given the order appealed from is set aside and the case is remitted to the Court below so that the trial may be proceeded with on issues (5) to (15) only of the issues already framed and such further issues (if any) as may in terms of this judgment be properly raised as relating to the particular matter referred to the determination of the Court.

The plaintiff will be entitled to receive from the 1st and 2nd defendants his costs of appeal as well as of the proceedings held on the 8th March, 1956.

SANSONI, J.—

I agree and have very little to add.

The Privy Council judgment in *Wijeyesekera v. Festing*<sup>1</sup> proceeds on two grounds: (1) that the District Court in a proceeding under the Land Acquisition Ordinance No. 3 of 1876 was concerned with the assessment of compensation; and (2) that the decision of the Governor that the land was wanted for public purposes was final, and was intended to be final, and could not be questioned in any Court.

The first ground seems to me to apply to the present case, even though the Land Acquisition Act No. 9 of 1950 has repealed and taken the place of the Ordinance of 1876. Under both statutes the District Court or Court of Requests has been empowered to adjudicate on the respective rights and claims of the parties who claim the compensation, but only in order that the compensation may be correctly apportioned among the claimants.

When one examines the provisions of the Land Acquisition Act relating to a reference of a claim or dispute by an acquiring officer to the District Court or the Court of Requests, it seems clear that the particular Court to which the reference is made has jurisdiction only to decide that claim or dispute and nothing else. Special provisions deal with the conduct of the proceedings, the stamp duty leviable, the award of costs, and the right of appeal, on a reference. These provisions indicate that a reference

<sup>1</sup> (1919) A. C. 616.

is not the equivalent of a regular action in a District Court or Court of Requests. It is therefore not open to a plaintiff or defendant in a reference to raise issues which are appropriate only to such an action.

But the principle would still apply that "wherever jurisdiction is given to a Court by an Act of Parliament or by a Regulation in India (which has the same effect as an Act of Parliament) and such jurisdiction is only given upon certain specified terms contained in the Regulation itself, it is a universal principle that these terms must be complied with, in order to create and raise the jurisdiction, for if they be not complied with the jurisdiction does not arise"—see the judgment of the Privy Council in *Nusserwanjee Pestonjee v. Meer Mynoodeen Khan*<sup>1</sup>. This principle would enable the District Court to enquire whether the reference is valid or not, by seeing whether the conditions laid down in the Act governing references have been fulfilled. One such condition is the time limit of 14 days within which the claimant should apply to the acquiring officer to refer the claim to Court; another condition is that the Court must be one having local jurisdiction in respect of the land which is to be acquired—section 10 (2).

But the 1st and 2nd defendants-respondents would go further, and it was argued on their behalf that the District Court in these proceedings could and should inquire into the validity of the determination of the Land Commissioner made by that officer under section 3 (4) of the Land Redemption Ordinance No. 61 of 1942. I do not accept this submission because it does not seem to me that a valid determination of the Land Commissioner is a condition governing the exercise of jurisdiction by the Court. I think we must look in the Land Acquisition Act itself and not outside it for the terms upon which that jurisdiction can be exercised.

Let it be assumed that the Land Commissioner has acted without jurisdiction in making his determination. It may well be that the validity of such a determination could have been questioned in appropriate proceedings. There would be much force in the argument that the determination of the Land Commissioner who acts under a limited jurisdiction conferred on him by the Land Redemption Ordinance has not the same binding effect as the decision of the Governor made under section 6 of the Land Acquisition Act of 1876. The provisions of the two statutes on this point are so dissimilar that the second ground on which the decision in *Wijeyesekera v. Festing*<sup>2</sup> went would hardly be applicable to the determination of the present appeal.

I would therefore rest my decision in this appeal on the ground that, having regard to the limited and special jurisdiction of a District Court in land acquisition proceedings, it is not the proper forum to adjudicate on the validity of the Land Commissioner's determination.

I agree with the decision of my brother that the trial should proceed on issues (5) to (15) only, and such further issues as may be properly raised having regard to our judgments.

*Order set aside.*

<sup>1</sup> (1855) 6 Moore's I. A. 154.

<sup>2</sup> (1919) A. C. 616.