

1901.
March 26
and 28.

ELLIS v. CAREEM.

D. C. Colombo, 2,165.

Land Acquisition Ordinance, No. 3 of 1876—" Person interested "—Reversionary lessee.

The owner of a reversionary lease is not a person interested in the property sought to be acquired under the Land Acquisition Ordinance.

Though the result of the property being taken over by the Government will result in loss to the reversionary lessee,—in that it renders the lessor unable to fulfil his agreement to put the lessee in possession when the time comes for him to take possession, and the lessee cannot sue the lessor or the Crown for damages,—yet no compensation can be given him when the Ordinance awards none.

THIS was a reference by the Government Agent of the Western Province under the Land Acquisition Ordinance, No. 3 of 1876, to acquire a land situated at Maradana, containing in extent 4 acres and 22 perches. The Government Agent tendered a sum of Rs. 39,818 as a sufficient compensation, but the owners demanded Rs. 100,000, and their lessee, who was in possession of the land, claimed the sum of Rs. 6,000 as compensation in respect of three leases in his favour: the first expiring on the 13th June, 1900, nearly two months after the date of the libel of reference, and the second a lease to him from the 1st July, 1900; for a term of two years, the rent payable being at the rate of Rs. 250 per month.

The case was tried with the aid of two Assessors, Messrs. F. C. Loss and David Perera. The former assessed the proper compensation to be Rs. 50,000 and the latter at Rs. 37,500.

The District Judge valued the premises at Rs. 50,000, and as to the lessee's claim he delivered judgment as follows:—

“ As between the plaintiff and the first and second claimants, the Court has held that the value of the land acquired by the Crown is Rs. 50,000. The third claimant, who is the lessee of the land, claims to be paid Rs. 6,000 out of this sum as compensation.

1901.
 March 26
 and 28.

The lease in his favour (C 2) is dated 21st August, 1899, and is for two years commencing from the 1st July, 1900. The land appears to have been acquired by the Crown between January and March, 1900. It is contended on behalf of the lessors, the first and second claimants, that the lessee is not entitled to compensation, as the lease had not commenced, and the lessee was not in possession of the lease premises at the date of the acquisition by the Crown, and I have been referred to *Voet, lib. XIX., tit. II., section 16*. I do not see that that passage applies to this case. I am of opinion that the lessee is entitled to compensation to the extent of his interest in the land acquired.

“ With regard to the value of that interest, there is the evidence of the third claimant, who was called as a witness by the lessors as against the Crown in order to prove that the land was worth Rs. 100,000. I did not believe that evidence as to income, but I think that the first and second claimants are bound by that evidence, as I must accept it as against them.

“ I find that the third claimant is entitled to Rs. 3,243.36 as compensation, and he is entitled to draw that amount from the Rs. 50,000.

“ The first and second claimants are therefore entitled to Rs. 46,756.84, and the third claimant to Rs. 3,243.36.

“ The first and second claimants to pay the third claimant his costs of this contention.”

The owners appealed.

Van Langenberg and *H. J. C. Pereira*, for appellants.

Rāmanāthan, S.-G., for respondent.

Their Lordships, after argument, considered Rs. 50,000 to be sufficient compensation to the appellants, but desired to hear further argument as regards the right of the lessee to obtain compensation in regard to the new lease, which had not begun to run at the time of the acquisition by the Crown.

Sampayo, for the lessee, respondent contended that his client had an interest in the land acquired by virtue of his lease, and quoted 3 *N. L. R.* 48; 4, *S. C. C.* 151; Indian Land Acquisition Act, No. 10 of 1870 (section 19); 12 *Calcutta L. R.* 33; and *Voet, XIX. 2, 1*.

BONSER, C.J.—If the lessee's claim be rejected in this suit, can he claim damages as against the Crown or his landlord?

Rāmanāthan, S.-G.—He cannot. *Lex non cogit ad impossibilia*. The circumstances of *Bailey v. De Crespigny* are precisely in point (*L. R. 4 Q. B.* 180).

Cur. adv. vult.

1901. 28th March, 1901. LAWRIE, J.—

March 26
and 28.

By the Land Acquisition Ordinance Government must pay for land required for public purposes the market value at the time of awarding compensation.

There may exist several interests in the acquired land which are saleable, having a separate market value. The interest of the proprietor, whether one or many, the interest of a tenant in possession, the interest of a usufructuary mortgagee, the interest of a life-renter, all these and others may, in the general case, be sold separately; and I am of the opinion that when interests are separate, and when each of those separately interested cannot agree with the Government Agent as to the market value of their separate interests, then each must be referred to the Court to have the matter determined by the Court and Assessors.

Here there were (it is said) two separate interests in the land acquired: (1) the interests of the owner; (2) the interest of a lessee. The Government Agent settled with the lessee and gave him the market value of the existing lease under which he was in possession, but the Government Agent refused to pay anything for a lease to commence some months later which was not current at the time of awarding compensation.

I think the Government Agent was right. The reference of the Court was on the matter between the Government Agent and the owner: what was the market value of the land?

The District Judge and Assessors were unanimous in finding that the nett income or rental derived from the land was Rs. 3,000.

The District Judge and one Assessor held that Rs. 50,000 was the market value as being the capital which, if fairly invested, would produce the income of Rs. 3,000.

As the Government Agent did not appeal, it is unnecessary to consider whether the Court did not give too large a sum.

It treated the land as capable of yielding Rs. 3,000 per annum for ever, whereas from the unsubstantial buildings on the land the rental was probably not stable nor permanent. If Rs. 3,000 was the rental, seven to ten year's purchase might have been enough, whereas the Court gave nearly seventeen year's purchase. But as I said, the Government Agent did not appeal; it seems to me that the landowner had no cause of complaint—he got quite enough.

Then the lessee came forward. He had been refused compensation by the Government Agent for the market value of a lease which was not in existence at the date of awarding compensation.

He acquiesced in that refusal, and he did not press the claim and asked that it be referred to Court.

What interest had this claimant in the land under the lease on which he founds? It seems to me he had none. He had made a contract with the owner in which, in consideration of Rs. 750 paid, the owner gave him a lease to commence at a future date. That did not create a present interest in the law at the date of the award, which had to be paid for under the Land Acquisition Ordinance.

1901.
March 26
and 28.
LAWRIE, J.

I would affirm the decree in favour of the owner for Rs. 50,000 and dismiss the lessee's claim, setting aside the decree in his favour with costs.

BONSER, C.J.—

As regards the question raised by the first appeal as to the sufficiency of the compensation awarded to the landowner, I agree in dismissing the landowner's appeal, being of opinion that the compensation awarded was amply sufficient, having regard to the description of the property given by the witnesses, a large portion of it consisting of mud-walled huts with catjan roofs.

Then, as regards the other appeal in which the landowners object to a portion of their compensation being diverted to compensate the owner of a reversionary lease. I agree that the appeal should be allowed. It seems to me that the owner of a reversionary lease is not a person interested in the property within the meaning of the Ordinance.

No doubt the result of the property being taken over by the Government under the provisions of the Land Acquisition Ordinance will result in loss to the reversionary lessee, in that it renders the landowners unable to fulfil their agreement to put the lessee in possession when the time comes for him to take possession, but it seems to me that that is a case which has not been provided for by the Ordinance, and that we have no right to make law and award compensation when the Ordinance gives no compensation.
