

STEPHEN PERERA AND OTHERS
v
MINISTER OF LANDS, IRRIGATION AND MAHAWELI
DEVELOPMENT AND ANOTHER

SUPREME COURT
FERNANDO, J.
EDUSSURIYA, J., AND
WIGNESWARAN, J
SC APPEAL No. 18/97
CA APPLICATION No. 423/92
8TH OCTOBER, 2002

Writs-Writs of certiorari and mandamus – Land acquisition – Breach of settlement in court to provide alternate land – Power of court to grant compensation.

The appellant applied to the Court of Appeal for writs of certiorari and mandamus to quash an acquisition of 16.85 perches of land in Wellawatte in 1979 under an order in terms of the proviso (a) to section 38 of the Land Acquisition Act and for a direction to make a divesting order in respect of the said land in terms of section 39A. The Court of Appeal dismissed the application in 1996.

In the course of the appeal before the Supreme Court the parties entered into two settlements, one on 23.5.2000 and another on 11.2.2002 whereby the dispute was settled on the basis that the appellants would accept alternate land. The appeal was dismissed subject to the first settlement. That settlement failed as the appellants objected to the suitability of alternate land offered. Hence the 2nd settlement. Thereafter on 8.10.2002 the court was informed that alternate lands were no longer available. Consequently the second settlement too failed. In view of the failure of the settlement the parties requested the court to order compensation to be paid by the 2nd respondent (National Housing Development Authority), in an amount to be agreed upon by the parties, and failing agreement in an amount to be determined by the court on an equitable basis.

Held:

- (1) If the circumstances do not warrant contempt proceedings, loss or prejudice caused by the failure of settlement can be averted by an order for substituted performance or compensation in lieu. The court

can order payment of compensation in lieu of the 2nd respondent's obligations under the settlement.

- (2) Whatever rights the appellants may have had in respect of the land originally acquired, the two settlements entered into by them must be the measure of their present rights.

APPEAL from the judgment of the Court of Appeal

Mohan Peiris for appellants

Shavindra Fernando Senior State Counsel for respondents.

Cur.adv.vult

December, 9, 2002

FERNANDO, J.

The three Petitioners-Appellants filed an application in the Court of Appeal in 1992, in respect of an order made in 1979 under proviso (a) to section 38 of the Land Acquisition Act, praying for Certiorari to quash that order and Mandamus for a divesting order under section 39A. That acquisition was of land at Galle Road, Wellawatte, for the National Housing Development Authority, the 2nd Respondent. The Court of Appeal dismissed that application in 1996, and the Petitioners appealed to this Court with special leave. In the course of the proceedings the 3rd to 5th Respondents were discharged. It is unnecessary to consider the facts and the legal issues relating to that application, as the dispute was settled on 23.5.2000 on the basis that the Petitioners would accept 40 perches out of the land available at the Maththegoda Housing Scheme, the exact location of which was to be determined by the 2nd Respondent in consultation with the Petitioners. Subject to that settlement, the appeal was dismissed.

However the Petitioners considered the land offered by the 2nd Respondent to be unsuitable, and it was thereafter agreed on 11.2.2002 that the 2nd Respondent would communicate a written offer within two weeks, giving the Petitioners a choice: the 40 perch land at Maththegoda, or two allotments from the Jaya-

wardenagama Housing Scheme (one being 18.62 perches and the other 13 perches), or, if possible, another allotment from the Gajabapura Housing Scheme. It was agreed that the Petitioners would indicate within two weeks which option they accepted, failing which they would be entitled only to the Maththegoda land.

That agreement, too, was not complied with. On 8.10.2002 the Court was informed that the aforesaid allotments were no longer available, and that no purpose would be served by making further attempts to reach a settlement. It is unnecessary to determine who was responsible for the failure to implement the settlement, because the parties requested the Court to order compensation to be paid by the 2nd Respondent to the Petitioners, in an amount to be agreed upon by the parties, and failing agreement in an amount to be determined by the Court on an equitable basis.

Where a settlement entered into by the parties cannot be implemented, one or both parties will suffer loss or prejudice. If the circumstances do not warrant contempt proceedings, such loss or prejudice can only be averted by an order for either substituted performance or compensation in lieu. It is not feasible for this Court to attempt to identify alternative lands which the 2nd Respondent should offer to the Petitioners, and accordingly the remaining option is to order equitable compensation. Although the Petitioners' prayer was for *Certiorari* and *Mandamus*, this Court can order payment of compensation in lieu of the 2nd Respondent's obligations under the settlement.

In his written submissions, learned Senior State Counsel contended, on behalf of the 2nd Respondent, that 40 perches of land at Maththegoda are presently worth Rs. 65,200 per perch, and submitted that compensation should be assessed on that basis.

Learned Counsel for the Petitioners did not contest that valuation, but relied on a valuation report valuing the land originally acquired (16.85 perches in extent) at Rs. 40,000 per perch in 1980, and Rs. 1,000,000 per perch in 2000 (and even now) – on which basis he claimed Rs. 16,850,000 as compensation.

Whatever rights the Petitioners may have had in respect of the land originally acquired (even assuming that there were no factors which would have depreciated its value) were superseded by the

terms of the settlement entered into on 23.5.2000, and that together with the subsequent settlement must be the measure of their rights now.

Having regard to the value (as assessed by the 2nd Respondent) of the land which the Petitioners have been deprived of, and the circumstances of this case, including the delay, expense and inconvenience to the Petitioners, I consider that a sum of Rs. 3,300,000 would be equitable compensation, and I direct the 2nd Respondent to pay that sum to the Petitioners in equal shares, on or before 31.1.2003, together with interest calculated at the rate of 15% p.a. in the event of any delay in payment.

EDUSSURIYA, J. – I agree.

WIGNESWARAN, J. – I agree.

*Compensation ordered in lieu
of settlement.*