

1962 Present : Basnayake, C.J., and Abeyesundere, J.

L. S. WICKRAMASINGHE, Appellant, and THE GOVERNMENT
AGENT, HAMBANTOTA, Respondent

S. C. 4—Land Acquisition Case, BR. 1635

Land acquisition—Appeal to Board of Review—Duty of Board to make order as to costs—Interest on compensation—Land Acquisition Act, ss. 19, 26 (1), 28, 35, 38.

In land acquisition proceedings a party is entitled to be awarded the costs and interest due to him in terms of sections 26 (1) and 35 of the Land Acquisition Act.

A PPEAL under section 28 of the Land Acquisition Act.

S. C. E. Rodrigo, for Appellant.

S. Pasupathy, Crown Counsel, for Respondent.

June 7, 1962. BASNAYAKE, C.J.—

This is an appeal under section 28 of the Land Acquisition Act from the decision of the Board of Review constituted under section 19 of that Act.

It would appear from the affidavit filed by the appellant along with his petition of appeal that he was the owner of two lands called Gæderawatta Mudunkebella and Hedagedarawatta part of assessment Nos. 107/6 and 107/7 in Ward No. 6 of Beliatta Town depicted as Lots Nos. 231 and 239 in Sup. No. 16 to F. V. P. 291 in extent 3 acres and 6 perches. The acquiring officer took possession of the land by virtue of an order made by the Minister under section 38 and published in *Gazette* No. 10,348 of 1st February 1952.

The Board has determined the value of the land at Rs. 4,000 per acre and entered an award of Rs. 12,150. The main questions urged by learned counsel are—

- (a) that no regard has been paid to the value of the buildings on the land in arriving at the valuation ;
- (b) no costs have been awarded to the appellant by the Board although the Board increased the value awarded by the acquiring officer ;
- (c) that no interest which he is in law entitled to has been allowed by the Board.

Counsel did not press the first ground as the buildings were school buildings built with contributions from the public and as the appellant had at the inquiry before the acquiring officer stated, " I now withdraw the claim made by me for the school buildings standing in Lot 239 for which I have asked a sum of Rs. 15,000. "

The appellant cannot therefore claim any relief on ground (a) as he by his own act had excluded the buildings from the ambit of the assessment of compensation. In regard to the second ground the appellant is entitled to relief. The Board increased the valuation from Rs. 3,500 to Rs. 4,000 per acre, but it proceeded to state "there will be no order as to costs". This order is contrary to section 26 (1) of the Act which reads—

"The decision of the Board on an appeal made to it shall, unless for special reason the Board directs otherwise, contain an order as to the person who is to pay the costs of the proceedings relating to the appeal and shall determine the amount of such costs."

In the instant case as the Board gives no special reason for its order disallowing costs, the order is not in accordance with the statute and we set it aside and direct the Board to determine the amount of costs the appellant should receive from the Crown. Learned counsel urged that unless we made an order regarding interest it may be contended that it was not payable although the statute provided for it. Section 35 of the Land Acquisition Act requires that where the amount of compensation payable under the Act is not paid to the person entitled to it or into Court before the date on which an Order under section 38 is published in the *Gazette*, the amount of such compensation shall be paid with interest at the prescribed rate from that date up to the date of payment. There is no question that the appellant is entitled to interest on the amount ultimately awarded to him by the Board at the prescribed rate.

The appellant is entitled to the costs of appeal.

ABEYESUNDERE, J.—I agree.

Order set aside.

