1953 *Present :* **Gratiaen J.**

SUFFRAGAM RUBBER AND TEA CO., LTD., Petitioner, *and* M. J. M. MUHSIN (A. G. A., Ratnapura), Respondent

S. C. 169—In the matter of an Application for a Mandate in the nature of a Writ of Prohibition under section 42 of the Courts Ordinance (Cap. 6).

Writ of Prohibition—Land Acquisition Act, No. 9 of 1950 — Order for taking immediate possession of a land—Effect of—Claim for compensation—Scope of acquiring officer's inquiry—Sections 4, 5, 9, 10, 16, 36, 37, 41—Construction of statute—Power of Court to fill in gaps.

Where, by virtue of the special powers vested in him under proviso (*a*) to section 36 of the Land Acquisition Act, the Minister of Agriculture and Lands makes order directing an " acquiring officer " to take immediate possession of a land on the ground of urgency, the property vests absolutely in the Crown from the date of the publication of the order in the *Gazette*, and the " acquiring officer " has no jurisdiction thereafter to commence or continue (once commenced) an inquiry into claims for compensation under section 9 or to make an award under section 16. In such cases, the common law jurisdiction of the regular Courts of Justice to determine disputes between the private individual (whose property has been compulsorily acquired) and the Crown has not been superseded by the Act either expressly or by necessary implication.

"In the construction of a statute 'the duty of the Court'—and *a fortiori* the duty of a tribunal created by the statute—'is limited to interpreting the words used by the Legislature, and it has no power to fill in any gaps disclosed. To do so would be to usurp the function of the Legislature.'"

APPLICATION for a Writ of Prohibition.

H. V. Perera, Q.C., with *D. S. Jayawickreme*, for the petitioner.

Walter Jayawardene, Crown Counsel, with *G. F. Sethukavaler*, Crown Counsel, for the respondent.

July 17, 1953. GRATIAEN J.—

The petitioner is a company with limited liability and was the owner in the Ratnapura District of an estate a portion of which was known as Galkaduwa Division. The respondent is the Assistant Government Agent of the District and, by virtue of his office, is an " acquiring officer " within the meaning of the Land Acquisition Act No. 9 of 1950.

On 28th May, 1951, the Minister of Agriculture and Lands, exercising the special powers vested in him under proviso (*a*) to sec. 36 of the Act, had made an order directing the respondent to take possession of Galkaduwa Division on behalf of the Crown. This order was duly published in the *Gazette* on 30th May, 1951, and the property accordingly vested absolutely in the Crown with effect from that date (sec. 37). In the result the Company was automatically and by operation of law divested of its former title to this extent of land (hereinafter referred to for convenience as " the property ".)

It is necessary to record in this connection that, prior to 28th May 1951, the respondent had, on the Minister's direction, already initiated steps with a view to the acquisition of the property in accordance with the more normal procedure commencing with sec. 4 of the Act. Had that procedure been continued to its logical conclusion, the company would have enjoyed the opportunity, if so advised, of making representations against the proposed compulsory acquisition of its property for a public purpose. This valuable right was however lost when the Minister later decided, on the ground of urgency, that it had become necessary to vest the property forthwith in the Crown, thereby depriving the Company of the opportunity of showing cause why the proposed acquisition should not take place.

Notwithstanding the effect of the Minister's statutory order to which I have previously referred, the respondent purported to proceed, in respect of the property, with the various steps prescribed in the Act for the ultimate vesting of private land in the Crown under sec. 37 on the basis that it " should be " (*vide* sec. 5) and was " to be acquired " (*vide* secs. 9,10 and 16)—whereas in truth and by operation of law the acquisition of this particular property had already been complete on 30th May, 1951. On this fictitious hypothesis he fixed a date for the holding of an inquiry under sec. 9 at which he proposed *inter alia* to make a purported award for compensation under sec. 16 (1) (*c*) in accordance with the statutory basis of computation laid down by sec. 41 of the Act.

The Company's contention is that an " acquiring officer " has no jurisdiction to hold an inquiry under sec. 9 or to make an award under sec. 16 in cases where property has already been vested in the Crown under sec. 37 by virtue of the publication of an emergency order made by the

Minister under sec. 36 proviso (*a*). It accordingly asked for a mandate in the nature of a writ of prohibition prohibiting the respondent from holding an inquiry under sec. 9 of the Act or from resuming the inquiry which he had purported to commence to hold under that section. The application came up *ex parte* in the first instance before my brother Pulle who entered a rule *nisi* in favour of the Company. On 8th July, 1953, I made the rule absolute with costs after hearing Counsel for both sides. I now proceed to pronounce the reasons for my decision.

Before the passing of the Land Acquisition Act No. 9 of 1950, the regular Courts of Justice were alone vested with jurisdiction to fix the amount payable to private parties as compensation for the compulsory acquisition of their property by the Crown. This jurisdiction has now been substantially, but only to the extent laid down by the relevant legislation, been transferred to statutory tribunals. It is apparent that the scope of the jurisdiction of these new tribunals must be found within the four corners of the Act itself. If one examines the limits of the respondent's jurisdiction upon this footing, one finds that, as conditions precedent to the commencement or the continuation (once commenced) of an inquiry under sec. 9, the following steps are essential :

(*a*) The appropriate Minister must have issued a direction under sec. 4 (1) and must, after the prescribed procedure has been followed, have decided under sec. 4 (5) that the property " should be . . . . acquired under (the) Act ". (The words of futurity are important).

(*b*) The Minister must, following upon his decision under sec. 4 (5), have issued a further direction to the acquiring officer under sec. 5 (1).

(*c*) The Minister's direction under sec. 5 (1) must have been carried out.

(*d*) The provisions of sec. 7 must have been complied with.

It is quite evident from this analysis that whenever, before the conclusion of an inquiry under sec. 9, the publication of a Minister's order under sec. 36 proviso (*a*) has had the automatic effect of vesting the property in the Crown, the acquiring officer's jurisdiction under sec. 9 is forthwith terminated. The Act does not confer upon him any statutory jurisdiction to determine issues of fact or law arising after the property previously belonging to a private individual has vested in the Crown. Once that has occurred, the Minister himself is powerless to confer any further jurisdiction on the acquiring officer by purporting to give him further directions (under sec. 5) which have no relation to reality. Indeed, it is implicit in the provisions of secs. 5, 7, and 9 that the property concerned has not yet vested in the Crown.

The Act is silent upon the question as to who should determine the amount, if any, of compensation payable to a person whose property has compulsorily been acquired by virtue of the publication of the Minister's order under sec. 36 proviso (*a*). It follows that an acquiring officer who purports to exercise judicial functions in respect of any dispute arising in that context would be usurping a jurisdiction which the Legislature has not conferred upon him.

In the construction of a statute " the duty of the court "—and *a fortiori* the duty of a tribunal created by the statute—" is limited to interpreting the words used by the Legislature, and it has no power to fill in any gaps disclosed. To do so would be to usurp the function of the Legislature "—*Magor and St. Mellons Rural District Council v. Newport Corp.* [1] Applying this principle, I am satisfied that the clear and unambiguous words by the Legislature which passed the Act do not extend an acquiring officer's jurisdiction under sec. 9 to cases where the Minister's special powers under sec. 36 proviso (*a*) have been exercised and have already resulted in a vesting of the property under sec. 37. In such cases the common law jurisdiction of the regular Courts of Justice to determine disputes between the private individual (whose property has been compulsorily acquired) has not been superseded either expressly or by necessary implication. To take any other view would be to " twist the words and phrases (of the Act) into a sense that they cannot fairly and reasonably bear "—*Mohindar Singh v. The King* [2]. It is quite improper to assume that this residual jurisdiction of the Courts has survived the impact of the statute only through some inadvertence on the part of Parliament. Indeed, even if that could be assumed, it is not for this Court to indulge in " guesswork with what material the legislature would, if it had discovered the (alleged) gap, have filled it in. If a gap is disclosed the remedy lies in an amending Act "—*per* Lord Simonds in *Magor's case* (*supra*).

Rule made absolute.