

1946

*Present : Keuneman S.P.J. and Jayetileke J.*

WIJESINGHE, Appellant, and THE ATTORNEY-GENERAL,  
Respondent.

296—D. C. Nuwara Eliya, 2,504.

*Land reserved for construction of road—Possession of it for over 10 years—Improvements effected on it—Right to claim compensation—Claim for rights conferred by Crown Lands Encroachments Ordinance, s. 9—Throughfares Ordinance (Cap. 148), ss. 67, 73—Crown Lands Encroachments Ordinance (Cap. 321), ss. 9, 10.*

Section 67 of the Thoroughfares Ordinance, read with section 73, debars a person from claiming compensation for improvements effected on land which has been marked off and reserved for the construction of a road.

A person who has been in uninterrupted possession, for not less than ten years, of land reserved for the construction of a road is precluded by section 10 of the Crown Lands Encroachments Ordinance from making any claim under section 9 of the same Ordinance.

**A** PPEAL from a judgment of the District Judge of Nuwara Eliya.

*E. F. N. Gratiaen* (with him *Anton Muttukumaru*), for the defendant, appellant.

*H. W. R. Weerasooriya, C.C.*, for the Crown, respondent.

October 18, 1946. KEUNEMAN S.P.J.—

In this case it is clear that the land in question was acquired under the Land Acquisition Ordinance and a Certificate of Acquisition was duly issued in 1914 vesting the premises in His Majesty the King. There can be no question that it still remains to this day Crown property.

Two points have been urged by Counsel for the appellant, first, that he was entitled to be paid compensation for improvements under the common law. It is, however, obvious that in the acquisition proceedings the land was taken over by His Majesty for a public purpose, namely, for deviating the Tawalantenna-Watagoda road. I think it is clear that the premises in question come within the definition of the word "road" in section 73 of the Thoroughfares Ordinance (Cap. 148), namely that it is land which has been marked off and reserved for the construction of a road. Section 67 of the Thoroughfares Ordinance accordingly applies, namely, that the provisions of the Prescription Ordinance and of any other law relating to the acquisition of rights by virtue of possession or user shall not apply to roads. In my opinion a claim for compensation for improvements is a right acquired by virtue of possession or user and as this case refers to premises which constitute a road I think that no claim for compensation can be entertained.

The second point raised by Counsel for the appellant is under section 9 of the Encroachment upon Crown Lands Ordinance (Cap. 321). The appellant claims that he should be entitled to a grant from Government of the land on payment of half the improved value of the land or, in the alternative, that the Government should not be allowed to eject him until the Government has paid him half the improved value of the land and the full value of any buildings erected thereon. This is a claim on the footing that the appellant has been in uninterrupted possession of the land for not less than ten years. Unfortunately for the appellant, however, section 10 enacts that the provisions in section 9 do not apply to any public road, street, or highway. I think that the appellant is precluded from making his claim under section 9 and that that claim cannot be entertained by us.

We have considered the question as to whether the plaintiff in this case, namely, the Crown is entitled to costs of this action and of the appeal. Having regard to the length of time during which the defendant

and his predecessors in title have remained in undisturbed possession of this land, which had been acquired by the Crown as far back as 1914 for the purposes of a road, since when no steps seem to have been taken by Government till shortly before the institution of this action towards giving effect to the purpose for which the land was acquired, this seems to be a case where an ex-gratia payment of compensation to the defendant in respect of the cultivation made by him on the land under the belief that he had good title to it may be favourably considered by the authorities. I further think that the reasons that I have just advanced constitute a good reason for not giving the plaintiff costs either of the action or of the appeal. In substance, therefore, the appeal is dismissed without costs, subject to this that the order for costs made against the appellant in the Court below will be deleted.

JAYETILEKE J.—I agree.

*Appeal dismissed.*

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