

Present: Fisher C.J. and Garvin J.

1928.

GOVERNMENT AGENT, NORTHERN PROVINCE v.
KANAGASUNDERAM.

126—D. C. (Inty.) Jaffna, 23,456.

Land acquisition—Acquisition to part of building—Objection taken at inquiry—Ordinance No. 3 of 1876, s. 8.

Where, in proceedings under the Land Acquisition Ordinance, the Government Agent acquired a portion of a building belonging to the defendant, notwithstanding an objection based upon section 44 of the Ordinance, and thereupon instituted an action for determination of the compensation due to the defendant,—

Held, that the defendant was entitled to an injunction restraining the Government Agent from taking possession of the building pending the determination of the action.

THE plaintiff, who was the Government Agent of the Northern Province, sought to acquire a portion of a building belonging to the defendant. The defendant requested the plaintiff to acquire the whole building, which the plaintiff refused to do. Thereupon the plaintiff instituted the present action for assessment of compensation due to the defendant for the portion of the building sought to be acquired. The defendant pleaded that the plaintiff was not entitled to acquire a portion of the building and applied for an injunction restraining the plaintiff from taking possession or demolishing the portion of the building which was the subject of acquisition. The learned District Judge held that the defendant had consented to the acquisition of a portion of the building and dismissed the application for an injunction.

H. V. Perera (with *Rajapakse*), for defendant, appellant.

J. E. M. Obeyesekere, C.C., for plaintiff, respondent.

October 18, 1928. FISHER C.J.—

In my opinion the document relied upon by the learned Judge has no application in the circumstances of this case. That was a document which was given before the proceedings for the compulsory acquisition were instituted. Moreover, on the construction of the document itself it is merely an expression that the defendant was willing to part with the shop and verandah if he got the price he wanted. It cannot be suggested that either of the parties had in their mind that he was willing to submit the question of how much he was to receive to arbitration. Enactments for the compulsory acquisition of land have to be strictly construed and applied. See *Maxwell on the Interpretation of Statutes*, 4th ed., page 427.) Section 44 provides that a part of a house shall not be

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compulsorily acquired if the owner desires that the whole should be taken. The stage at which the defendant took his objection seems to be the proper stage, that is at the inquiry before the Government Agent. Therefore, in my opinion, the possession of the property against the will of the owner is wrongful, and he is entitled to have an injunction to restrain the plaintiff or his officers from taking possession pending the determination of the action.

The order of the learned Judge will be set aside, and the plaintiff will pay the costs of hearing in the Court below and of this appeal.

I should add that the objection based on section 87 of the Courts Ordinance, 1889, taken by Mr. Obeyesekere as to the power of the Court to grant an injunction in this case is met by the fact that a claim in reconvention was made and for that purpose the defendant occupies the position of a plaintiff.

GARVIN J.—I agree.

Set aside.

