

1960

Present : Basnayake, C.J., and Sansoni, J.

PERERA, Appellant, and DINGIRI MENIKA and others, Respondents

*S. C. 75/59—D. C. Kandy, 5087/L*

*Land Acquisition Act, No. 9 of 1950—Reference to Court under Section 10 (1) (b)—Incapacity of Court to decide matters other than those referred to it—Sections 7, 9, 11, 12—Civil Procedure Code, s. 18.*

Where the acquiring officer at the conclusion of an inquiry held under section 9 of the Land Acquisition Act, No. 9 of 1950, refers the claim or dispute for the determination of a Court, the Court has no power to determine claims or disputes not referred to it for its decision. The Court is not entitled to employ the provisions of Section 18 of the Civil Procedure Code to add parties who make claims not made before the acquiring officer or raise disputes not referred to it by him.

**A**PPPEAL from an order of the District Court, Kandy.

*H. W. Jayewardene, Q.C., with Vernon Jonklaas, S. Sharvananda and L. C. Seneviratne, for 1st Defendant-Appellant.*

No appearance for Plaintiff-Respondent.

September 1, 1960. BASNAYAKE, C.J.—

This is an appeal by the 1st defendant in a reference to the District Court made on 27th March 1957 under section 10 (1) (b) of the Land Acquisition Act No. 9 of 1950. That provision empowers the acquiring officer at the conclusion of an inquiry held under section 9 to refer the claim or dispute for the determination of a competent Court having jurisdiction over the place where the land which is to be acquired is situated. In his reference, which is in the form of a plaint, the acquiring officer stated—

“ 2. That at the said inquiry dispute arose between the said defendants as regards their right, title or interest aforesaid, and it has become necessary under Sec. 10 (1) (b) of the said Act to refer such dispute to this Court for determination.

“ 3. That the plaintiff does hereby refer the said dispute to this Court for determination and states for the information of Court the particulars of the said dispute which are as follows :—

(1) The 1st defendant claims the entirety of the land.

(2) The 2nd defendant claims Rajakariya Rights in respect of about 7½ acres of the land and claims compensation in a sum which if invested @ 3% should bring an annual income sufficient to perform the Rajakariya claimed.

- (3) The 3rd defendant claims Rajakariya Rights in respect of an extent of 3 roods 8 perches and claims 1/3rd of the value thereof as compensation. In addition he claims sole ownership of about 1½ acres.
- (4) The 4th, 5th & 6th defendants claim 2 acres of land jointly on Deed No. 3459 dated 18/5/1878 attested by R. D. Bastian, N.P.
- (5) The 7th defendant claims 5 lahas of land on Deed No. 11830 dated 17th February 1890 attested by J. A. Siriwardena, N.P.”

The 1st defendant in his answer disputed the claims of the 2nd, 3rd, 4th, 5th, 6th and 7th defendants referred to in the reference. The 3rd defendant, the trustee of the Dalada Maligawa, filed an answer claiming Rs. 15,000/- out of the compensation as being the value of the loss of Rajakariya Services to the Maligawa. The 4th, 6th and 7th defendants filed a joint answer in which they prayed—

(a) that the 4th defendant be declared entitled to 1/18th share of the compensation awarded ;

(b) that the 6th and 7th defendants be each declared entitled to 1/12th share of the compensation in respect of the land described in schedule “ A ” of the answer and 1/4th share each of the compensation in respect of land described in schedule “ B ” thereof.

The 5th defendant died after the reference without filing an answer and on the application of the Government Agent his heirs were added as defendants.

At the hearing on 19th March 1958, the 4th, 6th, 7th, 8th and 9th defendants appeared and abandoned their contests and admitted the title of the 1st defendant. The 2nd, 3rd and 5th defendants did not appear at the hearing. The Judge ordered decree *nisi* to be entered against them.

On 26th March 1958 the Proctor for the 2nd and 3rd defendants moved that the decree *nisi* entered against them be vacated as the defendants did not appear on the day fixed for the hearing owing to inadvertence on his part.

On 28th May 1958 after the Court had entered decree *nisi* in respect of some of the absent defendants, eight of the respondents to this appeal filed a petition in which they claimed that they were jointly entitled to “ an undivided two-thirds share of the compensation in respect of the land ” and prayed that they be added as defendants to the proceedings and that they be allowed to file their statements and that the Court do inquire into their claim ; and on 5th July 1958 the 9th respondent filed a petition claiming that she was entitled to compensation in respect of 2/3 share of an extent of two acres of the land and prayed that she be added as a defendant and that she be permitted to file a statement of claim, and that an inquiry be held.

On 20th May 1959 the application of the Government Agent for the addition of the minor children of the deceased 5th defendant, the application of the Proctor for the 2nd and 3rd defendants, and the applications of the respondents to this appeal, were heard and allowed. The appellant does not complain against the orders in favour of the Government Agent and the 2nd and 3rd defendants. He has appealed against the order that the nine respondents to this appeal be added as defendants.

The learned District Judge has failed to give effect not only to the relevant provisions of the Land Acquisition Act; but also to the provisions of Section 18 of the Civil Procedure Code which applies to proceedings under the Act by virtue of Section 12 thereof. The material portion of that section reads—

“(1) The proceedings in a court on a reference made to it under section 10 shall be subject to the procedure provided by the Civil Procedure Code for civil suits.”

A reference under section 10 is made at the conclusion of an inquiry held under section 9. An inquiry under that section is held into claims made in pursuance of a notice under section 7 directing every person interested in the land which is to be acquired personally or by agent duly authorised in writing to appear before the acquiring officer on the date and at a time and place specified therein after notifying in writing to the acquiring officer at least seven days before that date the nature of his interests in the land, the particulars of his claims for compensation, the amount of compensation and the details of the computation of such amount. The claim that the acquiring officer is authorised to refer to the Court for its decision is the claim made to him in pursuance of the notice under section 7 and the dispute referred to in section 10 (1) (b) is any dispute that may have arisen between any claimants who have made claims to him. The instrument of reference which the statute (s. 11) requires should be in the form of a plaint in a civil suit, makes it clear in the prayer wherein the Government Agent asks for a determination of the dispute described therein. The jurisdiction of the Court under the Act is purely statutory and the Court has no power to determine claims or disputes not referred to it for its decision. The claims made by the respondents were not before the Government Agent and have not been referred to the Court for its determination. It has therefore no jurisdiction to decide them. Even section 18 of the Civil Procedure which can undoubtedly be resorted to in an appropriate case is of no avail in the instant case because the presence of the respondents before the Court is not necessary for deciding the dispute under reference. The learned Judge quite properly exercised his powers under section 18 when he added the heirs of the deceased 5th defendant. That section enables the Court to add any person as a defendant to an action where a person ought to be joined or whose presence before the Court is necessary in order to enable it effectually and completely to adjudicate upon and settle the dispute or claim referred to the Court for its determination by the Government Agent. It does not empower the Court to add parties

who make claims not made before the Government Agent or raise disputes not referred to it by him, because the presence of such persons before the Court is not necessary for determining the dispute referred by the Government Agent to the Court for its determination.

Our view finds support in the decisions of this Court under the Land Acquisition Ordinance which was replaced by the Act. Though the language of the relevant provisions of the Ordinance and that of the relevant provisions of the Act are not precisely the same, there is no substantial difference between them. In the case of *Templer v. Seneviratne*<sup>1</sup> a bench of three Judges held that the Court has no power to decide matters other than those referred to it for its determination. In the case of the *Assistant Government Agent, Kalutara v. Wijesekara*<sup>2</sup> De Sampayo J. observed :

“The Court’s jurisdiction is limited by the Ordinance ; it is either to make an award as to the amount of compensation where the claimants and the Government Agent are disagreed on that point or to decide the question of title to the land where there is any dispute among the claimants or where all the parties interested have not appeared before the Government Agent. The proceedings are purely statutory and do not, I think, admit of legal exceptions or dilatory pleas, as in an ordinary action, where the case falls under the first head of inquiry.”

In this connexion the following observations of Withers J. in *Templer’s* case are relevant—

“According to clause 19 of Ordinance No. 2 of 1889, which governed the procedure herein, no person can intervene in any action other than as provided by clause 18 of Ordinance No. 2 of 1889. The intervention of the additional claimants could not possibly be necessary for the adjudication of the question raised between the Government Agent and the four claimants who had attended in pursuance of the notice.”

In the case of *Government Agent, Sabaragamuwa v. Asirawatham et al.*<sup>3</sup> where a land which was the subject of proceedings under the Land Acquisition Ordinance was transferred by the claimant while a reference to the Court was pending, the vendee was added as a party. That decision is consistent with the view we have taken, because the vendee’s presence was necessary for deciding the matter of the reference.

We therefore set aside the order appealed from and send the case back to the lower Court for proceedings to be taken in due course.

The appellant is entitled to the costs of the appeal.

SANSONI, J.—I agree.

*Order set aside.*

<sup>1</sup> (1892) 2 C. L. Reports 70.

<sup>2</sup> 4 C. W. R. 257.

<sup>3</sup> (1928) 29 N. L. R. 367.