1970 *Present :* Weeramantry, J., and de Kretser, J.

D. E. L. SURIYABANDARA, Appellant, *and* PEARL DE FRANSZ and others, Respondents

S. C. 517/67 (F)—D. C. Colombo, 3640/L.A.

Compulsory acquisition of land—Requirement of proper inquiry by the Acquiring Officer—Claim based on prescriptive title—Requirement of evidence on prescription—Reference to District Court without proper inquiry—Effect then on jurisdiction of the Court—Land Acquisition Act (Cap. 460), ss. 9, 10 (1) (a), 10 (1) (b).

Before notice is issued in terms of section 10 (1) (*a*) of the Land Acquisition Act it is the duty of the Acquiring Officer to hold an inquiry and, after holding that inquiry, to record his decision on every claim made before him. In such a case, a question such as that of prescriptive possession must be determined upon the basis of evidence rather than upon a bare statement of Counsel.

Just as much as a proper inquiry is a necessary pre-requisite to a decision under section 10 (1) (*a*) so also is it a pre-requisite to a valid reference under section 10 (1) (*b*). Accordingly, a District Court has no jurisdiction to determine a dispute which has been referred to it without proper inquiry by the Acquiring Officer.

Where the Acquiring Officer has already made a decision in terms of section 10 (1) (*a*) of the Land Acquisition Act, he has no power to make a reference thereafter in terms of section 10 (1) (*b*) of the Act.

APPEAL from an order of the District Court, Colombo.

C. Ranganathan, Q.C. with *Miss Suriya Wickremasinghe*, for the 1st defendant-appellant.

H. A. Koattegoda, with *Miss A. P. Abeyratne*, for the 3rd to 5th and 10th defendants-respondents.

Cur. adv. vult.

May 2, 1970. WEERAMANTRY, J.—

This appeal arises from an order made by the District Court pursuant to a reference to Court by an Acquiring Officer under Section 10 (1) (*b*) of the Land Acquisition Act, Cap. 460.

At the inquiry held before the Acquiring Officer, the 1st defendant-appellant laid claim to the entirety of the land sought to be acquired. His counsel stated at this inquiry that he claimed the land partly by virtue of prescriptive title and partly by deed of transfer. Prescriptive rights were claimed on the basis that the appellant had lived on the premises since 1934.

The only other appearance entered at the inquiry was by one Piyasiri on behalf of the Public Trustee. Piyasiri stated to the Acquiring Officer that the land sought to be acquired constituted part of the assets of a trust administered by the Public Trustee in terms of a last will. The Public Trustee was released from his trust when he handed over the estate to certain parties consequent on a Court Order of 17th May 1948.

It was not the position of the Public Trustee that he claimed any right, title or interest to, in or over the land. His appearance was apparently entered in order to safeguard his position as, to use the words of his representative, certain items of expenditure had still to be accounted for. What precisely this meant is not altogether clear but on this basis a postponement was obtained to enable the Public Trustee to produce proof to this effect.

On the next date of inquiry the only parties present were, as before, the 1st defendant-appellant and his lawyer and the Public Trustee's representative.

On that occasion the Inquiring Officer made the following order " Issue 10 (1) (*a*) notice in favour of Mr. D. E. L. Suriyabandara (the 1st defendant-appellant) on receipt of Public Trustee's further observations that his department has no claim or title to the land. Issue award accordingly ".

A week later it would appear that the inquiry was reopened despite objections raised by Counsel appearing for the 1st defendant-appellant. On this occasion the Public Trustee's representative stated that the premises had been rented out to the 1st defendant-appellant upon a tenancy agreement of 1939 and this representative stated once more that the land was handed over to the beneficiaries in May 1948.

Thereupon the Acquiring Officer made order cancelling his earlier order and referred the matter to Court under Section 10 (1) (*b*), in view of the evidence of the Public Trustee's representative.

At the proceedings before the learned District Judge certain preliminary objections were taken. Among these were the objection that the Acquiring Officer had already made a decision in terms of Section 10 (1) (*a*) of the Ordinance, and could not therefore have made a reference thereafter in terms of Section 10 (1) (*b*). It was further submitted that as the defendants other than the 1st defendant had failed to make a claim before the Acquiring Officer, they were not entitled to make any claim in the proceedings before the District Judge. The objections based on this contention were overruled and the case proceeded to inquiry with other parties as well participating and laying claim to interests in the land. The learned District Judge thereafter made order declaring the 1st defendant-appellant entitled to a 1/20th share only of the compensation. From this order the 1st defendant-appellant appeals.

A perusal of the procedure followed by the Acquiring Officer would appear to indicate that scant regard has been paid to the provisions of the Statute under which this officer was acting. It is elementary that public officers entrusted with public duties under a Statute should study carefully the terms of the statutory provisions under which they act and comply as far as possible with the procedure and the steps therein indicated. We regret very much that due attention does not seem to have been paid to this obvious duty with the result that much inconvenience and trouble have resulted to the parties concerned.

It seems quite clear upon a perusal of section 10 (1) (*a*) that the Acquiring Officer was under a duty to hold an inquiry and after holding that inquiry to make a decision on every claim made by any person to any right, title or interest to in or over the land which is to be acquired. Having made that decision he is required to give notice of his decision to the claimant or to each of the parties to the dispute.

In the first place the Acquiring Officer has failed to record any decision at all but has only stated that a 10 (1) (*a*) notice is to issue. The all important decision under the section remains unexpressed and one is left to infer that a decision had been made in favour of the first defendant-appellant on the claim preferred by him.

Secondly, although at inquiries of this nature it is not laid down as an essential requirement that evidence should be given on behalf of a party, it seems to us that a question such as that of prescriptive possession is essentially a matter to be determined upon the basis of evidence rather than upon a bare statement of counsel. The mere circumstance that there are no rival claimants does not absolve the Acquiring Officer of his duty to give a considered decision on every claim made and we do not see how there can be such a decision in the absence of the basic material on which such a decision can be founded. We may observe, moreover, that section 9 expressly contemplates evidence being placed before the Inquiring Officer and in fact the reception and consideration of evidence are treated as being of such importance that the Acquiring Officer is given the power of summoning witnesses and is required to make a summary of the evidence given by each witness. The assistance of these provisions meant essentially for aiding the Acquiring Officer in reaching decisions on questions of fact, has not been sought by the Acquiring Officer in a case eminently suited for their application.

Moreover, it is essential to a proper decision upon an inquiry that it be based on material placed before the Inquiring Officer. Where there is such material this Court would not ordinarily pronounce on its adequacy or otherwise for that would be a matter in the discretion of the Acquiring Officer. Where however, as in the present instance, there is, as I shall indicate, a total lack of material on which such a decision can be based, it cannot be said that the decision so reached is a valid decision in terms of the section.

It is essential that when a public officer is required to make a determination involving such legal questions as those of prescriptive title, he must at least familiarise himself with the fundamentals of the concept on which the privilege and responsibility of making a decision have been committed to him by the Legislature. All the material that the Acquiring Officer had before him in regard to the title of the 1st defendant-appellant was the submission made by his counsel that he had prescriptive rights as he had *lived* on the land since 1934. To state only that a person has lived on a land for upwards of 10 years is surely to fail to state the fundamental requisites on which a decision on prescriptive title can be reached even by a lay tribunal. The child of an occupant, a tenant under the owner or even a servant of a tenant are all persons who live upon and without in any way refusing to acknowledge title in another. Upon this material it would be just as impossible to arrive at a decision that prescriptive right has been acquired as would be the case where, for example, a party claims prescriptive title on the basis of 8 years' exclusive possession. In the illustration just given the essential time element on which a finding of prescription can be based is lacking. In the case before us the essential element of exclusive possession is lacking. No officer investigating such claims can afford to lose sight of the fact that both the element of time and the element of exclusive possession

must co-exist to found a claim by prescription. Where one or the other of these elements is totally lacking we are not in the field of inadequacy of evidence but of a total lack of the essential basic material on which a decision regarding prescriptive title can be founded. In this connection I would repeat that there was not even evidence of "living" on the land but only counsel's assertion to this effect.

For these reasons we are compelled to the view that the purported decision made by the Acquiring Officer is not a decision such as is contemplated by the Ordinance, for it is a decision given in the absence of the essential basis for such a finding.

Just as much as a proper inquiry is a necessary pre-requisite to a decision under Section 10 (1) (*a*) so also is it a pre-requisite to a valid reference under Section 10 (1) (*b*). It follows therefore that the reference to Court which constitutes the foundation of the Court's jurisdiction to hear this matter was itself bad and the proceedings before the District Court being had without jurisdiction, we quash those proceedings and declare that there has been no proper inquiry before the Acquiring Officer.

The conclusion that the reference to court was invalid may in fact be reached even upon the footing that there was a valid inquiry, and indeed this contention was strongly pressed before us by learned counsel for the first defendant-appellant. It does not become necessary, in the light of the views we have expressed regarding the invalidity of the inquiry, to consider this argument in much detail. It will suffice to observe however that if the inquiry was a valid one, the initial order made by the Acquiring Officer under Section 10 (1) (*a*) was an order determining the issues before him, and conditional in one respect only, namely that it was dependent on the Public Trustee making his "observations" that his department had no right or title. That was the only matter left open, and those "observations" were restricted to the question whether his department had any claim or title to the land. The order did not leave it open to the Public Trustee to make various submissions on other matters. We think the Public Trustee was not entitled to reopen the whole inquiry and canvass other matters, and that the Acquiring Officer should not have allowed him to do so in view of the order he himself had made earlier.

There having been, as far as the Acquiring Officer was concerned, an order already made under Section 10 (1) (*a*) determining the matter before him, and the position of the Public Trustee being patently clear that he was not claiming any title or interest in the land, the Acquiring Officer was not in my view entitled thereafter to make a reference under Section 10 (1) (*b*). This alternative line of inquiry would also thus lead to the conclusion that the District Court was without jurisdiction to inquire into the matter as it did.

I do not propose however to elaborate on this aspect of the matter in the light of the view I have already expressed regarding the invalidity of the inquiry held by the Acquiring Officer.

In either view of the matter, then, the proceedings had before the District Judge cannot stand and the order made by him must be quashed.

We consider that it would meet the ends of justice if we declare void the inquiry had before the Acquiring Officer and require that inquiry proceedings be commenced afresh.

It has been urged by the respondents that prejudice would be caused to them if this course should be followed, by reason of the long period of time that has now elapsed since acquisition proceedings commenced. However such a procedure is to the advantage of the respondents who by their default in appearing before the Acquiring Officer could in a more technical view of the matter be said to have forfeited their claim altogether.

In regard to the first defendant-appellant, we would observe that his paper title does not apparently extend beyond a 1/20th share of the land. Although he is no doubt anxious to retain the technical advantage of the non-appearance of other claimants at the original inquiry, we see no hardship to him in requiring him to adduce proper proof of his alleged prescriptive title to the entire land—a proof which he altogether failed to adduce when he had an opportunity of doing so.

The proceedings had before the learned District Judge are declared to have been without jurisdiction and the order of the District Court is quashed. We also invalidate the proceedings had before the Acquiring Officer, his order under Section 10 (1) (*a*) and his reference under Section 10 (1) (*b*).

There will be no costs of this appeal.

DE KRETSER, J.—I agree.

Order quashed.