

1932

Present : Macdonell C.J. and Lyall Grant J.

CHAIRMAN, M. C., COLOMBO v. ABDUL RAHIM.

111—D. C. (Inty.) Colombo, 2,789.

Land acquisition—Land subject to fidei commissum—No necessity for reference—Deposit of compensation in Court—Ordinance No. 3 of 1876, ss. 11 and 37.

Where in proceedings under the Land Acquisition Ordinance, the land acquired is subject to a *fidei commissum* and the sole claimant is the *fiduciarius*, it is not necessary to make a reference to Court under section 11. It is sufficient to deposit the compensation in Court under section 37 to abide the further orders of the Court.

A PPEAL from an order of the District Judge of Colombo.

Keuneman, for appellant.

Nadarajah (with him *Abeysekere*), for respondent.

January 30, 1932. LYALL GRANT J.—

This is an appeal from an order of the District Judge of Colombo disallowing the costs incurred by the Chairman of the Colombo Municipal Council in submitting a "libel of reference".

The Council had acquired a piece of land under the Land Acquisition Ordinance and the compensation payable to the claimant had been agreed upon.

The procedure adopted was the usual one. The Council advertised for claims. The only claimant was I. L. H. M. Abdul Rahiman, the defendant, in this case. The Chairman held a summary inquiry and fixed the compensation payable at Rs. 2,092.18, which he tendered to the claimant who accepted it.

It appeared however that the premises were subject to an entail or *fidei commissum*.

Thereupon the Chairman proceeded to refer the matter to the District Court for further inquiry, praying that the Court would proceed to inquire and determine the apportionment of the compensation.

The libel was entered as an ordinary plaint. Notice was issued and the case called on various occasions. There appears to have been difficulty in serving the notice on the claimant whom the libel treated as defendant to the plaint, and finally substituted service was allowed.

Proxy was filed on the claimant's behalf and she submitted a statement of claims, in which she set forth her title, admitted that there was an entail or *fidei commissum* and gave particulars.

The Chairman then applied for the costs of the reference, which were refused.

From this refusal the Chairman appeals.

He argues that he is entitled to costs under section 30 (2) (a) of the Land Acquisition Ordinance, No. 3 of 1876, inasmuch as he made the reference under section 11 solely for the determination of a question arising between or among two or more persons respecting the correct apportionment of the compensation awarded.

In such circumstances the section provides that he is ordinarily entitled to the costs of reference. Section 11 provides for reference by the Government Agent to the District Court for the determination of any matter where, *inter alia*, he considers that there should be further inquiry into the nature of the claim or if upon the inquiry any question respecting any interests in the land arise between or among two or more persons.

Section 13 to 32 provide for Court proceedings.

For the respondent it is contended that section 11 does not apply to the present case—that there was no question between two or more persons respecting any interests in the land which required reference to the Court.

The respondent referred to section 37 of the Ordinance which provides that “when the land taken is subject to any entail, settlement or *fidei commissum*, the compensation payable in respect thereof shall be subject to the same entail, settlement, or *fidei commissum*, so far as the different nature of the property will admit; and such compensation shall be paid into Court to abide its further orders as to the disposal or investment thereof” This section appears in a chapter of the Ordinance relating to payments, and provides an exception to the ordinary rule that payment should be made to the successful claimant. According to the respondent’s argument all that it was necessary for the Chairman to do was, instead of paying compensation to the claimant, to pay it into Court. No doubt the Chairman in paying the money into Court would accompany such payment by a letter explaining the reasons for the deposit.

It was argued that the course actually taken by the Chairman was unnecessary and irregular, that the expenses incurred by him were incurred without any reason and should not therefore be charged either against the claimant or against the compensation awarded.

The appellant maintained that there was here a question arising between two parties; yet the facts were that the claimant’s title disclosed only one party, herself, and that the other or others of the “two parties” the *fidei commissarius* or *fidei commissarii* had not appeared and in fact had no legal right to appear. I think that the contention of the respondents must prevail.

Although the language of section 11 and section 30 may not be quite free from ambiguity, I think the existence of section 37 in a different chapter of the Ordinance makes it plain that the Legislature did not intend that, where the only reason for non-payment of the compensation agreed upon to the claimant was the existence of a *fidei commissum*, reference should be made to the Court. In such cases the sole duty of the Chairman is to act under section 37, that is to pay the compensation into Court where it will abide further orders. By adopting the wrong procedure the Chairman has incurred additional expenses and I think he must bear that expense. I would dismiss the appeal with costs.

MACDONELL C.J.—I concur.

Appeal dismissed.