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“There can be no question that the Chief Valuer is required by law to act judicially. He must deal with the question referred to him without bias and must give each of the parties the opportunity of adequately presenting his case”.

APPPLICATION for Writs of Certiorari, Prohibition and Mandamus.

H. W. Jayawardena with H. L. de Silva, J. C. Ratwatte and Miss S. Fernando for the Petitioner.

V. C. Gunatilaka, Deputy Solicitor-General with *G. E. M. de Silva*, State Counsel, for the 1st Respondent.

Niranjan Sinnatamby, Deputy Solicitor-General, with *N. Jayasinghe*, State Counsel, for the 2nd Respondent.

Cur. adv. vult.

June 24, 1976. TENNEKOON, C.J.—

The question that arises for decision in this case is purely a question of law, and can be considered independently of the facts of the particular case.

The question relates to the meaning to be given to sub-section (2) of Section 64 of the Mines and Minerals Law No. 4 of 1973.

A Corporation called the State Graphite Corporation had been set up by the Minister under Section 2 of the State Industrial Corporations Act No. 49 of 1957. By a vesting order made on 13.9.1973 under Section 52 of the Mines and Minerals Law certain property comprising lands and buildings, machinery and equipment, that had been employed by the Petitioner, the Kahatagaha Mines Co., Ltd., was vested in the State Graphite Corporation.

Rules pertaining to the determination of the amount of compensation to be paid by the State Graphite Corporation in respect of property vested in the Corporation are provided for in Section 58, which I reproduce in full—

“58. The amount of compensation to be paid under this Law in respect of any property vested in the Corporation shall be determined in accordance with the following provisions :—

(a) Where such property consists of land, the amount of compensation shall be equal to the price which in the opinion of the Chief Valuer such property (excluding

any buildings standing thereon) would have fetched if it had been sold in the open market on the day on which that property was vested in the Corporation.

- (b) Where such property consists of any building, anything attached to the earth or permanently fastened to anything attached to the earth, or any other fixed asset, or any vehicle or furniture, the amount of such compensation shall be—

(i) where the owner of the property immediately prior to its vesting purchased it and the actual amount paid by him for such property, other than for any land, can be ascertained, such amount less any sum which the Chief Valuer considers reasonable for the depreciation of the property, or

(ii) the net book value of such property as shown in the last audited balance sheet prior to the date of its vesting in the Corporation, less any sum which the Chief Valuer considers reasonable for the depreciation of the property since the date of preparation of such audited balance sheet,

whichever is less.

- (c) Where such property consists of any movable property (other than vehicles and furniture) or any current asset, the amount of such compensation shall be the actual cost incurred in the purchase or production of that property or the price which in the opinion of the Chief Valuer such property would have fetched if it had been sold in the open market on the day on which it was vested in the Corporation, whichever is less.

- (d) Where such property is any right, interest or benefit in any movable or immovable property derived under the terms of any arrangement (formal or informal), lease or notarially executed instrument, the amount of such payment shall be the actual price paid by the holder or his predecessor for the acquisition of such right, interest or benefit :

Provided that a proportionate amount shall be deducted from the compensation on account of the period, if any, for which the holder and his predecessor, if any, has enjoyed such right, interest or benefit.”

We now come to Section 64. Subsection (1) thereof provides—

“64 (1). The Board of Directors shall refer to the Chief Valuer the determination of compensation payable in respect of any property, and such Valuer shall submit his determination to the Board of Directors.”

Pausing at this stage, it seems to me perfectly clear that, having regard to the rules for the *determination* of compensation that have been set out in Section 58, that upon reference to the Chief Valuer under Section 64 (1), his duty is to make a determination of the compensation in accordance with the statutory rules set out in Section 58.

His function, therefore, immediately becomes a judicial or at least a quasi-judicial function. This must necessarily be so, because the determination of the Chief Valuer is binding on the person from whom the property was acquired and on the State Graphite Corporation, and also on any other persons who had lesser interests in that property. If there was any doubt in regard to that matter, the Legislature made provision in subsection (2) of Section 64, the text of which is as follows:—

“64 (2). The Chief Valuer shall, before making his determination of the compensation payable in respect of any property, give the person from whom that property was acquired or requisitioned for the Corporation, as well as the Chairman of the Board of Directors, an opportunity to adduce before such Valuer, by himself or by a representative authorized by him in that behalf, evidence with regard to the value of that property.”

It seems to me that the person from whom the property was acquired would be interested in getting the best figure possible within the rules set out in Section 58; equally, the State Graphite Corporation would be interested in keeping the figure as low as possible, while still applying the rules in Section 58. The provision which the Legislature has made making it incumbent upon the Chief Valuer to give both sides “an opportunity to adduce evidence with regard to the value of that property,” can only mean that each side can place evidence before the Chief Valuer. The expression “to adduce evidence” is one well-known in legislation pertaining to inquiries and trials in Courts. Without going back to the language used by Legislators of the past one has only to look at the legislation passed by the first Parliament of the Republic, in order to ascertain what meaning the Legislature intended to attach to the expression, “adduce evidence”. Section 213 (5) of the

Administration of Justice Law speaks of the situation that arises—

“if the accused announces his intention not to adduce evidence.”

Similar expression occurs in Section 168(5) (“if any evidence is adduced on behalf of the accused.”) and in Section 184(5) (“if the accused announces his intention not to adduce evidence.”). In those parts of the Administration of Justice Law dealing with trials by Magistrate’s Courts, District Courts and High Courts, one comes across such expressions as “produce evidence” and “give evidence”. Similar expressions are to be found in Sections 447(1) and 451(2) of the Administration of Justice Law, Part VI, which deal with procedure in civil trials. There can in my mind be no doubt that the expression “adduce evidence” means, testifying subject to being questioned by the party against whose interest such evidence may operate in the mind of the Tribunal, and by the person called upon to make the final determination. Sub-section (2) of Section 64 of the Mines and Minerals Law also contemplates that the person from whom the property was acquired, or requisitioned and the Chairman of the Board of Directors of the State Graphite Corporation may be present by himself, or by a representative authorized by him for the purpose of adducing evidence. Lawyers are not excluded. It seems to me that the procedure contemplated by the Legislature was that each side should call witnesses, or produce documents, and that the other side would be entitled to cross-examine such witnesses. Such procedures for the determination of compensation upon compulsory acquisition are not unknown in our legislation. The fact that the Chief Valuer is here made a one-man tribunal seems to me to make no difference to the tribunal’s obligation to act judicially and fairly. By designating the Chief Valuer as the tribunal the Legislature has only sought to provide a tribunal less liable to be led astray by tendentious and partisan expert opinion that either side may place before him. A fair hearing will include an ascertainment of the nature, quality and condition of the thing acquired; this can be ascertained by oral or documentary evidence and/or by inspection of the thing itself. A fair hearing will also include a duty to take account of any acceptable expert opinion on the value of the particular thing.

A reference to Section 4 of the Oaths Ordinance, Cap. XVII makes it clear that persons who give evidence before the Chief Valuer in terms of Section 64(2) will have to do so under oath or affirmation.

It seems to me that what the Legislature contemplated was that the Chief Valuer should hold an inquiry before he makes his determination. The person designated as having the power to make the determination is the Chief Valuer, and not his whole department, and accordingly it seems to me that if any report containing factual information or opinions prepared by officers of the Valuation Department is proposed to be utilised by the Chief Valuer in making his determination, anything in such report which may operate to the prejudice of either of the parties, i.e. the person from whom the property was acquired. or the State Graphite Corporation, then such report should be disclosed to the parties, so that they can controvert them or make submissions thereon.

To set out the facts now upon which this application for a writ of certiorari and prohibition is made; certain property belonging to the Petitioner, the Kahatagaha Mines Co. Ltd., was vested in the State Graphite Corporation by a notice published in the Ceylon Daily News of 28.4.1975. The Chief Valuer, the 1st Respondent, announced that he would hold an inquiry to determine the compensation payable in respect of the property vested in the State Graphite Corporation under Section 64(2) of the Mines and Minerals Law. At a preliminary hearing held on 13.6.1975, there was some discussion among the lawyers who appeared for either side, and the Chief Valuer, as to the procedure he adopted. There was some discussion as to whether a witness called by the Petitioner should be subjected to cross-examination by the lawyer who appeared for the State Graphite Corporation. Counsel for the Petitioner expressed the view that each side had the right to cross-examine any witness produced by the other side. Counsel for the State Graphite Corporation expressed the view that while he agreed that the opportunity to adduce evidence includes also the opportunity to test and evaluate that evidence, he denied that Counsel for the Petitioner had a right to cross-examine witnesses who may be tendered on behalf of the State Graphite Corporation. He further went on to say that the State Graphite Corporation had no obligation to place any witnesses before the Chief Valuer in this manner.

Having adjourned further hearing for the 13th of August, 1975 the Chief Valuer made an order on that date. The effect of that order is that he would permit each side to call witnesses before him in the presence of each other. Such witnesses would be permitted to make statements, but whether they speak to facts or expert opinions, would not be permitted to be cross-examined by the opposite side; each side would be given an opportunity to make submissions on the other's evidence. He further went on to state,

“ This is not a formal inquiry or a quasi-judicial proceedings, and in my view it is therefore not necessary to give any opportunity for cross-examination. ”

When this order was made Counsel for the Petitioner inquired from the Chief Valuer whether he would be given an opportunity of commenting on or rebutting by other evidence any material which the Chief Valuer might himself procure or obtain through his own officials or other machinery available to him which in the view of the claimant might be prejudicial to his case. The Chief Valuer reserved his order for the next date, and ruled that no opportunity as asked for by Counsel for the Petitioner would be given to either party to make submissions or to controvert any material which the Chief Valuer might, unknown to the parties, obtain and utilise in making his determination.

These orders have been brought up before this Court for certiorari and prohibition.

Counsel for the Petitioner in his argument before us has referred us to a number of cases, and to certain passages in Halsbury dealing with judicial review of administrative action. The propositions which they support have become so much part of our law that I do not think it necessary to reproduce them in this judgment. It seems perfectly clear to me that there are two parties contending in this case—that is, the Petitioner, the Kahatagaha Mines Co. Ltd., on the one side, and the State Graphite Corporation, on the other. The Chief Valuer has been designated by the Legislature as the person to make a determination, and in doing so each party has been given the right to adduce evidence. There can be no question that the Chief Valuer is required by law to act judicially. He must deal with the question referred to him without bias and must give each of the parties the opportunity of adequately presenting his case. To refuse permission to one party or the other, a right to question any witness produced by the other, is to deny a fair opportunity of adequately presenting his case. The Chief Valuer must come to his determination in the spirit of fairness and a sense of responsibility of a Tribunal whose duty it is to mete out justice.

Counsel for the 1st Respondent referred us to the case, *In re PERGAMON PRESS LTD.*, (1971) 1 Chancery Division, 388 in which it was held that in the course of an *investigation* under Section 165 of the Companies Act of 1948, the Inspector holding the investigation was not obliged to submit witnesses to cross-examination. Lord Denning, MR. in the course of his judgment makes it quite clear that the Inspector's investigation under

Section 165 of the Companies Act was not a judicial proceeding, but only an investigation, and that therefore no question of cross-examination of witnesses arose. This case has no relevance to the question that is before us.

I would accordingly quash both orders made by the Chief Valuer on the ground that they both contain errors of law on the face of them. I would also direct the issue of a Mandate in the nature of a Writ of Prohibition prohibiting the Chief Valuer from proceeding in accordance with the views expressed in those two orders. He will of course continue the inquiry in accordance with the principles of procedure outlined in this judgment.

The 2nd Respondent as representing the State Graphite Corporation will pay to the Petitioner a sum of Rs. 210 as costs.

RAJARATNAM, J.—I agree.

WANASUNDERA, J.—I agree.

Application allowed.
