

1988

Present : Alles, J.

H. S. H. P. GUNAWARDENE, Appellant, *and* THE DISTRICT
REVENUE OFFICER, WELIGAMA KORALE, Respondent

S. C. 98/1967—M. C. Matara, 31977

*Compulsory acquisition of land—Failure of the public purpose for which it was
acquired—Claim to nullify the acquisition proceedings—Maintainability—Land
Acquisition Act, ss. 4, 5 (2), 5 (3), 17, 38, 40, 42.*

It is not open to a person whose land has been acquired under the Land Acquisition Act and the title to which has been vested in the Crown to maintain that the acquisition proceedings are bad on the ground that the public purpose for which the land was originally acquired has failed. The Crown is entitled to utilise the land for a public purpose different from that for which it was originally intended to be acquired.

¹ (1891) A. C. 455.

² See *Adkins v. Children's Hospital* 1923, 261 U. S. 525, at p. 544.

³ See, for instance, per Griffith C.J. in *Osborne v. Commonwealth* (1911), 12 C.L.R. at p. 337.

APPEAL from a judgment of the Magistrate's Court, Matara.

G. E. Chitty, Q.C., with *Elmo B. Vannitamby* and *M. S. M. Hussein*, for the petitioner-appellant.

Mervyn Fernando, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 23, 1968. ALLES, J.—

There is no right of appeal in this case but I have considered the matter raised in the petitioner's appeal by way of revision. This appeal was filed on the 15th of January 1967 from the order of the Magistrate of Matara directing the Fiscal to deliver possession of a land belonging to the petitioner bearing assessment number 347 to the District Revenue Officer, Weligama Korale, as the representative of the Acquiring Officer under section 42 of the Land Acquisition Act.

The order under section 4 of the Land Acquisition Act to acquire the petitioner's land for a cross-road, bus-stand and for the office of the Urban Council, Weligama (the public purpose contemplated under the Act) was made on the 2nd August 1962 and the 13th of November 1962 and notice under section 4 was given to the owners of the land. Inquiry into the objections to the acquisition was held and thereafter, the declaration by the Honourable the Minister was exhibited on the land on 27th April 1963. The petitioner, who was a tenant of the premises since 1958, purchased the premises on the 12th August 1963 and could not have been unaware that acquisition proceedings in regard to the land had already been commenced. The order under section 38 of the Act was made on the 6th November 1964 and published in the Government Gazette of 27th November 1964. On that date therefore, the title of the land vested in the Crown (vide section 40). Thereafter, the petitioner, on 1.7.66 made a claim in respect of his interest in the land and asked for a sum of Rs. 170,000 as compensation. This inquiry has also been concluded and an award under section 17 of the Act has also been made. According to the petitioner, the compensation offered was only Rs. 27,000 which he claimed was inadequate, and he has appealed to the Board of Review against the award of the Acquiring Officer.

The application for the writ of possession under section 42 (2) was made by the District Revenue Officer, Weligama Korale, on the 24th September 1966 requesting the Magistrate to issue directions to the Fiscal to enter the land and break open any doors, if necessary with Police assistance. On this direction, the Magistrate made an *ex parte* order and issued the writ of possession as prayed for by the District Revenue Officer. Notice of the order was given to all occupants of the land including the petitioner. The petitioner then made an application to the Supreme Court and prayed that the order to stay execution for

delivery of possession be stayed. When this application came up before me on the 12th November 1966, I directed the Magistrate of Matara to satisfy himself by affidavit or oral evidence that the averment in the application of the District Revenue Officer of threatened obstruction was justified. In pursuance of my directions the Magistrate recorded the evidence of the District Revenue Officer and made order directing the officer to take possession of the land in terms of section 42 (4) of the Act. The present appeal is from that order and the main complaint of the petitioner as stated in his petition of appeal is that he was not given an opportunity to cross-examine the District Revenue Officer at the inquiry. In view of my previous order and the judgment of Sirimane, J. in *Mohamed Lebbe v. Mudana*¹ I do not think there was any necessity for such an opportunity to be given to the petitioner,

Mr. Chitty for the petitioner stated that when this appeal came up before my brother Tennekoon, J. on 24.S.67, he granted an opportunity to the parties to file affidavits. Crown Counsel is unable to contradict this position. The petitioner then filed a petition and affidavit on 5.9.67 and in that affidavit he stated that the Minister of Public Works, Mr. Montague Jayawickrema, had stated in the course of a public speech on or about 1st June 1967 that the acquisition of the land for the purpose originally intended was not going to be carried out. He also said that the Minister had personally informed him on or about 6th December 1966 that the proposed acquisition was not being proceeded with. The affidavit contained much hearsay matter and I am not prepared to accept the statement in that affidavit as statements of truth. The acquiring officer also filed an affidavit on the 19th July 1968 and in that affidavit he stated that the subject matter of the petitioner's petition was part of an entire corpus for an acquisition required for a cross-road, bus-stand and Urban Council Office. Crown Counsel stated that the purpose of the acquisition has not been changed nor has the acquisition been abandoned.

Even assuming that after the order made under section 3S the Crown had decided to utilise the land for some other public purpose, I do not think that it is open to a person whose land has been acquired and the title to which has been vested in the Crown to maintain that the acquisition proceedings are bad. Learned Crown Counsel drew attention to the fact that nowhere in the Act is it stated that the public purpose should be mentioned. Under section 5 (2) and 5 (3) of the Act a declaration that a land is required for a public purpose shall be conclusive evidence that a land is needed for a public purpose. One must, of course, presume that the Government will always act in good faith when they acquire property belonging to the subject. I can however see no objection to the Crown utilising the land for a different public purpose than that for which it was originally intended to be acquired. Circumstances may arise when it may become necessary for the Government to abandon the original public purpose contemplated and utilise the land for another public purpose.

¹ (1964) 66 N. L. R. 239.

I am therefore unable to agree with the submission of Counsel for the appellant that even assuming that the original public purpose has failed he is entitled to maintain that the entire acquisition proceedings are bad. As a result of the dilatory tactics adopted by the petitioner this matter has been long delayed. Let my order be communicated forthwith to the Magistrate of Matara so that steps may be taken for compliance with the Magistrate's order of 15.1.67. The application is dismissed with costs which I fix at Rs. 105.

Application dismissed.