

1955

*Present* : Sansoni, J.

J. C. MUNASINHA, Petitioner, and B. DEVARAJAN  
(A. G. A., Puttalam), Respondent

S. C. 148—IN THE MATTER OF AN APPLICATION FOR WRIT  
OF MANDAMUS UNDER SECTION 42 OF THE  
COURTS ORDINANCE

*Writ of Mandamus—Availability against a servant of the Crown—Land Acquisition Act—Sections 16 and 27—Award of compensation—Mode of enforcing payment of it.*

A writ of *mandamus* does not lie against a servant of the Crown where the duty sought to be enforced is not one which is imposed on the servant himself but is imposed on him only in the capacity of agent for the Crown. It does not therefore lie to order an Assistant Government Agent to pay to a particular person money awarded as compensation for land acquired under the Land Acquisition Act. The proper remedy in such a case is a regular action against the Crown.

**A**PPPLICATION for a writ of *mandamus*.

*S. J. V. Chelvanayakam, Q.C.*, with *A. C. Nadarajah, S. Thangarajah* and *C. V. Munasinghe*, for the petitioner.

*V. Tennekoon*, Crown Counsel, with *C. H. M. P. Fernando*, Crown Counsel, for the respondent.

*Cur. adv. vult.*

May 19, 1955. SANSONI, J.—

The petitioner applies for a writ of *Mandamus* on the Respondent who is the Assistant Government Agent, Puttalam, ordering him to pay the petitioner the balance sum due to him as compensation for his land which was acquired by the Government. Consequent on an agreement arrived at between the parties an award was made by the respondent under section 16 of the Land Acquisition Act, No. 9 of 1950. The petitioner now submits that under section 27 a statutory duty is cast on the respondent to tender and pay to him the sum now claimed as all the conditions stipulated in the Act have been satisfied.

The respondent in his affidavit showing cause against the grant of the application has explained why he failed to pay the petitioner the amount claimed. He has stated that the amount was retained by him at the request of the Director of Fisheries who claimed that the petitioner owed it as a debt due to the Department of Fisheries. The respondent has further stated in his affidavit that in tendering and paying compensation awarded under the Land Acquisition Act and in setting off the claim of the Department of Fisheries as a debt due to the Crown,

he was at all times acting as an agent of the Crown. The claim of the Department of Fisheries is disputed by the petitioner and I do not intend to consider this aspect of the dispute; nor need I deal with the objection that this application has been made in order to deprive the Crown of the amount said to be due to the Department of Fisheries.

It seems to me that this application must fail for the reason that a writ of Mandamus does not lie against the Crown, nor against a servant of the Crown where the duty sought to be enforced is not one which is imposed on the servant himself but is imposed on him only in the capacity of agent for the Crown. The principle on which the rule is based is stated in *9 Hailsham, page 761*:—"As no Court can compel the Sovereign to perform any duty, no writ of Mandamus will lie to the Crown. Where it is sought to establish a right against the Crown the appropriate procedure is by way of petition of right. Nor will the writ lie against a Secretary of State in his capacity as an agent for the Crown; for in that capacity he is responsible to the Crown alone, and is under no legal duty towards a subject". The same rule applies as regards other persons acting as servants of the Crown.

The position of the respondent in this matter is that of an agent or servant of the Crown within the meaning of the above rule. The petitioner's land was acquired by the Crown and the Crown accordingly became liable to pay him compensation. In paying the compensation awarded, the Crown acts through its servant who in this instance is the respondent. It is not, of course, the respondent's money that has to be paid to the petitioner under section 27 of the Act; it is the money of the Crown which would come into and leave the hand of the respondent merely as a servant of the Crown.

The first case to settle the rule was *R. v. Lords Commissioners of the Treasury*<sup>1</sup>, where it was held that money voted as a supply to the Crown for certain specific purposes and paid to the Treasury is paid to the latter as servants of the Crown and no Mandamus lies to order the Treasury to pay such money to a particular person. Lush, J., in the course of his judgment said:—"I think that the applicants have failed to make out that which is essential to entitle them to a writ of Mandamus, namely, that there is a legal duty imposed upon the Lords of the Treasury—a duty between them and the applicant—to pay over this sum of money. The only statute which can be brought to aid at all is the Appropriation Act; and that, as it seems to me, clearly shews that the money is voted to the Crown upon trust that the Crown will dispense it for certain specified purposes. When the money gets to the hands of the Lords Commissioners of the Treasury, who are responsible for dispensing it, it is in their hands as servants or agents of the Crown; and they are accountable, theoretically to the Crown, but practically to the House of Commons; and in no sense are they accountable to this or any other court of justice". The proper remedy in such a case is, in England, a petition of right and, in Ceylon, a regular action against

<sup>1</sup> (1872) 7 Q. B. 387.

the Crown. In a later case, *R. v. Commissioners for special purposes of Income Tax*<sup>1</sup>, Lindley, L.J., pointed out the distinction between an application to enforce payment of money by the Commissioners (which cannot be allowed) and one to enforce the making of an order by the Commissioners without which a repayment of tax cannot be obtained, and which it is the duty of the Commissioners to make (which was allowed by the Court). There is a dictum of Lord Herschell to the same effect in *Commissioners for special purposes of Income Tax v. Pemsel*<sup>2</sup>.

These authorities are sufficient to answer Mr. Chelvanayakam's submission that in view of the peremptory terms of the Act the respondent was bound to pay the petitioner the compensation awarded. But I am by no means sure that this remedy would be available even where the duty to pay is imposed on one who is not acting as a servant of the Crown. In the case of *R. v. Hulf and Selby Railway Co.*<sup>3</sup>, an Act provided that a railway Company "shall forthwith pay" a bridge Company compensation under certain conditions which existed in that case. It was sought to recover the compensation by way of Mandamus but the Court refused to grant the writ as an action lay and would be as effectual a remedy as Mandamus. The decision in *R. v. St. Katherine Dock Co.*<sup>4</sup> cited by Mr. Chelvanayakam proceeded on the ground that there was no other legal remedy.

I therefore dismiss this application with costs.

*Application dismissed.*

<sup>1</sup> 21 Q. B. D. 313.

<sup>3</sup> (1844) 6 Q.B. 70.

<sup>2</sup> (1891) A. C. 531, at page 569.

<sup>4</sup> (1832) 4 B. and Ad. 360.

