

1913.

Present: Pereira J. and Ennis J.

ASSISTANT GOVERNMENT AGENT, KEGALLA, v.
BANDA *et al.*

216—D. C. Kegalla, 3,005.

Res judicata—*Omission to make a claim in reconvention in an action in the District Court — Civil Procedure Code, s. 207 — Land acquisition—Right of Government Agent to claim compensation for improvements effected by the Crown—Must Attorney-General claim the compensation on behalf of the Crown?*

A person who omits to make a claim in reconvention in an action in the District Court does not thereby lose his right to press that claim in a subsequent action.

A Government Agent has the power to assert in land acquisition proceedings the Crown's right to compensation in respect of improvements made by the Crown as *bona fide* possessor of lands acquired by the Crown.

By the loss of the *jus retentionis* a person who had effected improvements on landed property does not lose his right to compensation.

THE facts are set out in the indictment.

Bawa, K.C., Acting S.-G., for plaintiff, appellant.

A. St. V. Jayewardene, for defendants, respondents.

Cur. adv. vult.

March 4, 1913. PEREIRA J.—

This case is the result of a reference under section 11 of the Land Acquisition Ordinance, 1876. The portion of land acquired by the Crown is described as lot No. C 208 in preliminary plan No. 1,847. It is a part of the land known as Kalugalamukalana, which may generally be regarded as high forest. This forest was at one time

supposed to be Crown land, and in the belief that it was such Government erected a set of cooly lines on the portion acquired. Since then the whole land was dealt with under the Waste Lands Ordinance, and in the proceedings on the reference to Court under that Ordinance it was declared to be the property of the defendants. The defendants say that they have thus become entitled to the buildings erected by Government, and claim compensation in respect thereof. The District Judge has awarded the defendants Rs. 1,200 as compensation in respect of the buildings, and the Solicitor-General has limited his appeal to only this part of the award. This amount, I take it, is the market value of the improvements, and I may say that the party who made the improvements would be entitled, if at all, to this sum as compensation, because in law he is entitled to the market value of the improvements or their actual cost, whichever is less, and the evidence shows that the market value is in this case the less of the two sums. It may be inferred from the evidence of Mr. Jonklaas, District Engineer, that the rooms cost much more than Rs. 1,200. There were only two issues framed, namely, "What is the value of the lot acquired, and does the decree in D. C. 1,308 entitle the claimants to compensation for the buildings?" An admission was recorded in these terms. "It is admitted buildings on the land acquired were erected by the Crown." Considering what the District Judge says in his judgment, I take it that the second issue means whether, in view of the decree in case No. 1,308 of the District Court of Kegalla, the Crown can, in this case, maintain a claim to compensation. On this issue the District Judge says that the decree in 1,308 is *res judicata* as against the Crown. I do not see how that can be so. Assuming that the proceeding under the Waste Lands Ordinance was a regular action under the Civil Procedure Code, was the Crown bound to make its claim to compensation in it? The District Judge cites the explanation to section 207 of the Civil Procedure Code, but he omits the important words "upon the cause of action for which the action is brought." Anyway, he proceeds to ask himself, "What was the cause of action in the waste lands case?" and answers the question as follows: "It was the denial by the claimants of any right in the Crown to the land in question." Now, the Crown had no right whatever to the land in question, except a *jus retentionis* until it was paid compensation; and this right the Crown might have claimed, but it is not, as it cannot of course be in the circumstances, now insisted on. By the loss of the *jus retentionis* a person who has effected improvements on landed property does not lose his right to compensation. The actual claim that the Crown had was a money claim against the owners of the land, whoever they were, namely, a claim to compensation for the improvements, and this claim the Crown was not bound to make in reconvention in the waste lands proceedings. I mean its omission to make this claim

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in those proceedings did not render the decree *res judicata* as against the Crown in respect of its claim for compensation. This Court has already held that a person who omits to make a claim in reconvention in an action in the District Court does not thereby lose his right to press that claim in other proceedings. (See *Appuhamy v. Banda*.¹)

In the course of the argument I was in doubt that the Government Agent had the power to assert in the present proceedings the Crown's right to compensation in respect of the buildings in question. I thought that such a right could only be asserted by the Attorney-General; but having considered carefully the full scope of the Ordinance, I think that the Government Agent has full power thereunder to represent the Crown for all purposes directly connected with the acquisition of any land for public purposes, and the payment over, or the distribution of, the compensation awarded therefor. Now, I think that the Crown's claim to compensation in this case, being a claim against any person whomsoever who may be the owner of the property acquired, is a matter directly connected with the distribution of the compensation awarded, and that, therefore, the Government Agent can assert that claim in these proceedings. The right order will be that out of the whole sum awarded as compensation for the property acquired, the Crown is entitled to receive Rs. 1,200 as compensation for improvements made on that property, and that therefore the amount of compensation that the Crown is liable to pay for the property will be the sum awarded by the District Judge minus the said sum of Rs. 1,200.

Considering the irregularity in the procedure adopted by the Government Agent in asserting the claim of the Crown to compensation for the buildings, that is to say, by valuing the whole of the property acquired, which, including the buildings, obviously belonged to the claimants, at Rs. 31, I think that the proper order as to costs will be that each party do bear his own costs in both Courts.

ENNIS J.—I agree.

Varied.

¹ (1913) 16 N. L. R. 203.