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Present ; Jayewardene A.J.

ASSISTANT GOVERNMENT AGENT, MATARA, *v.*
PEDRIS.

189—C. R. Matara, 12,440.

Land Acquisition Ordinance—Court of Requests—Award exceeding Rs. 300—Jurisdiction—Security for costs of appeal—Crown—Public officer.

The question of jurisdiction of a Court of Requests in respect of a proceeding under the Land Acquisition Ordinance is decided either by the amount claimed by the claimant before the Government Agent, or if no claimant attends, by the amount offered by the Government Agent. The fact that owing to some circumstance or other the amount ultimately awarded exceeds Rs. 300 cannot divest the Court of jurisdiction where it originally had jurisdiction.

The Assistant Government Agent, who appeals against an order of the Court under the Land Acquisition Ordinance, need not give security for costs of appeal.

THE facts are set out in the judgment.

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Soertsz, for the respondent, took two preliminary objections to the hearing of the appeal:—The Commissioner of Requests had no jurisdiction to entertain this reference, inasmuch as the amount claimed is in excess of the monetary jurisdiction of a Court of Requests. Besides, the appellant has not given security for the respondent's costs of appeal.

J. E. M. Obeyesekere, for the Crown, appellant.—The jurisdiction of a Court of Requests in a reference under the Land Acquisition Ordinance is governed by section 3 of Ordinance No. 41 of 1917. A Court of Requests has jurisdiction where the amount claimed before the Government Agent does not exceed Rs. 300, and also where the amount tendered by the Government Agent does not exceed Rs. 300 if no claimant has attended. Here, there is no evidence to show that the claimant claimed a sum in excess of Rs. 300, and it must therefore be presumed that the reference was rightly made.

Security for respondent's costs of appeal need not be given where the Crown is the party appellant, vide *S. C. No. 340*; *D. C. Colombo, 31,856*; *S. C. Minutes, November 28, 1911*. Here the Assistant Government Agent must be considered to be acting on behalf of the Crown in terms of the mandate issued to him by His Excellency the Governor.

Soertsz in reply.

October 1, 1923. JAYEWARDENE A.J.—

This is an appeal from an order under the Land Acquisition Ordinance, No. 3 of 1876. The Assistant Government Agent of Matara, under a mandate issued to him by the Governor, proceeded to acquire certain blocks of a land called Samarasinghe Pathiranaige Ratmalawatta, described as lots Nos. 2 and 3 in preliminary plan No. 23. The claimants to the lots were summoned to submit their claims, and the defendant in the case came forward as the claimant to these two lots. The Crown offered Rs. 100 as compensation, but the claimant did not accept this figure, and the matter had to be referred to Court. It does not appear how much the defendant claimed for the lots Nos. 2 and 3. In his answer to the libel filed in the Court of Requests, he took the objection that the Court had no jurisdiction to hear and determine the cases as the subject-matter of the action was above the value of Rs. 300. It nowhere appears in the record what sum the defendant claimed as compensation for these two lots. In his answer, however, he claimed Rs. 1,000. The amount of compensation due to him was duly investigated, and the assessors unanimously found that he was entitled to a sum of Rs. 800. The learned Judge, disagreed with

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the assessment of the assessors, and thought that the amount offered by the Crown was reasonable. The learned Judge, instead of entering up judgment in favour of the claimant for the sum of Rs. 800, dismissed the plaintiff's libel of reference on the ground that he had no jurisdiction to award any sum exceeding Rs. 300, that is, he thought he had no jurisdiction to grant the amount which the assessors found, and which he was bound to award to the claimant by virtue of section 2 of Ordinance No. 6 of 1876. I do not think it is possible to say that the Commissioner had no jurisdiction to award this sum. Under Ordinance No. 3 of 1876 land acquisition cases had to be investigated before the District Court only, but by Ordinance No. 41 of 1917, section 3, which amended section 11 of the principle Ordinance, the Government Agent was authorized to institute his libel of reference in a Court of Requests, first, where the amount claimed as compensation by the person or persons interested; or, second, if no claimant has attended, the amount determined by the Government Agent under section 8 does not exceed Rs. 300.

In this case Mr. Soertsz, for the respondent, supports the learned Commissioner's decision, not on the ground given by the Commissioner, but on the ground that his client when he appeared before the Government Agent claimed a sum of Rs. 1,000 as compensation, the same amount which he claims in his answer. If there had been any evidence at all in the case to show that the claim of the defendant before the Assistant Government Agent exceeded Rs. 300, I would have been compelled to hold that the Commissioner of Requests had no jurisdiction. But counsel has searched in vain through the record to find any statement regarding the amount claimed by the defendant before the Government Agent. But no such statement appears anywhere, it is quite possible that the claimant might have claimed anything between Rs. 100 and Rs. 300, or between Rs. 300 and Rs. 1,000. Therefore, I am unable to give effect to Mr. Soertsz contention. I think the learned Commissioner was also not correct in holding that he had no jurisdiction to award Rs. 800, because the question of jurisdiction is decided either by the amount claimed by the claimant when he appeared before the Government Agent, or, if no claimant attends, by the amount offered by the Government Agent. The fact that owing to some circumstance or other the amount ultimately awarded exceeds Rs. 300 cannot in my opinion divest the Court of jurisdiction where it originally had jurisdiction. It is very likely that the claim by the defendant was Rs. 1,000 when he attended before the Government Agent, but I cannot go upon probabilities when any doubt as to it could have been set at rest by the defendant himself stating to Court or in his answer the amount which he claimed and which he says ousts the jurisdiction of the Court of Requests.

There is another objection taken by Mr. Soertsz, namely, that no security for costs has been given by the appellant, the Assistant Government Agent, and therefore the appeal ought to be dismissed. I am not certain that the Assistant Government Agent, acting under the provisions of the Land Acquisition Ordinance, is called upon to give security for costs. I think the Assistant Government Agent is there acting for and on behalf of the Crown, and as an officer expressly authorized under the Ordinance to take steps on the mandate issued by the Governor. I have been referred to a case which is unreported—*S. C. No. 340 ; S. C. Minutes, November 28, 1911 ; D. C. (Colombo), 31,856*—where it was held that the Crown is not liable to give security for costs in appeal. That case is not a direct authority here, because there the party appealing was the Crown. Here it is the Government Agent authorized by the Ordinance. But I think the principle of that case applies to all public officers suing or being sued as representing the Crown, not by virtue of their being recognized agents, but by virtue of their exercising certain powers conferred on them by law. However that may be, if the objection was a sound one I would have been prepared to send the case back for the Court to obtain the necessary security from the appellant under the powers conferred on this Court by Ordinance No. 42 of 1921, which entitles the Court to give relief against all defects and omissions in the matter of giving security. But counsel for the respondent does not wish me to adopt this course, which I would have had to adopt if he had pressed his objection as to want of security and I found it valid. The Crown also says that the award of Rs. 800 by the assessors is excessive, and wishes me to investigate the question of the reasonableness of the compensation on this appeal. But I do not propose to do that. I propose to send the case back for the learned Commissioner to enter up an award in terms of section 2 of Ordinance No. 6 of 1877. When that award is made, it will be time enough for the Assistant Government Agent to appeal, if so advised. The order in this case, therefore, will be that the learned Commissioner do enter up an award for Rs. 800 in favour of the claimant in terms of section 2 of Ordinance No. 6 of 1877. As the appeal has been necessitated by the action of the Commissioner himself, I think that the cost of this appeal should abide the event. An order for costs in the Court of Requests should be entered up in accordance with the provisions of the Land Acquisition Ordinance.

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