

1916.

Present: Wood Renton C.J. and De Sampayo J.

KIRI MENIKA *et al.* v. APPUHAMY *et al.*

330—D. C. Galle, 3,892.

Waste Lands Ordinance, No. 1 of 1897, as amended by Ordinances of 1899, 1900, and 1908—Claim by a person claiming undivided share—Whole land settled on him on the basis of a compromise—No claim by the other co-owners—Effect of order giving the whole land to claimant—Purchase.

The respondent claimed, *inter alia*, an undivided share of lots 88 and 88A before the Special Officer appointed under the Waste Lands Ordinance, who had published a notice calling for claims under section 1 (1) of the Ordinance. The Special Officer did not admit the claim, but entered into an agreement under section 4 (1) of the Ordinance, by which it was agreed that respondent should be declared owner of lot 88, and should purchase for Rs. 19

¹ (1908) 11 N. L. R. 185.

lot 33A, and that he should withdraw his claims to the other lots. Orders giving effect to the agreement was published in the *Gazette*. Appellants claiming to be owners of undivided shares of the two lots brought this action for declaration of title. Neither appellants nor their predecessors in title claimed their shares before the Special Officer.

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Held, that the orders published in the *Gazette* were conclusive of the respondents' title to lots 33 and 33A as against the plaintiffs.

"The Ordinance, when it provided for an agreement with the claimant, meant that a complete settlement of the title might thereby be arrived at, whether there might or might not be possible claims on the part of other persons who have not chosen to come forward."

The minority of persons who ought to have claimed, but did not, does not take away the conclusive effect of the order.

The word "purchase" in section 4 (1) should not be limited to a purchase by the Crown from the claimant, but includes also a purchase by the claimant from the Crown.

THE facts are set out in the judgment.

Bawa, K.C., for plaintiffs, appellants.

F. de Zoysa (with him *A. St. V. Jayawardene*), for second defendant, respondent.

Cur. adv. vult.

November 15, 1916. DE SAMPAYO J.—

There is a dispute in this case between the plaintiffs-appellants and the second defendant-respondent with regard to the title to a land called Habehena, situated in the village Ambatenna, and consisting of lot No. 33 and lot No. 33A in the village plan No. 103. It may be assumed for the purpose of this appeal that Ranhamy and Punchi Menika, under whom the plaintiffs claim title to 5/18 share of the land, were entitled to that share. The question is as to the effect thereon of certain proceedings taken under the Waste Lands Ordinance, No. 1 of 1897, as amended by the Ordinances of 1899, 1900, and 1903. In 1911 Mr. Wedderburn, Special Officer appointed under the provisions of the Ordinance, duly published a notice under section 1 (1) calling upon persons who claim any interest in certain lands in the village Ambatenna (of which the said land Habehena was one) to make claim to them, or any of them, or any interest therein within three months from July 7, 1911, and stating that if no claim was made he would declare that the same were the property of the Crown. The second defendant thereupon claimed 2/5 share of Habehena and some other lands mentioned in the notice, but neither the plaintiffs nor their predecessors in title made any claim. The Special Officer inquired into the second

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defendant's claim to Habehena. He did not admit it, but instead he, on March 25, 1912, entered into an agreement with the second defendant as authorized by section 4 (1) of the Ordinance. This agreement was to the effect that the second defendant, in consideration of (1) the Special Officer settling another land, namely, lot No. 10, as private property outside the Waste Lands Ordinances, (2) his being declared the owner of lot No. 33, and (3) his being declared the purchaser of lot No. 33A, thereby agreed to pay to the Assistant Government Agent the sum of Rs. 19, and thereby further withdrew all claims to the remainder of the lands appearing in the Waste Lands Ordinance notice above mentioned. The second defendant paid down the sum of Rs. 19, and the agreement was embodied in two orders published in the *Government Gazette* of July 24, 1914, by one of which the Special Officer admitted the claim of the second defendant to lot No. 33, and by the other of which the second defendant was declared to be the purchaser of lot No. 33A for the said sum of Rs. 19. The second defendant relies on these orders as conclusive of his title to the entirety of both the lots Nos. 33 and 33A as against the plaintiffs.

When a notice is issued under the Waste Lands Ordinance, the Settlement Officer has to do one of three things: (1) If no claim at all is made, he must make an order declaring the land to be the property of the Crown (section 2, sub-section (1)); or (2) if a claim is made, he may either admit the claim or enter into an agreement with the claimant "for the admission or rejection of the whole or any portion of such claim, or for the purchase of the whole or any portion of the land" (section 4, sub-section (1)); or (3) if he does not admit the claim and fails to enter into any agreement with the claimant, he must refer the claim to Court for determination. The present case falls under the second of these heads, and it will be seen that the agreement with the second defendant amounts to a compromise, such as is contemplated by section 4 (1), by which both an admission and a purchase were agreed upon. When attacking the validity of the agreement, Mr. Bawa, for the appellants, suggested that the word "purchase" in the section meant a purchase by the Crown from the claimant, and not a purchase by the claimant from the Crown, but I do not see any reason why it should be so limited. The difficult question is whether an agreement with a person who only claims an undivided share operates to exclude other persons who have not claimed, but who, on the basis of the claim of the actual claimant, may also have undivided shares in the land. The primary object of the Ordinance is to settle once for all, as between the Crown and private persons, the title to the lands of the description mentioned in the Ordinance, and if the rights of shareholders who do not come forward to claim are to remain intact, notwithstanding the proceedings taken under the Ordinance, that object will not be

attained. Consequently it seems to me that the Ordinance, when it provided for an agreement with the claimant, meant that a complete settlement of the title might thereby be arrived at, whether there might or might not be possible claims on the part of other persons who have not chosen to come forward. In order that any incidental injustice may be met, the Ordinance provides for an extension of the time limited by the notice for making claims (section 2, sub-section (3)), for causing particular notice to be given to a person who has not claimed, but who, there is reason to think, is interested in the land (section 1, sub-section (5)), for actions to be brought within one year after any declaration in favour of the Crown (section 20), and, lastly, for compensation being awarded by the Governor in favour of any person who has failed to make a claim in time (section 26). In my opinion, the order embodying the agreement with the claimant is, subject to such relief as the above, "final and conclusive," as section 4 (2) itself declares, even where the person with whom the agreement has been entered upon has claimed only an undivided share. It was said that the order in this case could not be binding upon the second, third, and fourth plaintiffs, who are minors. But I do not think that the minority of persons, who ought to have claimed, but did not, take away the conclusive effect of the order. Moreover, they claim under Punci Menika, but he is stated to have died only two years before the action, and was, therefore, alive when the proceedings under the Waste Lands Ordinance commenced. I agree with the District Judge that if the plaintiffs had a fair claim to shares in the land, they might, and probably would, obtain some relief under the provisions I have mentioned.

I think the questions involved in the case were rightly decided by the District Judge, and I would dismiss the appeal with costs.

WOOD RENTON C.J.—

I agree, and have nothing to add.

Appeal dismissed.

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