1930.

Present: Fisher C.J. and Drieberg J.

SCHRADER *v.* MARIKAR *et al.*

16—D. C. (Inty.) Galle, 26,827.

Land acquisition—Failure to state amount of claim—Omission explained—Award of compensation—Ordinance No. 3 of 1876, s. 23.

Where, in proceedings under the Land Acquisition Ordinance, a person failed to make a statement of claim to the Government Agent but has sufficiently explained his omission to Court,—

Held, that the Court had power to award him as compensation more than the amount tendered by the Government Agent.

APPEAL from the order of the District Judge of Galle.

Rodrigo, C.C., for plaintiff, appellant.

B. F. de Silva, for defendants, respondents.

March 25, 1930. DRIEBERG J.—

This appeal is by the Government Agent of the Southern Province against a judgment awarding the respondents Rs. 4,400 as compensation for two lots, No. 152 and No. 160, in preliminary plan No. 12,384 acquired by the Crown. The appellant offered Rs. 1,012.50 as compensation, and the respondents claimed Rs. 9,000.

The appellant contended that the respondents had refused or omitted to make their claim before the Government Agent and that the Court could not therefore award more than the amount tendered (section 23 of Ordinance No. 3 of 1876).

What happened was that the respondents without stating what they claimed asked that they be given lot 158 in exchange for lot 152, such an arrangement is allowed by section 46 (1) of the Ordinance. The Government Agent said he was unable to consider the question of exchange and that the respondents should make an application for that purpose to the Chairman of the Municipal Council of Galle.

The inquiry was adjourned for December 10, 1928; on that date the respondents' Proctor applied for an extension of time, this was refused by the Government Agent. The omission of the respondents to state the amount of their claim was not wilful but has been sufficiently explained, and it was open to the Court under section 23 to consider the claim they made in their answer.

On the question of the correct compensation for these lots, there is evidence in the case which supports the finding of the learned District Judge. Mr. Toussaint, the Superintendent of Works of the Municipality, could not say positively that a building conforming to the building by-laws could not be built on the combined lots. In fact, he stated at one time that this was possible, and he qualified his evidence to the contrary by stating that he would allow a building of iron sheets but not one of wood.

But it is not correct to consider the question only from the point of view whether a building can be erected on these two blocks alone, and the learned Judge rightly remarks that these blocks have a value to capitalists desirous of combining them with others and rebuilding on them.

It is stated in the petition of appeal that this is not possible as all the adjoining lots have been acquired. But this is not so. P 1 and P 3 show that the acquisition of the adjoining lot No. 164, a large one of 1.29 perches, has been abandoned.

The appeal is dismissed with costs.

FISHER C.J.—I agree.

Appeal dismissed.