

Present : De Sampayo J. and Schneider A.J.

1919.

GUNARATNA v. LOCAL BOARD, KALUTARA

186—D. C. Kalutara, 7,686.

*Permission granted by Chairman, Local Board, to build—Encroachment—  
Is Board estopped from questioning plaintiff's title?—Notice under  
s. 88 of the Road Ordinance to plaintiff to establish title—  
Action brought against Local Board—Must Crown be sued?*

The Chairman of the Local Board of Kalutara granted the plaintiff permission to erect certain buildings, and made it a condition that the buildings should be so erected that the eaves of the roof should be within the live fence which formed the boundary of plaintiff's land by the road. The plaintiff filled up the land and erected certain buildings on it. Thereafter the Chairman of Local Board issued notice, under provisions of section 88 of the Road Ordinance, requiring him to take legal proceedings to establish his title to the lots in dispute, and for preventing the removal of the encroachment by the Board. The plaintiff brought this action against the Board, and contended that the Board was estopped from denying plaintiff's title.

*Held*, that the Board was not estopped, and that the proper party to be sued was the Board and not the Crown.

THE facts appear from the judgment.

*Weeraratne*, for plaintiff, appellant.

*E. W. Jayawardene*, for defendant, respondent.

October 3, 1919. SCHNEIDER A.J.—

The land in dispute in this case consists of lots 4, 5, and 6 in the tracing marked D 1/G.S.S. at page 54 of the record of a survey made in June, 1917, by Mr. A. R. Felsing, and authenticated by the Surveyor-General on August 18, 1917. This appears to be the survey referred to in the plaint as made by Mr. D. W. (of H.) Felsing, and dated August 18, 1917, and in the answer as the plan "hereto annexed," without further description. On the record there is no plan annexed to the answer.

I conjecture this is the survey plan referred to as plan A in the issues dated February 18, 1918, submitted on behalf of the defendant corporation, and the plan referred to in the plaintiff's issues, and also the plan referred to as D 1 in the proceedings.

In 1875 the Crown acquired *inter alia* lots No. 6,008 and 6,007 in preliminary plan No. 3,305 for an approach road to the bridge across the Kalu-ganga. This bridge links the public road from Colombo

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to Galle at this point. The evidence in the case proves beyond any doubt that the lots in question comprise the said lot No. 6,007 and a portion of the said lot No. 6,008. The evidence of Mr. Felsing and also of Mr. Souza called by the plaintiff establishes this fact. The plaintiff claims the lots in question as portions of Paranapalliya-watta, which was partitioned in D. C. Kalutara, No. 5,191.

He relies on plan No. 194 dated March 30, 1914, filed in that action, of which he produced a copy marked P 1 in this action. This plan, it appears to me, does not show that the portions in dispute fall within the land which was the subject-matter of the action for partition. But even if they did, and they had been dealt with in that action, that would make no difference, because, if they be regarded as Crown property, a partition action to which the Crown was no party would not affect the title of the Crown; while, on the other hand, if they be regarded as a road, being a road reservation, they are incapable of private ownership. The plaintiff, therefore, has no paper title to the lots in question. He claims them also by prescription, on the ground that the Crown has not possessed them for over forty years.

This claim is not maintainable in view of the provisions of section 90 B of the Road Ordinance of 1861, as amended by Ordinance No. 23 of 1910, which preclude the acquisition of any rights in respect of roads by virtue of possession or user. The land in question is a road within the meaning of the Road Ordinance of 1861, because the evidence points to the conclusion that it adjoins the Colombo-Galle road, and has been reserved for the protection or benefit of that road. The plaintiff also pleaded that he had improved portions of the land in dispute by filling them up and erecting certain buildings on them, and that the defendant corporation had admitted his title to them, and was, therefore, now estopped from denying that title. He claimed for this reason that the defendant corporation should either pay him Rs. 6,000 as compensation, or be directed to convey lot 4 to him for Rs. 200.

It would appear that the foundation of the estoppel pleaded is the fact that the Chairman of the Local Board had granted the plaintiff permission to erect certain buildings on Paranapalliawatta in 1914, and in granting permission had made it a condition that the buildings should be so erected that the eaves of the roof should be within the live fence which formed the boundary of plaintiff's land. In his evidence the plaintiff does not expressly state, nor is there any other evidence, that the buildings are within the fence in question. But, even assuming them to be, I entirely fail to see that any estoppel is or can be established.

There is no proof that the defendant corporation intentionally represented to the plaintiff that the portion of land in dispute belonged to the plaintiff, and thereby caused him to believe that they belonged to him. Neither the plaintiff nor the defendant

corporation at the date of the application for permission to build could have had the question of the boundary in view. Even if the Chairman had the authority to permit the erection of the buildings, it does not follow that any act of his beyond the granting of that permission will bind the Board. Furthermore, the Board is a corporation vested with certain rights and duties for the benefit of the public. Those rights and duties are expressly defined. There is no power given to a Board by any admission to divest itself of title in respect of a road or other property held upon trust for the public. It seems to me that no estoppel can be pleaded in bar of any proceedings by a Board to vindicate title to a road. I, therefore, think that the plaintiff has not made out a case for compensation to be paid to him by the defendant corporation, nor for compelling the defendant corporation to convey any portion of the land in dispute to him. The defendant corporation can only deal with a road according to the provisions of the Road Ordinance or the Local Boards Ordinance, 1898.

The plaintiff was driven to this action by a notice (P 9) under the hand of the Chairman of the defendant corporation issued under the provisions of section 88 of the Road Ordinance requiring him to take legal proceedings to establish his title to the lots in dispute, and for preventing the removal of the encroachment by the Board. Section 65 of the Local Boards Ordinance vests in Local Boards, as regards roads within Local Board limits, all powers, duties, and responsibilities vested in Provincial or District Committees under the Road Ordinance. The defendant corporation is, therefore, the authority empowered to act in this instance under the provisions of section 88 of the Road Ordinance and the person to be sued. But, most inconsistently it seems to me, objection was taken by the defendant corporation that it was wrongfully sued, and that not it, but the Crown should have been sued, as the land was the property of the Crown. If the land belonged to the Crown, then the notice under section 88 was bad, because the procedure there laid down applies only to thoroughfares. A thoroughfare is not the property of the Crown, but of the public. The land in claim does not belong to the Crown, but to the Local Board for certain public purposes. I am, therefore, unable to agree with the learned District Judge that the plaintiff's action should be dismissed on this ground.

For the reasons I have already given I hold that the said lots do not belong to the plaintiff, but are part of the road reservation. The appeal is accordingly dismissed, with costs.

DE SAMPAYO J.—

I also think that this appeal fails, and should be dismissed, with costs.

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*Appeal dismissed.*