1968 *Present :* **T. S. Fernando, J., and Alles, J.**

P. KARUNANAYAKE, Appellant, *and* C. P. DE SILVA (Minister of Lands) and another, Respondents

S. C. 99 (Inty.) of 1967—D. C. Matara, 2460/L

Compulsory acquisition of land—Cannot be of an indeterminate corpus—Description of the land must be precise as to location and extent—Land Acquisition Act, as amended by Act No. 28 of 1964, ss. 2, 4, 4A, 5, 38.

In proceedings under the Land Acquisition Act, the notice under section 4, the declaration under section 5 and the Order under section 38 must each set out the particular land to be acquired. The acquisition cannot be of an indeterminate corpus.

The land sought to be acquired from the plaintiff-appellant was described as follows :—" A portion in extent about 1A. 1R. 16P. out of the land called Hambu Ela Watta and bounded as follows :—North and East by the remaining portion of the same land and V. C. road ; South and West by Polwatta Ganga and the remaining portion of the same land."

Held, that there was uncertainty as to the precise location of the land. The plaintiff was therefore entitled to an interim injunction restraining the acquisition.

APPEAL from an order of the District Court, Matara.

E. R. S. R. Coomaraswamy, with *L. W. Athulathmudali*, for the plaintiff-appellant.

Mervyn Fernando, Crown Counsel, with *G. P. S. Silva*, Crown Counsel, for the defendants-respondents.

Cur. adv. vult.

February 22, 1968. T. S. FERNANDO, J.—

The plaintiff-appellant instituted action No. 2460/L in the District Court seeking (1) a declaration *inter alia* that a proposed acquisition of land belonging to him is wrongful and unlawful and (2) a permanent injunction restraining the defendants from taking steps to acquire the said land. He also sought an interim injunction pending the determination of the action restraining the defendant from taking steps as aforesaid. An enjoining order was issued by the District Court on ex-parte application and notice thereof was ordered on the defendants.

After the defendant appeared on notice, an inquiry was held in the District Court, and by an order made on the 27th February 1967 the learned District Judge dismissed the application for the interim injunction and, therefore, discharged the enjoining order.

This appeal canvasses the correctness of the order of the 27th February 1967 above referred to.

The notice required to be given in terms of section 4, the declaration required to be made under section 5 and the Order for taking possession that may be published under the proviso to section 38 of the Land Acquisition Act (Cap. 460) all require that the land proposed to be acquired should be indicated in the respective documents. It is contended on behalf of the appellant that all three documents in respect of this proposed acquisition are so defective in regard to the description of the land as to render them of no force or effect in law.

The proviso to section 38 enables the Minister to take steps on occasions calling for urgent acquisitions provided a notice under section 2 or section 4 has been exhibited. While a notice under section 2 will ordinarily specify only an area and such a notice is sufficient authority for the authorized officer to enter any land situated within that area, nevertheless possession of any such land can be taken only after deciding or determining the particular land of which it is necessary to take possession. There would be no difficulty to demarcate with sufficient precision the land intended to be taken and, it must be noted, the authorized officer is empowered by section 2 (3) to enter and survey the land.

Section 4 relates to a stage after investigations for selecting land have taken place, and that section requires the Minister to direct the acquiring officer to give notice to the owner or owners of the particular land which the Minister considers is needed for a public purpose and has to be acquired. To enable the acquiring officer to give notice to the owner or owners it must follow that he (the acquiring officer) should know the particular land proposed to be acquired. The circumstance that the law contemplates objections to the proposed acquisition involves necessarily that the precise location has to be known not only to the officers of the government charged with the duty of acquiring the land but also to the owner or owners thereof. It is only after the objections have been disposed of as provided in section 4 that the decision to acquire can be taken by the Minister. The written declaration that follows such decision also must relate to that particular land. I am, therefore, of opinion that the notice under section 4, the declaration under section 5 and the Order under section 38 must each set out the particular land to be acquired. The contention of the appellant that the acquisition cannot be of an indeterminate corpus is, in my opinion, sound and has to be upheld.

That the view I have reached as above set out is correct—at any rate in respect of acquisitions after the amendment to the Land Acquisition Act by Act No. 28 of 1964 (which came into force on 12th November 1964)—will be apparent on an examination of the provisions of section 4A of the Act (inserted by section 3 of Act No. 28 of 1964) which has been designed to nullify the disposal of and to prevent damage to land in

respect of which a notice has been issued or exhibited under section 2 or section 4. Sub-section (2) of this section 4A renders null and void any sale or other disposal of land in contravention of sub-section (1), while sub-section (3) declares such a contravention to be a punishable offence. If a person is to be punished for selling or otherwise disposing of certain land, surely he must be informed of the precise location and extent of such protected land. Any interpretation which will involve the result that a person will be prevented from dealing with all his lands in a particular area because he does not know what is the land in that area he cannot sell or dispose of without contravening the Act should be avoided.

When we turn to the three relevant documents in this case, viz. X1 of 5th April 1966 (the notice under section 4), X2 of 14th May 1966 (the declaration under section 5), and X3 of 14th May 1966 (the Order under section 38), each of them is found to describe the land in exactly the same terms. That description is set out below :—

> " A portion in extent about 1A. 1R. 16P. out of the land called Hambu Ela Watta and bounded as follows :—
>
> North and East by the remaining portion of the same land and V. C. road ;
>
> South and West by Polwatta Ganga and the remaining portion of the same land. "

In whatever way one may attempt to ascertain where precisely within Hambu Ela Watta this portion of about 1A. 1R. 16P. is to be found one will be met with uncertainty as to its location. Indeed, Crown Counsel had in the end to concede that there is uncertainty in this description and, therefore, that the corpus sought to be acquired as described in the documents was an indeterminate one.

We do not apprehend that there would be any difficulty for Government, with the resources available to it, to have a proper survey plan prepared in the case of each acquisition. Indeed, our own experience is that such plans are usually made and are the basis of the Minister's own decision to acquire land. If so, what difficulty is there to describe that land by reference to such a survey plan and even to make it available to parties affected ? We do not however intend to say that the situation of a land cannot ever be described without reference to a survey or other plan ; but the description adopted in the instant case fails to give effect to the requirements of the Act. As so often happens, action taken hastily in the supposed interests of expedition actually results in a delay greater than that which would have been occasioned by a resort to the procedure which the legislature had in contemplation.

As the Order under section 38 and indeed the other two documents as well are not in conformity with the law, they do not, in our opinion, have that force and effect which the Land Acquisition Act contemplates. For

this reason we set aside the order of the District Court made on the 27th February 1967 which discharged the enjoining order and dismissed the application for an interim injunction. The enjoining order has to be restored and the interim injunction applied for by the plaintiff granted, and we have made order accordingly. The appellant is entitled to the costs of the inquiry in the District Court and of this appeal.

ALLES, J.—I agree.

Order set aside.