1952

Present: **Rose C.J. and Pulle J.**

PERUMAWASAM SILVA *et al.*, Appellants, *and* BALASINGHAM (A. G. A., Kalutara), Respondent

S. C. 106 Inty.—D. C. Kalutara, 412

Land Acquisition Ordinance (Cap. 203)—Notice under Section 6—" Proceeding "—Land Acquisition Act No. 9 of 1950, ss. 60, 61—Retrospective effect—Interpretation Ordinance (Cap. 2), s. 6 (3).

A statutory notice published under section 6 of the Land Acquisition Ordinance (Cap. 203) prior to the date when it was repealed by the Land Acquisition Act of 1950 is a proceeding which may be carried on to completion under the Ordinance in spite of its repeal.

[1] *(1951) 52 N. L. R. 278.*

APPEAL from an order of the District Court, Kalutara.

E. B. Wikramanayake, Q.C., with *O. M. de Alwis*, for the defendants appellants.

E. R. de Fonseka, Crown Counsel, for the respondent.

Cur. adv. vult.

February 27, 1952. PULLE J.—

This appeal arises out of a reference made under section 11 of the Land Acquisition Ordinance (Cap. 203). The libel states that the Minister of Agriculture and Lands by virtue of the powers vested in him directed the Assistant Government Agent by a mandate dated the 14th July, 1949, to take order for the acquisition of an allotment of land described as lot 2 in Preliminary Plan No. A 2,555. In obedience to the mandate the Assistant Government Agent published a notice in the *Government Gazette* of 24th February, 1950, as required by section 6 of the Ordinance, fixing the 20th March as the day on which all persons interested in the land were to appear and state the nature of their interests in the lands and the amount and particulars of their claims to compensation. On that date two claimants who are the present appellants appeared before the Assistant Government Agent who determined the compensation at Rs. 53,510. The appellants did not agree to accept this sum and a libel of reference was filed on the 12th September, 1950. On the 9th March, 1950, the Land Acquisition Act came into operation by section 60 of which the Land Acquisition Ordinance (Cap. 203) was repealed. The appellants submitted as a preliminary point to the learned District Judge that he had no jurisdiction, either to entertain or hear the case, because by reason of the repeal it was not competent for the Assistant Government Agent to have filed the libel of reference. The District Judge ruled against the appellants.

Before the District Judge the argument took the extreme form that the effect of the repeal was that no action could be taken under the repealed enactment and that it was to be considered as obliterated from the statute book, except for any provision made in the new enactment to keep alive the provisions of the old. It was contended that section 61 of the Act of 1950 was exhaustive of all proceedings which having been initiated under the repealed Ordinance could thereafter be continued. Though admittedly the present case is not covered by section 61 learned Counsel for the appellants rightly conceded before us that the true answer to the question raised in the case depended on the application of section 6 (3) of the Interpretation Ordinance (Cap. 2), the relevant portion of which reads,

> " Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or deemed to have affected—
>
> (a)
>
> (b)

(*c*) any action, proceeding or thing pending or incompleted when the repealing written law comes into operation, but every such action, proceeding, or thing may be carried on and completed as if there had been no such repeal."

Was there a proceeding or thing pending or incompleted when the repealing Act of 1950 came into operation on the 9th March of that year? It is said that the Assistant Government Agent did nothing more than publish a notice in the *Gazette* of 24th February, 1950, and that this publication could not be described as a proceeding or thing pending or imcompleted on the 9th March. It would, not however, be correct to state that in the process of acquiring the land there was nothing more done than the publication of a notice. The notice was published after a survey had been made in pursuance of section 4 of the Ordinance and after the consideration of the report of the Surveyor-General. It was urged on behalf of the appellants that a proceeding within the meaning of section 6 (3) (*c*) is one which is in the nature of an investigation and that, as the stage of an investigation was not reached before the 9th March, the events that had taken place up to that date could not be described as a proceeding. I do not think that there is justification for placing such a restricted meaning on the word "proceeding". A reference to sections 39, 43, 45 and 47 reveals that steps taken under the Ordinance are described as "proceedings" and, in my opinion, that word in section 6 (3) (*c*) of the Interpretation Ordinance can be read in that wider sense. There is support for this view in the case of *Thompson & Sons v. North Eastern Marine Engineering Company, Ltd.*[1]. A question that fell incidentally to be determined was whether a mere notice of a claim given by a workman who was injured in an accident to his employers, the plaintiffs, was a proceeding against them within the meaning of section 6 of the Workmen's Compensation Act, 897 (60 & 61 Vict. C. 37) even though the claim was compromised without recourse to the statutory remedy of arbitration. Kennedy J. said at p. 435:

> "For the purpose of my decision in this case it is sufficient to say, so far as authority goes, I do not think, if it were necessary to decide the point, that anything bars me from holding that the word 'proceed' is sufficiently satisfied by a claim for compensation being made under the Act, as was done here."

The statutory notice published by the Assistant Government Agent was in my opinion a proceeding which he was entitled to carry on to completion under the Ordinance in spite of its repeal. I would dismiss the appeal with costs.

ROSE C.J.—I agree.

Appeal dismissed.

[1] *(1903) 1 K. B. 428.*