1953 *Present:* **Rose C.J. and K. D. de Silva J.**

P. B. RATWATTE, Appellant *and* P. ARTHUR SILVA (Assistant Government Agent) *et al.*, Respondents

S. C. 18—D. C. (Inty.) Anuradhapura, 3,172

Land acquisition—Valuation—Intervention by interested parties.

In awarding compensation in respect of compulsory acquisition of land, the value to be ascertained is the value to the vendor, not its value to the purchaser. Therefore, any increase in value consequent on the execution of the undertaking in connection with which the acquisition is made must be disregarded.[79]

In land acquisition proceedings, tenants and others claiming compensation for improvements effected on the land to be acquired may be allowed to intervene.

APPEAL from a judgment of the District Court, Anuradhapura.

N. K. Choksy, Q.C., with *D. S. Jayakody* and *E. P. Wijetunge*, for the 1st defendant appellant.

V. Tennekoon, Crown Counsel, for the plaintiff respondent.

Cur. adv. vult.

October 16, 1953. ROSE C.J.—

This matter turns upon the amount of compensation to be awarded to the appellant in respect of the compulsory acquisition of a certain land named Elabodekelle of about 29 acres in extent. The sum of

Rs. 20,470 as compensation for the land at the rate of Rs. 700 per acre was awarded, of which Rs. 6,165 was allotted to certain tenants of the appellant in respect of improvements which the learned District Judge held they had effected.

The first point that the appellant takes is that the rate of compensation was too low. It appears that the land in question was acquired for the purpose of developing the new town of Anuradhapura situated outside the urban limits of the old town.

Evidence was called both on behalf of the appellant and the 1st respondent in regard to the value of certain lands in the neighbourhood. These estimates naturally varied and the learned District Judge was placed in the somewhat difficult position of having to arrive at an arbitrary figure. One of the assessors was of the opinion that the compensation should be at the rate of Rs. 1,200 per acre whereas the other, with whom the learned District Judge agreed, estimated the appropriate compensation at Rs. 700 per acre.

We are invited by learned counsel for the appellant to hold that the learned District Judge is wrong in his computation. As is pointed out by Mr. Justice Eve in *South Eastern Railway v. L. C. C.*[1]—and his observations are referred to with approval in *Cripps' Compulsory Acquisition of Land*, 9th Edition at page 503—the value to be ascertained is the value to the vendor, not its value to the purchaser, and that therefore any increase in value consequent on the execution of the undertaking in connection with which the acquisition is made must be disregarded.

While the market price, as Eve J. points out, is not a conclusive test of real value it has, of course, a distinct bearing upon the value of the land to the vendor. Crown Counsel points out that this land was relatively waterless and only intermittently cultivable once every three or four years and that it had no saleable value at all, apart from the value it had to the 1st respondent in connection with the proposed Housing Scheme. That being so, it seems to me that there is really no adequate material upon which we, as an Appellate Court, can hold that the learned District Judge's assessment, which in the very circumstances of the case must have been more or less of an arbitrary nature, is wrong ; especially as there is some material upon the record which would seem to lend support to the adoption of the figure that he chose. This point of the appeal therefore fails.

There remains the question of the compensation which was awarded to the various tenants for improvements. As regards the amount, I am of opinion that there is no good ground for this court to interfere with the decision of the learned District Judge. There was evidence, which he accepted, as to the value of the various buildings and other improvements effected ; moreover there was evidence to support his finding that the respondents (who were the tenants in question) effected those improvements. On those matters, therefore, I see no reason to disturb the finding of the learned District Judge.

[1] *(1915) 2 Ch. 252.*

The appellant contends, however, that the matter of improvements and the compensation to be paid for them should not have been considered at all by the learned District Judge in the present proceedings. There is some support for this view in the case of *G.A., W. P. v. Cooray & others*[1]. That case, however, which was decided as long ago as 1908, although it does not appear to have been expressly overruled, does not seem to have been followed in subsequent decisions of this court, or indeed in the practice of the District Courts themselves. I am informed from both sides of the Bar, and I accept, that the general practice in these matters is for intervention to be allowed by tenants and others claiming compensation for improvements effected on the land to be acquired. This practice seems to me to have at any rate the advantage of being convenient and, that being so, I would be reluctant at this late stage to introduce any innovation, Moreover, it may well be that the observations of Grenier A.J. in *G. A., W. P. v. Cooray & others* were only intended to be read in the context of their application to the particular facts of that case.

I consider therefore that the appellant's second point also fails.

The appeal is therefore dismissed with costs payable to the 1st respondent. The remaining respondents did not appear and will receive no costs.

K. D. DE SILVA J.—I agree.

Appeal dismissed.