

1954

*Present : Pulle J. and Swan J.*

ASSISTANT GOVERNMENT AGENT, MATARA, Appellant,  
and SIDDIK *et al.*, Respondents

*S. C. 98 (Inty.)—D. C. Matara, 21,382*

*Land Acquisition Ordinance (Cap. 203)—Libel of reference—Joinder of parties—Sections 3, 5, 32.*

Where the Crown desires to acquire a land under the Land Acquisition Ordinance, the proceedings ending with the filing of the libel of reference are not bad if in fact a claimant can satisfy the Court that he owns a divided portion of the land.

**A**PPPEAL from an order of the District Court, Matara.

*E. W. P. S. Jayawardene*, Crown Counsel, for the plaintiff appellant.

*H. W. Tambiah*, for the 1st and 2nd defendants respondents.

*Cur. adv. vult.*

May 10, 1954. PULLE J.—

This appeal arises out of proceedings taken under the Land Acquisition Ordinance (Cap. 203). The land sought to be acquired is described as lot 30 in Preliminary plan No. A 1,186—S. P. Its extent is 3 A. 0 R. 22.5 P. Five claimants appeared at the enquiry before the Assistant Government

<sup>1</sup> (1915) 18 N. L. R. 168.

Agent and, as no agreement was reached as to the amount of compensation, a libel of reference was filed making the five claimants and two others as defendants. The 1st and 2nd defendants, among other matters, pleaded that the libel could not be maintained owing to "a misjoinder of parties and causes of action". The learned District Judge upheld the plea and dismissed the reference with costs.

In their statement which was supplemented by evidence the 1st and 2nd defendants alleged that a divided part of the land sought to be acquired of the extent of 1 A. 2 R. 08 P. depicted as lot B2 in Plan No. 483A of 3rd October, 1939, devolved on them and that, therefore, the libel could not be maintained owing to a misjoinder of parties and causes of action.

The argument which appears to have weighed with the Judge is that where the Crown desires to acquire a land the proceedings ending with the filing of the libel are bad, if in fact a claimant can satisfy the court that he owned a divided portion of the land. In my opinion the argument is not valid. Before the Minister directs the Government Agent to take order for the acquisition of a land a decision is taken under section 3 as to whether it is likely to be needed for a public purpose. Thereafter the Surveyor-General is directed to examine or cause to be examined such land and to report whether the same is fitted for the purpose of the acquisition. Under paragraph (d) of section 3 it is the duty of the surveyor to set out the boundaries of the *land proposed to be taken* and a report is made under section 5. It is on this report that the Government Agent is directed to take order for the acquisition. It is manifest that none of the duties specified in sections 3 and 5 involve the ascertainment of the title of one or more persons to the exclusive ownership of a divided portion of the land. Otherwise, one would have expected the Legislature to have set up a machinery for the investigation of such title. The undesirability of such an investigation is obvious.

Where a land is dividedly possessed apportionment of compensation may, as the Judge observes, become difficult but difficulties of the same magnitude exist no less where the land is not divided as, for example, in the assessment of compensation for buildings and plantations put up by co-owners or lessees or bona fide possessors.

The learned Judge relies on section 32 in justification of the order dismissing the action. The proceedings taken in Court on a libel of reference being filed are subject to the Civil Procedure Code only "so far as the same can be made applicable". Not a single flaw in the steps taken up to and including the filing of the libel has been pointed out. I am unable to appreciate how in these circumstances the libel could be rejected. No disability attaches to anything done according to the requirement of law.

I would set aside the order appealed from and remit the case to the District Court for further proceedings *in due course*. The 1st and 2nd defendants will pay to the plaintiff the costs of appeal and the costs incurred by him on the 2nd February, 1953.

SWAN J.—I agree.

*Order set aside.*