

1933

*Present : Dalton S.P.J. and Drieberg J.*  
SANGARAPILLAI v. DEVARAJAH MUDALIYAR.

185—D. C. Colombo, 2,860.

*Land Acquisition—Mortgage of land acquired—Person interested—Rights of mortgagee to compensation—Ordinance No. 3 of 1876, ss. 3 and 7.*

A mortgagee is a person interested in the land within the meaning of section 3 of the Land Acquisition Ordinance, and as such is entitled to put forward a claim to the compensation paid under section 7 of the Ordinance.

**A** PPEAL from an order of the District Judge of Colombo. The facts are fully stated in the judgment.

*H. V. Perera* (with him *Chelvanayagam*), for first defendant, appellant.  
*N. E. Weerasooria* (with him *Amerasinghe*), for third defendant, respondent.

April 10, 1933. DALTON S.P.J.—

This appeal arises out of a dispute between two persons, who both claim a sum of money deposited in Court under the Land Acquisition Ordinance. No evidence was led but certain facts were admitted. Those facts are as follows:—

- (1) Sangarapillai, the first claimant (appellant), was the owner of land, portion of which was acquired for public purposes.
- (2) By bond of February 27, 1929, (X 1.) he mortgaged the entire land to one Silva.
- (3) By bond of April 8, 1931, he mortgaged the entire land, under a secondary mortgage, to Devarajah Mudaliyar, the third claimant (respondent to appeal).
- (4) The date of acquisition of portion of the land so owned and mortgaged was May 6, 1931. The sum of Rs. 3,595.78 has been brought into Court, but there is a dispute pending as to the sufficiency of that amount.
- (5) The bond of February 27, 1929, was put in suit in case D. C. 44,915, on July 2, 1931, to recover the sum of Rs. 25,850 and interest; hypothecary decree was entered on August 7, 1931.
- (6) The third claimant (respondent), who as secondary mortgagee had a claim for the sum of Rs. 10,251.39, became purchaser at the execution sale for the sum of Rs. 28,000, and obtained transfer (Exhibit X 5) on December 23, 1931, of the entirety of the property mortgaged including the portion acquired for public purposes.
- (7) The first claimant (appellant) sought to have the sale set aside, but his petition was dismissed, the dismissal being affirmed on appeal.

The question to be decided on these facts is whether appellant or respondent is entitled to the amount of compensation paid or to be paid for the portion of the property acquired for public purposes. The trial Judge answered it in favour of the third claimant, and Sangarapillai now appeals.

For the appellant, Mr. Perera, first of all, but not very strenuously, suggested that mortgagees were in no way protected under the Land Acquisition Ordinance, 1876, and in that event a mortgage would be extinguished, if the land subject to the mortgage was acquired under the Ordinance. On that point, in the absence of the production of any authority to the contrary, I am satisfied that a mortgagee is a person “interested in the land”, within the meaning of those words as used in

the Ordinance. This is in fact expressly admitted in appellant's petition of appeal. The Ordinance provides that the land acquired vests absolutely in His Majesty "free from all encumbrances". The mortgagee certainly then, in my opinion, has an interest, in respect of which he is entitled to put forward a claim to the compensation paid under the provisions of section 7 of the Ordinance.

It was then urged that although respondent by his deed of December 23, 1931, purported to obtain transfer for the whole property including the acquired portion, and although he purported to purchase the whole, he in fact only purchased the portion that had not been acquired, inasmuch as the latter portion after May 6, 1931, vested in the Crown free of all encumbrances, and that, merely as purchaser of the property sold at the sale in execution, he had no claim to the compensation paid for the portion acquired, which in fact could not have and had not been purchased by him.

On the other hand, as secondary mortgagee, he was a party in the action D. C. 44,915, and on the facts as now admitted, he had an interest in the land at the time of its acquisition. The result of this is set out, and I think correctly set out, in the petition of appeal. It is there urged that the money deposited in Court was to compensate all persons who had interests in the land at the time of the acquisition. The owner and the mortgagee are such persons, but not one who is merely the purchaser of the land subsequent to the acquisition.

Unfortunately, at the trial of this matter in the lower Court the date of acquisition was not correctly ascertained. The trial proceeded on the supposition that the date of acquisition was February 11, 1931, a date at which respondent was not a mortgagee, and the petition of appeal was drafted before the error was discovered. When the matter first came before this Court on appeal, it was ascertained that date was wrong, the correct date of acquisition being May 6, 1931, subsequent to the execution of respondent's second mortgage. At the time of acquisition therefore he was a mortgagee and a person who, as set out in the petition of appeal (an argument intended at the time to apply only to the first mortgage), had an interest in the compensation. In dealing with this appeal, then, I am not prepared to deal with the respondent as being a purchaser only, subsequent to the acquisition. On the facts, as now ascertained and as put before this Court, he was also a mortgagee. Appellant concedes that the mortgagee's rights to compensation would always remain with him till his debt was satisfied or waived, and, that being so, it seems to me sufficient to say that on the facts as now established the respondent, whose debt has not been satisfied or waived, is entitled to the compensation up to the amount of that debt. If that answer decides this question as it arises in this case, it is not necessary to consider further the nature of the compensation paid, whether it is to be considered immovable property as representing the land acquired, or whether as movable property impressed with certain trusts, or as a sum of money in Court and nothing else.

I would therefore hold that the respondent is entitled to the amount of compensation to be paid for the acquisition subject to what I have stated.

The appeal must therefore be dismissed with costs.

DRIEBERG J.—I agree.

*Appeal dismissed.*