

1969

Present : Samerawickrame, J.

Mrs. MALLIKA RATWATTE *et al.*, Petitioners, and
THE MINISTER OF LANDS (The Hon. C. P. de Silva) *et al.*,
Respondents

*S. C. 141/69—Application for an Injunction in terms of
Section 20 of the Courts Ordinance*

*Compulsory acquisition of land—Interim injunction to restrain it—Requisite conditions
—Suspicion of malice—Duty of Court then to scrutinise the acquisition—Land
Acquisition Act, ss. 4 (1), 5, 38 (proviso)—Courts Ordinance, s. 20.*

The requisite conditions for the issue, by the Supreme Court, of a temporary injunction under section 20 of the Courts Ordinance are—

- (1) irremediable mischief would ensue from the act sought to be restrained ;
- (2) an action would lie for an injunction in some court of original jurisdiction ;
and
- (3) the plaintiff is prevented by some substantial cause from applying to that court.

By a notice under section 4 (1) of the Land Acquisition Act, the Minister (the 1st respondent) sought to acquire certain lands of the 1st petitioner for the purpose of carrying out the widening of a road. Upon the facts and circumstances disclosed in the Supreme Court, the question arose whether, in giving directions for these acquisitions, the 1st respondent, wittingly or unwittingly, gave effect to a design or plan by a political opponent of the petitioners which was calculated to protect the interests of himself and his relatives and cause loss and detriment to the petitioners.

Held, that the petitioners were entitled to the issue of a temporary injunction restraining the respondents in respect of the acquisition of the lands. In order that an interim injunction may issue, it is not necessary that the Court should find a case which would entitle the plaintiff to relief at all events ; it is quite sufficient if the Court finds a case which shows that there is a substantial question to be investigated, and that matters ought to be preserved *in statu quo* until that question can be finally disposed of.

APPPLICATION for an injunction in terms of Section 20 of the Courts Ordinance.

Nihal Jayawickrema, for the petitioners.

H. L. de Silva, Crown Counsel, for the 1st, 2nd and 3rd respondents.

Cur. adv. vult.

April 11, 1969. SAMERAWICKRAME, J.—

On the application of the petitioners, I made order on the 20th of March, 1969, ordering the issue of a temporary injunction restraining the respondents in respect of the acquisition of certain lands and in my order, I reserved the right to the respondents to apply, on good grounds shown, to have the order vacated. The respondents have now applied to have the order set aside and, in view of the imminence of the Court Vacation and the possibility that this matter may not come up for hearing during the term if they controverted the facts and thereby made it necessary for the respondents to file counter affidavit, they have been content with contending that upon the facts and circumstances disclosed in the papers filed by the petitioners, they were not entitled to the issue of an injunction.

In the case of *Mohamado v. Ibrahim*,¹ Bonsor, C.J. set out the circumstances in which a temporary injunction under Section 20 of the Courts Ordinance would issue and his statement of them has been cited and adopted by Alles, J. in *Vellasamy v. N. Q. Dias*². The requisite conditions are as follows :—

- (1) Irremediable mischief would ensue from the act sought to be restrained ;
- (2) an action would lie for an injunction in some court of original jurisdiction ; and
- (3) the plaintiff is prevented by some substantial cause from applying to that court.

A notice under s. 4 (1) of the Land Acquisition Act has been issued in respect of these acquisitions and unless the respondents are restrained, the petitioners are in grave danger of being deprived of their lands, and, if their case is true, being deprived wrongfully. An order under s. 5, and an order for immediate possession under the proviso to s. 38 could be made in a matter of few days. In recent times, it has been the rule rather than the exception to make orders for immediate possession of land in acquisitions. I am, therefore, satisfied that condition (1) is fulfilled in this case. The petitioners are also prevented from applying to the District Court for relief by reason of the requirement that notice of action should be given before an action is filed against a person holding the office of Minister or a public officer. The petitioners state that they have issued notice but are precluded from applying for relief immediately to the District Court by reason of the requirement that action should be filed only after the expiry of a month after delivery of notice. I am also, therefore, satisfied that condition (3) has been fulfilled.

There remains to be considered the question whether an action in the District Court would lie to the petitioners in which they would be entitled to apply for an interim injunction. The 1st petitioner is the Member of Parliament for Balangoda and her husband had been the Member of

¹ (1895) 2 N. L. R. 36.

² (1965) 68 O. L. W. 37.

Parliament before her. The other petitioners are their political supporters. Both at the election at which she was elected and at the election at which her husband was returned, the opposing candidate was one Aboosally, a gentleman who now holds the office of Chairman of the Urban Council of the area. According to the petitioners, their political opponent Aboosally informed them that he had decided that, instead of widening the existing main road which passes through the bazaar, an old circuitous road, which had hitherto been hardly used by motorists, would be widened by 34 feet. The main road which is at most places about 40 feet wide is at the centre of the bazaar only about 20 feet wide and the land and buildings immediately adjacent to that spot are occupied by the said Aboosally and several of his relatives. The land and premises on either side of the old circuitous road belong to the families of the petitioners. On 21st February, 1969, the 3rd respondent, in the company of the said Aboosally and other officials, inspected the said old circuitous road. At the inspection the 1st petitioner's husband requested the 3rd respondent not to pursue the proposed project as it was nothing but an attempt to take political revenge. According to the petitioners, the 3rd respondent rejected the request of the petitioner's husband apparently for the reason that it did not lie in the mouth of the petitioners to raise such an objection because the previous government, which the petitioners had supported, had arbitrarily acquired lands, including a land belonging to a relative of his, upon false pretences. It is alleged that Aboosally who was present also stated that the previous government had acquired a land belonging to him for the purpose of a housing scheme about ten years ago but had failed to pay him any compensation.

On or about the 14th of March, 1969, a notice under s. 4 of the Land Acquisition Act was issued in respect of these acquisitions and the petitioners made the present application on the 17th of March, 1969. They state in their petition that the said notice is a nullity and is void and has no force or effect in law as the 1st respondent as the Minister of Lands has acted in excess or in abuse of his powers and has been induced by the said Aboosally, for political and other reasons, to direct the issue of the said notice.

Aboosally was the government party candidate at the election for a member of parliament for the Balangoda constituency at the last two parliamentary elections. He is also presently the Chairman of the Urban Council of the area. It is, therefore, likely that the 1st respondent who is the Minister of Lands would have received and given weight to the views that he expressed in respect of the road widening. In addition to antecedent probability there are the further circumstances relied on by the petitioners that Aboosally's information to them that he had decided that instead of the main road the old circuitous road should be widened was followed by directions by the 1st respondent for the acquisition of their lands for the purpose of carrying out the proposed widening of the old circuitous road.

Section 4 of the Land Acquisition Act makes provision for objections to an intended acquisition and for consideration of those objections by the Permanent Secretary who is to make his recommendation to the Minister, and it provides that after the Minister has considered the Permanent Secretary's recommendation on objections, he should decide whether the land should or should not be acquired. In this case the Permanent Secretary who is to receive objections is the 3rd respondent who had, at the inspection, already expressed the view that there was not available to the petitioners the objection that the acquisitions were an act of political revenge. It would follow, therefore, that the petitioners are deprived of the opportunity of any real consideration of their objections, and of a proper and impartial recommendation upon them to the Minister.

Upon the matters placed before this Court by the petitioners, the question arises whether in giving directions for these acquisitions, the 1st respondent, wittingly or unwittingly, gave effect to a design or plan by a political opponent of the petitioners which was calculated to protect the interests of himself and his relatives and cause loss and detriment to the petitioners; and if the 1st respondent did so, but acted unwittingly, whether the petitioners are entitled to relief. In order that an interim injunction may issue it is not necessary that the court should find a case which would entitle the plaintiff to relief at all events: it is quite sufficient if the Court finds a case which shows that there is a substantial question to be investigated, and that matters ought to be preserved *in statu quo* until that question can be finally disposed of.—vide *Halsbury's Laws of England, Simonds Edition, Volume 21, page 365*. I am, therefore, of the opinion that condition (2) also is fulfilled in this case.

I cannot resist the observation that it is remarkable how often over the years it has turned out by some extraordinary coincidence that the public interest appeared to require the acquisition of lands belonging to persons politically opposed to the party in power at the time. It is, therefore, necessary that Courts, while discouraging frivolous and groundless objections to acquisitions, should be vigilant, if it is open to them to do so, to scrutinise acquisition proceeding where it is alleged that they are done *mala fide* and from an ulterior motive.

In fairness to the persons against whom the petitioners have made allegations, I should state that the Court is not called upon, at this stage, to consider the truth of the petitioners' case and it has not done so. In fact, this Court has not heard what the other persons have to say on the subject. As indicated earlier, my order was made *ex parte* and, even upon the application made by the respondents, occasion has not arisen for going into the questions of fact. I desire to point out that the issue of a temporary injunction by this Court to enable a party to file an action in the District Court and to apply for an injunction in that action, does not absolve that Court from the duty of considering the matter and of forming its own view, particularly where it comes to consider the matter

after the defendants have put before it such material as it may be permitted to place before it by law in support of their opposition to the grant of the injunction.

I accordingly hold that the objections of the respondents fail and they are dismissed. I make no order as to costs.

Application for temporary injunction allowed.
