

Present: Lascelles C.J. and Wood Renton J.

FRASER v. DIAS.

206—D. C. Colombo, 2,354.

Land acquisition—Reference by the Government Agent—Burden of proof that the amount tendered is sufficient compensation is on the Government Agent.

When the Government Agent makes a reference to the District Court under the Land Acquisition Ordinance, 1876, on the owner of the land refusing to accept the amount tendered by him as sufficient compensation for the land, the burden of proving that the amount tendered is a sufficient compensation is on the Government Agent.

THE facts are set out in the following judgment of the learned Additional District Judge (L. M. Maartensz, Esq.):—

This is a reference under section 11 of the Land Acquisition Ordinance, 1876, made by the Government Agent of the Western Province, as the amount of compensation (Rs. 221,239·50) tendered by the Government Agent for the land acquired was not accepted by the first defendant.

The first defendant in his statement of claim alleges that the proper value of the land acquired is Rs. 487,848·75, and prays that that sum may be declared to be the proper amount of compensation for the land and premises acquired.

The premises acquired consist of land and buildings. At the trial it was agreed between the Government Agent and the first defendant that the value of the buildings should be assessed at Rs. 43,500. In view of this agreement the amount of compensation which the Government Agent is willing to give for the land is Rs. 177,739·50, and the amount of compensation demanded by the first defendant is Rs. 444,348·75.

The land acquired is 14 acres 3 roods 9·86 perches in extent, and the amount of compensation as determined by the Government Agent is approximately Rs. 12,000 an acre, and the amount of compensation demanded Rs. 30,000 an acre.

The Solicitor-General for the Government Agent, desired the Court to frame the following issue:—

“Is the land, apart from the buildings, worth more than Rs. 12,000 an acre, and if so, how much?”

Mr. Drieberg objected to the issue, and urged that the only question before the Court was as to the amount of compensation due to the defendant, and that the only issue, if an issue was necessary, was the following issue, namely:—

“What amount of compensation is due to first defendant for the land acquired?”

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The Solicitor-General would not accept this issue. The question for decision is whether an issue is necessary, and if so, whether the issue should be in the form suggested by the Solicitor-General or in the form suggested by Mr. Driberg. The issue suggested by the Solicitor-General throws the burden of proving that the land is worth more than Rs. 12,000 on the first defendant, and the issue was suggested with the object of raising the question as to the party on whom the burden of proof lay.

The case of *Fink v. The Secretary of State for India*¹ was cited by the Solicitor-General, where it was held that the *onus probandi* varies according to the probative value of the Collector's inquiry, and if he makes no inquiry or gives no reason for his valuation, the onus on the claimant is nominal, and the special judge must decide on the weight of evidence. This ruling is, in my opinion, not applicable to the Ceylon Land Acquisition Ordinance, 1876, as the Indian Act differs considerably from the local Ordinance.

Under the Indian Act the Collector makes his award whether the compensation is accepted or not, and he refers the matter to Court only on the application of some person who objects to the award. If the objection be to the amount, the Collector in making his reference has to state in writing, for the information of the Court, the grounds on which the amount of compensation was determined (section 19 of the Land Acquisition Act, 1894), and the Court proceeds "to determine the objection" (section 20 *ibid.*).

Under the local Ordinance the Government Agent makes an award only where the amount of compensation is determined. And in referring a dispute as to compensation to Court, the Government Agent does not state the grounds on which the amount of compensation was determined, nor does the Court proceed to determine the objection to the compensation.

The Solicitor-General urged that the Court had to determine, not the abstract question of compensation, but whether the defendant was entitled to more compensation than was tendered, and referred to section 23 of the Ordinance as being in support of his position.

Section 23 provides that when the person interested has made a claim to compensation pursuant to notice, the amount awarded to him shall not exceed the amount claimed or be less than the amount tendered.

The Solicitor-General contended that as the Court could not award less compensation than was tendered, it was only necessary to determine whether the compensation exceeded the amount tendered by the Government Agent.

In Beverley's Commentary on the Indian Land Acquisition Acts, 1 of 1894. there is the following note to section 22 :—"The claimant takes the position of plaintiffs, and the burden of proving that the compensation should be more than he has (was ?) awarded rests on the claimant." But in India the practice appears to be different from the local practice. In India, apparently, the Collector does not in making his reference describe himself as plaintiff. The claimant is so described, and the Collector is described as defendant. This appears to have been the practice even under the old Indian Act X. of 1870, which is almost identical with the local Ordinance, for in the reported cases the Collector

¹ (1907) 34 I. L. R. Cal. 599.

is described as the defendant. The cases are (1) *Khasgiralu v. The Collector of Poona*,¹ (2) *Bunal v. Collector of Calcutta*,² (3) *Ali Khan v. The Collector of Furakhabad*.³

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In Ceylon, however, the Government Agent has invariably adopted the position of plaintiff and described himself as such. The form of reference was adopted by Government Circular No. 169 of October 16, 1899 (*Circulars of 1899, 90*).

It has never been the practice to frame issues, and it has always been the practice for the Government Agent to lead evidence in the first instance regarding the amount of compensation to be allowed.

In this case the Government has, in accordance with the practice, adopted the position of plaintiff, and I am not prepared to frame an issue which will involve a departure from the practice of the Government Agent leading evidence in the first instance. Although no issues were framed in land acquisition cases, the Court always had in view the general issue, namely, What amount of compensation should be allowed for the land acquired?

In accordance with the practice, I hold that the issue in this case should be the issue proposed by first defendant's counsel. The cost of November 2 will be costs in the cause.

The plaintiff appealed.

Bawa, K.C., Acting S.-G. (with him *Akbar, C.C.*), for plaintiff, appellants.

A. Driberg (with him *Hayley*), for first defendant, respondent.

Cur. adv. vult.

February 28, 1913. LASCELLES C.J.—

This is an interlocutory appeal by the Government Agent of the Western Province in a reference under the Land Acquisition Ordinance, 1876. The property which is the subject of the reference consists of land and buildings at Captain's Garden in Colombo, and is part of the estate of the late Sir Harry Dias. The first defendant, as the administrator of the estate, claimed Rs. 487,848.75 for the land and premises acquired by the Crown, his claim being at the rate of Rs. 30,000 an acre for the land apart from buildings. The Government Agent tendered Rs. 221,239.50 as compensation for the property, the tender being based on a rate of Rs. 12,000 per acre. By agreement between the parties the value of the buildings was put at Rs. 43,500. The claim of the first defendant was thus reduced to Rs. 444,348.75, and the Government Agent's tender to Rs. 177,739.50.

When the reference came before the Court, the Acting Solicitor-General, for the Government Agent, proposed the following issue:—

“Is the land, apart from the buildings, worth more than Rs. 12,000 an acre, and if so, how much?”

And Mr. Driberg, for the first defendant, the following issue:—

“What amount of compensation is due to first defendant for the land acquired?”

¹ (1884) 8 I. L. R. Bom. 553.

² 2 I. L. R. Cal. 103

³ 7 I. L. R. All. 817.

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After considerable argument the learned District Judge accepted Mr. Driberg's issue, and from this decision the present appeal is brought.

The real point in dispute is with regard to the onus of proof, the appellant's issue being framed with the object of casting upon the defendant-respondent the burden of proving the value of the property.

We were referred to certain decisions under the corresponding Indian Act, which, as the District Judge has shown, are not in point owing to the essential difference between that Act and the Ceylon Ordinance.

The following considerations appear to me to be material. The Government Agent does not disclose the basis of his tender either at the time when he makes it or subsequently on reference to the Court. It strikes me as scarcely reasonable that the Government Agent, by means of an ingeniously framed issue, should be allowed to escape the obligation of proving that the amount tendered by him is adequate compensation for the property acquired.

Further, under the libel of reference the Government Agent comes before the Court as a plaintiff, and avers that the compensation offered by him "was sufficient and proper compensation to be allowed for the acquisition of the said land and premises, but was not accepted by the first defendant."

The burden of proving this averment is surely on the plaintiff who makes it. Again, the prayer in the reference is not that the Court should determine whether anything beyond the sum tendered should be paid to the defendant. The prayer is that the Court should determine generally the amount of compensation to be awarded without reference to the amount tendered. The proper issue on such a reference, if indeed any issue is necessary, is clearly in the general form suggested by Mr. Driberg rather than in that suggested by the Acting Solicitor-General.

In my opinion every consideration which can be drawn from the form of the reference tells in favour of the defendant-respondent's contention.

The practice of our Courts for many years has been for the Government Agent, as the plaintiff on the record, to begin by leading evidence in support of the amount tendered by him, and I see no reason why this practice should be changed, unless it is shown to be erroneous or unfair to either of the parties.

The onus of proof is not, I think, affected by the fact that the Ordinance provides that the compensation shall in no case be less than the sum tendered by the Government Agent. The true question is, What is the fair value of the property? In order to decide this, it is necessary to test the valuation of the Government Agent no less than that of the defendant. I can see no objection to the prevailing practice under which the representative of the Crown

in these proceedings is required, in the first instance, to substantiate the valuation which he himself puts forward as sufficient and proper compensation to be allowed for the property acquired.

In my opinion the appeal fails, and must be dismissed with costs.

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WOOD RENTON J.—

This case raises for the first time an interesting point under the Land Acquisition Ordinance, 1876 (No. 3 of 1876). Land belonging to the estate of the late Sir Harry Dias, whose executor is the first defendant-respondent, has been acquired by Government for public purposes. The Government Agent of the Western Province, the appellant, tendered to the respondent the sum of Rs. 221,239.50 as compensation for the land. The respondent refused to accept this amount, and claimed a sum of Rs. 487,848.75. The Government Agent thereupon referred the matter to the District Court under the provisions of the Ordinance of 1876. The parties are agreed that the buildings on the land have been properly valued at Rs. 43,500. The tender of the Government Agent is based on an allowance of Rs. 12,000 for every acre of the land in question. The respondent claims Rs. 30,000 an acre. When the case came on for hearing before the District Court, the Acting Solicitor-General asked the District Judge to frame the following issue:—

“ Is the land, apart from the buildings, worth more than Rs. 12,000 an acre, and if so, how much? ”

The respondent's counsel objected that no issue was necessary or proper in proceedings of this kind, and contended that if an issue was to be framed it should be in the following form:—

“ What amount of compensation is due to the first defendant for the land acquired? ”

The learned District Judge over-ruled the Solicitor-General's contention, and accepted the issue suggested by the respondent's counsel. The Government Agent appeals.

In my opinion, although in view of the provisions of section 32 of Ordinance No. 3 of 1876 I see no reason why an issue should not be framed, if it is thought expedient, in land acquisition cases, the decision of the District Judge as to the form of the issue is perfectly right. The Government Agent, where the amount of compensation tendered by him is not accepted by a claimant, comes before the Court as a plaintiff. The libel of reference has been held by the Supreme Court to be practically a plaint (*In re Perera*¹). It is in form a prayer by the Government Agent that the Court would “ proceed to inquire and determine the amount of compensation to be awarded,” and the District Judge states—a statement supported by an examination of the procedure adopted in the cases decided under the Ordinance—that it has always been the practice for the

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Government Agent to accept the rôle of plaintiff and to lead evidence in the first instance regarding the amount of compensation to be allowed. A *cursus curiæ* of this character is obviously entitled to the greatest weight. In my opinion it is supported by the form of the reference, and there is nothing in Ordinance No. 3 of 1876 which really militates against it. The learned District Judge has shown that no analogy exists in regard to the matter that concerns us here between the Ceylon Ordinance and the Indian Land Acquisition Act, 1894. I would adopt his reasoning on that question as part of my own judgment. Section 15 of Ordinance No. 3 of 1876 itself is sufficient to show that the award of the Government Agent is one of a very different character from that which the Indian Act contemplates.

I hold that it is the duty of the Government Agent in cases of this kind to lead affirmative evidence in support of the amount of compensation tendered by him to a claimant. It is obvious, of course that, while the initial burden of proof rests on the Government Agent, it may readily be transferred to the claimant in the course of the proceedings.

On the grounds that I have stated I would dismiss the appeal with costs.

Appeal dismissed.

