

ELLIS v. DIAS.

E. B. CREASY, claimant.

D. C., Colombo, 2,157.

1900.

June 8

*Land Acquisition Ordinance, 1876, s. 13 (c)—Dispute between owner and lessee as to the amount of compensation tendered by Government Agent—Right of lessee to compensation—" Person interested"—Costs.*

Under the Land Acquisition Ordinance, 1876, section 13 (c) a lessee is a person interested in the land, and can claim his share of the compensation, as the value of the land acquired in the present case represents the interests of the lessor and the lessee.

The Government Agent is entitled to his costs, if the amount awarded by Court does not exceed the amount tendered by him.

THIS was a reference by the Government Agent of the Western Province under the Land Acquisition Ordinances. The first, second, third, fourth, and fifth claimants claimed compensation as the owners of the land. The sixth claimant claimed compensation as the lessee of the land under the first, second, and third claimants for the unexpired term of the lease.

At the trial the fourth and fifth claimants withdrew their claim, and the first, second, and third claimants expressed their willingness to accept the sum of Rs. 36,500 tendered by the Government Agent as compensation.

The contest now was between the sixth claimant and his lessors, the first, second, and third claimants. The deed of lease was dated 28th February, 1896, and at the date of the acquisition of the land by the Crown the unexpired term of the lease was two years.

It was contended for the lessors that a lessee was not a "person interested" in the land, and could not therefore claim compensation.

The District Judge over-ruled this objection, and held that the sixth claimant was entitled to claim compensation in respect of the unexpired term of his lease, and as to the amount due to him,

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the District Judge found as follows: " The value of the premises " as accepted by the claimants is Rs. 36,000. and the rental at " 5 per cent. will be Rs. 1,825 per annum. The sixth claimant is " entitled to the difference between Rs. 1,825 and the Rs. 1,200 " rent stipulated by the lease. For the unexpired two years of " the lease, the sixth claimant is entitled to Rs. 1,250.....The " first, second, and third claimants to pay costs of the sixth " claimant in the class in which compensation has been awarded " to him. "

The first, second, and third claimants appealed.

The case came on for argument before LAWRIE, J., and BROWNE, A.J., when their Lordships, not being agreed, ordered the case to be set down for hearing before the Collective Court, which on the 8th June consisted of BONSER, C.J., MONCREIFF, J., and BROWNE, A.J.

*Van Langenberg*, for first, second, and third appellants.

*Bawa*, for sixth respondent, claimant.

*Loos*, for plaintiff, respondent.

8th June, 1900. BONSER, C.J.—

I should have thought this a perfectly plain case had not two of my learned brothers been unable to agree in their judgments.

The appellants were the owners of a certain property which was acquired by the Government under the provisions of the Land Acquisition Ordinance. The respondent was a lessee for a term of five years, of which term at the date of the acquisition two years were unexpired.

The Government Agent gave notice to the parties that he wished to acquire the land, and he gave them notice to attend and state their claims to compensation. He tendered a certain amount, which the parties were unwilling to accept, and thereupon, as required by the Ordinance, he referred the matter to the District Court. The case was complicated by the fact that two persons attended and claimed to be owners in competition with the appellants. However, when the case got to the District Court that claim was withdrawn, and the dispute about the amount of compensation was settled by the appellants and the respondent agreeing to accept the amount which had been tendered, but the appellants and the respondent were unable to agree as to the division of the purchase money. The appellants claimed the whole of the compensation, contending that the lessee was not a person interested within the meaning of the Ordinance, and that if he had any claim to compensation for being ejected

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from the premises, he must get it from the Government, quite apart from the Ordinance, in some way which is not explained. It seems to me that that contention is one which cannot be supported for a moment. The full value of the land is made up of the interests of the lessor and the lessee, and it seems to me to be a monstrous proposition that the lessor should step in and take the value of the lessee's interest. I can imagine a case where the lessee's interest will be of greater value than that of the lessor. Take, for instance, the case of a lease for ninety-nine years. The value of the lessor's interest will in that case be practically nil.

It seems to me that such a contention has only to be stated to show how unreasonable and absurd it is. The appeal on that ground fails.

Then, it was said that the Court had, in apportioning the amount to be paid to the lessee, allowed him too much. I am not satisfied that the Court has allowed him too much. It was not shown that the District Judge has made any error of any moment in this matter.

Then, it was said that the Government Agent ought not to have been allowed his costs; but section 29 of the Ordinance enacts that he is to be allowed his costs if the amount awarded by the Court does not exceed the amount tendered by him. In this case the amount awarded did not exceed the amount tendered by the Government Agent, and therefore the Government Agent is entitled to his costs.

Then, an objection was raised by the respondent that he ought not to have been made to pay any portion of the costs because he did not dispute the amount of compensation which was tendered by the Government Agent. But there is an allegation in the libel of reference that he did dispute it, and there is an admission by him in his answer of that allegation, and, therefore, I must take it that he did dispute the amount of compensation tendered.

The judgment is affirmed with the variation that the sixth defendant is to be paid on the 30th May, 1901, the balance which shall then be due and unpaid in respect of the five-twelfths attributable to the first defendant's share.

The sixth defendant will have his costs of this appeal.

MONCREIFF, J.—

I fully agree with the views expressed by the Chief Justice.

BROWNE, A.J.—

My only difficulty was as to the way in which the lessee should be paid his share of the compensation. I concur with the Chief Justice, in the judgment delivered by his Lordship.