

1958 Present : Basnayake, C.J., de Silva, J., and Sinnnetamby, J.

GOPALLAWA (Municipal Commissioner of Colombo), Petitioner, and
LAND ACQUISITION BOARD OF REVIEW and others, Respondents

*S. C. 323—Application for a Writ of Prohibition on the Land Acquisition
Board of Review*

*Land Acquisition Act, No. 9 of 1950—Payment of compensation by acquiring officer—
Acceptance of it by claimant—Claimant's right of appeal thereafter—Sections
7, 9, 16 (1) (d), 20, 27, 31, 35.*

Acceptance, by the claimant, of payment of the amount of compensation which the acquiring officer has determined under section 16 (1) (d) of the Land Acquisition Act, No. 9 of 1950, does not preclude the Board of Review from hearing an appeal preferred by the claimant under section 20 of the Act.

APPPLICATION for a Writ of Prohibition on the Land Acquisition Board of Review. This application was referred to a Bench of three Judges under section 48A of the Courts Ordinance.

E. F. N. Gratiaen, Q.C., with *Walter Jayawardena*, for Petitioner.

H. V. Perera, Q.C., with *Edmund J. Cooray* and *E. B. Vannitamby*, for 1st Respondent.

H. W. Jayewardene, Q.C., with *Miss Maureen Seneviratne*, for 2nd to 7th Respondents.

Cur. adv. vult.

May 13, 1958. BASNAYAKE, C.J.—

The only question for decision on this application is whether acceptance by the claimant of payment of the amount of compensation which the acquiring officer has determined under section 16 (1) (d) of the Land Acquisition Act, No. 9 of 1950, (hereinafter referred to as the Act), is a bar to the hearing by the Board of Review (hereinafter referred to as the Board) of the claimant's appeal under section 20 of the Act.

Shortly the material facts are as follows : The petitioner the Municipal Commissioner of Colombo who is also an acquiring officer within the administrative limits of the Municipal Council of Colombo held an inquiry under section 9 of the Act into the market value of Lot 1 in P. P. A. 3,298 in Maradana claimed by the 1st Respondent the Roman Catholic Archbishop of Colombo (hereinafter referred to as the 1st Respondent). On 6th October 1954 he made his award under section 16 of the Act determining that in his opinion a sum of Rs. 261,820 should be allowed as compensation for the acquisition. On 20th October 1954 the 1st Respondent whose claim under section 7 of the Act was Rs. 434,944/31 being dissatisfied with the offer appealed under section 20 to the Board. About 1st November 1954 the petitioner directed that a cheque for

Rs. 260,976/25 drawn in favour of the 1st Respondent be posted to him together with a voucher. On 3rd November 1954 the Municipal Treasurer sent the following letter :—

I enclose herewith cheque for Rs. 260,976/25 together with Voucher No. 9433. Kindly perfect and return the voucher early.

On 9th November 1954 the 1st Respondent returned to the petitioner the voucher duly received together with a letter the text of which is as follows :—

This is to acknowledge receipt of your memo. No. 2304 dated 3.11.54 together with the Voucher No. 9433 and a cheque for Rs. 260,976/25.

The voucher with the receipt on the reverse is returned herewith.

It would appear from the petitioner's affidavit that thereafter, it is not clear when, he without any intimation to the 1st Respondent, informed the Board that he had received payment of the amount tendered to him according to the award and that he would not therefore be entitled to receive any further sum on account of compensation. I can find no authority in the Act for such a communication to the Board by an acquiring officer and in my opinion it was unwarranted.

When the 1st Respondent's appeal came up for hearing before the Board on 26th October 1956 the Chief Valuer who represented the petitioner took a preliminary objection to the hearing of the appeal on the ground that by receiving payment of the amount of compensation determined by the petitioner, the 1st Respondent must be deemed to have waived or abandoned his appeal to the Board. On 16th November 1956 the Board quite rightly over-ruled the objection and directed that the appeal be listed for hearing. On 25th June 1957 the petitioner filed the present application for a Writ of Prohibition on the Board. On 28th June 1957 notice was ordered on the respondents. On 12th September 1957 the application came up for hearing before my brother H. N. G. Fernando who reserved the matter under section 48 of the Courts Ordinance for the decision of more than one Judge of this Court. The matter has accordingly come before this Court on an order made by me under section 48A of the Courts Ordinance.

We have no doubt whatsoever that the 1st Respondent did not lose his right of appeal when he accepted the cheque sent to him by the petitioner. We cannot escape the feeling that the petitioner paid the amount of compensation he had determined to the 1st Respondent in the belief that its acceptance would deprive him of his right of appeal. We can find no other explanation for his conduct in sending the cheque after the appeal had been lodged and, thereafter, through his spokesman before the Board, raising the objection that the 1st Respondent had forfeited his right of appeal by his acceptance of it. The conduct of the petitioner is deplorable.

Learned counsel for the petitioner relied on section 35 of the Act in support of his contention that the Board was precluded from hearing the appeal after the acceptance of the compensation by the 1st Respondent.

That section provides that where compensation for the acquisition of any land or servitude has been or is deemed to have been paid in accordance with the provisions of the Act no further claim against the Government for compensation for the acquisition shall be allowed.

He argued that the appeal was a claim for further compensation and the Board had no power to allow it even if they formed the conclusion that the 1st Respondent's claim should be allowed. We are unable to accept this submission of learned counsel. Section 27 provides that where an award is made under section 16 the acquiring officer shall tender the amount of compensation allowed in the award to each person who is entitled to it and where in appeal the amount of compensation is varied he shall tender the amount determined by the appellate body. If the person entitled to receive compensation consents to receive it when tendered the acquiring officer is required to pay it to him. The section is obscure and does not expressly provide for the case in which the amount of the compensation determined by the acquiring officer in his award under section 16 is paid to a claimant who consents to accept it when tendered as required by that section and thereafter the amount determined by the acquiring officer is increased in appeal. Clearly the Legislature does not intend that the acquiring officer should tender and pay once more the amount he has already paid the claimant on his consenting to accept the amount tendered by him in accordance with his award. Where the acquiring officer has already paid the amount of compensation awarded by him on the claimant consenting to accept it on its being tendered and where the amount of compensation is increased in appeal the acquiring officer need only tender after the decision in appeal the difference between the amount already paid by him and the new amount determined in appeal.

Section 27 does not authorise the acquiring officer, in the event of an appeal, to refrain from tendering the amount determined by him in his award under section 16 and withhold its payment till the decision in appeal where the claimant consents to receive it. He must tender the amount after he has made his award and pay it to the claimant if he consents to receive it regardless of whether there is an appeal or not. In the instant case if the 1st Respondent were to succeed in his appeal the acquiring officer need tender to him and pay, if he consents to receive it, only the difference between the amount already paid by him and the amount determined in appeal as sufficient compensation for the land acquired.

We observe that the acquiring officer has deducted from the amount of compensation already paid a certain sum in respect of rates payable by the 1st Respondent. Such a deduction is not prescribed in the Act. Only deductions authorised by the Act may properly be made from the compensation payable to a claimant.

We were informed by learned counsel for the petitioner that the present application was in the nature of a test case. We wish therefore to make it clear that in our opinion neither section 35 nor any other section of the Act has the effect of taking away the right of appeal of a claimant under section 20 or precluding the Board from hearing an appeal on the ground that the claimant has accepted the compensation tendered and paid by

the acquiring officer, whether such acceptance be with or without qualification. A right of appeal given by statute is not lost by the party on whom it is conferred except where the statute makes express provision in that behalf.

The application is refused with costs which we fix in respect of the 1st Respondent at 100 guineas and in respect of the 2nd Respondent, the Board, at 75 guineas.

DE SILVA, J.—I agree.

SINNETAMBY, J.—

I have seen the judgment prepared by My Lord the Chief Justice and I agree that the application should be refused. I also agree with his order in regard to costs.

The seemingly innocent letter dated 3rd November 1954 sent by the Municipal Treasurer enclosing a cheque for Rs. 260,976/25 and requesting the Archbishop to perfect and return the voucher annexed to it was an invitation to the Archbishop to accept the money with no conditions attached. There was no indication that the payment was offered in full satisfaction of the Archbishop's claim for compensation; and, having regard to the fact that an appeal to the Board of Review had already been filed against the award under section 20 of the Act, any ordinary man was entitled to assume that the payment was subject to the final decision of the Board. This inference was all the more reasonable as the acquiring officer was liable to pay interest on the compensation awarded under section 33 of the Act.

The acquiring officer, however, took the view that once a payment has been made and accepted under section 27 of the Act, whatever the circumstances, the claimant was debarred under section 35 from making any further claim and that the appeal to the Board must be regarded as at an end. When the Board refused to accept this view the petitioner filed the present application for a Writ of Prohibition. I agree with My Lord the Chief Justice that the attitude of the acquiring officer in this matter cannot under any circumstances be regarded as commendable. However, if the law penalises a claimant in the manner suggested the acquiring officer is entitled to exact the full penalty.

Provisions of the law which have the effect of depriving the subject of his normal rights and of imposing penalties on him must be strictly construed. Section 27 requires a tender of the full amount of compensation as determined by the acquiring officer. This, however, was not done. The acquiring officer deducted certain sums alleged to be due to the Municipal Council and tendered only the balance. Even on the assumption that the contention of learned Counsel who appeared for the acquiring officer is correct there has been a non-compliance with the provisions of section 27. The acquiring officer is therefore not entitled to claim any benefit under it. This is sufficient to dispose of the present case but it seems to me that even if the full amount of the award had been paid the claimant would still be entitled to proceed with his appeal before the Board of Review.

I agree with the interpretation placed on section 27 by My Lord the Chief Justice. I am fortified in this view by a consideration of the provisions of section 31 of the Act. If the claimant refuses to receive the amount awarded or is dead or cannot be found section 31 enables the acquiring officer to pay the amount into Court. Such a payment would in terms of section 35 be a payment "in accordance with the provisions of the Act" and would, if petitioner's contention is correct, operate as a bar to further proceedings before the Board of Review. Nothing would be more unreasonable than that. All that an acquiring officer has to do to compel acceptance of his award is to offer it to the claimant and if he refuses to accept it pay it into Court. The claimant cannot then appeal to or prosecute his appeal before either the Board of Review or any other authority as provided for in the Act. The acquiring officer would thus be vested with the power of nullifying all the provisions of the Act in regard to the rights of a claimant who is dissatisfied with an award. This was not the intention of the legislature, nor is it the plain meaning of the provisions contained in sections 27 and 35 of the Act. The acquiring officer's contention is altogether untenable and this application must accordingly fail.

Application refused.
