

Privy Council Appeal No. 20 of 1918.

O. B. Wijeyesekera - - - - - *Appellant*

v.

Richard Arthur Grindall Festing, Assistant Government Agent,
Kalutara- - - - - *Respondent*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH FEBRUARY, 1919.

Present at the Hearing :

LORD FINLAY.
LORD PARMOOR.
LORD WRENBURY.

[*Delivered by* LORD FINLAY.]

This appeal raises a short point upon the construction of the Ceylon Ordinance No. 3 of 1876. The two Sections which are material in that Ordinance are Sections 4 and 6. Section 4 provides :—

“ Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct the Surveyor-General or other officer generally or specially authorised by the Governor in this behalf, to examine such land and report whether the same is fitted for such purpose.”

The Section then goes on to confer certain powers upon the Surveyor-General with regard to entering upon the land and doing certain acts upon it. Section 6 provides :—

“ The Surveyor-General, or other officer so authorised as aforesaid, shall then make his report to the Governor, whether the possession of the land is needed for the purposes for which it appeared likely to be needed as aforesaid, and upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government agent to take order for the acquisition of the land.”

The procedure prescribed by the Act in the Sections which have been read was followed, and an order was made by the Governor, with the advice of the Executive Council, directing the Government agent to take order for the acquisition of the land.

The whole point in the case is whether the decision of the Governor in Council is conclusive on the point that the land is wanted for a public purpose. It is now contended that it is open to the person whose land is affected to challenge the decision of the Governor in Council upon this point, as embodied in the order directing the Government agent to take order for the acquisition of the land.

This question has already been raised in the Courts of Ceylon. In the case of the *Government Agent v. Perera* (7, New Law Reports, Ceylon, 1904, 313), the very point now under consideration was raised and decided in the Supreme Court of Ceylon. It is enough to read the first two paragraphs of the head-note :—

“ In the acquisition of a private land for a public purpose, the Governor is not bound to take the report of the Surveyor-General as to its fitness for such a purpose.

“ His decision on the question whether a land is needed or not for a public purpose is final, and the District Court has no power to entertain objections to His Excellency’s decisions.”

It appears to their Lordships that that decision was manifestly right. The whole frame of the Ordinance shows that what the District Court is concerned with is the assessment of compensation, but their Lordships do not desire to rest their opinion that the decision of the Governor is final merely upon the question of the Court before which the question is raised. It appears to their Lordships that the decision of the Governor that the land is wanted for public purposes is final, and was intended to be final, and could not be questioned in any Court. The nature of the objection is such that it would be obviously unsuitable for the District Court, which is concerned with questions of compensation which would arise if the land is to be taken. But the question might also be raised in a preliminary way, as was suggested by Lord Wrenbury in the course of the argument. It might be raised by an application to the Court to stay the further proceedings on the ground that, although the Governor in Executive Council had made the order, it was not a case where the condition precedent of the Ordinance was really fulfilled, namely, that the land was wanted for a public purpose.

In their Lordships’ opinion no such proceeding would be competent in such a case, and the decision of the Governor in Council, making an order under the latter part of Section 6 of the Ordinance, is final and conclusive.

Reference has been made to similar questions arising under Ordinances in India. Their Lordships do not refer to those cases because the wording of the Ordinance is not the same, and their discussion might, to some extent, complicate what appears to their Lordships to be a very simple issue.

The whole case is decided, in the opinion of their Lordships, in the last three lines of Section 6 of the Ordinance:—

And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government agent to take order for the acquisition of the land."

When you have an enactment of that kind it shows that it was intended that the decision of the Governor in Executive Council on the point should be binding.

For these reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

O. B. WIJEWESKERA

v.

RICHARD ARTHUR GRINDALL FESTING,
ASSISTANT GOVERNMENT AGENT, KALUTARA

[DELIVERED BY LORD FINLAY]