

BETWEEN :

HIS MAJESTY THE KING, on the }
information of the Attorney-General }
of Canada }

PLAINTIFF;

1942
Nov. 5 & 10.
Nov. 20.

AND

ROWLEY S. HOOPER DEFENDANT.

Expropriation—Motion for judgment on pleadings—Expropriation Act, RSC, 1927, c. 64, secs. 9, 23 and 34.

Held: That the Court should not make any declaration as to the sufficiency or justice of the compensation money in proceedings under the Expropriation Act merely on the pleadings of the parties and without having before it proper evidence as to the value of the property in question upon which the Court could make an adjudication as to the value of such property and the amount of compensation money to which the defendant is entitled.

2 That section 34 of the Expropriation Act, R.S.C., 1927, c. 64, contemplates a judgment of the Court, in virtue of the provisions of the Act, based upon an adjudication by the Court as to the compensation money to which the defendant is entitled, which adjudication is based upon proper evidence as to the value of the property in question and does not extend to a fixation of the compensation money at the amount agreed upon by the parties either before action brought or by the pleadings.

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MOTION by the defendant for judgment on the pleadings.

The motion was heard before the Honourable Mr. Justice Thorson, President of the Court, at Ottawa.

L. A. Kelly, K.C. for plaintiff.

A. G. McHugh, K.C. for defendant.

THE PRESIDENT, now (November 20, 1942) delivered the following judgment:

This motion for judgment on the pleadings was made by counsel for the defendant with counsel for the plaintiff concurring therein. It was subsequently re-argued at the request of the Court by counsel for both parties.

The information exhibited by the Attorney-General of Canada contained, *inter alia*, the following paragraphs:—

1. The lands hereinafter described were taken under the provisions and authority of the Expropriation Act, being Chapter 64 of the Revised Statutes of Canada, 1927, by His Majesty the King, for the purposes of the public works of Canada, by depositing of record on the 20th day of August, 1938, under the provisions of section 9 thereof, a plan and description of such lands in the office of the Registrar for the Registry Division of the City of Ottawa, whereby the said lands have become and now remain vested in His Majesty the King.

4. His Majesty the King is willing to pay to the defendant or to whomever by this Honourable Court may be adjudged entitled thereto the sum of \$39,830 in full satisfaction of all estate, right, title and interest free from encumbrance and discharge of all claims in respect of damage or loss, if any, that may be occasioned by reason of the said expropriation and the construction of any building that may be hereafter erected thereon.

The Attorney-General of Canada on behalf of His Majesty the King made the following claims:—

(a) That it may be declared that the above described lands and real property are vested in His Majesty the King.

(b) That it may be declared that the sum of \$39,830 is sufficient and just compensation to the defendant for and in respect of the above described lands and real estate so taken as aforesaid and for the said claim for alleged loss and damage mentioned in the third paragraph of this information.

(c) That it may be declared and adjudged what amount is a sufficient and just compensation to the defendant for and in respect of the above described lands and real property so taken as aforesaid.

The defendant by his statement of defence admitted the allegations of fact contained in the information and alleged that he was the absolute owner free from encumbrances of the lands described in the information and went on to say:—

3. The defendant is willing to accept the sum of \$39,830 mentioned in the fourth paragraph of the said information as being in full satisfaction of all estate, right, title and interest, free from encumbrances (if any) and in discharge of all claims in respect of damage or loss, if any, that may be occasioned by reason of the said expropriation and the construction of any building that may be hereafter erected thereon.

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The defendant consented to the declaration asked for in clauses (a), (b) and (e) of the claim of the Attorney-General of Canada. On these pleadings counsel for the defendant moved for judgment on the pleadings and counsel for the plaintiff concurred in the motion.

No evidence of the value of the property in question was adduced.

The Court can, of course, make the first declaration asked for, namely, that the lands in question are vested in His Majesty the King for such a declaration would be in accordance with the provisions of section 9 of the Expropriation Act.

The Court should not, however, make any declaration as to the sufficiency or justice of the compensation money in proceedings under the Expropriation Act merely on the pleadings of the parties and without having before it proper evidence as to the value of the property in question upon which the court could make an adjudication as to the value of such property and the amount of compensation money to which the defendant is entitled.

Section 23 of the Expropriation Act provides that the compensation money agreed upon or adjudged for any land or property acquired or taken for or injuriously affected by the construction of any public work shall stand in the stead of such land or property. / The Act contemplates that there are two ways by which the amount of compensation money for property expropriated in virtue of the Expropriation Act may be fixed—namely, by agreement as between the parties or by an adjudication by the Court.

Where the parties have already agreed between themselves as to the amount of the compensation money there is no need of coming to the Court for an adjudication as to the amount of compensation money to which the defendant is entitled.

It would not be difficult to infer from the course of conduct of the parties in this case that an agreement as to the amount of compensation money had been arrived

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at before these proceedings were launched. The expropriation commenced with the deposit of the necessary plans on August 20, 1938. The information was filed on October 19, 1942, and the statement of defence on November 2. Notice of motion on behalf of the defendant for judgment on the pleadings was made on November 3rd, returnable on November 5th. Indeed, counsel for the defendant on the re-argument of the motion stated that the price had been settled before the information was filed.

This being so, there is no need to come to this Court for an adjudication as to the amount of compensation money to which the defendant is entitled, for the rights of the parties have already been determined by the agreement of the parties.

It was stated by counsel that the action was brought in order to obtain a judgment of the Exchequer Court in favour of the defendant since otherwise there was no provision in the government department concerned under which the defendant could immediately be paid the amount of compensation money which had been agreed upon, and the defendant might have to wait until the necessary appropriation had been voted by Parliament.

This does not appear to be a sound ground for intervention by the Court, since the parties are not asking the Court to make an adjudication as to the value of the property in question but are in effect asking the Court to approve by judicial sanction an arrangement already made between them.

Section 34 of the Expropriation Act provides as follows:—

34. The Minister of Finance may pay to any person, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, any sum to which, under the judgment of the Court, in virtue of the provisions of this Act, he is entitled as compensation money or costs.

It is not contemplated by this section that the Exchequer Court should become merely an agency for the convenience of the parties who have already agreed upon the amount of the compensation money in a particular expropriation but desire a judgment of the Court approving of their agreement so that the defendant may be paid out of the Consolidated Revenue Fund, without any specific appropriation.

If the parties wish to rely upon the agreement arrived at between them as to the amount of the compensation money they are, of course, free to do so, but they should not ask the Court to become merely an instrument of convenience to them for the purpose of overcoming difficulties or delays of government departmental arrangements.

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If the judgment of the Court cannot be obtained merely on the pleadings and without proper evidence of the value of the property in question and the parties wish to rely upon the amount of compensation money agreed upon between them the question of payment of such amount is a matter to be worked out between the parties with the government department concerned.

Furthermore, the judgment asked for on this motion on the pleadings is not the kind of judgment contemplated by sec. 34 of the Expropriation Act. That section does not contemplate mere approval of a settlement made between the parties, whether before action brought or by the pleadings.

Section 34 of the Expropriation Act contemplates a judgment of the Court, in virtue of the provisions of the Act, based upon an adjudication by the Court as to the compensation money to which the defendant is entitled. This means an adjudication based upon proper evidence as to the value of the property in question and does not extend to a fixation of the compensation money at the amount agreed upon by the parties either before action brought or by the pleadings, for the amount of compensation money agreed upon by the parties may not represent the value of the expropriated property as it might be adjudged by the Court.

The Court should not be asked in proceedings under the Expropriation Act to give judicial sanction to an arrangement between the parties as to the amount of compensation money to be paid for expropriated property, without having the opportunity of determining, on the basis of the necessary evidence, the propriety of such arrangement.

If the parties wish to have the judgment of the Court in order to obtain the benefit of section 34 of the Expropriation Act, they must contemplate a judgment of the Court in virtue of the provisions of the Act by which the

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amount of compensation money to which the defendant is entitled is determined not by agreement between the parties but by an adjudication by the Court. The Court has a duty under expropriation proceedings, when its judgment is asked for, to determine judicially the amount of compensation to which the defendant is entitled. Since the compensation money takes the place of the property that has been expropriated, it is incumbent upon the Court, when it is asked to do so, to fix the compensation money at an amount equivalent to the value of the property so that the expropriated party shall be in the same position, so far as monetary compensation can effect such result, as he was in before his property was expropriated. The Court must therefore make an adjudication as to the value of the expropriated property in order to determine the amount of compensation money to which the defendant is entitled. Such adjudication cannot be made except upon proper evidence as to the value of the property. The Court cannot, in its adjudication as to such value, be restricted to the amount already predetermined by the parties, either by an agreement before action or by the pleadings since such amount may not necessarily represent the value of the property. Such an adjudication would be no adjudication at all.

The motion for judgment on the pleadings is therefore dismissed. The parties may, of course, proceed to trial of the action on its merits. There will be no order as to costs.

Judgment accordingly.