

(1978) 08 KL CK 0022

In the High Court Of Kerala

Case No : L.A.A. No's. 271, 273, 274 and 343 to 347 of 1977

Balakrishnan Nambiyar and Others

APPELLANT

Vs

Kanakathidathil Madhavan and Others

RESPONDENT

Date of Decision : 16-08-1978

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Article 3(A)(1), 51
Kerala Land Acquisition Act, 1961 — Section 33, 60

Citation : AIR 1979 Ker 40

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.; T. Chandrasekhara Menon, J.; K. Bhaskaran, J

Bench : Full Bench

Advocate : C.K.S. Panicker, P.V. Madhavan Nambiyar and T. Karunakaran Nambiyar, for the Appellant; T.P. Kelu Nambiyar and A.G., for the Respondent

Judgement

Chandrasekhara Menon, J.—These cases have come up before the Full Bench on a reference by a Division Bench of this court (Balakrishna Eradi and Balagangadharan Nair, JJ.) wherein the correctness of the decision of a previous Division Bench ruling of this Court in Sabapathy Pillai v. Special Tahsildar 1970 KLT 1015 was doubted.

2. The appeals have been filed by different claimants against the decision of the Subordinate Judge's Court, Tellicherry in a batch of connected reference made to that court u/s 32 of the Kerala Land Acquisition Act (hereinafter called "the Act") concerning apportionment of the compensation awarded by the Land Acquisition Officer in respect of certain large extents of land acquired for the purpose of Aralam Seed Farm. At the hearing of the appeals, objection was taken on behalf of the State by the learned Advocate-General as also by some of the counsel appearing for the party respondents regarding the court-fee paid on the memorandum of appeals. According to them, the court-fee was insufficient and the appeals are liable to be rejected on the ground of non-payment of proper court-fee.

3. In all those cases, only a court-fee of Rs. 10/- had been paid on each Memorandum of Appeal. This was on the basis that the subject-matter of the appeals it governed by Article 3 (A) (1) of Schedule II of the Kerala Court-fees and Suits Valuation Act (hereinafter referred to as "C. F. Act"). This article would apply when the matter is not governed by any of the other specific provisions in the C. F. Act. In the case of *Sabapathy Pillai v. Special Tahsildar* 1970 KLT 1015 there were observations which lend support to the contention of the appellants.

4. The learned Judges who referred the cases to the Full Bench, as stated earlier, expressed grave doubts about the correctness of the decision and they thought the matter requires re-examination by a Full Bench. It was pointed out in the reference order that Section 51 of the C. F. Act which seems to have a direct bearing on the question had not been adverted to by the Division Bench. Under that section the fee payable on a memorandum of appeal against an order relating to the compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant. The Division Bench was of the view that the word "awarded" occurring in Section 51 has been used in a wide and generic sense as meaning "ordered to be paid". This meaning, the learned Judge observed, is also clearly indicated by Section 60 of the Act under which provision, the appeals had been filed. That section treats even a decision rendered by the Court on a reference u/s 32 as an award and provides that an appeal shall lie against such decision as if the award is a decree passed by a Civil Court. The Reference Order also refers to the decision of the Karnataka High Court reported in *Ghouse Saheb Vs. Sharifa Bi and Others*, where there has been a detailed review of the prior decisions rendered on the subject by various High Courts. The Karnataka High Court took the view that in view of Section 48 of the Karnataka Court-fees and Suits Valuation Act, which corresponds to Section 51 of the C. F. Act, the appellant in an appeal, filed against a decision of a Subordinate Judge on a reference u/s 31 of the Act, should pay ad valorem court-fee on the difference between the amount awarded and the amount claimed by the appellant. The learned Judges in the Reference Order observed that the Karnataka view prima facie appeared to them to lay down the correct position.

5. Before going into the various decisions referred to by counsel on both sides, it would be useful to refer to the relevant provisions in the Act as well as of the C. F. Act for considering the question that has been referred to this Bench. Section 11 of the Act provides that on due enquiry as provided in the earlier part of the section, the Collector shall make an award under his hand of the true area of the land acquired; (2) the compensation which in his opinion shall be allowed for the land and (3) the appointment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they have respectively appeared before him. Section 12 provides that the award shall be filed in the Collector's Office and shall, except as provided in the Act, be final and conclusive evidence as between

the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. The Collector will have to give immediate notice of the award to such of the persons interested as are not present personally or by their representatives when the award is made. If there is an agreement as to the amount of compensation between the Collector and all the persons interested, the Collector can make the award under his hand for the same as provided in Section 16 of the Act. That award will also have to be filed in the Collector's office and shall be conclusive evidence as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same. The next relevant provision is Section 20 which provides for reference to Court when any person interested who has not accepted the award, may by written application to the Collector, require the matter be referred to by the Collector for the determination of the Court, whether his objections be to the measurement of the land, the amount of compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested. The next six sections in the Act are in regard to the matters of procedure in the court, all questions that will have to be considered in determining the compensation to be fixed by the court as well as the matters that should not be taken into consideration in such fixation. The court then will have to take a decision in regard to the award of compensation to the concerned parties. Section 28 states that every award under Part III thereon shall be in writing signed by the Judge, and shall specify the amount awarded as compensation for the land acquired and also the amounts if any respectively awarded under each of the various other clauses of Sub-section (1) of Section 25 together with the grounds of awarding each of the said amounts. Such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Clause (2) of Section 2 and Clause (9) of Section 2 respectively of the Code of Civil Procedure, 1908. Such award shall also state the amounts of costs incurred in the proceedings in the court and by what persons and in what proportions they are to be paid. This is specifically provided in Section 29 of the Act. Section 31 of the Act which is the 1st section in Part IV of the Act, which part relates to apportionment of compensation states that where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of apportionment. The reference in this provision to the award is obviously to the award passed by the Collector. When there is a dispute as to the apportionment of compensation, which has been settled u/s 11 or Section 16 or any part thereof, or as to the persons to whom the same or any part thereof is payable, it is provided in Section 32, that the Collector may refer such disputes to the decision of the Court. Section 33 of the Act which occurs in Part V of the Act dealing with the payment of compensation provides that on making an award u/s 11 or Section 16, the Collector shall tender payment of compensation awarded

by him to the persons interested entitled thereto, according to the award and shall pay it to them unless prevented by any one or more of the contingencies mentioned in Sub-section (2). Sub-section (2) reads as follows :--

"If they do not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 20 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided further that no person who has received the amount otherwise than under pro-test shall be entitled to make any application u/s 20:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

We may also quote here Section 60 of the Act which deals with appeals in proceedings before Court.

"Appeals shall lie from the award or from any part of the award of the Court as if the award or part of the award is a decree passed by a Civil Court under the provisions of the Code of Civil Procedure, 1908, and subject to such rules as may be prescribed."

6. Section 51 of the C. F. Act reads :

"The fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant."

It would be useful to refer to Section 52 of the C. F. Act, the relevant part of which reads :

"The fee payable in an appeal shall be the same as the fee that would be payable in the Court of first instance on the subject-matter of the appeal."

When a matter is not governed by any of the other specific provisions in the C. F. Act. that would attract Article 3 (A) (1) of Schedule II of that Act under which the fixed court-fee of Rs. 10/- is only to be paid.

7. We would now refer to the decision of the Division Bench of this Court in *Sabapathy Pillai v. Special Tahsildar, Palghat* 1970 KLT 1015 which states that only a court-fee of Rs. 10/- has to be paid under Article 3 (A) (i) (a) of Schedule II of the C. F. Act in an appeal u/s 60 of the Act from the decision of the Land Acquisition Court apportioning the compensation. There the Court said that when once the total compensation amount was fixed the award was complete and the

further question for decision would only be as to a Party's entitlement to the compensation amount or share of the same. This dispute between interested persons as to the extent of their interest formed no part of the award. For this conclusion reliance was placed on the decision of the Privy Council in *T.B. Ramachandra Rao v. A. N. S. Ramachandra Iyer* (AIR 1922 PC 80). Reference was also made to the decision of the Supreme Court in *State of Uttar Pradesh Vs. Ramkrishan Burman (Dead) by L. Rs. and Others*, : where the Supreme Court had pointed out the difference in meaning between the expressions "decree for money or other property" and "decree for declaration of title to money or other property". This court in the aforementioned case accepted in effect the contentions raised for the appellants there that what was sought in the appeals was only a declaration of title to the money awarded. The court also cited with obvious approval the decision in *Hakim Martin De Silva Vs. Martin De Silva II and Others*, where a Division Bench of the Rajasthan High Court has held that when the dispute related to the shares of the parties in the property acquired, what the appellant wanted was merely a declaration that he alone was the owner of the property and the appeal does not require payment of ad valorem fee on the claim. In this view this court in 1970 KLT 1015 held that the fixed court-fee of Rs. 10/- would be sufficient in such cases. We might also note that the learned Judges in that case had also referred to the decision rendered by Justice Mathew in *Kochummon Easo v. State of Kerala* ILR (1964) Ker 380 where it had been held that when an appeal is filed against an order passed by a Subordinate Judge in a land acquisition reference that the owner of the land was not entitled to claim compensation as he failed to make a claim before the land acquisition officer, court fee need not be paid u/s 5 of the Travancore-Cochin Court-fees Act.

8. In coming to the decision, we are afraid that due regard has not been paid by the Division Bench to Section 51 of the C. F. Act which we have quoted earlier. That section would be applicable when the appeal is against an order relating to compensation under any Act in force for the acquisition of the property for public purposes and the fee will have to be computed on the difference between the amount awarded and the amount claimed by the appellant. As the order of reference correctly points out, the word "awarded" occurring in Section 51 had to be given a wide and generic sense as meaning "ordered to be paid". We would in this connection refer to the observations of that eminent Judge, Chief Justice Rankin of the Calcutta High Court in *Re: Ananda Lal Chakrabutty and Others*, . That case dealt with three appeals from an award of the Calcutta Improvement Tribunal and the question which arose there, was regarding the proper amount of court-fee payable on the appeals. A certain property in Calcutta has been compulsorily acquired. Portions of that property acquired lay within the ambit of the zamindaries of the appellants in that case. The Tribunal held that the property acquired was revenue free property and no part of the mal lands of the appellants. Therefore, the Tribunal allotted the whole of the compensation to the Kainani Industrial Bank rejecting the claim of the zamindar appellants to any portion thereof. It is from that decision, the zamindars came in appeal to the

High Court and the question of court-fee arose. After referring to Section 8 of the Court-fees Act of 1870, which reads as follows:--

"The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant"

the learned Chief Justice observed :

"The provisions of Section 8 involving as they do that the fee in the class of cases dealt with is an ad valorem fee are themselves sufficient to exclude any question of Article 11 of Schedule 2 being made applicable to such cases.

It is not necessary to consider whether the tribunal's award which is an order and not a decree is an order having the force of a decree. Whatever the effect of that phrase may be, Section 8 shows one perfectly clearly that an appeal regarding compensation in a land acquisition case is not under Article 11, Schedule 2, because it is not a fixed fee at all. In this connection, I will only add that I think the provisions of Section 8 have been misinterpreted because Section 8 is really a provision (upon the assumption that there is already an ad valorem fee laid down by the Act) that the ad valorem charge is to be made in a way that is most favourable to the subject. The object of Section 8 is not to impose an ad valorem charge; it assumes that that has already been done. If a person is appealing from an award in a compensation matter there are various ways in which it might have been thought right to charge him with court-fee. If he is appealing about the total amount of the award and saying that the total amount ought to be so much more, it would be arguable whether or not he ought not to be charged upon that difference. In the same way, if the question as to his right to compensation involves a question of title to land, it might be argued that his appeal should be valued upon the basis of the value of the land that was in dispute. The purpose of Section 8 to my mind, is to say that he is to be charged in the most favourable way.

It does not matter what is the difference between the total amount awarded and the amount which he says should have been the total amount awarded. It does not matter whether the question of title involved is a question of title relating to a large and valuable estate. The position is that he as an individual appellant is only interested for this purpose in his own claim for compensation. Whatever may be the matter to be discussed in the end, the point is :

"I have been given so much money as compensation for my interest and I claim by the appeal to get so much more."

Section 8 says that he is only to be charged upon the further amount that he is claiming by the appeal, that is. the amount of money which he says should be awarded to him in his own individual case in excess of the amount which in fact

has been awarded. The business of the section is not, therefore to impose an ad valorem charge but on the assumption that the Act has already made an ad valorem charge to say that it is to be charged upon him in that particular way. It is the least onerous way that could very well be suggested. Nevertheless the section has to be taken into account when one is construing the Act as a whole and, on the face of that section, I have no doubt at all that an ad valorem fee is chargeable under Article 1, Schedule 1, Court-fees Act."

We have quoted Chief Justice Rankin's observation at great length because we feel that it lays down the correct law on the matter.

9. Section 51 of the C. F. Act corresponds to Section 8 of the Court-fees Act of 1870.

10. A detailed discussion of the question occurs in a decision rendered by the Division Bench of the Karnataka High Court in *Ghouse Saheb Vs. Sharifa Bi and Others*, . As pointed out in that decision, the language of the section (Section 51 of the C. F. Act corresponds to Section 48 of the Karnataka Court-fees and Suits Valuation Act) is clear and unambiguous. The words therein have to be expounded in their natural and ordinary sense. The Karnataka High Court says there (at p. 184):

"It is seen that the first part of the section refers to a memorandum of appeal against a decision or an award or order relating to compensation for the acquisition of property for public purpose. The words "relating to compensation" found therein should not be narrowly construed so as to confine them only to the question of adequacy of compensation. The word "relate" means "bring into relation", "establish" or "have reference to". That means, if the appeal is against a decision or an award or order adjudicating a dispute with reference to compensation awarded in respect of a property acquired for public purpose, then the fee payable on the appeal shall be computed in the manner provided by the second part of Section 48. The second part states that the fee shall be computed on the difference between the amount awarded and the amount claimed by the applicant. There will be a difference between the amount awarded and the amount claimed not only in a claim for compensation but also in a case where there is a right to compensation to be adjudicated. Therefore, the appeal relating to both these matters squarely fell within the ambit of Section 48."

11. The decision of the Privy Council in *Ramchandra v. Ramchandra* AIR 1922 PC 80 could have no relevance in deciding the question which arises in this case. In that case, the question that arose was whether the decision u/s 31 of the Land Acquisition Act (Central Act) is res judicata in subsequent litigation on the same point. The Privy Council held that it will be res judicata. The contention raised was that the earlier decision had arisen out of the proceedings under the Land Acquisition Act. The decision rendered would not be res judicata in the subsequent litigation. Lord Buckmaster, speaking for the council observed that there appeared to be some misapprehension in the Courts in India as to the

effect of the authority of an earlier decision of the Privy Council in ILR 1913 Cal 21, which it was desirable should be removed. Under the Land Acquisition Act there are two perfectly separate and distinct forms of procedure contemplated. The first is that necessary for fixing the amount of the compensation and this is described as being an award. When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end. The duty of the Collector in case of dispute as to the relative rights of the persons, together entitled to the money, is to place the money under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. The award as constituted by the statute is nothing, but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information meaning thereby people whose interests are not in dispute but from the moment when the sum has been deposited in Court u/s 31 (2) (of the Indian Land Acquisition Act) the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. The Privy Council further pointed out that such dispute forms no part of the award, and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal, which would be wholly taken away when the piece of land was represented by a sum of money paid into Court.

12. The decision of the Privy Council as is apparently clear cannot have any bearing on the question of interpretation of Section 51 of the C. F. Act. The word "awarded" means ordered or directed to be paid.

13. Mr. Panicker, one of the learned counsel appearing for some of the claimants strongly contended that once the amount is deposited in court the disbursement of the amount by the Court on the decision taken by it will not tantamount to payment of compensation but distribution of money on the basis of the entitlement of parties to the same. The amount deposited is the compensation due on acquisition of the land and if that be so, the order or decision of the court relating to the disbursement of the amount would be an order or decision relating to compensation under the Act. It might be, as Mr. Venkiteswara Iyer one of the counsel for the claimants contended, not part of the award made by the Collector as such, but only decree, but even then it is a decision relating to compensation under the Act.

14. It is now well settled that the decision made by a court on a reference u/s 32 of the Act need not be incorporated for the award to be complete. The award made by the Collector is in law no more than offer made on behalf of the State and is liable to be questioned under the provisions of Section 20 of the Act. The law is also well settled that the decision of a court given on a reference u/s 32 of the Act though not an award u/s 32 of the Act is a decree and will operate as res judicata in a subsequent proceeding between the same parties on the same

question. This court has also said that a reasonable way of interpreting the several provisions of the Act is only to hold that when a Collector refers to the court, after compensation is settled u/s 11 of the Act, any dispute arising as to apportionment of the same or any part thereof or as to the person to whom the same or any part thereof is payable and passes, a joint award, the said award is valid and complete u/s 11 of the Act. See *Kozhiparambath Raman and Others Vs. Special Tahsildar for Land Acquisition, Kozhikode and Another*,

15. However, the decision of the Court which u/s 33 of the Act is a decree and will also operate as *res judicata* in subsequent proceedings, will nevertheless be an order relating to compensation within the ambit of Section 51 of the C. F. Act. We refer to this aspect because as far as the Madras High Court is concerned it has treated an appeal u/s 54 of the Land Acquisition Act (1894) against an order u/s 30 of that Act apportioning compensation as an appeal from a decree which would invite Article 1, Schedule 1 of the Court-fees Act (1870) in respect of charge of court-fee. (See *A. Mahalinga Kudumban and Others Vs. Theetharappa Mudaliar*, and *(Chintakeyala) Thammayya Naidu v. (Chintakayala) Venkataramanamma* AIR 1932 Mad 438) However, the results of applying Section 8 of the Court-fees Act of 1870 (corresponding to Section 51 of our C. F. Act) or applying Article 1, Schedule 1 of the Court-fees Act would be the same as in both cases *ad valorem* fee on the subject-matter of the appeal will have to be paid.

16. It was contended by the counsel on behalf of the claimants that the Calcutta High Court in *Rash Behari Sanyal Vs. Gosto Behari Goswami*, had taken a different view from that of Chief Justice In *Re: Ananda Lal Chakrabutty and Others*, . The facts of that case were:--

A Hindu widow had sold immovable property to one Gosto Behari Goswami. This property had been acquired by the Calcutta Improvement Trust compulsorily and certain compensation had been awarded to Gosto Bebari Goswami as the owner of the property. The reversioners of the widow's husband claimed that they were entitled to the compensation after the death of the widow because the Bale by the widow was not for necessity. The question whether the reversioners were or were not entitled to the compensation money depended on the settlement of the question whether the sale by the widow was for legal necessity or not. This question had to be settled by the Tribunal in order to determine whether the amount of compensation should or should not be handed over to Gosto Behari Goswami, but be invested by the President of the Tribunal under the provisions of Section 32 of the Act. The reversioners' claim was negated by the Tribunal which had the jurisdiction to determine the question by virtue of the provisions of Section 77 (1) (b) of Bengal Act 5 of 1971. In an appeal against the decision of the Tribunal, a dispute arose as to the proper amount of court-fee payable and it was held that the proper court-fee payable was under Schedule II, Article 17 (iii) of the Court-fees Act i.e. fixed court-fee was payable and no *ad valorem* court-fee was contemplated u/s 8 of the Court-fees Act. Justice Costallo who decided the case observed:

"It is quite clear, In my opinion, that the dispute between the Sanyals and Gosto Behari Goswami cannot in any sense be properly said to be concerned with the amount of compensation payable by reason of the compulsory acquisition of the property owned by Bhuban Mohini. The Sanyals in the proceedings before the President of the Improvement Tribunal were really asking for a declaration and some consequential relief, namely, that the money should be invested instead of being handed over to Goswami."

17. We do not think that the learned Judge in *Rash Bebari*'s case differed from the rule laid down in *Ananda Lal Chakrabutty*'s case. The observations indicate that there could be no question of Section 8 of the Court-fees Act coming into play in that case. In fact, in a later decision of the Calcutta High Court in *Kali Gopal Chatterjee Vs. T. Banerjee and Others*, Justice Bijayesh Mukherji has clearly explained that there is no conflict between the earlier quoted ruling in *In Re: Ananda Lal Chakrabutty and Others*, and *Rash Behari Sanyal Vs. Gosto Behari Goswami*, .

18. We might also refer to a Full Bench decision of the Punjab High Court in *Daryodh Singh v. Union of India* ILR (1966) P&H 481 The decision holds :

"that the dispute as to apportionment would be a dispute relating to compensation and being a dispute under the Land Acquisition Act, where the land has been acquired for a public purpose, the court-fee has to be computed according to the difference between the amount awarded to the appellant and the amount claimed by the appellant as provided in Section 8 of the Court-fees Act. Thus a memorandum of appeal against an order u/s 30 of the Act has to be stamped on ad valorem basis -- a result which really carries out the intention of Section 8 of the Court-fees Act. The scheme of the Land Acquisition Act discloses that the Collector, the Court as well as High Court are only called upon to determine the matters pertaining to compensation. The dispute in such matters may relate to the area of the land acquired, its quality and the amount of compensation payable for it as well as the persons who are entitled to the compensation or its apportionment. Whatever form the dispute assumes, it, all the time, is a dispute relating to compensation inasmuch as when land is acquired what the owners or persons having interest in the land are entitled to, is its equivalent in money or in other words compensation. Apportionment, as divorced from compensation, has no meaning. It is the compensation money which has to be apportioned between the various persons having interest in the land acquired. It will be apparent from the definition of "persons interested" in Section 2 (b) of the Act that this expression includes all persons claiming an interest in compensation to be made on account of the acquisition of the land; and the definition includes a person to be interested in land if he is interested in an easement affecting the land. This is a very wide definition and that is why, the disputes as to apportionment some-times assume considerable proportions."

(Section 8 of the Court-fees Act, 1870 and Section 30 of the Land Acquisition Act, 1894 referred to therein corresponds to Section 51 of our C. F. Act and

Section 33 of our Land Acquisition Act).

The Patna High Court has also taken the same view in *Braja Kewat v. Madanlal Aggarwala* (AIR 1951 Pat 608).

In the light of the above discussion, we are of the view that the appellants are liable to pay court-fee on an ad valorem basis on the compensation amount they laid claim to in the appeals, u/s 51 of the C. F. Act. According to us the decision in *Sabapathy Pillai v. Special Tahsildar, Palghat* 1970 KLT 1015 on this aspect does not lay down the correct law. The reference is answered accordingly.

As the proper court-fee was not paid by the various appellants in the above appeals in view of the earlier decision of this court in 1970 KLT 1015, it would only be proper that they are given six weeks time from today to pay up the additional court-fee over and above the amount already paid towards court-fee in the various memoranda of appeals. We order accordingly.

These appeals will be posted for hearing and disposal after the said six weeks.