

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA

In the matter of an application for  
orders in the nature of Certiorari  
and Mandamus under Article 140  
of the Constitution.

CA (Writ) Application No.849/2008

Major General U.A. Karunaratne  
(Retired)  
No.5, Dickman's Road,  
Colombo 05.

**Petitioner**

Vs.

1. K.K. Gunapala  
Divisional Secretary - Bentota  
Divisional Secretariat,  
Bentota  
And 05 others.

**Respondents**

**BEFORE** : S. SRISKANDARAJAH, J (P/CA)

**COUNSEL** : Shantha Jayawardana,,  
for the Petitioners,  
Nuwan Peiris SC  
for the Respondents.

**Argued on** : 04.05.2011

Decided on : 15.06.2012

**S.Sriskandarajah.J,**

The Petitioner is the owner of two rubber estates situated within the Bentota Divisional Secretariat Division. The estate called Bangalawatta is in extent of 5 acres and the estate called Akkara Hata is in extent of 7 acres. The Project Manager of the Ceylon Electricity Board issued notice to the Petitioner under Section 15 of the Electricity Act that a high power transmission line of the Ceylon Electricity Board would be laid over the Petitioner's aforesaid estates and, for that purpose, the officials and the agents of the Ceylon Electricity Board would be entering the Petitioner's land for the purpose of installing the said high power transmission lines. The Petitioner, after receiving the said notice, had not lodged any objection to the drawing of the said electricity line and to enter the said land and to do all or any of the acts specified in the notice. The officials of the Ceylon Electricity Board entered the said estates and carried out the construction work to install a 132 kw electricity line over the Petitioner's estate.

The Petitioner submitted that due to the said installation of the electricity line, about 375 rubber trees were cut down and removed for the installation of the said electricity line. The Petitioner submitted that according to the Rubber Research Institute's estimates, the cutting down of 375 rubber trees, the loss caused was in a sum of Rs.4,720,882/-, and the Petitioner submitted a report of the Rubber Research Institute dated 21/06/2006 in support of his claim. The Petitioner submitted that he has submitted a claim for the said sum to the 1<sup>st</sup> Respondent to take into consideration when assessing compensation under Section 17 of the Electricity Act. The Petitioner submitted that he received two letters in June 2007 from the Project Manager of the Electricity Board and these two letters were in respect of the compensation in relation to Akkara Hata Estate and Bangalawatta Estate. In relation to Akkara Hata, a sum of Rs.287,550/- was awarded as compensation, and in respect of Bangalawatta Estate, a sum of Rs.322,400/- was awarded as compensation.

The Petitioner contended that the aforesaid sums were totally inadequate in the given circumstances and, in particular, that the Rubber Research Institute, in their assessment of compensation, has assessed the loss to an extent of Rs.5.5M, and the Petitioner also stated that the 1<sup>st</sup> Respondent had not acted according to law and he submitted that under Section 17 of the Electricity Act, the 1<sup>st</sup> Respondent should have held an inquiry to determine the compensation and, as he was not given an opportunity to make representations in the Section 17 inquiry. Therefore, the Petitioner submitted that the said inquiry is, *ab initio*, void, and he further submitted that a sum of Rs.750,000/- awarded as compensation is unreasonable, irrational and contrary to the principles of proportionality and, in these circumstances the Petitioner has prayed for Writ of Certiorari to quash the award made by the 1<sup>st</sup> Respondent contained in document marked P17. He has also sought a Writ of Mandamus directing the 1<sup>st</sup> Respondent to hold a fresh inquiry under Section 17 of the Electricity Act.

The Electricity Act under Section 15 has provided for issue of notice to enter upon any land for the construction of posts and installing electricity lines, the Petitioner did not object to the drawing of the said electricity lines and that the Petitioner had no objection for the Respondent to perform the acts specified in the notice. The only complaint the Petitioner has is in relation to the compensation paid to him for the damages caused to his property in order to draw the electricity line. Section 17 of the Electricity Act specifically provides for procedure that has to be followed for the assessment of compensation, which provides for the Divisional Secretary to assess the compensation after such inquiry what he may deem sufficient. In these circumstances the Divisional Secretary called for a report from the Grama Sevaka and thereafter has called for a valuation report from the Government Valuer, and the compensation was paid based on the Valuer's report. Section 17 of the Electricity Act requires the Divisional Secretary to make such inquiries that is sufficient to assess the compensation and, in this instant, the Government Agent has got a valuation from the Government Valuer and has decided to act on that valuation. The section does not provide for an

inquiry to be held to determine the valuation after giving a notice to the parties affected. The section only requires the Divisional Secretary to determine the compensation after such inquiry that is sufficient to determine the compensation. In these circumstances the Divisional Secretary is not bound to give a fair hearing to the Petitioner in determining the compensation. In any event, the Petitioner is not prejudiced by the decision of the Divisional Secretary in relation to the determination of compensation. Section 17(4) provides a remedy to an affected owner. It provides - Section 17(4): "An owner of a land who is aggrieved by the decision of the Government Agent that no compensation under Section 15 or Section 16 is payable to him or who is dissatisfied with the amount assessed by the Government Agent as such compensation may, for the recovery of the compensation claimed by him or of the difference between the amount of the compensation claimed by him, and the amount of the compensation tendered to him, institute in a Court of competent jurisdiction an action against the Licensee from whom compensation is claimed.

The law has specifically provided for a remedy to the Petitioner to claim the difference between the amount of compensation claimed by him and the amount of compensation tendered to him by instituting an action in a Court of competent jurisdiction, but the Petitioner has not taken this course of action which is an effective remedy provided by statute. The Petitioner has not sought this remedy for which he is entitled, the civil court is the proper forum to consider and determine compensation that is due to the Petitioner as it involves evidence, an application for judicial review is not a proper remedy in which facts are in dispute. As the Petitioner has not exercised a statutory remedy that is available to him and the determination of compensation is purely based on facts and evidence, this Court cannot determine compensation in these proceedings. In view of the above, this Court dismisses this application without cost.

President of the Court of Appeal