

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

CA/LAQ/BR/01A/2004
CA/LAQ/BR/01B/2004

G. B. Jayaratne
No. 546, Bauddhaloka Mawatha
Colombo 6.

APPELLANT

Vs.

Acquiring Officer
Divisional Secretariat,
Colombo 12.

RESPONDENT

AND NOW BETWEEN

G. B. Jayaratne
No. 546, Bauddhaloka Mawatha
Colombo 6.

APPELLANT-APPELLANT

Acquiring Officer
Divisional Secretariat,
Colombo 12.

RESPONDENT-RESPONDENT

BEFORE: Anil Gooneratne J. &
Deepali Wijesundera J.

COUNSEL: T. Kanagasabey with S. Srinath Tissera for the
Appellant-Appellant in 01B/2004 & Respondent in 01A/2004

Milinda Gunatilleke D.S.G for the Respondent in 01B/2004 &
Appellant in 01A/2004

ARGUED ON: 13.05.2013

DECIDED ON: 30.08.2013

GOONERATNE J.

These are two cross Appeals made to this court from the order of the Land Acquisition Board of Review, one by the Appellant-Appellant Mr. G.B.J. Jayaratne against the majority and minority orders dated 6th August 2004 of the Land Acquisition Board of Review. In that appeal the above Appellant seeks to set aside both the above orders and seek to substitute for the award the increased amount of Rs. Seven Million Seven Hundred and Fifty Thousand and Five Hundred (as in prayer (iii) of the petition of Appeal dated 28.8.2004). In the other Appeal the Acquiring Officer Colombo 12 is the Respondent-Appellant who by Petition of

Appeal dated 26.8.2004 seeks to set aside the majority decision of the Board of Review (as in sub paragraph (a) of the prayer to the petition) and in the alternative as in sub paragraph (b) of the prayer to the petitioner seek to affirm or reduce the amount referred to therein in accordance with the minority decision of the Board of Review.

I would at the very outset refer to certain undisputed facts. The subject matter and the corpus is lot 1 in preliminary plan Co.7388(R1). Land sought to acquired consists of two storied building bearing Assessment Nos. 83, 83/1, 83/4, 83(1/2), 83(1/4), 83(1/5), 83(1/6), 85 & 88, St. Sebastina Street, Colombo 12. These premises are located in Pettah in Hultsdorph almost opposite 'Sucharitha' and behind Gunasinghepura Housing Complex. Extent 12.25 perches with a 35 foot road frontage to St. Sebastian Street, Colombo 12. The appellant Jayaratne was awarded as compensation by the Acquiring Officer a sum of Rs. 1100000/-. The entire land occupied by a two storied building. Relevant date of determination of compensation as in the Section 7 notice is 13.12.1993. There is also no dispute that except premises No 83 above, the other premises were tenanted on the relevant date.

The Appellant Jayaratne's position as submitted on his behalf by his learned counsel proceed on the basis of a 'comparable method'. It was submitted

to this court that lot 3 in plan 7388 (R1) is one but the next land depicted as lot 1 which comprises of the corpus. The case of the Appellant very simply is that computation of compensation of the award made in respect of lot 1, the ascertainment of the market value should be based on the award made in respect of lot 3 in a sum of Rs. 7,000,000/- In other words market value should be ascertained by referring to the market value of land in the vicinity. In the instant case Appellant argue that the market value had been ascertained not on a comparable method. Appellant relied in the cases reported in 75 NLR 391; Ponnampalam Vs. The Municipal Commissioner Col. 59 NLR 87. The Appellant has also given some details of Lot 3 as follows:

- (a) Situations of the comparable land was along St. Sebastian's Street.
- (b) The frontage of the comparable land was 29 feet abutting St. Sebastian's Street.
- (c) Extent 14.38 perches on Lot 3 stand on old building bearing Assessment No. 93 – possession of Lot 3 & 1 taken over on same date. (13.8.1992).

Appellant contend that awards made in this case both majority/minority has failed to take cognizance of the award marked A7 made in respect of Lot 3 in a sum of Rs. 7,000,000/-. It is argued on behalf of the Appellant that compensation should be calculated as if the land had not been encumbered as once acquired land vest in the state free from encumbrances. This court observes

that provisions, contained in Section 40 of the Land Acquisition Act was enacted for a purpose to give the state good and absolute title and it has nothing to do with the award of compensation. Court cannot be misled on very clear provisions of the law, and as such I reject the Appellant's argument on that position. Then again attention of court is drawn to Section 46 (1) of the Land Acquisition Act. It enacts in very broad terms that compensation for acquisition of land is based on the market value and shall be proportionate to his interest. Tenancy is an interest. Appellant's position is that tenancy is a monthly contract and renewable and could be terminated with one months notice. Payment of compensation shall not exceed one month's rent. Further the encumbrances of protected tenant is a creation of the state. State cannot benefit from its own Act.

This court cannot fall in line with the argument put forward as above. The method of calculation as referred to in the majority, award is good authority since the Board has adopted a meaningful method and was inclined to consider previous decisions of this court and the Supreme Court (CA1/96 & S.C Spl. Leave to Appeal 45/98).

The learned Deputy Solicitor General inter alia submitted that the comparable method should never be adopted as Lot 1 was tenanted in 9 out of 10 units according to the assessment Nos. and the tenants are protected in

terms of the Rent Act, but Lot 3 was un-encumbrance and not occupied by tenants. As such Lot 3 is not a comparable land. Learned D.S.G also stress that the Appellant never argued before the Board of Review that the value of Lot 3 should be the basis for ascertaining the value of Lot 1. Instead Appellant submitted to the Board that compensation for Lot 1 should be computed on the basis of the sale price of a land at Olcott Mawatha. I am invited to the following passage of the majority order of the Board of Review, which this court has no reason to dispute.

“Olcott Mawatha is in fact undisputedly in the heart of the Commercial district of the city of Colombo. It has excellent transport and communication facilities, far more than the corpus. It is the hub of the country’s retail and wholesale trade. It can in no way be compared in Market Value to the corpus and is in commercial value poles apart” (at page 30 of the brief)

I would also refer to the points raised by the Respondent-Appellant (Acquiring Officer) in Appeal in CA/LAQ/BR/01A/04.

The majority decision of the Board of Review erred in law in adopting the “Contractor’s Method” of valuation instead of the “Investment Method” of valuation since the former method of valuation is inconsistent with the provisions in 45, 46, 48 and 65 of the Land Acquisition Act.

The majority decision of the Board of Review erred in law in assessing a value for want of possession whilst adopting the "Contractor's Method" when in law the tenant was protected from eviction in terms of the Rent Act No. 7 of 1972 and the land could not have therefore been assessed on the basis of vacant possession since such a valuation would be unlawful.

The majority decision of the Board of Review erred in law in increasing the value of floor area of the vacant until from Rs.10/- to Rs. 15/- per sq. ft. month since neither the law nor evidence supports the said increase.

Only assertion in contesting the award by Appellant-Respondent is that the contract method of valuation is contrary to Section 45, 46, 48 & 65 of the Land acquisitions Act. Mere assertion of this nature would not suffice. Part vi of the above Act contemplate on Assessment of Compensation with regard to market value, assessment; deductions and matters to be ignored. State, has not properly identified the area repugnant to above and demonstrate as to why it is contrary to the above Section of the Act?

When compensation is to be determined the authority concerned has to consider certain matters and certain other matters have to be left out or neglected. The market value as stated in the relevant section is the

market value of the property at the time of the issue of the Section, 7 notice. It is nothing but the price which a willing vendor might be expected to obtain in the open market from a willing purchaser. The fact that the owner is having ownership of other lands in the neighborhood is irrelevant for the purpose of ascertainment of the market value. As a matter of course a comparable method should not be followed, since one lot of land could very well differ from the other lot due to a variety of reasons and circumstances even if situate in the vicinity.

We have perused both majority and the minority orders of the lands Acquisition Board of Review. We are inclined to accept the majority view. In that order the Board is of the view having regard to Section 45 of the act, market value of the land and building should be determined without differentiation but as one 'Entity' (view considered in CA 1/94). This is a land that is encumbered or tenanted in terms of the prevalent Rent Laws of the country. The Board has analyzed the evidence of the two valuers who gave evidence. As such this court does not intend to interfere with the reasoning of the Board of Review and also as regards the findings based on all primary facts applicable to the land in question. I would incorporate that part of the order which this court has no reason to dispute or reject. In a summary of the Board of Review order we note the following.

That the most reasonable, equitable, just and realistic method of valuation to determine the market value should be on the basis of the unencumbered value of the premises, taken as one entity with a 50% deduction by reason of it being encumbered and the want of vacant possession to which a depreciated replacement cost be added as the building now demolished was undisputedly in good condition.

I am therefore of the view that in this instance it would be reasonable equitable, just and realistic to value the land including the building as at the relevant date in December 1993 at the rate of Rs. 1000000/- per perch with a depreciated replacement cost of Rs. 500 per square foot, being added to it and the deduction of 50% for want of vacant possession.

This court is of the view that the Appellant in both appeals have not convinced this court of a substantial question of law which has a bearing on the award of compensation. A defect pointed out in the decision making process which is alleged to be invalid in view of the defect and urged by a party cannot be canvassed in this court. This court hold that there are no question of law on the basis of which the order of the Board of Review can be reviewed and both appeals need to be dismissed. Further this court is empowered only in terms of Section 28(5) in determining the questions of law on which an appeal is made, to either confirm reduce or increase the amount of compensation which has been

confirmed or determined by the Board's decision against which an appeal has been preferred. As such we confirm the majority, decision of the Land Acquisition Board of Review and dismiss both appeals without costs.

Appeals dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera

I agree.

JUDGE OF THE COURT OF APPEAL