

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

Distilleries Company of Sri Lanka PLC
No. 110, Norris Canal Road,
Colombo 10.

APPELLANT-APPELLANT

C.A/Land/Acq/02/2012
BR/40/2000/KD

Vs.

1. The Divisional Secretary/Acquiring Officer
Kandy and Gangawata Korale
Divisional Secretariat
Kandy.

RESPONDENT-RESPONDENT

2. S. T. Gunawardene (Vice Chairman)
3. J. C. Boange
4. W. Panditharatne
5. H. M. Premathilake

**All are members of the Land Acquisition
Board of Review
Y.M.B.A. No. 70/2/2 - 2nd Floor,
D.S. Senanayake Mawatha,
Borella, Colombo 8.**

RESPONDENTS

BEFORE: Anil gooneratne J. &

Deepali Wijesundera J.

COUNSEL: Nihal Fernando P.C., with H. Withanachchi and
Anudi Nanayakkara for the Appellant-Appellant

M.N.B. Fernando A.S.G., for the Respondents-Respondents

ARGUED ON: 16.07.2013, 17.09.2013, 23.01.2014 & 12.03.2014

DECIDED ON: 24.09.2014

GOONERATNE J.

This is an appeal to this court from the order of the Lands Acquisition of Board of Review pronounced on or about November 2011 affirming the award of the Acquiring Officer. The Section 7 notice under the Land Acquisition Act was published on 19.7.1996. The award for compensation under Section 17 of the said Act was made in favour of the Appellant, the Ceylon Distilleries

Corporation, in a sum of Rs. 40 million. The extent of the property acquired is about 1 Acre, 2 Roods and 5.182 Perches, situated at No. 418 Sirimavo Bandaranaike Mawatha, Katukele, Peradeniya Road, Kandy.

The land in question is shown in Survey General's plan P.P 4123/Maha comprises of 8 lots adding up to the above extent. Appellant describes that the access to the property is from a 20 feet wide road branching off from the main Peradeniya Road. Appellant explains further by adding that the land is situated in a very prestigious area, within the city of Kandy, and commercial activity takes place within this area. Infrastructure facilities as electricity, water, telecommunication and scavenging services are readily available.

I would also refer to the claims of the appellant as described in the written submissions of Appellant.

1. Before the Respondent, Acquisition Officer the Appellant made a claim for compensation under the following three heads, aggregating to a total sum of Rs. 411,209.064.19

(this figure was subsequently amended and reduced to Rs. 128,117,227/69)

- | | | |
|-------|--|----------------------|
| (i) | Land and buildings as per the Valuation Report of - Rs. 172,208,100.00
Mr. B.L. Ariyatillake, Former Chief Valuer | |
| (ii) | Loss of earnings | - Rs. 230,194,782.00 |
| (iii) | Expenses of relocation | - Rs. 8,806,182.19 |

2. However the award made by the Respondent under section 17 of the Act, was for a sum of Rs. 40 million without disclosing any basis or a mode of calculation.

The Board of Review order no doubt gives a description of various matters which are not so connected to its task. i.e to praise and congratulate some persons described therein etc. I would for convenience refer only to those parts of the order of the Board connecting the claim of the Appellant as follows, and in the order it is stated that the Appellant before the Acquiring Officer had a staggering claim as;

(1) Land and building	-	Rs. 172,208,100/-
(2) Loss of business	-	Rs. 230,194,782/-
(3) Charge of residence	-	Rs. 8,806,182,69/-

It is also stated that the Appellant modified the claim as follows before the Board.

(1) Land and building	-	Rs. 90,450,000/-
(2) Loss of business	-	Rs. 26,653,104/-
(3) Change of residence	-	Rs. 8,806,182/69

The Board of Review order at pg. 4 gives another calculation.

The valuation at privatization.

Land	-	Rs. 18,620,000/-
Building	-	Rs. 4,370,000/-
Plant and machinery	-	Rs. 17,900,000/-

1991 figurestotal	-	Rs. 40,890,000/-
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I would as far as possible attempt to gather some points from the order which attempts to show its importance, to this appeal, as follows.

- (a) Appellant at the time of acquisition, had the benefit of receiving Government land, short distance from the present location at a concessionary price. To this extent there was no loss of business, despite 36 days closure of one plant. Material furnished on loss of business not convincing.
- (b) The two parties had cited four sales each and cross-examination revealed several flaws. In the final analysis valuation of the State is a realistic valuation
- (c) A striking revelation is that at the time the acquisition of the land had not been transferred to the Appellant company. In fact, the ownership was in State lands here and the State is conceding to the Company of the Appellant a sum of Rs. 40,000,000/- for something that did not belong to the company. The history reveals a possible clue to this grave omission. The Kandy warehouse and plant was originally commenced by the State in a Katukele location wherein the Excise Unit of the State was standing right next to the Excise Office.

The learned President's Counsel who appeared for the Appellant at the outset of his oral submissions, with reference to the Board of Review Order, (590) made the following remarks.

1. Market value of property not properly ascertained.
2. Loss of profit not considered.
3. Expenses of relocation not considered
4. The order of the Board of Review lacks in proper reasoning
5. Market prices of other lands in the vicinity not considered.
6. Valuation by Government Valuer was by R16, R17 & R18. Board has completely ignored R17 and R18.
7. As regards the entitlement of compensation as per the statute, the following Section namely Sections 5(1), 46(i) and (iii) & 46(1)(v) has not been considered by the Board.

I would also refer to the points urged by the Appellant in their attempt to get enhanced compensation. It is stated that the Appellant relies on the evidence of Mr. Kaleel (Valuer). Particulars of comparable sales of similar large extents of land were not available, as such he relies on smaller extents of 2 – 15 perches, and shown in plan 'C' as lots 1 – 4. It is stated that Mr. Kaleel has projected an actual value of Rs. 6,000.000/- per perch in 1996. It is stated that

a Notional Development method should be adopted due to non-availability of sales of large extents. Therefore the final value of the land and building valued at Rs. 92,567,942/= (Rs. 377,914 per perch) in keeping with the comparable method. In the written submissions it is stated that the State Valuer Mr. Hennbanda relied on the development method since there were no larger lands in the locality.

The Respondent's rely on the development method as in R 16A and an award of Rs. 40 M. Calculation in R16, value the land at Rs. 100,000,00 per perch based on the existing use value ascertained based on schedules of sales of similar lands as at 19.7.1996 (schedule of sale marked R2). Building valued at Rs. 7,118,815.00 after depreciation. Consequently the compensation payable for the said land and buildings had been valued at Rs. 31,650,000.00. To this amount the compensation for loss of business and change of residence as in R17 & R18 had been added. Total being Rs. 37.4 M.

Appeals to this court on question of law has made certain limitation in Section 28(5) of the Land Acquisition Act. The said section reads thus:

Every appeal to the Court of Appeal under this section shall be heard and determined by any two Judges of that court. On determining the question of law on which an appeal is made to the Court of Appeal under this section, that court shall, in accordance with its decision on such question, confirm, reduce or increase the amount of compensation which

has been confirmed or determined by the board's decision against which that appeal has been preferred

Provided that the Court of Appeal shall not allow as compensation to any person an amount which exceeds the amount of the claim for compensation which he had originally notified to the acquiring officer who made the award under section 17 in respect of the land or servitude to which that claim relates.

This court is not mandated to quash or set aside the decision of the Board of Review. We could confirm, reduce or increase the compensation awarded by the Board. This seems to be the legislative intention of Parliament, based on a question of law. The petition dated 22.12.2011, filed by the Appellant refer to several questions of law, in para 17 of the said petition. Almost 11 questions of law are suggested. I observe that some of these are certainly not questions of law. I have already stated in this judgment that the Board of Review has given its mind to certain extraneous matters instead of concentrating mainly on the question of compensation as per the statute.

When I examine documentation submitted by both sides, I cannot accept the contention of the Appellants as regards the valuation suggested by witness Kaleel based on a Notional Development plan 'F'. I agree with the contention of the state that the Appellant's witness relies on hypothetical and

unrealistic facts and figures, except in the valuation supporting change of residence. This court is inclined to accept, figures contained in the entirety of document R16, as regards land and building and the loss of business (as in R17). However on the question of change of residence it appears that there is some substance in the material furnished by the Appellant's party. One Mr. Koliths Jagath Kahanda testified as regards the liquor production process, and his evidence reveal that same is monitored by the Excise Department. The takeover of land necessitated the shifting of plants and machinery within 36.5 working days.

The documents as regards shifting X5 to X14 and X25, X16 & X17 being invoices are documents and invoices issued by Stassen Exports Ltd. The challenge to these invoices on the basis of close link with Appellant need to have been probed properly and mere suggestions would not be a basis to reject such a claim. There cannot be a deliberate delay in shifting and some of the points of attack by the Respondent should not have been tolerated at the inquiry, unless valid acceptable proof was placed before the Board. Therefore the Appellant claim on account of shifting is justified in the circumstances of this case. As such the expenses for relocation in a sum of Rs. 8,806,181.69 claimed by Appellant need to be added to the claim. In brief the method of

calculation and adopted by the Respondent on account of the value for land and building and loss of business are confirmed by this court, and as observed above a sum of Rs. 8,806,181.69 claimed by Appellant on account of change of residence should be added to the above two components. The figure acceptable to this court are as follows:

Land and building	-	Rs. 31,650,000.00
Loss of business	-	Rs. 4,400,000.00
Cost of shifting or change of residence	-	Rs. 8,806,181.00
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	-	Rs. 44,856,181.00
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Whatever method chosen, by the parties concerned must be in accord with Section 45 and 46 of the Lands Acquisition Act. Calculations are no doubt based on certain accepted valuation methods of land and building. The said sections in a gist contemplate of the market value as at the date of the Section 7 notice which also entitles to be added to the compensation whatever sums of money due on loss of earnings and change of residence. Law also does not contemplate to make an award over and above the claim made by the Appellants before the Acquiring Officer. This court would enhance the compensation according to the above stated sum of Rs. 44,856,181.00. It is

desirable to make it a round figure of Rs. 45 million (difference being only Rs. 143,818.31). Thus the compensation awarded by the Board of Review is enhanced or increases by a sum of Rs. 5 million, giving credit to the claim of the Appellant only on account of change of residence.

Subject to above, appeal allowed. Compensation enhanced.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL