

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

In the matter of an Appeal filed in terms of
Section 28 (1) of Land Acquisition Act
against the Order dated 11th February
2013 given by the Land Acquisition Board
of Review in Appeal No. BR/89/2008/GM.

Hatton National Bank PLC
Head Office
479, T.B. Jayah Mawatha
Colombo 10.

APPELLANT

C.A. No. CA/Land/Acq/03/2013

Land Acquisition

Board of Review

Appeal No. BR/89/2008/GM

Vs

T.D.S.P. Perera
Divisional Secretary/
Acquiring Officer
Biyagama Divisional Secretariat

RESPONDENT

AND NOW BETWEEN

Hatton National Bank PLC
Head Office
479, T.B. Jayah Mawatha
Colombo 10.

APPELLANT – APPELLANT

Vs

T.D.S.P.Perera
Divisional Secretary/
Acquiring Officer
Biyagama Divisional Secretariat
RESPONDENT – RESPONDENT

BEFORE

: Deepali Wijesundera J.

M.M.A. Gaffoor J.

COUNSEL

: Ronald Perera PC with Nalin

Amarajeewa and Thusitha Ediriweera

For the Appellant.

Priyantha Nawana DSG for the

Respondent.

ARGUED ON

: 23rd February, 2016

DECIDED ON

: 08th July, 2016

Deepali Wijesundera J.

The appellant Bank had filed this appeal under *Sec. 28 of the Land Acquisition Act no. 9 of 1950 (an amended)* against an award of compensation for a land acquired. The Acquiring Officer had awarded compensation in respect of the land acquired in an order under proviso (a)

of section 38 of the Act as published in a gazette, after holding an inquiry under sec. 9 of the said Act. The appellant had appealed to the Land Acquisition Board of Review under sec. 22 against the said award of compensation. The Board of Review after a long inquiry affirmed the award of compensation. This appeal had been filed against the order of the Board of Review.

The learned counsel for the appellant stated that the section 9 inquiry was held only on one occasion and the respondent did not call for a valuation report to ascertain the market value of the acquired land or call for any other witness. The Acquiring officer had awarded the appellant a sum of Rs. Seventy four million as compensation for the acquired land. The appellant's counsel stated that the material produced by them were not considered and as to how they arrived at the amount of compensation was also not stated.

The appellant submitted that they appealed to the Board of Review against the said award and at the inquiry held valuer J.M.J. Fernando and Assistant Director valuer Bandara gave evidence and said that he visited the land in question and inspected the buildings before he prepared the valuation report. He further stated valuer Bandara in his evidence admitted that he did not visit the land before he prepared the valuation report.

Valuation report prepared by the appellant for the Board of Review inquiry had been marked as **A1** and the deed of sale for a property close to the land in dispute had been marked as **A2**. The appellant's argument was according to these two documents the actual value of the property was much more.

The appellant further submitted that the valuation report prepared by the respondent taking into account that the said land is situated in the high security zone should be rejected for the reasons that it was prepared without a scene visit by the valuer. He further stated that the trees in the land have not been taken into account.

The appellant argued that the Board of Review failed to hold a proper inquiry in compliance with *sec. 9 of the Land Acquisition Act* and failed to estimate the true market value of the land under the provisions of *sec. 45 (1)* of the said Act thereby erred in law when delivering their findings. The appellant stated that the Board of Review had taken into account irrelevant considerations in determining the market value of the acquired land and cited the judgment in **Karunadasa vs Unique Gem Stones Ltd 1997 1 SLR 256**. In this judgment it stated that a party is entitled to a reasoned consideration of the case which he presents and

that in the instant case the Board of Review did not give a reasoned consideration.

The learned counsel for the respondent stated that the appellant did not present to the Acquiring officer any legally permissible material that could have been considered by him under the Act in order to decide the market value in terms of Sec. 45 of the Act to award compensation. The respondent stated that the claim was based on an alleged total outstanding money due to the appellant Bank from a mortgagee who previously owned the property, were claimed as compensation from the state. The respondent stated therefore it could be clearly seen that there was no valuation report from the appellant before the Acquiring officer at the inquiry under sec. 9. He further stated that there was no disclosure of an acceptable basis on which compensation could be decided under sec. 46 (1) (a) of the Act. He further stated that in the absence of any marked value whatsoever to consider the condition report and the valuation report of the government valuer to award compensation.

The respondents further argued that documents **A1 to A5** were submitted to the Board of Review by the appellants for the first time at the inquiry they were not presented to the Acquiring officer. The respondents stated that an appellate tribunal can not and should not consider fresh

material in appeal if the party had failed to produce such material at the initial hearing. Respondents cited the judgments in **Heenbanda and another vs Tikiri Banda 1984 1 SLR 69**, **Thalwatte vs Somasunderam 1997 2 SLR 109** and **Simon Fernando vs Bernadette Fernando 2003 2 SLR 138**. The respondents stated a question of law mixed with facts could not be raised in appeal for the first time.

This is an appeal under *section 28 of the Land Acquisition Act* against the award of compensation. The Acquiring officer has awarded compensation in a sum of rupees seventy four million, which amount the appellant had challenged before the Board of Review. The Board of Review had affirmed the award and dismissed the appellant's appeal. The instant application is against the said award. The appellant stated in their submissions that no proper valuation was done by the Acquiring officer and that their documents and evidence were not considered. The appellant had only submitted the said documents to the Board of Review and not to the Acquiring officer. The Board of Review after considering the evidence and the documents had refused the appeal and affirmed the Acquiring officer's award. This court can only decide on questions of law and evidence have to be evaluated at the inquiry. The appellant's arguments were all based on evidence and not on law. The documents **A1 and A2** are documents to be considered under *section 9* of the Act by the Acquiring officer and not by this court under the Land Acquisition Act.

The appellant having failed to submit any material at the inquiry under *section 9* before the Acquiring officer had submitted new material **(A1 to A5)** to the Board of Review in the appeal under *section 22* of the Act. It is trite law that an appellate tribunal can not consider fresh material in appeal if the appellant had failed to submit them at the initial hearing.

As submitted by the respondent in **Heenbanda and another vs Tikiri Banda** it was held that a question mixed with facts and law can not be raised in appeal for the first time. The same issue was decided in **Thalwatte vs Somasunderam and Simon Fernando vs Bernadette Fernando** where it was held once again that an appellant was not entitled to present in appeal a case materially different from the case presented before the trial court.

The orbit of the appeal under *section 28 (1) of the Land Acquisition Act* is confined to the review of a decision of the Board of Review on a question of law and what was not contested in the proceedings can not form the subject of an appeal. No questions of law had arisen from the determination of the Board for this court to decide. What was urged before this court were matters of fact, which were not placed before the Acquiring officer.

For the afore stated reasons the appeal of the appellant is refused.
Appeal is dismissed with costs fixed at Rs. 100,000/=.

JUDGE OF THE COURT OF APPEAL

M.M.A Gaffoor J.

I agree.

JUDGE OF THE COURT OF APPEAL