

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 delivered on 25/10/2011 by the Land Acquisition Board of Review in Appeal No: BR/155/288/BD

C.A.Application No: CA/LAND/Acq/1/13

Land Acquisition Board of Review

Appeal No: BR/155/2008/BD

H.A Kapila Piyasena

No. 16/2, Sri Wimaladharma Mawatha,

Badulla

Appellant

Vs.

Divisional Secretary,

Divisional Secretariat,

Badulla.

Respondent

AND NOW BETWEEN

H.A Kapila Piyasena

No. 16/2, Sri Wimaladharma Mawatha,

Badulla

Appellant-Appellant

Vs.

Divisional Secretary,

Divisional Secretariat,

Badulla.

Respondent-Respondent

BEFORE : L.U Jayasuriya J.
Deepali Wijesundera J.

COUNSEL : Geoffrie Allagaratnam P.C for the Petitioner
Suranga Wimalasena S.S.C for the Respondents

ARGUED ON : 8th June, 2016

DECIDED ON : 30th September, 2016

L.U Jayasuriya J.

(1) The Appellant-Appellant (hereinafter Appellant) was awarded a sum of Rupees 85000/- by the acquiring officer as compensation for an allotment of Land containing Hectares 0.1138 in extent which was acquired under the Land Acquisition Act No.9 of 1950 (hereinafter referred to as the Act)

(2) Being dissatisfied with the quantum of compensation, he appealed to the Board of Review against that award.

(3) The Board of Review has affirmed the grant of compensation

(4) This appeal is from the decision of the Board of Review dated 25.10.2011.

(5) It is common ground that the Land in question was acquired for the development of the General Hospital of Badulla.

(6) The Appellant's claim is for an enhancement of the quantum of compensation and he has led evidence in accordance with regulations 6 and 7 of the Land Acquisition Regulations made in terms of s.63 of the Act. (See Vol VII, Subsidiary Legislations, page 558)

(7) It appears from the brief that the Appellant has made a claim of Rupees 350,000/- per perch before the Acquiring Officer.

(8) In the condition report produced marked R2, the Land was described as a "paddy" land over grown with scrub jungle having two coconut trees (not bearing) and one "Sapu" tree more than ten years of age, which had a girth of about two feet.

(9) The Appellant had signed the said report without any objection; therefore, he cannot take up the position that the Land in question is not a Paddy Land.

(10) Admittedly evidence led before the Board of Review reveals that the land in Question was not cultivated for a long period due to the non-availability of irrigation facilities.

(11) The Appellant's complaint is that Lot No.3, which is adjacent to the Appellant's Land depicted in plan No. 587 was valued at the rate of Rupees 150,000/- per perch but the Appellant was awarded a mere sum of Rupees 85,000/- for the entirety of his Land.

(12) This court now proceeds to see if there is any merit in such a complaint.

(13) The evidence recorded (at page 59) before the Board of Review reveals that a block of land consisting of 12 perches contained in Lot No.3 was developed as a residential site after obtaining permission from the Agrarian Services Commission.

(14) On the other hand the remaining portion of Lot No.3 consisting of 8.33 perches was considered as a Paddy Land and a perch is valued at the rate of Rupees 1850/- by the Government Valuer.

(15) However the Appellant has not placed evidence before the Board of Review to the effect that he developed the Land obtaining permission from the Agrarian Services Commission.

(16) If the Appellant is relying on the valuation given to the developed portion of Lot No.3, he cannot be allowed to ignore the fact that the remaining paddy Land forming part of lot No.3 was valued at a nominal rate.

(17) The State has valued the property in question as a paddy land considering yield particulars and the price of paddy in the area as at the relevant date.

(18) My considered view is that the Board of Review has correctly held that a fair and reasonable valuation has been submitted by the State after evaluating the evidence placed before them.

(19) I see no reason to interfere with the findings of the Board of Review.

(20) For the afore-said reasons I would dismiss the Appeal.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL