

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

Vidyajyothi Professor Lakshman
Alwis,
Chairman,
Design Consortium Limited,
No. 85, Kynsey Road,
Colombo 8.
Petitioner

CASE NO: CALA/09/2014

COMPENSATION TRIBUNAL NO: COM T/01/15/81

Vs.

1. R.A.R.M.N. Rajakaruna,
Chairman, Office of the
Compensation Tribunal,
Tax Appeals Commissions
Building, No. 49/12,
Galle Road, Colombo 3.
2. P.W. Senaratne,
Member, Office of the
Compensation Tribunal,
Tax Appeals Commissions
Building, No. 49/12,
Galle Road, Colombo 3.
3. Sunil Fernando,

Member, Office of the
Compensation Tribunal,
Tax Appeals Commissions
Building, No. 49/12,
Galle Road, Colombo 3.

4. Design Consortium Limited,
No. 85, Kynsey Road,
Colombo 8.

5. Ceylinco Homes International
(Lotus Tower) Ltd,
Hyde Park Corner,
Colombo 2.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Avindra Rodrigo, P.C., with Akiel Deen for the
Appellant.

Farzana Jameel, P.C., A.S.G., with Ganga
Wakishta Arachchi, S.S.C., for the
Respondents.

Decided on: 11.09.2019

Mahinda Samayawardhena, J.

Design Consortium Limited filed the appeal CALA/8/2014
against the determination dated 31.10.2014 of the
Compensation Tribunal set up under the provisions of the
Revival of Underperforming Enterprises or Underutilized Assets

Act, No. 43 of 2011 (which has now been repealed by Act No. 12 of 2019) whereby the claim made by the said Company was rejected on the basis that the said Company has no ownership to the assets vested in the State.

The Company's claim for a sum of rupees nearly 59 Million relates to providing Consultancy Services to the Ceylinco Homes International (Lotus Tower) Ltd. in respect of design and construction of "Ceylinco Celestial Residencies" at No. 116 and 134/1, Galle Road, Colombo 3, which Assets, according to the Company, were vested in the State by operation of the said Act.

According to section 4(2)(b) of the Act, the owner or owners of any Underutilized Assets shall be entitled to receive prompt, adequate and effective compensation in terms of the succeeding provisions of the Act.

Section 4(3)(b) further states that the compensation payable shall, in relation to an Underutilized Asset, reflect the value of such Asset based on the ownership by one or more owners.

There cannot be any doubt that the said Company which provided services to construct a luxury apartment complex in the Assets vested is not the owner or one of the owners of the said Assets.

Hence the determination of the Tribunal not to pay the said Company for Consultancy Services provided was held in CALA/8/2014 to be correct.

This case (CALA/9/2014) was filed by the Chairman of the said Company in CALA/8/2014 (Professor Lakshman Alwis) on the basis that the Chairman and the aforesaid Ceylinco Homes

International (Lotus Tower) Ltd. agreed to set off the Chairman's component of the Consultancy Fees payable by Ceylinco Homes International (Lotus Tower) Ltd. to the Company in CALA/8/2014 against the payments due by the Chairman for the Apartment No.1 on Level 27 of Ceylinco Celestial Residencies, which the Chairman wanted to purchase.

It is the contention of the Chairman that a sum of US\$ 176,735 has thus been set off against the purchase price of that Apartment, and therefore he is entitled to claim that amount under the Act as a payment made to purchase that Apartment.

This claim of the Chairman has also been rejected by the Tribunal by X15 (of the same date as X5) giving the same reason.

The Chairman admits that his name was not in the original List of the prospective purchasers sent to the Tribunal by the Ceylinco Homes International (Lotus Tower) Ltd. His contention is that his name was sent later by document marked X11 produced with the petition.

The Tribunal denies receipt of X11 and further says that such a copy was never produced by the Chairman at least during the inquiry held prior to the impugned determination.

Without strenuously contesting that denial of the Tribunal, the Chairman says that a Director of Ceylinco Homes International (Lotus Tower) Ltd. by way of an affidavit dated 26.01.2016 has affirmed these payments in a sum of US\$ 176,735 for the said identified Apartment.

This affidavit is dated more than one year after the impugned determination and therefore there was no way the Tribunal could make use of it to arrive at the determination.

This Court sitting in appeal cannot make a fresh determination on new material.

I dismiss the appeal of the Petitioner, Chairman in Design Consortium Limited, without costs.

Judge of the Court of Appeal