

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

In the matter of an Appeal in terms of
Section 28(1) of the Land Acquisition Act

Court of Appeal Case No:
LAND/ACQ/ 01/2018
Land Acquisition Board of Review
Appeal No: **BR/ 304/2009/GM**

1. Mrs. M.L. Sithy Ayisha,
No. 197,
Colombo Road,
Malwana.
2. Mrs. M.L. Sithy Nuzaira,
No. 246,
Dompe Road,
Malwana.
3. Heirs of M.A.L. Noorshifaya of Malwana
(Deceased)
 - (i) M.L.M. Thaha,
 - (ii) M.A. Farook,
 - (iii) M.A. Faris,
 - (iv) M.L.M. Ali,
 - (v) M.L.M Sakkaf,

All of
No. 197,
Colombo Road,
Malwana.

Appellant-Appellants

-Vs-

T.D.S.P. Perera,
Divisional Secretary/ Acquiring Officer,
Divisional Secretariat of Biyagama,
Sapugaskanda
Makola.

Respondent-Respondent

Before : A.L. Shiran Gooneratne J.

&

Mahinda Samayawardhena J.

Counsel : Aravinda Athurupana with A.P.R. Thakshila instructed
by Sandamali Madurawala for the Appellants.
Chaya Sri Nammuni, SSC for the Respondent.

Written Submissions: By the Appellant-Appellants on 01/02/2019
By the Respondent-Respondent on 30/10/2019

Argued on : 30/10/2019

Judgment on : 04/12/2019

A.L. Shiran Gooneratne J.

The Appellants have invoked the jurisdiction of this Court in terms of Section 28(1) of the Land Acquisition Act No. 9 of 1950 as amended, (referred to as the Act) to set aside order dated 26/07/2012, made by the Board of Review (BOR). The said order was made upon an appeal to the BOR from an award by the

Respondent-Respondent dated 07/09/2009, (hereinafter referred to as the Respondent) made in terms of Section 17 of the Act.

The Appellants land identified as Lot No. 65 in Survey-General's Preliminary Plan bearing No. 116/Gam (at page 82 of the brief) in extent of 27A.2R.32P was acquired by the Respondent in 1981, in terms of Section 38(a) of the Act, for the purpose of the then Greater Colombo Economic Commission, later known as the Board of Investment, to set up the Biyagama Export Processing Zone.

The inquiry into claims for compensation in terms of Section 9 of the Act commenced on 18/06/1981. During the inquiry a dispute between the claimant's rights and title over the land was referred to the District Court of Gampaha in terms of Section 10(1)(b) of the Act. At the stage of inquiry into claims for compensation, the 3 Appellants entered into 3 separate agreements on 14/05/1982, (at page 64, 65 and 66 of the brief) by which the Appellants received a sum of Rs. 154,000/- as a relief payment (සහනදායී දීමනාවක්). The Appellants also agreed that the said payment received is deductible at the time of payment of compensation. By award dated 07/09/2009, made in terms of Section 17 of the Act, the Appellants were awarded a sum of Rs. 750,000/-. The Appellants preferred an appeal against the said award to the BOR. By the impugned order dated 26/07/2012, the BOR dismissed the appeal on the basis that the Appellants have been paid the balance compensation on 17/03/1986 and therefore, the

Appellants have no right of Appeal under the law. The Appellants submit that apart from the acceptance of the relief payment by the said agreement, they are not privy to any communication by the Respondent or proof of payment of compensation made to them. The Appellants further submit that the Respondent's letter to the BOR dated 08/12/2010, would justify that only a sum of Rs. 154,000/- has been paid.

The BOR has dismissed the appeal on the basis that the Appellants have accepted part of the payment of compensation in advance and therefore, the appeal is liable to be dismissed in terms of the proviso (a) to Section 22(1) of the Act. The present appeal stems from the said decision.

Section 22(1) of the Act states,

(1) *"A person to whom compensation is allowed by an award under section 17 and who has notified his claim for compensation to the Acquiring Officer within the time allowed therefor by this Act may appeal to the board against that award on the ground that the amount of the compensation allowed to him is insufficient:*

Provided that-

a) where, before such person prefers an appeal against such award, the whole or any part of the compensation allowed to him by such award is tendered to him by the Acquiring Officer and he does not decline to

receive the amount so tendered, he shall not have the right to prefer an appeal against such award; and

b) where, after he has preferred an appeal against such award and before such appeal is decided by the Board, the whole or any part of such compensation is tendered to him by the Acquiring Officer and he does not decline to receive the amount so tendered, the Board shall dismiss such appeal."

The Appellants submit that the proviso to Section 22(1) of the Act is to prevent an awardee to receive the whole or part of the compensation 'allowed by such award' and then appeal against the said award.

In the written submissions filed of record, the Respondent submits that there is no provision in the Act to make any sought of compensatory/ex gratia or other payment to be made before compensation is calculated and therefore, compensation can only be granted after the award is made and calculated.

At the hearing of this appeal the learned Counsel for the Respondent contended that the Appellants received a conditional relief payment as an advance prior to the award itself been made known to them. It is also contended that the word 'allowed' in the phrase 'by such award' in the said proviso, clearly points to the fact that what is contemplated is the post award receipt of compensation.

By agreements reached between the claimants and the Respondent, a sum of Rs. 154,000/- was received by the Appellants prior to the written notice of the

award under Section 17 of the Act. The impugned order refers to a further payment of compensation made on 17/03/1986.

As stated by the chief valuer by his letter dated 28/02/1986, the market value of the land for the purpose of payment of compensation was Rs. 750,000/-. The impugned order refers to a balance payment of compensation paid to the claimants on 17/03/1986. The Respondent's letter dated 09/07/1986, addressed to the Administrative Officer of the Board of Investment, which is filed of record, refers to the said payment. However, the Appellants deny receiving any further payment other than the part payment received by the aforesaid agreements.

The Appellants draw attention to the Respondents letter dated 08/12/2010, to the BOR (at pages 62 and 63 of the brief) which states that even though reference is made to compensation been paid to the Appellants on two previous occasions, on the available documentation the Respondent can confirm that the Appellants have been paid only Rs. 154,000/- as an advance payment. Therefore, it is important to note that when the Appellants reached agreement with the Respondent to accept Rs. 154,000/-, as an advance payment on 14/05/1982, the market value of the land was not known to the claimants.

In this context, the question to be asked is, when the market value of the land to be acquired is not known, is it possible for a claimant to arrive at a settlement on the question of compensation?

If the answer to the above question is in the negative, then the proviso to Section 22(1)(a) should not be applicable to a claimant who has agreed to receive a relief/ advance payment of compensation prior to the claimant knowing the market value of the land to be acquired.

Section 9 of the Act provides that,

(1) *“Where a notice under section 7 in respect of any land is published, the acquiring officer of the district in which that land is situated shall, on the date on which and at the time and place at which persons interested in that land are directed by that notice or in accordance with the proviso to section 7 (2) (c) to appear before him, hold an inquiry into-*

(a) the market value of that land or of the servitude which is to be acquired over that land;

(b) such claims for compensation as may have been notified to him within the time allowed therefor by that notice or in accordance with the aforesaid proviso;

(c) the respective interests of the persons claiming compensation; and

(d) any other matter which needs investigation for the purpose of making an award under section 17.”

Therefore, Section 9 of the Act empowers the Acquiring Officer of the District to hold an inquiry, *inter alia*, regarding the market value of the land, claims for compensation, ect.

In *Pearl Kalaliadde Goonathilaka Vs. Gananayake and Others (2004) 3 SLR 163, Weerasuriya J.* held that;

“The position taken up by the Appellant that the compensation is offered only at the award stage and the acceptance of compensation cannot be interpreted as acquiescence or waiver of statutory right which would nullify the purposes of section 12 and section 22 is unacceptable. The right of appeal in section 22(1) is in respect of awards which are considered insufficient.”

The instant application can be clearly distinguished from the aforesaid case on the basis that when the agreement reached at the stage of the statutory inquiry between the Appellants and the Respondent to accept the relief/ advance payment, the Appellants were unaware of the market value of the land to arrive at a settlement on the question of compensation.

In *Pearl Kalaliadde Goonathilaka Vs. Gananayake and Others (supra)*, it was further held that,

“The governing principle seems to be that by reaching an agreement at the stage of the inquiry, the appellant has satisfied herself with the adequacy of compensation allowed.”

The Appellants in the instant case cannot be said to have been satisfied with the adequacy of compensation allowed, since they were unaware of the valuation of the land at the stage of accepting the relief payment.

In the circumstances, I find that the Appellants by accepting the relief/ advance payment has not acquiesced or waived their right of appeal in terms of the proviso to Section 22 of the Act and therefore, I set aside the order dated 26/07/2012, and direct the Board of Review to proceed with the Appeal.

Appeal allowed, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE COURT OF APPEAL