In the Court of Appeal of the Democratic Socialist Republic of Sri Lanka

In a matter of an Appeal terms of the Articles 154 (P) (4) and 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka read with section 28 of the Land Acquisition Act, No. 9 of 1950 (as amended)

CA case No: BOR/02/2019

Board of Review Application
No: BR/281/2009/NE

1. Mohamed Cassim Mohamed Zubair (deceased)
   i. Fathima Roshan Sulaiman nee Zuibair
   ii. Mohamed Yousuf Zubair
   iii. Ayesha Mariyam Hameed nee Zubair
   iv. Ahamed Khalid Zubair

   (Substituted 1st (i) to (iv) Appellants)

   All of
   No. 44/2A, Woodland Avenue, Kohuwela

2. Abdul Wahab Hilmy Ahamed
   No. 716-02, D. P. Wijeyasinghe Mawatha, Pelawatte, Battaramulla

3. Mohamed Shafi Sulaiman
   No. 716-02, D. P. Wijeyasinghe Mawatha, Pelawatte, Battaramulla

4. Fathima Roshan Sulaiman nee Zubair

5. Ayesha Mariam Hameed nee Zubair
   Both of No. 44/2A, Woodland Avenue, Kohuwela

Appellants

Vs.

Divisional Secretary,
Divisional Secretariat,
Hanguranketha

Respondent

and now between

1. Mohamed Cassim Mohamed Zubair (deceased)
   i. Fathima Roshan Sulaiman nee Zuibair
   ii. Mohamed Yousuf Zubair
   iii. Ayesha Mariyam Hameed nee Zubair
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   Both of No. 44/2A, Woodland Avenue, Kohuwela

Appellant-Appellants

Vs.

Divisional Secretary,
Divisional Secretariat,
Hanguranketha

Respondent-Respondent

Before: Prasantha De Silva, J.

S.U.B. Karalliyadde, J.

Counsel: Mr. Murshid Maharoof with Ms. Sabrina Ahamed for the Appellant-Appellants

Mr. M. Jayasinghe SSC for the Respondent-Respondents

Written submissions tendered:

On 03.01.2020 and 10.05.2021 by the Appellant-Appellants

On 24.09.2020 by the Respondent-Respondents

Argued on: 19.03.2021.

Decided on: 08.10.2021.

S.U.B. Karalliyadde, J.

By this Appeal the Appellant-Appellants (hereinafter referred to as the Appellants) seek to set aside the Order of the Divisional Secretary of Hanguranketha, (the Respondent-Respondent and hereinafter referred to as the Respondent) dated 22.09.2009 regarding the amount of compensation for a land acquired from the Appellants in terms of section 17 of the Land Acquisition Act, No. 9 of 1950 as amended (hereinafter referred to as the Act) and the Order dated 15.03.2019. of the Land Acquisition Board of Review (hereinafter referred to as the Board) made in appeal against the order of the Respondent. By the impugned Order dated 22.09.2009, the Respondent has concluded that the Appellants should be entitled to a sum of Rs. 14,000,000|= (Rupees Fourteen Million) which is the State valuation as compensation for the land acquired from them. The Appellants are the co-owners of the land known and identified as Joansland Estate. A portion of that land in extent of approximately 92 Acres which is the subject matter of the action has been acquired to build houses for the people of the area who lost their houses due to landslides. Joansland Estate is situated in the Poramadulla village in Nuwara-eliya District. The claim of the Appellants before the Respondent for the acquisition was Rs. 736,000,000|= (Rupees 736 million) i.e., at the rate of Rs. 50,000|= per Perch. Being dissatisfied with the quantum of compensation determined by the Respondent, the Appellants preferred an Appeal to the Board seeking to enhance that amount. By the impugned Order dated 15.03.2019, the Board has increased it up to sum of Rs. 27,585,000|= (Rupees 27 million and 585 thousand). Being dissatisfied with that amount, the Appellants preferred this Appeal to this Court in terms of section 28 of the Act seeking further enhancement.

The learned Counsel for the Appellants submitted that the compensation determined by the Board is *per se* bad in law and contrary to the provisions of section 45 (1) of the Act for the reason that the computation of compensation has not been done using the correct Method of assessing the market value of the land and even though, on behalf of the Appellants two alternative valuation options were suggested those valuations were not considered by the Board.

In terms of the Act, a person from whom a land is acquired is entitled to the market value of the land as compensation. Section 45 (1) of the Act, which sets out the mode of assessing the market value of a land is as follows;

"*for the purposes of this Act, the market value of a land in respect of which a notice under section 7 has been published shall, subject as hereinafter provided, be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that notice in the Gazette.*"

Sections 45, 46, 46A, 47 and 48 deals with elaborate provisions in assessing compensation and the matters which should be considered in deciding the quantum of compensation.

The learned Counsel for the Appellants submitted that the land has been valued for the Appellants by the Valuer, Mr. Kaleel as a land which could be used for the agricultural purposes as well as the construction purposes. The learned Counsel has submitted that if the land is valued applying the Comparison Method as an agricultural land, the minimum market value of a Perch would be Rs. 5,000|= and if it is valued applying the Residual Method as a land which could be used for housing development it would attract minimum value of Rs. 11,000|= per Perch whereas the Board has valued it at the rate of Rs. 1,875|= per Perch. The learned Counsel further submitted that in the year 2000, another portion of the same Joansland Estate was acquired from the Appellants awarding them Rs 3,258|= per Perch and after 7 years, in the year 2007, the decision to pay at the rate of Rs 1,875|= per Perch is contrary to common sense. Under such circumstances, the learned Counsel argues that the Board has not adopted a coherent and reasonable methodology in valuing the compensation and no rational and common sense explanation has been given as to how the land was valued. The learned Counsel further argues that the valuation does not reflect the

market value of the land and therefore, seek to enhance the amount of the compensation to Rs. 6,500|= per Perch even though, Rs. 50,000|= per Perch has been claimed by the Appellants before the Respondent.

The learned Senior State Counsel appearing for the Respondent submitted *inter alia*, that the area which the land in question is situated has no proper infrastructure facilities, since the land consists of hilly and sloppy areas the cost on infrastructure facilities would be excessive, the National Building and Research Organization (NBRO), taking into consideration the geographical, geological and the topographical situation of the land has recommended that only $1/3^{rd}$ of the land is suitable for construction and the land is prone to landslides. Therefore, the learned SSC argues that the land could not be valued on the basis that the entirety of it could be used for construction of houses. The learned Senior State Counsel submitted that at the earlier acquisition in 2000, the compensation was calculated at the rate of Rs. 3,258|= per Perch considering that it is a tea Estate, the land acquired for the construction of houses is a neglected land and even if a tea plantation is done on the subject matter converting it to a suitable land for tea plantation, a considerable period of time would require to pluck the tender leaves of tea. Under such circumstances, he argues that a scientific and intelligible methodology has been adopted by the Board in computing the quantum of compensation and therefore, the compensation determined by the Board is adequate and reasonable.

According to the observation No. 2 mentioned in the NBRO report (page 263 of the Appeal Brief) the subject land consists of hill and flat areas, slopes in different degrees and valleys. When considering the said topographical and geological situation of the land and the landslides which were occurring during the past several years in the area in which the subject land is situated, in terms of section 114 of the Evidence Ordinance, the Court can presume that the land is situated in an area which is prone to landslides.

At the inquiry before the Board, the two Valuers who had prepared the valuation reports on behalf of both parties have testified. Mr. Kaleel, a Private Valuer who had prepared the valuation report (marked as A12, at page 346) for the Appellants has valued the entire land for Rs. 159,772,871/= (Rupees one hundred and fifty-nine million seven hundred and seventy-two thousand and eight hundred and seventy-one),

at the rate of Rs. 11,000/= per Perch on the basis that the land could be blocked out for 350 lots and develop it for a housing project (pages 7 and 10 of the inquiry proceedings on 22.4.2014 and 17.06.2014 respectively). At the beginning of his evidence the witness has testified that even though, a hypothetical blocking out plan had not been drawn up by him to prepare his valuation report, after considering a blocking out plan obtained from the Urban Development Authority (UDA) he had prepared his valuation report (inquiry proceedings before the Board on 17.06.2014. page 10). Nevertheless, the witness has admitted later that the UDA did not have a blocking out plan to the date on which he had prepared his valuation report and testified that assuming that the UDA possesses a blocking out plan which consists of 350 lots he had prepared his valuation report (inquiry proceedings on 17.06.2014 page 11). But later he has testified that he did not obtain a plan from the UDA (proceedings on the same day page 13). Although, he has admitted in cross-examinati5 on that he had not prepared a hypothetical blocking out plan to do the valuation, on the next date of inquiry, in re-examination he has testified that he had prepared a hypothetical blocking out plan and produced it marked as A3 (proceedings on 31.07.2014. page 3). On a consideration of that plan, it is clear that it is not a plan which is prepared by the UDA but, a plan which is prepared by the Surveyor General for the purpose of the acquisition of the subject matter. When considering the above stated evidence, it is clear that the testimony of the witness is contradictory *per se* on the important facts. In addition to that, there is no material before the Court to prove that the witness had gone to the land more than one occasion. Therefore, it is hard to believe that after visiting the land once the witness was able consider the different topographical and geographical levels of the land in extent of 92 Acres to prepare a hypothetical blocking out plan which consists of 350 lots. In addition to that it is important to draw the attention of Court to the 'Certificate of Consent' tendered to the Board at the inquiry on behalf of the Appellants which has been issued by the Tea, Rubber and Coconut Estates Board instituted under the Tea, Rubber and Coconut Estates Board (Control of Fragmentation) Act, No. 20 of 2005 (marked as A8a page 352). In that document the consent has been given to divide the land into the blocks of minimum extent of 2 Acres for the agricultural purposes only. That Certificate has been issued on 10.10.2006 i.e., long before Mr. Kaleel had prepared his valuation report. Mr. Kaleel, in his testimony has admitted that before he prepared his valuation report he knew about that Certificate but it was not considered when preparing the valuation

report (page 6 proceedings on 17.06.2014). Therefore, it is clear that the witness has suggested to block out the land for 350 lots for housing development without taking into consideration the conditions imposed by the Tea, Rubber and Coconut Estates Board about the blocking out of the land and the purpose which it should be utilized. Mr. Kaleel has testified *inter alia*, that he has proposed to provide 10 to 30 feet wide road accesses to the blocking out lots, 500 meters of land area would be sufficient to cover the ground area of the roads (proceedings on 17.06.2014. page 13) and the total cost for construction of roads would be Rs. 10 Lakhs (16.07.2015. proceedings page 8). Nevertheless, the Court cannot believe and accept the evidence of the witness that to provide 10 to 30 feet wide roads 500 meters of the land area and spending Rs. 10 Lakhs would be sufficient. When considering the above stated evidence of Mr. Kaleel which is contradictory and hard to believe, the Court cannot treat him as a trustworthy witness. Under such circumstances, the Court cannot accept the valuation report prepared by Mr. Kaleel on behalf of the Appellants.

On behalf of the Respondent, a State Valuer had prepared a valuation report (pages 180 - 184 in the Appeal Brief) using the Direct Comparison Method and valued the land for Rs. 14,000,000/= (Rupees 14 million). According to the evidence of the State Valuer, Mr. Dampe who has assisted the Chief Valuer in valuing the subject matter of the action even though, there are other Methods which could be used to value the lands, he has chosen the Direct Comparison Method being the most appropriate and suitable Method to assess the market value of the subject matter. The reasons given by the witness for using that Method are *inter alia*, that when considering the geographical and topographical situation of the land, it is difficult to develop in order to gain profits, the extent of the land is large, it's a barren land without any plantation which has a monetary value, according to the MBRO report only 30% to 35% of the land area is suitable for construction and the Tea, Rubber and Coconut Estates Board has given consent to divide the land into the blocks of minimum extent of 2 Acres only for agricultural purposes. In valuing the subject matter, the State Valuer has taken into consideration the face value of a deed of transfer (marked as R11a) which was executed by the Appellants for a portion of the same Johnsland Estate for an extent of 10 Acres 2 Roods and 38.7 Perches. The witness has produced at the inquiry before the Board another deed (marked as R11b) which was executed by the Appellants for another portion of the same Estate for an extent of 12 Acres 8.5

Perches to corroborate his evidence that the valuation done by using the deed marked as R11a is realistic and reasonable. On behalf of the Appellants, four deeds which were executed for the portions of Johnsland Estate had been produced marked as A13 to A16 before the Board to corroborate the valuation for Appellants. The extent of the lands mentioned in the deeds other than the deed marked as A13 is about 15 Perches. Therefore, when considering the extent of the lands transferred by those deeds, it is clear that those lands were purchased for construction purposes and not for agricultural purposes. Anyhow, the possibility of valuing the subject land employing the Direct Comparison Method after taking into consideration the transfer values of those deeds has not been questioned from State Valuer, Mr. Dampe. When drawing the attention of Court to the hereinbefore mentioned reasons given by Mr. Dampe for using the Direct Comparison Method, I am of the view that the transfer values mentioned in deeds which are dealt with larger extents of lands are more realistic than the transfer values mentioned in deeds which are dealt with smaller extents in calculating the market value using the Direct Comparison Method.

It was held in the case of *Perera (G.A., N.W.P.) vs. Fernando et al., (51 NLR 121)* that in deciding the market value, the evidence of recent sales in the vicinity is an important test, provided that such sales were property, similarly situated and are shown to have been by a willing seller to a willing buyer.

The evidence of Mr. Dampe is that the consideration of transfer value mentioned in the deed marked R11a was sufficient to assess the market value of the property and the valuation done on that deed corroborates the transfer value mentioned in the deed marked as R11b. The parties have agreed that the relevant date for valuation of the land acquired is 20th December 2007. The deeds marked as R11a and R11b were executed on 1st November 2006 and on 6th June 2009 respectively. Therefore, it is clear that the transactions on R11a and R11b had been taken place respectively about one year prior and 1 ½ years later to the relevant date for the valuation. The face value of the deed marked as R11a is Rs. 2,000,000/= for 10 Acres 2 Roods 37.8 Perches. Therefore, the value of an Acre is Rs. 186,285/=. By the deed marked as R11b an extent of 12 Acres and 8.5 Perches had been transferred for Rs. 1,200,000|= and therefore, the value of an Acre dealt with that deed is Rs. 99,520/=. The Valuer has valued an Acre of the subject matter of instant action for Rs. 152,182|= and the entire

land which is approximately 92 Acres in extent for Rs. 14 million. Therefore, when comparing the transfer values of an Acre mentioned in deeds R11a and R11b with the compensation suggested by the Valuer for an Acre, the Court can be satisfied that the decision of the Respondent that the Appellants should be entitled to Rs. 14 million as compensation for the entire acquisition is reasonable, realistic and adequate and in terms of section 45 (1) of the Act it is the market value of the subject land.

The Board has refused to accept the State Valuation on the basis that the transactions taken place on deeds marked as R11a and R11b were within the members of the Appellants' family and therefore, the market value does not reflect on those deeds. Even though, the Valuer Mr. Kaleel has given evidence before the Board neither the Appellants nor the vendees of those deeds have given evidence. Mr. Kaleel has stated that the transactions were taken place on those deeds within the members of the Appellants' family.

In terms of section 50 of the Evidence Ordinance, when the relationship of a person to another is relevant, the opinion of a family member or any other person who has special means of knowledge on that relationship is relevant. In the action in hand, there had not been evidence before the Board that Mr. Kaleel is a relative of the Appellants or how he has acquired knowledge that the parties to those deeds are relatives. Furthermore, the Notary's Certificate in the deed marked as R11a demonstrates the fact that the consideration mentioned in that deed has been passed before the Notary. Under the said circumstances, I hold that the Board has come to the conclusion that the parties to the deeds marked as R11a and R11b are relatives and therefore, the market value of the property does not reflect in those deeds were not based on evidence adduced before the Board.

Taking into consideration the compensation paid to the Appellants on a previous acquisition of 8 Acres of Johnsland Estate for the playground of the Poramadulla Central College, the Board has come to the conclusion that the Appellants should be entitled to a sum of Rs. 27,585,000/= as compensation. But the Valuers who are experts in valuing lands have not been examined as to whether the land acquired for the playground could be compared with the land acquired in the instant action when computing the valuation of the subject matter. Even though, there is no proof before the Board about the topographical and geographical situation of the land acquired for

the playground, on the assumptions that it is a flat land, in deciding the compensation tea plantation of that land had been considered and even if a tea plantation is done in the subject land considerable period of time would take to pluck tea, the Board has come to its conclusion about the quantum of compensation for the subject matter of the action. Therefore, I hold that the Board has come to a conclusion about the quantum of compensation arbitrary on the assumptions and without any proof to support its conclusion. However, the Respondent has not taken up the position in the Appeal that the compensation ordered by the Board is excessive and the learned Senior State Counsel for the Respondent has argued that the quantum of compensation ordered by the Board is fair and reasonable. Since the Respondent do not dispute the quantum of the compensation ordered by the Board, I affirm the Order of the Board and hold that the Appellants are entitled to a sum of Rs. 27,585,000/= as compensation for the entire acquisition. I set aside the Order of the Respondent. No costs ordered.

JUDGE OF THE COURT OF APPEAL

I agree.

Prasantha De Silva J.

JUDGE OF THE COURT OF APPEAL