

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

In the matter of an appeal under Section 28 of
the Land Acquisition Act against the decision
made by the Land Acquisition Board of
Review on 31st March 2008.

CA / 01/ 2008/ BOR

Board of Review No. B.R./130/2001/R.T.

A.A. Manuel Perera,
No.81, Rosemead Place, Colombo 07.
And two others.

Appellant-Appellants

Vs.

L.H.G. Weerasekera Kahawatte,
Divisional Secretariat, Kahawatta.
And three others

Respondent-Respondents

Before: **PRESANTHA DE SILVA, J. &**
K.K.A.V. SWARNADHIPATHI, J.

Counsel: Manohara De Silva (P.C.) with K. Kumarage (A.A.L.) (for the Appellant)
Vicum De Abrew (D.S.G.) (for the Respondents)

Argued on: By Written Submissions

Decided on: 18.02.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Appellants have moved the jurisdiction of this court against the order dated 31st March 2008 delivered by the Land Acquisition Board of Review.

The Appellants were the owners of an allotment of land called Trincowatta in the village of Pannila, which comes under the Divisional Secretariat Division of Kahawatha in Rathnapura. The land is about 118 acres in extent. The Divisional Secretary at Kahawatta had decided to acquire the land for a public purpose, and steps were taken under Land Acquisition Act by the 4th Respondent.

Once the notice under Section 7 of the Land Acquisition Act was informed, the Appellants, as claimants, claimed compensation in a sum of Rs.300 million. The value was formulated considering the value of the land and the valuable trees in the land.

By order of 4th Respondent dated 26th September 2001 in terms of Section 17 of the Land Acquisition Act, an award was made to all three claimants in a sum of Rs.4000,000/=. Order was only for the land, and the 4th Respondent had not considered any value for the trees. Dissatisfied by the award, the Appellants appealed against the Land Acquisition Board of Review award.

.An inquiry was held recording evidence of both parties, and on 31st March 2008, the Land Acquisition Board of Review dismissed the Appeal without cost.

The present Appeal is against that order dated 31st March 2008 by the Board of Review.

The main issue to be determined is "whether the tress in the land should or should not be considered in evaluating compensation?". According to the Appellants, many valuable trees such as teak and Mahogani hold commercial value. The Respondents argue that there is no doubt the trees are valuable, but as the trees cannot be felled and transported, it holds no value. While the inquiry was pending in

this court, the Appellants filed a motion on 1st October 2018, forwarding documents marked [A1 to A13]. Respondents objected to these documents being considered as those documents were not a part of the Board of Review inquiry., Taking into consideration any facts which were not forwarded for the consideration of the members of the Board who made the decision is unfair. The document marked [A1] was a document made on 11th June 2018.

The order canvassed in this court is an order made on 31st March 2008. When perusing these documents, most of them are documents after the date of the order that is being contested. [A7] and [A8] were documents carrying dates in 2017 and the documents marked as [A1], [A2], [A4], [A5], [A6] and [A9] were documented in 2018. Since the Appeal was against an order in 2008, any document should not be entertained after that date. If the Board of Review had the opportunity to consider these documents, the Appellants might not have moved in Appeal. Therefore, this court can consider what had transpired at the inquiry and any other material produced at the first inquiry.

Document [A3] is communication in the year 2000 between the Chief Valuer and Divisional Secretary of Kahawathe, already marked as page 229 of the documents from the Board of Review. Therefore, that letter had been a part of the inquiry.

[A12] is a Gazette notification published on 30th March 1977 and

[A13] a Memorandum of the Cabinet dated July 1991

As [A13] is a document that should have been forwarded to the original Board of Review. This court is not inclined to accept those documents for the first time in this court. However, [A12] is a Gazette notification. Judicial notice will be taken in respect of that document.

This court should consider whether the order of the Board of Review is justifiable or not? To conclude, we considered written submissions of the parties and the proceedings and the order of the Board of Review. According to the Appellants, there should be a valuation for the trees.

The Appellants have challenged the order on grounds set out below:-

(a) The decision is contrary to law and against the weight of evidence

- (b) The Board had erred in holding that the Award of the Acquiring Officer included the value of timber on the land
- (c) The Board had considered correspondents between two government officers without notice to the Appellants, thereby depriving the Appellants of an opportunity to challenge any such situations.
- (d) Without an environmental impact assessment to come to a conclusion that the felling of the trees will not be allowed to transport due to environmental reasons.
- (e) When the Chief Value did the inspection, it was not informed to the Appellants and did not comply with Section 55(b) of the Land Acquisition Act.
- (f) Holding a re-inquiry by the 4th Respondent is against the law, and it was done without informing the Appellants.
- (g) Board had not considered that selective approval to cut trees was considered by the conservator of Forests, and the State Timber Corporation had shown their willingness to buy the timber.
- (h) Board had failed to observe that trees in the land are not prohibited trees. Therefore, there was no need for permission to cut down trees.

In the Petition of Appeal, the Appellants had forwarded five questions of law that they wished to argue that Section 7 of the Land Acquisition Act specifies that notice should be given to claimants. Section 7 and 9 of the Act allow a claimant to participate and claim. The letter marked as [A20] at the Board of Review inquiry had not been sent to the Appellants, who were the sole claimant. Therefore, any decisions taken in that inquiry is not valid. The Respondents did not address this matter. The Respondents had limited their submissions to valuations. They argued that the valuation is correct since timber has no value according to various positions taken. The Respondents had discussed the road accessibility and the situation of the land. However, not on the points Appellants' have moved jurisdiction of this court.

Justice not only has to be done but also seems to be done. To a layperson, it should be clear as crystal that all steps were taken before coming to a decision. Law provides for the claimant to be informed, and if an inconsistent arises in the claim and estimated value, an inquiry is to be held. Such an inquiry

should be held with notice to the parties. The Respondents must show this court that the claimants' allegation is baseless. Without coming to that conclusion, it is pointless discussing regarding valuation.

Land Acquisition Act had allowed the citizens to claim compensation. Whenever a claimant is dissatisfied with an award, there is a provision for review. State officials should be considered towards the citizens. Public officers should do so with the public in mind in carrying out a duty. The citizens should be considered masters, and the officers, whatever their rank, are servants. Acts of the officials should not leave for doubt in the minds of the citizens. This theory is essential in good governance.

When considering the evidence given by U.G. Wijerathna witness produced by the Respondents for the inquiry before the Board of Review, the question arises whether the fair and transparent inspections were held? Proceedings of 14th September 2006 of the Board of Review the said witness giving evidence had recorded there is no necessity to inform the claimants regarding his visit. When questioned as to why he did not inform? He had answered that is the custom of the department. He was in possession of the Preliminary Plan, and the Grama Niladari was present.

When the question was put to him that the law requires a visit for the purpose of valuation, the owner/claimant of the property should be informed? The answer was that he was not aware of such a requirement. When section 55 of the Land Acquisition Act was read to him, he had answered that since there are no departmental orders to that effect, the owner need not be informed.

Even if the law was silent regarding a visit for an inspection or valuation, principles of natural justice require informing the owner or claimant or any person looking after the property except raids and unlawful events.

Arguments put forward by the Respondents can only be considered. When there is evidence to come to a conclusion that a fair and transparent procedure had followed. Indeed, the trees in the land may not be used as commercial timber. There can be disturbances to the environment and the forest

reservations by felling the timbers. Still, all that can be considered if the Respondents can satisfy this court that a fair inquiry had been held.

For the reasons set out above, I allow the Appellants' Appeal with costs.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal