

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

*In the matter of an Appeal on questions of
law from the decision of the Land Acquisition
Board of Review in Appeal No.
BR/133/2014/MR under and in terms
of Section 28 (1) of the Land
Acquisition Act No. 9 of 1950 (as amended).*

**C.A. Appeal No:
CA/LAND/ACQ/01/2019**

**Land Acquisition Board of
Review Appeal No:
BR/133/2014/MR**

Jagath Chandana Abeygunawardena
Kurunduwatta,
Kotapola.

Appellant

Vs.

Aquiring Officer
Divisional Secretary,
Kotapola.

Respondent

AND NOW BETWEEN

Aquiring Officer
Divisional Secretary,
Kotapola.

Respondent-Appellant

Vs.

Jagath Chandana Abeygunawardena
Kurunduwatta,
Kotapola.

Appellant-Respondent

**Before: Prasantha De Silva, J.
S.U.B Karalliyadde, J.**

Counsel: Suranga Wimalasena S.S.C for the Respondent-Appellant.

Geoffrey Alagaratnam P.C with Ms. Thahira Cader A.A.L for the
Appellant-Respondent.

Argued on: 30.03.2021

Written Submissions 21.11.2019 by the Appellant-Respondent.
tendered on: 22.10.2019 by the Respondent-Appellant.

Delivered on : 03.03.2022

Prasantha De Silva, J.

Judgment

This is an appeal preferred against the decision of the Land Acquisition Board of Review dated 12.03.2019 awarding compensation to the Appellant-Respondent in respect of the property described as Lot No. 2294, depicted in FVP No. 45, supplement No. 87, sheet No. 115 as a garden including tea plantation and of 0.8094 Hectares [320 Perches] in extent, situated in the village of Kotapola, in Divisional Secretariat limits of Kotapola, in the District of Matara.

The said property was acquired by the State in terms of Section 38(a) proviso of the Land Acquisition Act, No. 9 of 1950 (as amended) by issuing the Extra Ordinary Gazette Notification No. 1796/13 dated 07.02.2013.

Thereafter, a notice under Section 7 of the Land Acquisition Act was published on 27.12.2013 in the Extra Ordinary Gazette No. 1842/17. Subsequent to it, the inquiry in terms of Section 9 of the Land Acquisition Act was conducted by Acquiring Officer, the Respondent-Appellant and decided that the Appellant-Respondent is the owner of the said Lot No. 2294.

It appears that the said property was valued by the Valuation Department and has reported the marked value as 4,500,000/- by computing at a rate of Rs.14,062.50 per perch and added further Rs.10,000/- as an additional compensation in terms of the Land Acquisition Regulations-2008 under the Land Acquisition Act awarding Rs. 4,510,000/- (Rs. 14,093.75 per perch) as compensation for the said land acquired.

Being aggrieved by the said amount of compensation awarded by the Respondent-Appellant (the Acquiring Officer), the Appellant-Respondent made an appeal dated 22.05.2014 to the Land Acquisition Board of Review on the premise that the award of compensation by the Respondent-Appellant is not based on the market value.

However, the matter had been taken up for inquiry before the 'Board' and after the conclusion of the inquiry, the Board of Review delivered the Order on 12.03.2019, increasing the award of compensation from Rs. 4,510,000/- to a sum of Rs. 15,360,000/-, computed at the rate of Rs. 48,000/- per perch. It is seen that the said order was a majority decision and the two valuer members dissented the said decision of the Board of Review for increasing the award.

Being aggrieved by the said decision, the Respondent-Appellant [the acquiring officer] appealed against the same to the Court of Appeal on the following questions of law. It appears that some of the questions cannot be considered as questions of law, thus those questions are only based on facts. However, it is worthy to note the questions of law formulated on behalf of the Respondent-Appellant in terms of Section 28 of the Land Acquisition Act,

1. Has the Board come to the decision without evidence?
2. Has the Board misdirected itself when applying of the principles governing the determination of the market value of the said land?
3. Has the Board erred in law as it failed to make proper evaluation of the evidence given by the expert witnesses of both parties?
4. Has the Board of Review erred in Law by failing to mention the method of valuation that the Board had relied upon at arriving its decision?
5. Has the Board erred in law by failing to give reasons as to why the Board did not use the method of valuation used by the expert witnesses, namely the Residual Method of valuation?
6. Has the Board of Review erred in Law in deciding the 'Market Value' of the property as it shall be the amount, which the land is expected to have realized if it was sold by a willing seller in the open market as a separate entity on the date of publication of Section 7 notice in the Gazette as per Section 45 of the Land Acquisition Act and its regulations?
7. Has the Board erred in law by failing to make proper analysis of the land, evaluation of the sales, past awards and past valuations submitted by both parties in comparing the nature, access, extent, use, lie and the location of the acquired property?

8. Has the Board had erred in law by failing to take into account relevant considerations such as the nature, access, extent, use, lie and the location of the acquired property in deciding the market value of the said property?
9. Has the Board misdirected itself in considering and concluding that the nature, access, extent, use, lie and the location of the acquired property is equivalent to the nature, access, extent, use, lie and the location of the properties of which the deeds of transfers, past valuations and past awards were placed before it by the Respondent?
10. Has the Board erred in Law in deciding that the Appellant had merely rubber stamped the valuation by the Government valuer without evidence to that effect?
11. Has the Board erred in Law in disregarding the powers given to the Chief Valuer of the Government and his agents by the provisions of Section 55 of the Land Acquisition Act?
12. Has the Board erred in Law in disregarding the acquisition procedure set out in the Land Acquisition Act and its regulations as elaborated by the Land Manual?
13. Has the Board erred in Law in concluding that the Appellant-Respondent had failed to give reasons for the award based on the mere fact that the reasons being not mentioned in the award itself?
14. Has the Board also failed to consider and recognize that the reasons for an award granted by an Acquiring Officer is disclosed by the Acquiring Officer at the first day of Land Acquisition Board of Review, if it is not so requested by the owner of the acquired property prior to such review?

It appears that at the inquiry before the Board of Review, Mr. A.R.M. Kaleel, Private Valuer adduced evidence on behalf of the Appellant-Respondent and had marked and produced documents A₁ to A_{11(a)}. As per his valuation report marked as A₉, the said valuer had adopted Residual Method of valuation to ascertain the market value of the acquired property and had computed the value at the rate of Rs. 63,085/- per perch.

Apparently, the District Valuer of the Valuation Department Mr. Athula Nisad who adduced evidence on behalf of Appellant-Respondent in this Appeal, also adopted the Residual Method of

valuation and marked and produced documents R₁ to R_{9(c)} justifying the award made by the Respondent-Appellant, the Acquiring Officer.

Accordingly, the amount specified by the Respondent-Appellant [hereinafter sometimes referred to as the Appellant], which is Rs. 4,510,000/- as the Market Value of the subject property has been computed at a rate of Rs. 14,062.50 per perch (Rs. 14,062.50 x 320 = Rs. 4,500,000/- and by adding further Rs.10,000/- as an additional compensation under the aforesaid Land Acquisition Regulations-2008).

In view of the 'Order' of the Board of Review, it is apparent that the Board adopted the 'Direct Comparison' method of valuation. Thus, the 'Board' compared the land to be valued with the prices obtained for other similar properties situated in the vicinity of the acquired land, which were submitted as 'Sales' and 'Past Awards' made by the expert valuer [Chief Government Valuer] of the Appellant on prior occasions, and also which were submitted by the expert valuers of both parties before the 'Board'.

In terms of Section 25 of the Land Acquisition Act, the Board of Review empowers to confirm or to reduce the award of the Appellant or to determine the amount of compensation payable.

It is noteworthy that in the Order of the Chairman of the Board of Review, the 'Board' had analyzed and compared the sales and also the past awards made by the expert valuer [Chief Government Valuer] of the Appellant which are situated in the vicinity of the acquired land and which were submitted before the 'Board' by the valuers of both parties.

It was alleged by the Appellant that the method of valuation is not specifically mentioned by name. The Respondent had denied this question of law. Nevertheless, it clearly manifests that, the 'Board' had come to the decision by adopting the most direct approach method in arriving at a value to the acquired land.

Even though the 'Method of Valuation' is not specifically mentioned by name, in reading the 'Order' it is observable that the 'Board' compared the land acquired with the prices of sales and past awards made by the expert valuer [Chief Government Valuer] of the Appellant and which were submitted to the 'Board' by the valuers of both parties, it is apparent that the Board adopted the direct approach method.

Furthermore, it is worthy to note that the Expert Valuer of the Respondent had calculated the total compensation to be paid at Rs. 20,179,000/- at the rate of Rs. 63,000/- per perch for the extent of 320 perches, by adopting the 'Residual Method of Valuation'.

Adopting the same 'Residual Method of Valuation' the expert valuer [Chief Government Valuer] of the Appellant arrived at the total compensation at Rs. 4,510,000/- (at Rs. 14,093.75 per perch) for the extent of 320 perches at the rate of Rs 14,093.75 per perch.

When compared the final figures arrived at by both the valuers as the compensation payable to the acquired land, it appears that there is a vast disparity in their opinions.

Observing the wide disparity of the Market Value arrived at by both valuers, the 'Board' was compelled to adopt a practical convenient and available method and adopted the 'Direct Comparison Method' of valuation, which seems that it is reasonable.

It is very clear that from page 2 to 13 of the 'Order' of the 'Board', the Honourable Chairman analyzed and compared the sales and past awards made by the expert valuer of the Appellant, the Chief Valuer in arriving at his decision regarding the Market Value of the acquired land. The Chairman has given his reasons for same while considering all relevant factors.

The expert valuer of the Appellant, the Chief Valuer through his District Valuer submitted his sales schedule 'R9' at the inquiry. In the 3rd paragraph of page 10 of the 'Order', the Honorable Chairman analyzed the 3rd sale submitted as R9.

It was submitted by the Respondent that 'The actual price' of Rs.25,000/- per perch mentioned in the 3rd sale in the document (R9), which was marked before the 'Board' by the District Valuer of the Chief valuer is a fair statement sufficient enough for the Board to arrive at a reasonable opinion as to the values fetched in the vicinity of the land acquired.

The documents marked R8(a), R8(b) and R8(c) refers to the 'Notional Development Plan' (NDP) prepared by the expert valuer of the Appellant and the way how the prices adopted for the blocks in the NDP and the way adopted in calculating and arriving at the final figure of Rs.4,510,000/- at Rs.14,093.75 per perch.

As stated above considering the huge difference of the final figures arrived at by both valuers, the Chairman was compelled to compare directly the sales and past awards tendered to the 'Board' by both valuers.

Having considered the evidence placed by both the expert witnesses before the 'Board', the Chairman also taking into consideration the nature of the acquired land arrived at a total value of Rs. 15,360,000/- at a rate of Rs. 48,000/- per perch.

On behalf of the Appellant, Question of Law has been formulated that, has the Board of Review erred in Law in deciding the 'Market Value' of the property as it shall be the amount, which the land is expected to have realized, if it was sold by a willing seller in the open market as a separate entity on the date of publication of Section 7 notice in the Gazette as per Section 45 of the Land Acquisition Act and its regulations?

It is seen in the 'Order' that the relevant date is mentioned therein as 08.05.2014. The order speaks that this is an appeal against a proposed award of Rs. 4,510,000/- as compensation, made by the Acquiring Officer on 08.05.2014, thus the 'Board' was well aware of the date on which the

aggrieved land was to be valued, and the 'Board' decided the Market Value as at 08.05.2014 [A₃ and R₆].

It was the contention of the Respondent-Appellant that the Board erred in Law by failing to make proper analysis of the land, evaluation of the sales, past awards and past valuations submitted by both parties in comparing the nature, access, extent, use, lie and the location of the acquired property.

Perusing the Order of the 'Board of Review', it appears that the Chairman had analyzed the values of sales and past awards made by the Chief Valuer (The expert valuer of the Appellant) and compared those with the acquired land in arriving at its conclusion.

The Respondent's expert valuer submitted to the 'Board' that he arrived at his amount of compensation of Rs. 20,170,000/- at Rs. 63,000/- per perch.

The said valuer based his value for the acquired land by analyzing two transfer deeds and two past awards made by the **expert valuer [Chief Valuer] of the Appellant**. (Marked as 'A6' in the location sketch which is referred to in to 1st paragraph of Page 2, to 1st paragraph in Page 3 and also to 1st paragraph and 3rd paragraph of Page 4 of the 'Order').

The Appellant's expert valuer too submitted to the 'Board' that he arrived at his amount of compensation of Rs. 4,510,000/- (at Rs. 14,093/75 per perch) based on analyzing three transfer deeds marked as 'R2' in the location sketch which is referred to in 3rd and 4th paragraphs of Page 10 and 2nd paragraph of Page 11 of the 'Order'.

It is worthy to note that, before the 'Board', the District Valuer who represent the Chief Valuer has to give oral evidence and has to tender relevant documents to satisfy the 'Board' of the reasonableness of the value arrived at in conformity with Sections 45, 46, 46 and 48 of the Land Acquisition Act including the regulations (Marked as 'A3' by the Appellant) and is subjected to cross examination of the counsel of the opposing party.

As such, the District Valuer who represents the Chief Valuer, even though they are experts in the field of valuation, before the 'Board', they are only expert witnesses who cannot bind the 'Board', had referred to the last paragraph of page 11 to 1st paragraph of page 13 of the 'Order' and analyzed the past awards made by the Chief Valuer (Expert Valuer of the Appellant) in arriving at the compensation to be paid for the acquired land.

On this premise, it was cited the case *Gratian Perera Vs. The Queen [61 NLR 522]*, where *Sinnathambi J.* emphasized that "The opinion of an expert is relevant, but the decision must nevertheless be the Judge's".

It is apparent that the Board has not misdirected itself in considering and concluding that the nature, access, extent, use, lie and the location of the acquired property is equivalent to the nature, access, extent, use, lie and the location of the properties of which the deeds of transfers, past valuations and past awards were placed before it by the Respondent.

It is worthy to note that, naturally there is a demand for lands situated in the close proximity of school premises for residential development. Since the school is a 'National School', thus the a value for this two acre land could be arrived at by a reasonable man taking in to consideration the price fetched by the abutting land which had a commercial value, of course by making necessary adjustments to the figures of the sale. Apparently, the land in question is strategic to the School.

The 'Board' has analyzed sales of the Appellant in 3rd and 4th paragraph of page 10 of the 'Order' in arriving at the market value of the acquired land.

The attention of Court was drawn to the sales schedule marked and produced as R9 and valuation of gross development value as R8_(c) submitted to the 'Board' by the District Valuer of the Valuation Department on behalf the Chief Valuer (the Expert Valuer of the Appellant).

In view of the document R8_(c), it clearly indicates the valuation of gross development value per perch for Rs. 320/- and Rs. 9,800,000/- as market value.

It appears that, No.259 (iii) of the Land Manual ('A1') submitted by the Appellant clearly mentioned that 'If it is the opinion of the Acquiring Officer that the Valuation Report of the Chief Valuer is not in accordance with the evidence given at the inquiry, in terms of Section 9 of the Land Acquisition Act, he should inform it to the Chief Valuer and shall get his consent for an amendment to the valuation.

It was submitted by the Appellant-Respondent that in the appeal before the Board of Review, no evidence were led by the Respondent-Appellant to substantiate that the Appellant had complied with that direction given in the land manual. Chairman of the 'Board' observed this situation and commented that 'The Acquiring Officer cannot act as a Rubber Stamp of another Officer'.

It is only after the confirmation of the Chief Valuer that the valuation tendered to the Acquiring Officer is 'Reasonable', the Acquiring Officer (the Respondent-Appellant) should proceed to make the 'Award' based on the valuation of the Chief Valuer.

It was contended by the Appellant, that the Board of Review had erred in Law in disregarding the powers given to the Chief Valuer of the Government and his agents by the provisions of Section 55 of the Land Acquisition Act.

In respect of the said question of Law, the Appellant-Respondent had drawn the attention of Court to Section 24 (5) of the Land Acquisition Act.

Section 142 of the Civil Procedure Code and Section 132 of the Evidence Ordinance shall apply to a witness in any proceeding before the 'Board of Reviews' as those proceedings are proceedings before a Civil Court.

Apparently, during the proceedings before the Board of Review, the Counsel for the Respondent led evidence of the expert valuer of the Respondent and the Counsel for the Appellant cross examined the expert valuer of the Respondent.

Furthermore, the Counsel for the Appellant led Evidence of the expert valuer of the Appellant. H.J. Athula Nisad, the District valuer attached to the Matara District of the Valuation Department on behalf of the Chief Valuer, at the inquiry before the Board of Review.

Subsequently, the Counsel for the Respondent cross examined the expert valuer of the Respondent-Appellant, the said District valuer, H.J. Athula Nisad. Order of the 'Board' was delivered on 12/03/2019 before the Board by its Chairman. It was submitted by the Appellant-Respondent that the above mentioned procedure is the procedure adopted in a Civil Court.

Therefore, it is seen that the above mentioned Procedure is the procedure adopted in a civil court, which reveals that the Chief Valuer is only an Expert Witness before the 'Board' who gave evidence for the Respondent-Appellant through his District Valuer. Thus, it is clear that the opinion of the Chief Valuer is not conclusive or binding.

Similarly, the powers given under Section 55 of the Land Acquisition Act refers only to the powers granted to the Chief Valuer and his Agents in collecting evidence to prepare his valuation not to bind the 'Board'. Order of the 'Board' was delivered on 12.03.2019 by the Chairman of the Board of Review.

The Respondent-Appellant has taken up the position that, the Board of Review has erred in Law in disregarding the acquisition procedure set out in the Land Acquisition Act and its regulations as elaborated by the Land Manual.

It was submitted by the Respondent-Appellant that the acquisition procedure laid down in the Land Acquisition Act and regulations elaborated in the Land Manual are not conclusive or relevant before the 'Board'. What is relevant before the 'Board' is oral evidence and the documentary evidence adduced before the 'Board' by the expert valuers of both parties.

Apparently, what is emphasized by the Chairman in his 'Order' is the above Current Position of the Law.

In item No.259 of the 'Land Manual' it is mentioned that 'The decision to be given by the Acquiring Officer under Section 17 of the Land Acquisition Act, declare under the specimen form mentioned under G.A.L.39, thus this 'Form' doesn't require the Acquiring Officer (the Respondent-Appellant) to give reasons. Such cannot preclude the giving of reasons.

Instead, it informs the Appellant-Respondent that 'If he is not satisfied with the Award to make an Appeal to the 'Land Acquisition Board of Review' and further stating that in the Appeal the Acquiring Officer should be made as the 'Respondent' and further gives the address of the 'Board' to which the Appeal is to be directed.

Has the Board also failed to consider and recognize that the reasons for an award granted by an Acquiring Officer is disclosed by the Acquiring Officer at the first day of Land Acquisition Board of Review, if it is not so requested by the owner of the acquired property prior to such review?

The Respondent denies this Question of Law. The hearing of the appeal commenced before the 'Board' on 21/01/2015. (Please refer to Page 45 of the proceedings). No reasons for the award was disclosed by the Acquiring Officer on this first day of the hearing.

However, it is pertinent to note that although the private valuer, Mr. A.R.M.Kaleel valued the property acquired on behalf of the Appellant-respondent at the rate of Rs 63,000 per perch nevertheless the 'Board' determined the amount of compensation payable to the acquired land at the rate of Rs 48,000 per perch, which clearly proves that the said value is reasonable and justifiable according to the direct approach method of valuation.

In view of the aforesaid reasons, it is imperative to note that the Chairman of the Board of Review setting aside the award of the compensation made by acquiring officer dated 08.05.2014 and directing that compensation be paid at the rate of Rs. 48,000/- per perch for 320 perches for extent of the acquired land, is well founded, thus I see no reason for us to interfere with the order of the Board of Review dated 12.03.2019.

Hence, I dismiss the appeal of the Respondent-Appellant with cost.

JUDGE OF THE COURT OF APPEAL

S.U.B Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL