

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

In the matter of an application for leave to appeal made under and in terms of Section 6(2) of the Revival of Underperforming Enterprises or Underutilized Assets Act, No.43 of 2011, read with the provisions contained in Chapter LVIII and Chapter LXI of the Civil Procedure Code.

**Case No.CALA/4/2015**

CEYLINCO HOMES INTERNATIONAL (LOTUS TOWER) LTD

No.428/47, Eden Gardens, Samagi Mawatha,  
Hokandara South, Hokandara.

**PETITIONER**

**Vs.**

1. Edirachcharige Dayasena,  
Chief Government Valuer and Chairman of the Compensation Tribunal established under the Revival of Underperforming Enterprises or Underutilized Assets Act No.43 of 2011.  
Tax Appeals Commission Building, No.49/14, Galle Road,  
Colombo – 12.
  
2. P.W. Senaratne,  
Member of the Compensation Tribunal established under the Revival of Underperforming Enterprises or Underutilized Assets Act No.43 of 2011.

Tax Appeals Commission Building, No.49/14, Galle Road,  
Colombo 02.

3. Sunil Fernando,  
Member of the Compensation Tribunal established under the  
Revival of Underperforming Enterprises or Underutilized  
Assets Act No.43 of 2011.  
Tax Appeals Commission Building, No.49/14, Galle Road,  
Colombo 02.
4. M.L. Suresha Tharanga,  
Secretary of the Compensation Tribunal established under  
the Revival of Underperforming Enterprises or  
Underutilized Assets Act No.43 of 2011.  
Tax Appeals Commission Building, No.49/14, Galle Road,  
Colombo 02.
5. Kalinga Indatissa,  
Duly appointed individual designated as the "Competent  
Authority" under the Revival of Underperforming  
Enterprises or Underutilized Assets Act No.43 of 2011.  
No.325 1/1, Thimbirigasyaya Road, Colombo 05.
6. Compensation Attorney General  
Hulftsdorp, Colombo -12.

**RESPONDENTS**

Before:

**PRASANTHA DE SILVA, J.**  
**K. K. A. V. SWARNADHIPATHI, J.**

Counsel: S.A. Parathglingam (P.C.) with  
Nishkan Parathalingam (A.A.L),  
Olivia Thomas (A.A.L)  
(For the Petitioner)

Chaya Sri Nammuni (S.S.C)  
(For 1 – 4<sup>th</sup> and 6<sup>th</sup> Respondents)

Argument: By Written submissions

Date of Judgment: 04.04.2022

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

### **JUDGMENT**

The Petitioner had sought an intervention against an order made at the Compensation Tribunal established under Revival of Underperforming Enterprises or Unutilized Assets Act No.43 of 2011.

It is the contention of the Petitioner by Section 6(2) of the Act; he has a right to come before this Court under Section 6(2) of the Revival of Underperforming Enterprises or Unutilized Assets Act No.43 of 2011 reads as follows:-

*"Any person who is aggrieved by an award made by the Compensation Tribunal may appeal against such award to the Court of Appeal within fourteen days from the date on which the award was communicated to such person, with the leave of the Court of Appeal first had and obtained."*

The provisions of the Civil Procedure Code relating to appeals to the Court of Appeal from an order of a District Court shall, mutatis mutandis, apply to the making and hearing of appeals under this Section.

After hearing both parties, this Court had granted leave to the Petitioner. When the Appeal was taken up for argument, the Petitioner raised a preliminary issue stating that the tribunal's order is wrong in law. It does not give any reasons or speak of how the compensation calculation was done. As far as the Petitioner is concerned, he received only the document marked as [X21]. The Petitioner was unsatisfied with the amount of compensation the tribunal had decided to pay. He had to lodge his application for leave to appeal in terms of the Act.

However, the Petitioner argues that he has a right to know how the compensation was calculated. Even his Appeal will have to be based on the calculation and how the tribunal concluded calculating.

In reply to the above argument, the Respondent pointed out that the documents marked [X18] and [X21] consist of the order. In the document marked [X18], the tribunal had given all the breakdowns and how they arrived at a conclusion. Further, [X18] is a document the Petitioner had himself forwarded to the Court and therefore, he cannot say he was unaware of [X18].

As there were many claimants, the tribunal had to lay down the breakdown of every claimant in the document [X18].

Another argument of the Petitioner was that [X18] is not an order but a document addressed to the Supreme Court. In reply, the Respondents pointed out that the subject matter of this case is just a fraction of a larger picture. The entire problem was before the Supreme Court, and this is a unique incident in which the Supreme Court had to intervene. The many members of the general public who were affected had sought the intervention of the Supreme Court.

The argument put forward by the Appellant was that he has a right to know the order proper [X18] is not an order but only a statement. The Appellant argues that an order should consist of reasons and should analyze the submissions and documents of the Petitioner.

Section 187 of the Civil Procedure Code reads as follows, "The judgement shall contain a concise statement of the case, the points for determination, and decision thereon, and the reason for such desition; and the opinions of the assessors(if any) shall be prefixed to the judgment and signed by

such assessors respectively." *In National Development Bank V Chrys Tea [Pvt] Ltd*<sup>1</sup> states, "It is an accepted principle that there is a duty cast on the court or any administrative body clothed with authority when an order is made to give reasons for such order."

In *Fernando Vs. Mohideen Ismail*<sup>2</sup>. It was held that the reasons, meaning the thought process which led to that decision, must be communicated, and it is an error of law to communicate only the conclusion of fact on which such a decision is based and not the reasons which led to such conclusions.

One can argue that was a case where the statute required the reasons to be given. Even though silent regarding reasons, the present Act had explicitly given a right of Appeal. Therefore, the statute need not specifically say that reasons should be given. When it had stated that an appeal lies, that indicates the reasons should be given.

Perusing the document marked [X18] does not give an in-depth account of how calculations were done. There may have been many parties claiming before the tribunal, but the tribunal had a duty to take each claimant separately and analyze each one's claims in-depth.

One other point raised and argued was that [X21] and [X18] consist of the order. Unfortunately, the dates of those two documents are different. The document marked [X18] carries 26.12.2013, and [X21] the date indicates 21.10.2014. Therefore, it is not easy to calculate the appealable period.

The order and reasons need to be in one document with a single date. Anything contrary to this cannot be considered an order. Therefore, both documents [X18] and [X21] cannot be considered the same document, which is an order for the claim placed by the Petitioner.

An order should be signed at the end, and the date should be placed. One cannot declare orders on different dates as there is a right for Appeal, and the Act has given 14 days as the appealable period. For the calculation of time, there should be a precise date where the order was pronounced. The

---

<sup>1</sup> (2000) 2 SLR Pages 206, 208-9

<sup>2</sup> (1982) 1 SLR pages, 222, 226

document marked [X21] was not signed by the members of the Board. Every member must sign the document to establish that they agree with the contents. If any one or more disagree, then they must give their reasons for disagreement. In perusing documents, one cannot be satisfied as to the fact that all members had agreed with the conclusion. It is mandatory to sign the order and place the signatures on the same day as a clause allows an appeal.

A document addressed to the Supreme Court, or any other forum cannot be counted as an order if it is not prepared in the manner stipulated in the Civil Procedure Code.

A document to become an order must analyze all points in the issue and give reasons for the conclusion. Signed at the end by every member as to their agreement or disagreement and place the date. If disagreeing, his reasons and conclusion should be attached with the date and signature. Any document that does not satisfy the above cannot be considered a valid order. When a right of Appeal is given, it is mandatory to give reasons in the case of *Kusumawathie Vs. Aitken Spence and Company Ltd.*,<sup>3</sup> "It is a general principle of law... that wherever a right of Appeal is given from the order of a tribunal, a duty to record findings and given reasons is implied from the grant of such right of Appeal. This need to give reasons has been discussed in many cases—Supreme Court in *Central Bank of Sri Lanka Vs. Lankem Tea and Rubber Plantations (Pvt) Ltd.*<sup>4</sup> had pointed out the need to give reasons.

In the instance case, the Controller of Exchange imposed a penalty under Section 52(2)(a) of the Exchange Control Act (Chap.423) (as amended) in respect of an alleged offence under Section 10(1) read with Section 51(1) of the Act, but without giving reasons.

The Supreme Court held, "Even against the decision of the Minister, an appeal is reviewable in writ proceedings".

For the reasons mentioned above, I am of the view that documents marked [X18] and [X21] cannot be considered orders in accordance with the law.

---

<sup>3</sup> (1996) 2 SLR Pages 18,27

<sup>4</sup> (2009) 2 SLR page 75

I award the reliefs "c" and "e" sought by the Petitioner in his Petition dated 14<sup>th</sup> November 2014.

**Judge of the Court of Appeal**

**PRASANTHA DE SILVA, J.**

I agree.

**Judge of the Court of Appeal**