

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

C. A. Land Acq.05/2013

Dhammika Nissanka Gunasekera
No. 19, Deal Place A,
Colombo 03.

Substituted -Appellant-Appellant

-Vs-

The Acquiring Officer/Divisional Secretary
Greater Colombo Flood Control Project
Divisional Secretariat, Sri Jayawardanepura Mw.,
Welikada, Rajagiriya.

Respondent - Respondent

L.H.G. Weerasekera (Chairman)

W. Panditharathne (Member)

M.D.E.S. Gunatilaka (Member)

Members of the Land Acquisition Board of
Review, No. 70,2/2, Y.M.B.A. Building,
Borella, Colombo 08.

Respondents

C.A. Land/Acq./05/2013 : Land Acquisition Board of Review
Appeal No. BR/151/2003/CL

Before : K.T. Chitrasiri,J. &
L.T.B. Dehideniya,J.

Counsel : Parakkrama Karunaratne with Berti Mihindukulasuriya
for the Substituted Appellant-Appellant
Anusha Fernando, S.S.C. for the 1st Respondent-
Respondent
2nd, 3rd & 4th Respondents are absent and unrepresented.

Argued &

Decided on : 19.03.2015.

K.T. Chitrasiri,J.

Both Counsel submit that the presence of the 2nd, 3rd and the 4th Respondents in this appeal is not required as they are only the members of the Appellate Tribunal and also due to the fact that no relief is sought from them.

Heard both Counsel in support of their respective cases.

This is an appeal filed in terms of the provisions contained in the Land Acquisition Act as amended, seeking to set aside the decision/order dated 16.09.2013 of the Land Acquisition Board of Review. In the prayer to the Petition of Appeal, the Appellant also has sought that the amount of compensation awarded by the Land Acquisition Board of Review be enhanced. However, at this stage learned Counsel for the Appellant submits that his application to have the compensation will be restricted to Rs. 50,000/- per perch and will not pursue to have the amount prayed for in the prayer to the appeal.

We note that an order dated 09.11.2006 had been made in respect of the adjacent land by the same Land Acquisition Board of Review by which the Board of Review has decided Rs. 50,000/- per perch as its market value. The said decision is found in paragraph 3 in page 46 of the appeal brief. The aforesaid order dated 09.11.2006 had been produced in evidence marked as A3a in this application when it was taken up for inquiry before the Land Acquisition Board of Review.

The Land Acquisition Board of Review in this application has come to the conclusion that such an order will not help determining the market

value of the land subjected to in this case despite it was an item of evidence led before the tribunal. However, we also observe that there is evidence to show that the order in that other matter had been decided upon considering the relevant material when the market value in that application was determined by the Tribunal. Therefore, it is our view that the Board of Review has misdirected when it refused to rely upon the market value referred to in the order dated 09.11.2006 made in the other matter. Also, we do not see any reason as to why the market value decided in respect of the adjacent land should not be accepted as the market value for the land subjected to in this case when the two decisions have been made within a short period of time. The decision as to the market value in respect of the matter referred to in the document marked A3a had been decided having taken the relevant date as 05.02.2001 whilst the relevant date in this case is 24.08.2000. Furthermore, in the event, we decide not to disturb the order in this case, it will lead to absurdity since the market value in respect of the adjacent land has already been accepted as the market value by the same Board of Review.

In the circumstances, having considered the market value in respect of the adjoining land that was decided by the same Tribunal few months before

the impugned decision, we set aside the order dated 16.09.2013 of the Land Acquisition Board of Review and substitute the following order thereto.

Order

Appellant is entitled to Rs. 50,000/- per perch as compensation payable for the land subjected to in this appeal which contains an extent of 0A-3R-03.38P (0.3122Ha.). Under Section 35 of the Land Acquisition Act, the Appellant is also entitled to recover the interest as referred to therein.

For the aforesaid reasons, this appeal is allowed. No costs.

Appeal allowed.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya,J.

I agree

JUDGE OF THE COURT OF APPEAL

Cr/-