

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

In the matter of an Appeal filed in terms of Section 28(1) of Land Acquisition Act against the Order dated 16.11.2010 given by the Land Acquisition Board of Review in Appeal No. BR 236/2007/GM.

C.A. Land Acqu. No. 02/2011

Land Acquisition Board of
Review No. BR/236/2007/GM

I.W.M.P. Wickramathilake

No. 170, Dompe.

APPELLANT

-Vs-

Divisional Secretary,

Dompe Divisional Secretariat,

Weke-Kirindiwela.

RESPONDENT

AND NOW BETWEEN

I.W.M.P. Wickramathilake

No. 170, Dompe.

APPELLANT-PETITIONER

-Vs-

Divisional Secretary,

Dompe Divisional Secretariat,

Weke-Kirindiwela.

RESPONDENT-RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : Geoffrey Alagaratnam, PC with Nimal Jayawardena and Puvitharan for the Appellant
Milinda Gunatilaka, DSG for the Respondent

Decided on : 30.08.2018

A.H.M.D. Nawaz, J.

The Appellant-Appellant (hereinafter referred to as “the Appellant”) has preferred this appeal against the award of compensation made by the Board of Review in respect of the land owned by the Appellant and acquired by the Respondent-Respondent (hereinafter referred to as “the Respondent”) for a public purpose, namely to widen the *Hanwella-Kirindiwela Road*.

Admittedly the land in question is in extent of 0.0466 hectares or 18.42 perches situated at *Giridara* junction depicted as Lot 10 in Preliminary Plan No. Gam. 3328 prepared by the Survey Department and shown as Lot 9 in the advanced tracing No.GAM/DOM/02/269.

The Appellant is the owner of this land subject to the life interest of his mother Mrs. S.A.N. Menike, who, on or about 20.10.2005 died while the inquiry was pending before the acquiring officer. After the death of the mother, the Appellant has become sole owner of the said land.

The Appellant claimed Rs.2,510,300/- for his land bearing Lot No.10 before the acquiring officer, who on 26.04.2007 made an award of Rs.166,000/-. The Appellant, being dissatisfied with the award, made an appeal to the Land Acquisition Board of Review (hereinafter referred to as “the Board of Review”) which by its order dated 16.11.2010 increased the amount of Rs.166,000/- to Rs.226,000/- together with interest on the awarded amount in terms of the provisions of the Land Acquisition Act.

Being aggrieved by this order of the Board of Review, the Appellant has preferred this appeal to this Court, seeking an enhanced award to his original claim of Rs.2,510,300/- as compensation for the land depicted as Lot No.10 in P.P. No. 3328 containing in extent 18.42 perches.

Section 7 states what would be the a willing seller would have fetched in the open market. The matter before this Court is whether the amount awarded by the Board of Review is adequate for the Appellant's land, having regard to the place where it is situated, the purpose for which it was acquired, the price it would have fetched if it was a sale between a willing seller and a willing buyer, value of other adjacent lands in the vicinity etc. In terms of section 45 of the Land Acquisition Act No 9 of 1950, the date on which the notice under Section 7 was published in the *Gazette* notice is the date on which market value of the land has to be ascertained. Under Section 45, one has to find out the market value of the land as it was on 29.01.2004-the day on which Section 7 notice was published.

The said land is situated within the village of *Kapugoda* at *Giridara* junction in *Dompe* in the Divisional Secretariat limits in the *Gampaha* District. It is admitted that the *Giridara* junction where the property is situated is about 5 kilometers from *Hanwella*. It is to be noted that the land has been acquired for the Road Improvement Project of *Giridara* junction. The Surveyor General's tracing No.GAM/DOM/02/269,marked as **R5** had been submitted to the Board of Review.

A condition report prepared on 07.02.2003 indicates the description of Lot 9, which was also acquired from the Appellant. This condition report describes the land acquired as "Strip of irregular shaped flat land in level with the road". This land, according to the Preliminary Plan No.3328 is situated at *Giridara* junction having frontage to the road leading to *Pugoda* from *Hanwella*. It also has a frontage to the road leading to *Dompe* from *Giridara* junction. As the lie of the land goes, the corpus has road frontage on two sides and the location is significantly important.

The Appellant's valuer had submitted to the Board of Review the Location Sketch (marked A1) to indicate the location of the land to get the best value for the land and he divided the corpus into four blocks and also submitted two comparable sales in the immediate vicinity of the acquired land. According to the basis of valuation submitted by the Appellant's valuer, the value of acquired land is Rs.108,306/- per perch.

As against this valuation, the State Valuer submitted that the land could fetch Rs.45,000/- to Rs.50,000/- per perch but a rate of Rs.9,000/- for Lot No.10, however it can be adapted to Rs.15,000/- per perch if not for flooding.

In regard to the decision of the Board of Review for compensation it was urged by the Counsel for the Appellant that the Board has erred in law in that it acted unreasonably in failing to take into consideration the evidence given by the Appellant's valuer as to the market value of the acquired land. He also submitted that the Board of Review has erred in law in that it acted unreasonably and was biased and failed to evaluate the totality of evidence in respect of the value of the acquired land.

In contrast to the above submission of the Counsel for the Appellant, the Respondent's Counsel submitted that the portions shown as blocks A and D in the National Development Plan by the Appellant's valuer are quite small and not buildable at all. He further submitted that the land has an irregular shape and is subject to flooding and that there is public transport in this area.

As stated by the Appellant's valuer the land is abutted on two roads, and can be utilized for commercial purposes. It was established that there are some other lands in vicinity which fetched higher prices. That item of evidence must have been considered by the Board of Review. The contention that the shape of the land is not regular and it is not a buildable land does not merit scrutiny when considering the purpose for which the land was acquired. In this case the said land has been acquired for the widening of the road and not for the purpose of putting up any buildings thereon. In this respect the Board of Review has erred in coming to its conclusion that compensation in a sum of Rs.15,000/- per perch is reasonable.

No doubt the relevant date for ascertaining the market value is 29.01.2004, but by a *Gazette* notification under Section 38(a) of the Land Acquisition, the land had been taken over on 06.01.2003. By the time the value of the land must have gone up in the open market.

Section 45(1) the Land Acquisition Act states that for the purpose of this Act, the market value of the 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*.

There was evidence before the Board of Review on the basis of which it could reasonably conclude that having regard to the circumstances prevailing at the relevant date the land could be put to profitable use in the manner contemplated in the National Development Plan and that a higher value on that account was a reasonable probability. The land in an extent of 8.47 perches sold for Rs.800,000/- and another land bought by Sri Lanka Telecom for a higher value are all in evidence before the Board of Review, which the Board has left out of its consideration.

In the case of *Gunsekera v. Weerakoon (A.G.A. Kurunegala)* (1070) 73 N.L.R. 262, Sirimane, J. expressed the obiter: “to ascertain the market value of a land an Acquiring Officer should not solely and entirely rely on a report sent by an officer of the Valuation Department”.

In the instant case the Acquiring Officer and the Board of Review solely relied on the estimate given by the State Valuer and not on the oral and documentary evidence of the Appellant’s valuer. Whilst the Appellant’s valuer submitted two comparable sales in the immediate vicinity of the acquired land, as A5, and by adopting the “Direct Comparison Method” of valuation arrived at a total value of Rs. 1,993,700/, the State Valuer who is an officer from the Valuation Department submitted the sales schedule to the Board of Review without any basis of valuation, which has been accepted by the Board. This act of the Board of Review is erroneous and arbitrary. Lord Greene quite perspicaciously observed in the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury*

Corporation [1948] 1 KB 223 that a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must take into account relevant considerations and ignore irrelevant considerations. The decision maker cannot simply rubber-stamp another's decision. These principles will apply universally irrespective of the nature of any proceedings. I would call them immutable principles. They are not of an age and they are valid for all times.

In this regard the judgment of H.N.G. Fernando C.J. in *The Public Trustee v. Rajaratnam (District Land Officer)*, (1971) 75 N.L.R.391, becomes relevant. This was a case where in a claim for compensation made under the Land Acquisition Act, the Board of Review excluded relevant evidence from consideration, and acted somewhat arbitrarily in assessing the value of two portions of the land sought to be acquired, it was held that the claimant was entitled to be granted relief. In such a case, the prior sale price of similar land in the vicinity should be taken into account.

Considering the situation of the land having road frontage on two sides and the sale price of similar lands in the vicinity I find it inappropriate on the part of the Board of Review to have fixed the compensation at Rs.226,000/- which is equivalent to Rs.12,269/- per perch.

In the circumstances, I amend and increase the amount of compensation to Rs.1,381,500/- for the entire extent of 18.42 perches, which is equivalent to Rs.75,000/- per perch. I set aside the order of the Board of Review and allow the appeal.

JUDGE OF THE COURT OF APPEAL