

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

In the matter of an Application for Orders in the nature of Writs of *Certiorari* and *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0115/2021

Chandrani Mananayake Algama,
No. 516, Narangodapaluwa,
Batuwatta,
Ragama.

Petitioner

Vs

1. **S. M. Chandrasena,**
Minister of Lands,
'Mihikatha Medura'
No. 1200/6, Rajamalwatta Road,
Battaramulla.
2. **R. A. A. K. Ranawake,**
Secretary
Ministry of Lands,
'Mihikatha Medura'
No. 1200/6, Rajamalwatta Road,
Battaramulla.
3. **G. S. I. Wimalasena,**
Divisional Secretary,
Divisional Secretariat,
Mahara.

4. **N. G. P. B. Ranasinghe,**
Secretary,
Land Acquisition Board of Review,
No. 204/1/1, Kaduwela Road,
Battaramulla.
5. **Road Development Authority,**
5th Floor, Sethsiripaya,
Battaramulla.
6. **I. M. P. Gunaratne,**
Director (Maga Neguma).
Ministry of Highways
“Maga Neguma Maha Medura”,
08th Floor, Denzil Kobbekaduwa Mawatha
Koswatte
Battaramulla.
7. **Pubudika S. Bandara,**
Information Officer,
Ministry of Lands,
'Mihikatha Medura'
No. 1200/6, Rajamalwatta Road,
Battaramulla.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
WICKUM. A. KALUARACHCHI, J.

Counsel: Shantha Jayawardana with Ms. Dulika Imbuldeniya and
Ms. Wihangi Tissara for the Petitioner.

Ms. Himali Senanayake, SSC, for the 1st – 3rd and 5th – 7th
Respondents.

Argued on: 06.09.2023.

Written Submissions on: 17.11.2023 by the Petitioner
16.11.2023 by the 1st - 3rd and 5th – 7th
Respondents.

Decided on: 29.02.2024

MOHAMMED LAFFAR, J.

At the outset the Petitioner seeks Orders;

- a) in the nature of a Writ of Certiorari quashing the decision of the 1st to 7th Respondents, reflected in P28, refusing to hear the appeal of the Petitioner bearing No. BR/309/2018/GM made to the Land Acquisition Board of Review.
- b) in the nature of a Writ of Mandamus compelling the 1st to 4th Respondents to relist and hear the Petitioner's appeal bearing No. BR/309/2018/GM made to the Land Acquisition Board of Review.
- c) in the nature of a Writ of Certiorari, quashing the decision of the 1st to 6th Respondents to pay a sum of Rs. 105.000/- per perch of the land which was acquired from the Petitioner, contained in P14.
- d) in the nature of a Writ of Certiorari quashing P14.
- e) in the nature of a Writ of Mandamus compelling the 3rd Respondent to hold an inquiry under and in terms of Section 9 of the Land Acquisition Act No. 09 of 1950 (as amended), to determine the amount of compensation payable to the Petitioner.

The subject matter at issue, namely Polkanaththawaththa, originally owned by the parents of the Petitioner was gifted to the Petitioner by deed of gift bearing no. 59034 dated 10.01.1971 attested by Paulis Peiris Notary Public marked as (P1). The subject matter is depicted in Plan no. 790 dated

21.01.1946 and at the time contained 25 Acres 2 Roods and 16 Perches. Subsequent to a resurvey in 2001, the land contained 20 Acres 3 Roods and 38 Perches as depicted in plan No. 1355 (P4).

By the letter marked P9, the Assistant Title Settlement Officer at the Mahara Divisional Office of the Land Title Settlement Department, communicated with the Petitioner, directing her to meet for an inquiry on 12.09.2013 regarding the title claims for the land in question. Subsequently, the Petitioner learned of the State's intention to acquire her property for the construction of the Central Expressway. The State had assured affected landowners, including the Petitioner, that fair market prices would be paid for their land. Subsequently, by letters dated 09.11.2016, marked as P6(a) through P6(f), the Petitioner was notified that she was required to surrender, by 24.11.2016 at 09:30 a.m., vacant possession of a total area measuring 1.9771 hectares of her land, specifically depicted as lots B57, B62, B87, B89, B150, and B178 in Advance Tracing Gam/Maha/2016/349 dated 02.08.2016.

Subsequently, by a letter dated 03.07.2018 marked P10, the Assistant District Secretary notified the Petitioner about the scheduled Land Acquisition and Relocation Committee (LARC) inquiry into the compensation amount due to her, set to take place on 10.07.2018. The Petitioner contends that the same letter dated 03.07.2018 mentioned that the Divisional Secretary had already informed her of the award under Section 17 of the Act through a letter dated 04.07.2018. However, it is averred by the Petitioner that she never received the purported letter dated 04.07.2018 or the Section 17 award as indicated in the said communication. On or around 10.07.2018, the Petitioner actively participated in a Land Acquisition and Relocation Committee (LARC) inquiry aimed at determining the compensation rightfully owed to her. During the inquiry, the Petitioner was informed that her 781.69 perches of land had been assessed at a total value of Rs.82,106,600/-. This valuation was computed at a rate of Rs.105,000/- per perch. Additionally, an additional sum of Rs.300,000/- was allocated to the Petitioner, covering aspects such as vacating possession on the specified date, obtaining necessary documents, addressing crop loss, and a further sum of Rs.100,000/- was designated for a well.

The Petitioner explicitly stated that she was unhappy with the amount of compensation allocated to her and objected to the low valuation of Rs. 105,000/- per perch. Accordingly, the Petitioner by document marked P11 informed the authorities that she was not agreeable with the specified compensation amount as the Petitioner believed that individuals residing in close proximity to her land, with access from the same road as hers, were reportedly granted compensation ranging between Rs.300,000/- to Rs.350,000/- per perch.

The Petitioner received a Section 17 Award dated 29.06.2018, which granted her a sum of Rs. 82,206,600/-, (P14). On 10.08.2018, the Petitioner lodged an appeal with the Chairman of the Land Acquisition Board of Review. In the appeal, she expressed her dissatisfaction with the compensation awarded and requested an inquiry into the matter to enhance the compensation amount. Hand delivering the letter marked P15, she submitted it to the office of the Land Acquisition Board of Review in Thalangama, Battaramulla and thereby her appeal was assigned the reference number BR/309/2018/GM by the office of the Land Acquisition Board of Review.

On 15.08.2018, the Petitioner expressed dissatisfaction in a letter (P16) to the Road Development Authority Director, questioning the awarded compensation of Rs. 105,000/- per perch compared to her neighbours receiving Rs. 335,000/- per perch. The Petitioner states that thereafter no communication had been received from the Board or other contacted parties, leaving the Petitioner in uncertainty.

Six months after submitting her appeal to the Land Acquisition Board of Review, the Petitioner received a letter dated 07.02.2019 (P18) from the 5th Respondent, the Road Development Authority. The letter informed her that an initial sum of Rs.40,000,000/- had been deposited into her bank account as an advance payment of compensation. In May 2019, upon updating her bank passbook, she discovered an additional deposit of Rs.42,206,000/-, to her account.

On 17.10.2019, the Petitioner received a letter (P19) from the 4th Respondent, requesting additional copies of her appeal dated 10.08.2018 and related documentation about the compensation award under

Section 17 of the Land Acquisition Act. This was to facilitate preliminary preparations for her appeal by the Board of Review.

Subsequently, on 15.06.2020, the 5th Respondent, the Road Development Authority, informed the Petitioner through a letter (P22) that a sum of Rs. 200,000/- had been deposited into her bank account, described as a sum of money that had been 'retained'.

By a letter dated 04.12.2020 (P29), the Petitioner received information indicating, *inter alia*, that by a letter dated 03.12.2019, the 3rd Respondent had notified the 4th Respondent that the Petitioner had already been compensated. Consequently, appeals related to lands where compensation has been disbursed are not scheduled for hearings, and no further action will be taken regarding the Petitioner's appeal.

It is the contention of the Respondents that the Petitioner is not entitled to be subject to the appeal process as per Section 22(1)(a) of the Land Acquisition Act No. 9 of 1950 (as amended) on the basis that the Petitioner has already received her due compensation. An excerpt of the aforementioned provision reads thus;

“(1) A person to whom compensation is allowed by an award under section 17 and who has notified his claim for compensation to the acquiring officer within the time allowed therefor by this Act, may appeal to the board against that award on the ground that the amount of the compensation allowed to him is insufficient:

(a) where, before such person prefers an appeal against such award, the whole or any part of the compensation allowed to him by such award is tendered to him by the acquiring officer and he does not decline to receive the amount so tendered, he shall not have the right to prefer an appeal against such award, and”

In the matter at hand, the depositing of compensation into the Petitioner's bank account by the 5th Respondent raises issues that warrant a thorough examination as to whether such depositing would amount to her waiving her right to appeal. The central argument hinges on the unilateral nature of this deposit, which occurred despite the Petitioner explicitly expressing her disagreement with the proposed compensation amount. Such disagreement by the Petitioner in regards to the amount calculated as compensation is evidenced by the Petitioner signing document P11 stating that she is not agreeable to the amount of compensation due to her.

Firstly, the Petitioner's appeal to the Land Acquisition Board of Review remains a valid and pertinent course of action. The mere act of depositing compensation into the Petitioner's bank account by the 5th Respondent does not negate her right to appeal, especially when the deposit was made unilaterally without her explicit consent and despite her objections. Moreover, the timing of the deposit is significant. The initial payment of Rs. 40,000,000/- was made in February 2019, months after the Petitioner initiated her appeal to the Land Acquisition Board of Review in August 2018.

Therefore, the mere act of unilaterally depositing compensation by the 5th Respondent to the Petitioner's account should not be misconstrued as a waiver of the Petitioner's right to appeal. Her disagreement with the compensation amount, expressed before and after the deposit, remains a valid and substantial ground for the continuation of her appeal. The circumstances surrounding the deposit, coupled with the Petitioner's readiness to return the funds as evinced in her pleadings, warrant that her Appeal must be heard.

In dealing with the time bar aspect of the matter at hand, an objection was raised by the Respondent in terms of Section 23 of the Act. Section 23 states that;

“No appeal against an award made under section 17 shall be entertained by the board unless it has been preferred within twenty-one days after the date on which notice of that award was received by the appellant”

As per Section 23, the 21 days are not to be calculated from the date of the award but from the date of receiving such an award. Thereby in the application of the above provision to the matter at hand, it is evident that the P14 document of compensation was given on 29/06/2018 but the said notice was received by the Petitioner as per Paragraph 21 of the Petition in early August 2018. This fact was not disputed. Since the Appeal was made to the Review Board on 10/08/2018, it is well within the stipulated time limit as per Section 23.

For the foregoing reasons, Writs of Certiorari quashing the decision of the 1st to 7th Respondents reflected in P28 refusing to hear the appeal of the Petitioner in appeal bearing No. BR/309/2018/GM and quashing the decision of the 1st to 6th Respondents to pay a sum of Rs.105,000/- per perch of the land which was acquired from the Petitioner contained in P14 are issued. Furthermore, Writs of Mandamus compelling the 1st to 4th Respondents to relist and hear the Petitioner's said appeal and compelling the 3rd Respondent to hold an inquiry under Section 9 of the said Act to determine the amount of compensation payable to the Petitioner are issued. Parties are to bear their own costs.

Application Allowed. No cost.

JUDGE OF THE COURT OF APPEAL

WICKUM. A. KALUARACHCHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL