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

In the matter of an Appeal against an order of the Land Acquisition Board of Review under and in terms of Section 28 of the Land Acquisition Act No. 9 of 1950 as amended.

Court of Appeal Case No:
BOR/ 01/2016
Board of Review No:
BR/ 138/2013/CL

W.A.G. Wickramasinghe,
No. 7, Keells Houses,
Ihala Bomiriya,
Kaduwela.

Appellant

-Vs-

C.W. Abeysuriya,
The Land Acquiring Officer,
Greater Colombo Flood Control Project,
No. 03, Sri Jayawardhanapura Mawatha,
Welikada,
Rajagiriya.

Respondent

Before : **A.L. Shiran Gooneratne J.**

&

Dr. Ruwan Fernando J.

Counsel : Kanage Sivapathisundaram with Daya Guruge for the Appellant.

Anusha Fernando, DSG for the Respondent.

Written Submissions: By the Appellant on 07/08/2018

By the Respondent on 29/11/2018

Argued on : 04/03/2020

Judgment on : **16/06/2020**

A.L. Shiran Gooneratne J.

The Appellant has invoked the jurisdiction of this Court, *inter-alia,* to set aside the decision of the Land Acquisition Board of Review (hereinafter referred to as the BOR) dated 09/06/2016. The land acquired by the Respondent is in extent of 0.3765 Hectares (20 perches), located within the Municipal Council limits and the administrative division of Kaduwela in the Colombo District. In terms of Section 17 of the Land Acquisition Act No. 9 of 1950 (as amended), (referred to as the Act) the Appellant was awarded 100,132.15/- as compensation for the acquired land calculated at the rate of Rs. 5000/- per perch. The said order given by the Respondent was quashed by the BOR and the amount of compensation was substituted as Rs. 240,000/- at the rate of Rs. 12,000/- per perch

in total. The BOR, considering the documentary evidence, written and oral submissions made by the respective parties and also the provisions of the Land Acquisition Act and the Agrarian Development Act No. 46 of 2000 (as amended), made the said decision on the basis that the acquired land was an 'abandoned paddy land'. The Appellant being dissatisfied with the said decision of the BOR preferred an appeal to this Court.

The position of the Appellant is that according to the preliminary survey report in Partition Action No. 17459/P filed in the District Court of Colombo, the land called "Wetakeyyapotta Kumbura" which was acquired by the State is not paddy land but a high land. The Appellant has also referred to the Surveyor General's Plan No. ෙකා/ 8548, where the Appellant's land which is located within lot 21, is not a paddy field. Documents marked "A4", "A5", "A6" and "A7" are attached in support of the above contention.

The question of law disclosed by the Appellant in terms of Section 28 of the Act is as follows;

a) *The BOR failed to consider the report of the Surveyor in the partition action and thereby erred in law in deciding that the land was paddy land,*
b) *BOR failed to take account of the fact that the land is located in a metropolitan area, about half a mile away from the parliamentary complex and directly opposite the Environmental Authority and the Foreign*

Employment Bureau and thereby erred in law when computing compensation.

When this matter was taken up for argument the principle contention put forward by the Appellant was that, the compensation awarded should be enhanced on the basis that the land acquired is high land and that fact to be considered when deciding on the quantum of compensation and not on the basis that the land is a paddy field. Therefore, the question of law urged by the Appellant has a bearing on the quantum of compensation awarded.

The Respondent has taken up the position that the computation of compensation was based on the fact that the land acquired was a paddy land and relied on the tenement list (Vide page 98 of the brief), which describes lot. 21 as a paddy land and the condition report prepared by the Chief Valuer (Vide page 91 of the brief) which was signed and accepted by the Appellant, which is translated and produced in the impugned order as, *"abundoned paddy field having bushes and access along the canal bed (pita Ela) after crossing culvert on the by road."* The Respondent also relied on a statement given by the Appellant at the inquiry held in terms of Section 9 of the Act (Vide page 96 of the brief) to the effect that the land was a paddy land 30 years ago, which is a clear indication that the land in question had changed from its original position at the time of its acquisition.

According to the findings of the BOR, the position taken up by the Appellant was that *"the subject land is not a paddy field but a land which is*

required to be considered being a high land for the payment of compensation". (Vide page 228 of the brief). Having considered the above facts, the BOR when addressing their mind to the question whether the subject land is a paddy land or not was guided by the interpretation given to "paddy land" in terms of Section 101 of the Agrarian Development Act No. 46 of 2000 (as amended). (erroneously stated as Act No. 46 of 2007 in the impugned order). Thereafter, the BOR concluded that neither party had proved that the land is within the definition of a paddy land in terms of the Agrarian Development Act. It is important to note that the award made by the land acquisition officer in terms of Section 17 of the Land Acquisition Act, (vide page 6 of the brief) does not describe the land acquired as a paddy land. It is the Appellant who took up the position at the inquiry before the BOR that the land acquired is a high land and not a paddy land. The Appellant summoned Ananda Jayalal, a District Land Valuer who in an unsworn statement before the BOR stated thus;

"කෘෂි කාර්මික තක්සේරුවක් යටතේ ආදායම් මත පදනම් කරගෙන තමයි මේකේ සියලුම කටයුතු කරලා තිබෙන්නේ ස්වාමීනි. මේ ලොට් 23 හැර.

ප්‍ර: මේ ගැන ඉඩම් අත්කර ගැනීමේ පනතේ තිබෙනවා ද?

උ: ඉඩම් අත්කර ගැනීමේ පනතේ නැහැ ස්වාමීනි. <u>ගොවිජන සේවා පනතේ</u> තමයි තිබෙන්නේ. එහි ඕවිට කියන එක විශේෂයෙන් මෙහෙමයි කියලා නැහැ ස්වාමීනි. ඕවිට කියන එක කුඹුරට වඩා ගොඩාක් උඩින් තිබෙන, ගොවියාට යම්කිසි වගා කටයුත්තක නියැලෙන්න පුලුවන් කොටසක් තමයි ඕවිට කියන්නේ. ඒක

සැලකිල්ලට ගෙන තමයි අපිට ඕවිටකට කුඹුරට වඩා යම්කිසි වැඩි අගයක් ගෙවන්නේ." (emphasis is mine)

Therefore, the question relating to the condition of the land to be considered by the BOR on an assessment of facts, was concluded by reference to the Agrarian Services Act, which had been repealed at the relevant period, by the Agrarian Development Act.

In the context of the Agrarian Development Act, "paddy land" is described as;

"paddy land" means land which is cultivated with paddy or is prepared for the cultivation of paddy or which, having at any time previously been cultivated with paddy, is suitable for the cultivation of paddy, and includes such other land adjoining or appertaining to it as may be used by the cultivator for a threshing floor or for constructing his dwelling house, but does not include chena Sand or any land, which, with the permission of the Commissioner-General is used for any purpose other than cultivation in accordance with the provisions of this Act, or which is determined by the Commissioner-General not to be paddy land."

Having taken into consideration, the above interpretation given to a "paddy land" within the construction of the Agrarian Development Act, the BOR concluded thus;

"the subject land marked Lot 21 is an abandoned paddy field but non of the parties have satisfied this Board that the acquired Land previously cultivated with paddy, is or is not suitable for paddy cultivation.

As per the facts placed before the Board the subject land could not be considered as a Land or paddy field as claimed by the Appellant nor by the Respondent but it is concluded being an abandoned paddy land."

It is observed that having taken up the position that the acquired land was previously cultivated with paddy and/ or is not suitable for paddy cultivation, the BOR concludes that the land is an abandoned paddy land. If this position is to be upheld, it would be reasonable to state that any statute dealing with paddy land can be used to interpret "paddy land", envisaged in the scheme of the Land Acquisition Act. Having stated that *"what is material and important is a state of the land, accepted by both parties"*, the BOR has concluded that the land is an abandoned paddy land. It is also observed that the survey report relied upon by the Appellant to establish that the acquired land is not a paddy land has not been considered.

The interpretation given to "Land" in terms of the Land Acquisition Act states thus;

"includes any interest in, or and benefit to arise out of, any land and any leasehold or other interest held by any person in any State land, and also

things attached to the earth or permanently fastened to anything attached to the earth."

In the circumstances, the question to be answered is whether the definition of an expression given in one statute can be used to construe a definition used in another statute.

When dealing with prior legislation relevant to the interpretation of an Act presently in force, it has been held that;

"Considerations stemming from legislative history must not, however, override the plain words of a statute." ***(Attorney General Vs. St. Ives R.D.C. [1961] 1 Q.B. 366; Clixby Vs. Pountney [1968] Ch. 719).*** *"Where it is clear that a different and wider intention inspired a later Act, the intention of Parliament as manifested in an earlier one will be of little assistance."* ***(Attorney General Vs. Prince Ernest Augustus of Hanover [1957] A.C. 436, per Viscount Simonds).***

It is also interesting to note that different statutes when dealing with similar subject matter cannot be construed together. *"Statutes are said to be 'in pari materia' when they deal with the same person or thing or class: it is not enough that they deal with a similar subject-matter."* ***(United Society Vs. Eagle Bank [1829] 7 Conn. 457, per Hosmer J., cited in Craies on Statute Law, 6th ed., pp. 133-134)***

Maxwell on The Interpretation of Statutes, 12th Ed. page 258, states;

> *"where a statute confers a power, and particulary one which may be used to deprive the subject of proprietary rights, the courts will confine those exercising the power to the strict letter of the statute."*

This very issue under consideration was discussed by Basnayake C.J. in ***Ahamadulebbai Vs. Jubariummah 62 NLR 474***, where Hon. Lordship stated that,

> *"the definition of an expression in one enactment does not apply to the same expression when used in another enactment unless it is so expressly provided."*

The Land Development Act *inter-alia*, was enacted, "to *provide for matters relating to landlords and tenant cultivators of paddy lands, for the utilization of agricultural lands in accordance with agricultural policies;----"* and the Land Acquisition Act provides for "the acquisition of lands and servitudes for public purposes and to provide for matters conneted with or incidental to such provisions." Therefore, there is a clear distinction between, an enactment dealing with utilization of agricultural lands in accordance with the agricultural policies, and an enactment dealing with acquisition of lands and servitudes for public purpose. Accordingly, it is very clear that the two statutes do not deal with a similar subject matter and therefore the interpretation of "paddy land" should be within the statutory context and the scheme of the Land Acquisition Act and not by any other enactment.

Accordingly, the Act should be regarded as a whole and in the absence of a specific interpretation in the Land Acquisition Act, the phrase 'paddy land' should be construed taking into consideration the other provisions in the same statute and not from within a statute which does not deal with a matter of similar nature. *"Individual words are not considered in isolation, but may have their meaning determined by other words in the section in which they occur".* **(See *Jewish Blind Society Trustees Vs. Henning* [1961] 1 W.L.R. 24*; Ratcliffe Vs. Ratcliffe* [1962] 1 W.L.R. 1455*; Cumberland Court (Brighton), Ltd. Vs. Taylor* [1964] Ch. 29*; R. Vs. Price* [1964] 2 Q.B. 76,** cited in ***Maxwell on The Interpretation of Statutes, Twelfth Edition p. 58)***

In determining the condition of the land for the purpose of computing compensation, at the time of acquisition, the BOR has not based its conclusions on facts ascertained of the condition of the land. The method adopted by the Respondents valuer in assessing the value of the land was not found to be correct and accurate by the BOR. Therefore, on the strength of evidence, there is no valid finding by the Board of Review. Accordingly, the findings of the BOR should be set aside. However, I am mindful of the decision in ***Palamkumbura vs. Jayasena (2008) BLR 412***, where Marsoof, J. held that:

"It is relevant to note that in terms of Section 28(5) of the Act, this Court on determining the question/s of law on which an appeal is made, is only empowered to "confirm, reduce or increase the amount of compensation which has been

confirmed or determined by the Board's decision against which that appeal has been preferred." It is, to say the least, extremely doubtful whether this Court is vested with any power, to set aside the Order of the Board of Review and to remit the case to the Board of Review to hear and decide the appeal according to law, which is the only relief that this Court might be inclined to grant to the Respondent-Appeallnt even if it is successful on the sole question of law it has urged before this Court in this appeal."

At the conclusion of the argument, the learned Counsel for the Appellant alluded to the fact that the Appellant would be satisfied if the BOR could consider an enhancement of compensation payable to him. It is noted that the impugned order does not state on what basis the calculation of compensation payable to the Appellant was made. In the light of the above, this Court directs the Board of review to reconsider the amount of compensation payable to the Appellant on an assessment of the market value of the acquired land in terms of the scheme of the Act.

Application allowed.

JUDGE OF THE COURT OF APPEAL

Dr. Ruwan Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL