

PEARL KALALIADDE GOONATHILAKA
v
GANANAYAKE AND OTHERS

COURT OF APPEAL

WEERASURIYA, J.

DISSANAYAKE, J.

CA 6/87.

LAND ACQUISITION BOARD OF REVIEW.

APPEAL BR 7527/KD 378.

MAY 16, 2001.

JUNE 18, 2001.

JULY 19, 2001.

OCTOBER 16, 2001.

Land Aquisition Act, sections 9, 10(5), 17, 22(1) – Land acquired – Award made – Agreed to accept same – Appeal to Board of Review – Does an appeal lie as the party had agreed to accept the compensation ?

Held:

- (1) The appellant by agreeing to accept the compensation before the respondent at the statutory inquiry has relinquished or waived her right of appeal.
- (2) The governing principle is that by reaching an agreement at the stage of the inquiry the appellant has satisfied herself with the adequacy of compensation allowed.

Per Weerasuriya, J.

“The position taken up by the appellant that the compensation is offered only at the award stage and the acceptance of compensation cannot be interpreted as acquiescence or waiver of statutory right which would nullify the purposes of section 12 and section 22 is unacceptable. The right of appeal in section 22(1) is in respect of awards which are considered insufficient.”

APPEAL from the Land Acquisition Board of Review.

Cases referred to:

1. *Nandarama Thero v Assistant Government Agent, Matara* SC 8.3.1973 SCM 5.5.1975
2. *Surambe v Acquiring Officer, Kandy* – SC 3/1976 – S.C.M. 8.3.1978

Wijedasa Rajapakse, PC with *Kapila Liyanagamage* fo applicant-appellant.

Farzana Jameel SC for respondent-respondent.

Cur.adv.vult.

February 5th, 2002.

WEERASURIYA, J .

The facts pertaining to this appeal are briefly as follows:

Two allotments of land in extent 4 acres 3 roods and 37 01 perches belonging to late E.W.A.B.W.M.J.B. Kalaliadde were acquired by the State in terms of the provisions of the Land Acquisition Act. Thereafter, Acquiring Officer held an inquiry under section 9 of the Land Acquisition Act and on 21.07.1983, made an award granting a sum of Rs. 57,550/- and Rs. 12,000/- as compensation. On 25.09.1983, an appeal was preferred to the

Board of Review by the appellant. At the hearing of the appeal, a preliminary objection was taken on behalf of the respondent that there is no right of appeal to the Board of Review since the 10 appellant had agreed to accept the amount mentioned as compensation at the conclusion of the inquiry under section 9. The Board of Review upheld the preliminary objection resulting in the dismissal of the said appeal. The present appeal is from the aforesaid order of the Board of Review.

At the hearing of this appeal, learned President's Counsel for the appellant contended that, in terms of the proviso to section 22(1) of the Land Acquisition Act, a claimant is disqualified from making an appeal only upon the proof of two elements, namely -

- (a) that compensation has been tendered to the claimant; 20
and
- (b) that the claimant has not declined to receive the amount so tendered.

It is manifest that the appellant as the duly appointed administratrix of the estate of the late E.W.A.B.W.M.J.B. Kalaliadda, had agreed to accept Rs. 5,550/- and Rs. 12,000/- as compensation for lots 4 and 1 respectively shown in preliminary plan No. 2238, as evident from the proceedings dated 21.07.1983.

In view of the significance of the purported settlement, it is necessary to consider the provisions of section 9 of the Land 30 Acquisition Act.

Section 9 of the Land Acquisition Act provides for an inquiry to be held to determine the following matters:

- (a) The market value of the land;
- (b) Claims for compensation;
- (c) Respective interests of persons claiming compensation; and
- (d) Any other matter which needs investigation for the purpose of making an award under section 17.

In terms of section 10(5), the decision of the Acquiring Officer 40 in respect of claims made by any person to any right, title or interest over the land proposed to be acquired is final. However, since at the

inquiry market value of the land proposed to be acquired is inquired into, it is open to a claimant to arrive at a settlement on the question of compensation. In the circumstances, an agreement reached between a claimant and the Acquiring Officer should not be confused with the acceptance of the compensation when tendered after the written notice of the award is given under section 17.

The appellant in the instant case by agreeing to accept the compensation before the respondent at the statutory inquiry has 50 relinquished or waived her right of appeal. The governing principle seems to be that by reaching an agreement at the stage of the inquiry, the appellant has satisfied herself with the adequacy of compensation allowed. It is significant that the only ground for an appeal is the insufficiency of compensation incorporated in the award.

In the case of *Nandarama Thero v Assistant Government Agent*⁽¹⁾ it was held that where a person consents to accept the compensation offered to him at an inquiry held under the Land Acquisition Act, he cannot thereafter appeal on the ground that it is 60 insufficient. This decision was followed in the case of *Suramba v Acquiring Officer Kandy*⁽²⁾.

The position taken up by the appellant that the compensation is offered only at the award stage and the acceptance of compensation cannot be interpreted as acquiescence or waiver of a statutory right which would nullify the purpose of sections 17 and 22 is unacceptable. The right of appeal in section 22(1) is in respect of awards which are considered insufficient.

Therefore, the question of tender of compensation to the claimant in terms of the proviso to section 22 (1) does not arise for 70 consideration.

For the above reasons, I dismiss this appeal without costs.

DISSANAYAKE, J. - I agree.

Appeal dismissed.