

**HIRAN GUNASEKERA  
VS.  
ACQUIRING OFFICER AND ANOTHER**

COURT OF APPEAL  
MARASINGHE.J  
SARATH DE ABREW.J  
CA 01/2006  
JULY 22, 2008  
NOVEMBER 22, 2008  
JANUARY 22, 2009

*Land Acquisition Act-Board of Review-Section 28 (2) - Compensation awarded - Appeal-Computation of time period-Rubber stamp of the registry-not initialed or endorsed- Importance? - Civil Procedure Code - Section 754, Section 755(2)- Petition of Appeal dated 20.2.2006 transmitted to Court of Appeal - Presumption? Evidence Ordinance Section 114.*

The appellant filed a petition of appeal dated 20.2.2006 seeking enhancement of compensation awarded, by the Board of Review.

The respondent contended that although the petition of appeal is dated 20.2.2006 it had been tendered on 21.2.2006-as the date stamp bears the later date and therefore the appeal was not presented within 21days.

The appellant contended that, even though the petition of appeal had been rubber stamped as 21.2.2006, the rubber stamp has not been signed, endorsed or authenticated by an authorized officer, which rendered the rubber stamp devoid of any legal sanction. The petition of appeal the motion and the proxy all bear the date 20.2.2006-therefore the appeal is in time.

**Held:**

- (1) The material date is the date of presenting and not the date the petition is bound to the record and transmitted. Even though there is an unauthenticated date stamp on the petition and the connected documents, in the absence of a proper authentication or endorsement by the Secretary to the Board or any other

authorized officer, there is no conclusive proof that the date stamp was stamped at the point of presentation to the Board or at the point of annexing the petition to the case proceedings.

Per Sarath De Abrew, J.

“Where a doubt arises, this should be resolved in favour of the appellant where substantial statutory right of appeal would be prejudiced otherwise. The situation would have been quite different if at the very point of presentation of the petition of appeal, the Secretary to the Board or other authorized officer had entered the date and time of presentation and duly initialed and authenticated same.”

- (2) Even though there is no statutory obligation to do so, there is a duty cast on the Secretary or his authorized officer to certify the date of presentation and filing of the petition of appeal as Section 28(3) Land Acquisition Act provided statutory pre conditions before the appeal is transmitted to the Court of Appeal. The Secretary to the Board should be satisfied that the petition of appeal is presented in conformity with the requirements in Section 28(2) and further he must be satisfied that it had been presented within time.
- (3) In the instant case the Secretary had transmitted the appeal to the Court of Appeal without any endorsement to the contrary that the above two requirements have not been fulfilled. This itself gives rise to a strong presumption that the petition of appeal had been presented within time.

**APPEAL** from an order of the Land Acquisition Board of Review - on a preliminary objection taken.

**Cases referred to:-**

1. *Chandrasiri vs. A.G.* - 1989 1 Sri LR 115
2. *Jayaweera vs. Assistant Commissioner of Labour* 1996-2 Sri LR 70
3. *Nachchiduwa vs. Mansoor* - 199 2 Sri LR 273
4. *Selenchina vs. Mohamed Marikkar and others* - 2000-3 Sri LR 100
5. *Boyagoda vs. Mendis* - 30 NLR 321
6. *Velupilla vs. the Chairman, Urban District Council* 39 NLR 464
7. *Reed vs. Samsudeen* - 1 NLR 292

*Palitha Kumarasinghe* PC with *I. Idroos* for appellant-appellant  
*Vikum de Abrew* SSC for 1<sup>st</sup> and 2<sup>nd</sup> respondents-respondents.

September 08, 2009

**SARATH DE ABREW, J.**

This is an appeal from a decision of the Land Acquisition Board of Review dated 30.01.2006 awarding compensation to the Appellant in respect of a land situated at Heiyantuduwa, Biyagama acquired under the Land Acquisition Act No. 9 of 1950 as amended. The appellant's entitlement of the land acquired was equivalent to A2-A3-P37 or 1.207 Hectares consisting of granite rocks commercially exploitable. Apparently, the land had been acquired to prevent any possible damages that could be caused to the nearby reservoir by the blasting of the granite rocks. Following an appeal to the Board of Review compensation awarded to the appellant had been enhanced to Rs. 7,450,000/= . Being aggrieved of this order, the Appellant-Appellant (hereinafter referred to as the Appellant) has filed a petition of Appeal dated 20.02.2006 and thereby appealed to this Court seeking the total compensation to be increased to Rs. 20,766,771/=

When the matter was taken up for hearing, the learned Senior State Counsel for the Respondent-Respondent (hereinafter referred to as the Respondent) raised a Preliminary Objection that the Petition of Appeal had been filed on 21.02.2006 and therefore the Appeal was not within the 21 days stipulated under Section 28(2) of the Act and was therefore out of time and should be dismissed in limine. After tendering oral submissions on this preliminary objection, both parties have submitted comprehensive written submissions supported by case law authorities. Henceforth, this order is confined to the preliminary objection raised by the learned Counsel for the Respondent.

We have carefully considered the entirety of the written submissions and case law authorities tendered by both

parties, the impugned petition of appeal and the entirety of the proceedings before the Board of Review. The learned Senior State Counsel has submitted that the Petition of Appeal, though dated 20.02.2006, had in fact been tendered not on 20.02.2006 but on 21.02.2006 as the date stamp bears the latter date. He has further submitted that under Section 28(2) of the Land Acquisition Act, the Petition of Appeal should have been presented in duplicate to the Board of Review by the Appellant within 21 days after the date of the decision of the Board which is 30.01.2006, and hence the Appeal should have been filed not later than 20<sup>th</sup> February 2006. The Senior State Counsel further submitted that even if the date of pronouncement of the judgment is excluded in line with similar provisions that have been interpreted by our Courts, Saturday, Sundays and Public Holidays cannot be excluded as the Act has not made provisions to exclude same.

The learned Senior State Counsel relied heavily on the date stamp, though not initialed or authenticated, stamped on the Petition of Appeal which bore the date of 21<sup>st</sup> February 2006. In support he cited *Chandrasiri vs A.G.*<sup>(1)</sup> where he submitted the Supreme Court had accepted the date in the date stamp as the date of filing. He further submitted that the Appellant did not adduce evidence to rebut the fact that the date on the date stamp was not the date of filing. He further submitted that the presumption under Section 114(d) of the Evidence Ordinance that Judicial and official acts have been regularly performed favoured the Respondent. In support the learned Senior State Counsel cited *Jayaweera Vs Assistant Commissioner of Labour*<sup>(2)</sup> where H.N.D. Jayasuriya, J had held that it is not open to the Petitioner to file a convenient and self serving affidavit for the first time before the Court of Appeal and thereby seek to contradict either a quasi judicial act or judicial record.

Therefore the learned Senior State Counsel based his submission that the petition of Appeal in question is out of time on the following grounds:-

- (a) As the judgment of the Board of Review was delivered on 30.01.2006, excluding that date, the 21days appealable period under Section 28(2) of the Land Acquisition Act expired on 20.02.2006.
- (b) Saturdays, Sundays and Public Holidays are not to be excluded in computing the appealable time period as there is no specific provision to that effect in the Land Acquisition Act unlike in Section 754(4) of the Code of Civil Procedure.
- (c) Even though the date of the Petition of appeal is 20.02.2006, as the date stamp bears the date of 21.02.2006, the latter date must be assumed to be the date of filing of the Petition of Appeal. As the Appellant had not adduced evidence to the contrary to rebut the presumption arising under Section 114(d) of the Evidence Ordinance.

The learned Counsel for the Appellant contended that the Petition of Appeal had been filed within time on 20.02.2006 and should be accepted on the following grounds.

- (a) The Petition of Appeal itself, the motion and the proxy filed of record bears the date of 20.02.2006.
- (b) Even though the Petition of Appeal, motion and the proxy had been rubber stamped as 21.02.2006, the rubber stamps have not been signed, endorsed or authenticated by an authorized officer of the Board of Review, which renders the rubber stamp devoid of any legal sanction. Since whether the petition was presented within the appealable time is decided upon the date the Petition of

Appeal is received by the accepting authority, it has been the accepted practice to place an endorsement giving the date and time of receipt.

- (c) There is no journal entry or any other official document duly maintained by the Board of Review to support the fact that the Petition was received on 21.02.2006, the date of the rubber stamp.
- (d) As the case record does not contradict otherwise, in all probability the Petition of Appeal may have been delivered and presented to the Board of Review on 20.02.2006 and was placed with a rubber stamp the following day 21.02.2006 by some employee of the Board. There is no proof whatever that the rubber stamp was placed on the Petition of Appeal by the Secretary of the Board or any other responsible officer authorized by the Secretary. In this regard the learned counsel for the Appellant cited in support *Nachchiduwa Vs Mansoor*<sup>(3)</sup> where the Court of Appeal had held that filing the Petition of Appeal in the case record and forwarding same to the Court of Appeal are official acts of the District court and any delay in filing a petition in the record cannot be attributed to the Appellant.
- (e) Under Section 28(3) of the Act, the Secretary to the Board shall transmit to the Court of Appeal one of the duplicates of the petition of appeal together with the record of the proceedings when the petition of Appeal is presented to the Board in the manner and within the time specified in Section 28(2) of the Act. Therefore the act of the Secretary forwarding the Petition of Appeal to the Court of Appeal creates a clear and strong presumption that the Petition of Appeal had in fact been presented within the stipulated time. There is no journal entry or other endorsement by the Secretary to the effect that the Petition of Appeal had

been received out of time. In this regard the presumption under section 114(d) of the Evidence Ordinance should operate in favour of the appellant.

Even assuming that the Petition of Appeal had been presented on 21.06.2006, the learned counsel for the Appellant contended that it was still not out of time as the legislature intended giving 21 clear days which also is the established practice in our Courts. In support the learned Counsel for the Appellant cited the interpretation given to Section 754(4) of the Code of Civil Procedure in *Selenchina Vs Mohamed Marikkar and others*<sup>(4)</sup> and *Boyagoda V Mendis*<sup>(5)</sup>. The learned Counsel for the Appellant further contended that in view of the above circumstances , a purely technical objection should not be allowed to stand in the way of the Appellant exercising his statutory right of Appeal. In support he cited *Velupillai Vs The Chairman, Urban District Council*<sup>(6)</sup> and *Reed Vs. Samsudeen*<sup>(7)</sup>.

Having carefully perused the submissions set forth above by both parties, we are inclined to take a liberal view for the reason that a litigant who is aggrieved of the quantum of compensation awarded to him with regard to the State acquiring valuable land and property affecting his substantial rights should not be denied his statutory right of appeal on a matter of construction and interpretation which would amount to a technicality. The legislature in all its wisdom would not have intended to time –bar and shut out an appeal to the Board of Review hinged on a bare dated stamp which is not initialed or authenticated, in the light of other factors which denote that the Petition of Appeal may have been presented within time the previous day. If a liberal interpretation is given to section 28(2) of the Act that the legislature intended to give 21 clear days to appeal, then the appellant is still within time even if the petition of appeal was presented on 21.02.2006.

In resolving this dispute, the key factors are the provisions of Section 28 of the Land Acquisition Act themselves. Section 28(2) of the Act provides "A petition of appeal under subsection (1) shall state the question of law to be argued, shall bear a certificate by an attorney-at-law that such question is fit for adjudication by the Court of Appeal, and shall be presented in duplicate to the board by the appellant within twenty-one days after the date of the board's decision against which the appeal is preferred."

Section 28(3) provides that when a petition of appeal is presented to the board in the manner and within the time specified in subsection (2) the Secretary to the board shall transmit same to the Court of Appeal.

The material date is the date of presenting and not the date the petition is bound to the record and transmitted. Even though there is a unauthenticated date stamp on the petition and other connected documents, in the absence of a proper authentication or endorsement by the Secretary to the Board or any other authorized officer, there is no conclusive proof that the date stamp was stamped at the point of presentation to the Board or at the point of annexing the petition and other connecting documents to the case proceedings. Where a doubt arises, this should be resolved in favour of the appellant whose substantial statutory right of appeal would be prejudiced otherwise. The situation would have been quite different if at the very point of presentation of the petition of appeal, the Secretary to the Board or other authorized officer had entered the date and time of the presentation and duly initialed and authenticated same. A parallel situation is envisaged under section 755(4) of the Code of Civil Procedure where there is a statutory obligation on the registrar of the Court concerned to certify the date of filing of the notice and the petition of appeal.



Even though there is no statutory obligation to do so, there is a duty cast on the Secretary or his authorized officer to certify the date of presentation and filing of the petition of appeal as section 28(3) of the Land Acquisition Act provides statutory precondition before the Appeal is transmitted to the court of Appeal, as follows:-

- (a) The Secretary to the Board should be satisfied that the Petition of Appeal is presented in conformity to the requirements in section 28(2) of the Act.
- (b) Equally, he must be satisfied that it had been presented within time.

In the instant case the Secretary had transmitted the appeal to the Court of Appeal without any endorsement to the contrary that the above two requirements have not been fulfilled. This itself gives rise to a strong presumption that the petition had been presented within time. Under the above circumstances, a bare authenticated date stamp on the petition and the other connected documents, does not conclusively establish that the petition had been presented on 21.02.2006 and is therefore out of time, specially in the light that the petition and other documents are dated 20.02.2006 and there is no other endorsement or document to prove otherwise.

In *Chandrasiri Vs. A.G (Supra)* Fernando, J held "In any event, unless there are circumstances indicating that the date set out in the date stamp is incorrect, that date must be assumed to be the date on which the petition was filed. The party tendering the petition of appeal has no control over the process whereby the petition of appeal reaches the relevant record and the making of the appropriate entry therein."

Even though the learned Senior State Counsel cited the above authority in support of his contention that the date on

the date stamp must be accepted as the date of presentation of the petition, in the instant case, the following circumstances rebel against the validity of the above statement.

- (a) The date stamp is not initialed or authenticated.
- (b) There is no appropriate entry in the petition or the case record as to the date of presentation of the petition.
- (c) There is a serious doubt as to whether the date stamp was inserted at the time of presentation of the petition or on a later occasion at the time of attaching and filing the petition on to the case proceedings.
- (d) As section 28(3) of the Act stipulated that the Secretary to the Board of Review should transmit the petition of appeal with the case proceedings on the pre-condition that the requirements under section 28(2) of the Act are complied with and the petition of appeal is presented within time, the fact that there is no endorsement by the secretary to the contrary at the time of transmitting gives rise to a presumption that the required pre-conditions have been complied with, and this feature itself militates against the theory that the appeal had been presented out of time. Under these exceptional circumstances the onus shifts to the party alleging the breach to conclusively establish same.

Due to the foregoing reasons we are of the view that in the interest of justice, the preliminary objection raised on behalf of the Respondent should be overruled and the matter be fixed for argument, and we make order accordingly.

Preliminary objection overruled.

**MARASINGHE, J.** - I agree

*Preliminary objection overruled*

*Matter set down for argument*