

**PEIRIS
v
ACQUIRING OFFICER – KOLONNAWA**

COURT OF APPEAL
UDALAGAMA, J.
C.A. 364/2003
AUGUST 8, 2003
SEPTEMBER 9, 15, 2003

*Writ of certiorari – Land Acquisition Act – S. 7, S. 9, S. 17 (1), S. 18, S. 38 (1)
– Delay in granting compensation – Inadequate – Opinions sought from people in the vicinity – Right of Petitioner to question such people – Natural justice – Legitimate expectation – Rules of fairness – Alternate procedure.*

The petitioner's land was acquired in 1980. On a direction of the Cabinet of Ministers Rs. 132 Million was offered, the petitioner sought to challenge the award on the basis that it was arbitrary, inadequate and unreasonable, and further sought an order directing the 1st respondent to continue the Inquiry in accordance with the provisions of section 17 (1).

Held:

- (i) The valuation report prepared by a former Chief Valuer and certified by another former Chief Valuer amounted to a sum very much more than the amount recommended.
- (ii) The 1st respondent appears to have obviously on his own without notice to the petitioner/or his Attorney -at -Law questioned people in the vicinity of the acquired area and had come to conclusions apparently without affording the elementary right to the petitioner/Attorney -at-law to question such people whose opinion the 1st respondent had considered for the purpose of computing the impugned award – this opinion did not stand the test of cross examination. Discretion in deciding compensation must be properly exercised.
- (iii) When proprietary rights of a subject are impugned by compulsory acquisition compensation must be adequate, realistic and reasonable. Perusing the documentation and the valuation report it appears that the 1st respondent's conduct runs contrary to even the "Wendsburys rules of fairness".

As regards the contention that the petitioner has an alternative remedy-
Per Udalagama, J.

"I am unable to subscribe to the view as this court is not precluded from exercising the power of judicial review as the present application presents peculiar facts and circumstances which warrant interference by this court to rectify an apparent injustice – acquisition proceedings having commenced as far back as 1980 and the owner is denied due compensation for the last 24 years and it is now a tenet of administrative law that no discretionary power is unreviewable.

- (iv) Natural justice is concerned also with the observance of fair procedure in the context of public decision making. It also entails the component of the right to receive reasons for a decision. It also means that a party is entitled to a reasoned consideration of his case and whether or not the parties are also entitled to be told the reasons for the decision. If they are withheld once judicial review commences the decision may be condemned as arbitrary and unreasonable.

APPLICATION for a writ of certiorari.

Cases referred to:

1. *Findley v Secretary of State for Housing Department* –1984 3 All ER 801.
2. *Gunasekera v Weerakoon* – 73 NLR 352
3. *Premachandra v Major Jayawickrema and others* 1994 – 2 SRI LR 90

4. *Ridge v Baldwin* – 1964 AC 40
5. *Karunadasa v Unique Gem Stones Ltd. and others* – 1997 1 SRI LR 258

L.C. Seneviratne, P.C. with A.R. Surendran and A. Selvaratne, for petitioner.
Sathiya Hettige, D.S.G., for respondents.

Cur.adv.vult

October 15, 2003

UDALAGAMA, J.

The petitioner by her petition dated 24.02.2003, *inter alia*, prayed for a writ in the nature of *certiorari* to quash the award contained in document P13 made by the 1st respondent and for a writ in the nature of *mandamus* directing the 1st respondent either to resume in a lawful manner the inquiry to compute the compensation payable to the petitioner under section 9 of the Land Acquisition Act in respect of the acquisition of the land morefully described in para 2 of the petition.

Admittedly the aforesaid land was acquired by the Urban Development Authority and compensation paid for a part of the land amounting to 7 acres as per the Urban Development Authority Law.

It is the position of the petitioner that the aforesaid land although acquired by way of vesting order in about 1980 under the provisions of section 38 (a) of the Land acquisition Act no notice as required by section 7 of the said Act was published in respect of the balance and the petitioner sought relief by an application for prerogative writ in the nature of *mandamus* in Court of Appeal case No. 1031/91 consequent to which notice having been published an inquiry held by the Divisional Secretary and the petitioner being dissatisfied with the intention of the former to award compensation on a purportedly unfair basis filed Fundamental Rights application on 08.08.94 bearing No. S.C. (FR) 207/94 complaining of the violation of the petitioner's rights under Article 12(1) of the Constitution. This Fundamental Rights application was dismissed as misconceived due to the fact that no award was made by the Acquisition Officer as at that time.

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The petitioner also sought relief by another application to this court for delay in the award of compensation as per the order in C.A. 1031/97 referred to above and in the course of which application the Attorney-General appears to have undertaken to expedite payment of compensation and a sum of approximately rupees 22 million paid as an initial payment. 30

However, the total estimated cost to be paid to the petitioner on a direction of the Cabinet of Ministers being approximately rupees 132 Million is computed at Rs. 79184 per perch and the petitioner being dissatisfied and aggrieved with the inadequate quantum of compensation sought relief in this court by instituting the present action seeking as stated above relief by way of a prerogative writ in the nature of *mandamus* directing the 1st respondent to continue the inquiry in accordance with the provision of section 17 (1) of the Land Acquisition Act and not on the basis of the Urban Development Authority Law. 40

It must be noted here that the original petitioner who claimed compensation in respect of the acquisition died and the present petitioner, the widow of the former, sought to proceed with the claim.

It is also significant that the value of the acquired land as per the valuation report prepared by a former Chief Valuer, Professor Shirley Fernando, and certified by another former Chief Valuer amounted to a sum very much more than the amount recommended by the Cabinet of Ministers. 50

However, consequent to further directions from this court the relevant section 9 inquiry did recommence before the 1st respondent who on 05. 02 2003 made an award to which the petitioner objects for the following among other reasons and seeks relief as prayed for in the instant application.

It is the submission of the learned President's Counsel for the petitioner that the said inquiry was not lawfully held and violated the basic principles of natural justice and was devoid of reasoning.

The learned Deputy Solicitor General appearing for the respondents raised a preliminary objection to this application on the basis that the petitioner had an alternative remedy in that the latter 60

was entitled to canvass the award under the provision of section 18 of the Land Acquisition Act and as such due to the existence of an alternative remedy that the petitioner was precluded from seeking relief by way of prerogative writ.

I am, however, unable to subscribe to this view as this court is not precluded from exercising the power of judicial review as the present application presents peculiar facts and circumstances which warrant interference by this court to rectify an apparent injustice. Besides the acquisition proceedings having commenced as far back as 1980 and the owner is denied due compensation for the last 24 years, and it is now a tenet of administrative law that no discretionary power is unreviewable." 70

De Smith Woolf Jowel in *Judicial Review of Administrative Actions* at page 311 of 15th edition states that "meanwhile our brief excursus into judicial control of discretionary power indicates that no statutory power is any longer unreviewable".

In any event there is no absolute or unfettered discretions in public law; discretions are conferred in public functionaries in trust for the public to be used for the public good and the propriety of the exercise of such discretion is to be judged by reference to the purpose of which they were so entrusted. 80

Besides the petitioner also has a legitimate expectation to a fair hearing.

As held by Lord Scarman in *Findley v Secretary of State for Housing Department*,⁽¹⁾ legitimate expectation can provide sufficient interest to enable one who cannot point to the existence of a substantive right, to obtain leave of court to apply for judicial review. So that the petitioner's right to a fair hearing on the basis of legitimate expectation is also a matter for consideration of this court. 90

As submitted by the learned Counsel for the respondent the facts in *Gunasekera v Weerakoon*⁽²⁾ could be distinguished considering the following facts and circumstances which appear to render the impugned award defective. Apart from the fact that the petitioner was represented by an Attorney-at-Law on certain days of the inquiry and as such the petitioner is precluded from saying that he was wholly denied of natural justice however the award signifi-

cantly does not refer to evidence to support the award. Also importantly no reasons had been given to conclusions reached by the 1st respondent especially the reason for the rejection of the exhaustive and detailed evaluation done by Professor Shirley Fernando referred to above. The compensation awarded for the land admittedly acquired had been done in 3 separate computations by which the extent of the entire land was subdivided into 3 lots bearing Nos. 1,2 and 3 without any reasoning as to the basis of such division or the varied values given to the individual lots. The 1st respondent also appears to have obviously on his own without notice to the petitioner or his Attorney-at-Law questioned people in the vicinity of the acquired area and had come to conclusions apparently without affording the elementary right to the petitioner or her Attorney-at-Law to question such people whose opinion the 1st respondent had considered for the purpose of computing the impugned award. 110

The 1st respondent's observation which apparently revealed that the major portion of the land so acquired was at that time of acquisition low-lying and marshy and inundated by floods was obviously based on the opinion gathered from people of the surrounding area the latter of which as stated above were not tested by cross examination. It also appears reasonable to assume that the 1st respondent valued the land as he did giving weight to the opinion gathered from such unknown people of the area which did not stand the test of examination. 120

I am inclined to the view that when propriety rights of a subject are infringed by compulsory acquisition compensation must be adequate, realistic and reasonable.

Perusing the documentation available in particular the orders of the Supreme Court and the valuation reports as tendered by the petitioner, I am also inclined to the view that the 1st respondent's conduct runs contrary to even the Wendsbury rules of fairness. 130

Discretion in deciding compensation must be properly exercised. *Premachandra v Major Jayawickrema and others.*⁽³⁾

Rules of natural justice demands that there has to be a fair hearing before an administrative authority acts or makes decisions affecting the rights of subjects. As stated by Wade "in its broadest

sense natural justice means simply "the natural sense of what is right and wrong and even in its technical sense equated with fairness." *Ridge v. Baldwin*,⁽⁴⁾ reinstated the right to a fair hearing as a rule of universal application affecting rights and natural justice.

Natural justice is concerned also with the observance of fair procedure in the context of public decision making. Natural justice also entails the component of the right to receive reasons for a decision. 140

Natural justice also means that a party is entitled to a reasoned consideration of his case and whether or not the parties are also entitled to be told the reason for the decision. If they are withheld, once judicial review commences the decision may be condemned as arbitrary and unreasonable. *Karunadasa v Unique Gem Stones Ltd. & others*.⁽⁵⁾

For the aforesaid reasons I would hold that this court would be justified in exercising its discretionary powers to grant a writ in the nature of *certiorari* on the basis that the decision making process of the inquiring officer was flawed. 150

Accordingly this court could issue a writ of *certiorari* quashing the award as contained in P13 and also issue a *writ of mandamus* directing the 1st respondent to either resume the inquiry in a lawful and proper manner under the provisions of section 9 of the Land Acquisition Act or conduct and conclude a fresh inquiry on the same basis within 2 months of this order considering the undue delay of approximately 24 years taken for the payment of compensation in respect of the acquired land morefully described in para 2 of the petition. 160

Application allowed.