

1971 *Present*: H. N. G. Fernando, C.J., and Samerawickrame, J.

THE PUBLIC TRUSTEE, Appellant, and
D. RAJARATNAM (District Land Officer), Respondent

*S. C. 1/70—Board of Review of Land
Acquisition No. BR/2664/CL/715*

Land Acquisition Act—Claim for compensation thereunder—Mode of assessment.

Where, in a claim for compensation made under the Land Acquisition Act, the Board of Review excluded relevant evidence from consideration, and acted somewhat arbitrarily in assessing the value of two portions of the land sought to be acquired—

Held, that the claimant was entitled to be granted relief. In such a case the prior sale price of a similar land in the vicinity should be taken into account.

APPEAL under the Land Acquisition Act.

H. W. Jayewardene, Q.C., with *Mark Fernando* and *D. C. Amerasinghe*, for the appellant.

S. Sivarasa, Crown Counsel, for the respondent.

Cur. adv. vult.

November 5, 1971. H. N. G. FERNANDO, C.J.—

This is an appeal from an order of the Board of Review—Land Acquisition—awarding compensation in respect of a land of about 42 acres acquired by the Crown under the Land Acquisition Act. The contention of the appellant, the former owner of the land, was that the amount of compensation should have been the sum of Rs. 145,600 which was claimed by him.

The Acquiring Officer had awarded a sum of Rs. 55,000 calculated at a flat rate of Rs. 1,300 per acre. On appeal to the Board of Review, the Board reached a determination that two portions of the land, in extent about one acre and about $3\frac{1}{2}$ acres respectively, were more valuable than the remaining part of the land, for the reason that in one case a portion of one acre on the North abutted a P. W. D. road, and in the other case, a portion of $3\frac{1}{2}$ acres on the South abutted a V. C. road. These two portions, in the opinion of the Board, should have been valued as building sites and not merely as agricultural land.

In reaching this conclusion, the Board considered a fair volume of evidence relating to the sales of other lands in the area which had been purchased as building sites, and was satisfied on that evidence that the valuation at the rate of Rs. 1,300 per acre was quite inappropriate in the case of these two portions of land. Having reached this conclusion, the Board in the concluding paragraph of its order made only the following statement:—

“ We would value the one acre fronting the P. W. D. road at Rs. 4,000 per acre. Our valuation of the $3\frac{1}{2}$ acres fronting the V. C. road is Rs. 3,000 per acre, subject to a deduction of 10% as quantity allowance.”

There were proved at the inquiry particulars relating to the sale of a land of about $\frac{1}{2}$ an acre, abutting the same V. C. road which cuts across the Southern portion of the appellant's land. That land of about $\frac{1}{2}$ an acre had been sold for a price representing a value of Rs. 7,500 per acre; allowing for the value of a hut which had stood on that land, the Valuer of the Valuation Department stated that the sale price represented a rate of Rs. 6,400 per acre for the land itself. The Board of Review took the sale of that land into account, together with the sales of certain other lands in the area, in reaching its conclusion that two portions of the appellant's land should be valued as building sites. But it does not appear from the order that the Board also took the sale of the $\frac{1}{2}$ acre into account in assessing the value of the two portions of the appellant's land. While both parties had referred to several sales in the area, the only sale which was strictly comparable was this sale of about $\frac{1}{2}$ an acre, because that was the only sale of a land in the vicinity which directly abutted the V. C. road; accordingly this sale afforded the best standard of comparison for the valuation of that portion of the appellant's land which abutted the same road. The Board, in its valuation of this portion at the rate of Rs. 3,000 per acre, makes no reference to any grounds upon which the valuation of Rs. 6,400 per acre should not also attach to this portion. It thus appears that the Board did not in fact take the

sale of the $\frac{1}{2}$ acre into account in assessing the value of the portion of $3\frac{1}{2}$ acres which abuts the V. C. road. Accordingly in our opinion the Board excluded relevant evidence from consideration, and acted somewhat arbitrarily, when it assessed the value of this portion at the rate of Rs. 3,000 per acre.

There was some evidence that as agricultural land the $\frac{1}{2}$ acre was superior to the appellant's portion of land, but there was nothing in the evidence to show that there is any substantial difference between the two lands when valued as building sites. We hold therefore that, upon the available evidence, the portion of land which abuts the V. C. road should properly have been valued at the rate of Rs. 6,400 per acre.

In regard to the portion of about one acre which abuts the P. W. D. road, the Board valued this portion at Rs. 1,000 more per acre than the portion abutting the V. C. road. Since no reasons were stated for this distinction, we do not feel able to maintain the same distinction in considering the valuation which should attach to the portion abutting the P. W. D. road. At the same time we see no reason why both these portions should not be assessed at the same value. Accordingly we hold that the portion of about one acre abutting the P. W. D. road should also be valued at Rs. 6,400.

For these reasons the valuation set out in the order of the Board is amended as follows :—

<i>Extent</i>	<i>Rate</i>	<i>Amount</i> Rs. . s.
1A. 0B. 6P. (fronting P. W. D. road) ..	Rs. 6,400 per acre ..	6,400 0
3A. 2B. 0P. (fronting V. C. road) ..	Rs. 6,400 per acre less 10% quantity allowance	20,160 0
1A. 3B. 0P. (Cabook pits and footpaths)		
0A. 1B. 20P. (Deniya land) ..	Rs. 400 per acre ..	850 0
35A. 2B. 11P. (Balance land) ..	Rs. 1,300 per acre ..	46,239 37
<u>42A. 0B. 31P.</u>		<u>73,649 37</u>

Accordingly, the total amount of compensation payable to the appellant is fixed at Rs. 73,649.37. We make no order as to costs.

SAMERAWICKRAMA, J.—I agree.

Amount of compensation increased.