

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

Court of Appeal Case No:
BOR/0001/2020

Land Acquisition Board of
Review Appeal
No. BR/36/2010/CL

In the matter of an Appeal under and in terms of Section 28 of the Land Acquisition Act No. 9 of 1950 as amended read with Article 138 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Appu Hennadi Totahewage Dawson
Silva (*Deceased*)
of No. 66, Madinnagoda Road,
Rajagiriya.

Appellant

1A. Mandadige Dharmi Swarnamali
Silva (nee Fernando)
(*Deceased*)
of No. 66, Madinnagoda Road,
Rajagiriya.

1B. Appu Hennadi Dilhan Nandika
Totahewage also known as Dilhan
Nandika Totahewa
of No. 66, Madinnagoda Road,
Rajagiriya.

1C. Appu Hennadi Ranga Ravinath
Totahewa of No. 66, Madinnagoda
Road, Rajagiriya.

Presently residing at :-
No. 59, Thornton Drive,
Penrith,
New South Wales 2750,
Australia.

1D. I.S. Totahewa

Both of No. 66, Madinnagoda Road,
Rajagiriya.

Presently residing at :-
No. 13, Yale Close,
North Rocks,
New South Wales 2151, Australia.

Substituted Appellants

Vs

**Additional Division Sec. Acquiring
Officer,**

Sri Lankan Land Reclamation and
Development Corporation,
No. 03, Sri Jayawardenepura Mawatha,
Welikada, Rajagiriya.

Respondent

AND NOW BETWEEN

**1B. Appu Hennadi Dilhan Nandika
Totahewage also known as Dilhan**

Nandika Totahewa, of No. 66,
Madinnagoda Road, Rajagiriya.

**1C. Appu Hennadi Ranga Ravinath
Totahewa** of No. 66, Madinnagoda
Road, Rajagiriya.

Presently residing at :-

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1B, 1C, and 1D Substituted

Appellants-Appellants

Vs

**Additional Division Sec. Acquiring
Officer,**

Sri Lankan Land Reclamation and
Development Corporation,

No. 03, Sri Jayawardenepura Mawatha,

Welikada, Rajagiriya.

Respondent-Respondent

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel : U Abdul Najeem for the 1B, 1C and 1D
Substituted Appellants-Appellants
Prabhashanee Jayasekara, SC for the
Respondent-Respondent.

Argued on : 03.11.2025

Written Submissions
of the 1B, 1C and 1D
Substituted Appellants
-Appellants tendered on : 15.09.2020

Written Submissions
of the Respondent-Respondent
tendered on : 15.09.2020

Decided on : 27.03.2026

K. M. S. DISSANAYAKE, J.

Instant appeal has been preferred to this Court by the 1A, 1B, 1C and 1D Substituted Appellants-Appellants (hereinafter called and referred to as ‘the Appellant’) from an order dated 14.10.2019 (hereinafter called and referred to as ‘the Order’) made by the Land Acquisition Board of Review (hereinafter called and referred to as ‘the LABR’) in the exercise of its appellate jurisdiction vested in it by section 28(1) of the Land Acquisition Act No. 9 of 1950 as amended (hereinafter called and referred to as ‘the Act’) in respect of an appeal preferred to it under and in terms of section 22 of the Act by the original Appellant thereto, namely; **Appu Hennadi Totahewage Dawson Silva** who had died during the pendency of the proceedings before it and the said 1A, 1B, 1C and 1D Substituted Appellants had been substituted as the

Substituted-Appellants in his place, thus, invoking the appellate jurisdiction of this Court on the following questions of law among any other questions of law that may be urged by Counsel at the hearing of this appeal, namely;

- “(i) The honourable Land Acquisition Board of Review erred in law in holding that the Appellant has not provided adequate proof of relevant comparative sales.
- (ii) The honourable Land Acquisition Board of Review erred in law in holding that a direct comparison of sale should be preferred over a valuation based on a notional development in the present case;
- (iii) The honourable Land Acquisition Board of Review erred in law in failing to appreciate the total failure on the part of the Respondent is justifying the valuation of Rs. 2,000/- per perch;
- (iv) The honourable Land Acquisition Board of Review erred in law in failing to justify the basis on which the Board concludes that the value of a perch of the subject land as at the relevant date should be Rs. 5,000/;
- (v) The honourable Land Acquisition Board of Review erred in law in holding that the subject land cannot be developed when in fact the law provides for the Appellant to seek permission to develop same;
- (vi) The honourable Land Acquisition Board of Review erred in law in holding that previous orders of the Board marked A5, A6, A7 and A8 are not relevant to the present Appeal.
- (vii) The Board misdirected itself on excluding the evidence with regard to the sales that took place which misdirection amounts to a misdirection on law.

- (viii) The several inferences were drawn by the board in arriving at its decision based on conclusion of facts drawn by the board are unsupported by legal evidence.
- (ix) The conclusion drawn by the Board from relevant facts were not rationally possible.
- (x) The board has drawn wrong and/or incorrect inferences from the evidence placed before the Board.
- (xi) The conclusions arrived at by the Board had not been supported by evidence.
- (xii) The Board has failed to consider the statutory provisions of the Land Acquisition Act and the Evidence Ordinance.
- (xiii) The Board had misdirected itself based on several inferences made after excluding admissible and relevant evidence and/or without considering relevant evidence.
- (xiv) The Board refused to acknowledge evidence placed before itself based on assumptions which were not put to the witness which amounts to a misdirection of Law.
- (xv) The Board misdirected itself by basing its decision on matters which did not arise during the course of the evidence.
- (xvi) The Board has failed to give reasons as to how it arrived at its decisions.
- (xvii) All the Members of the Board that delivered the Order were not present at the hearing of the evidence and therefore, did not have the jurisdiction to make the Order in question.”

While, totally, denying the contentions advanced by the learned Counsel for the Appellant at the hearing of this appeal before us, it was on the other hand,

contended by the learned State Counsel for the Respondent that computation of the quantum of compensation awarded to the Appellant in its order by the LABR is based on the evidence led before it and therefore, there is no error in it and as such it can sustain both in fact and law and therefore, the appeal should be dismissed with costs.

Although, the appeal was argued by the learned Counsel for the Appellant mainly, on the three heads, namely; a) the proof of comparative sales; b) the basis of valuation; and, c) failure of the LABR to give reasons in arriving at its conclusions, however, upon a careful perusal of all those three heads, it appears that all those three heads are interwoven, and therefore, I would propose to deal with all of them together.

Before I venture to examine the legal sustainability of the arguments so advanced by the learned Counsel for the Appellant under those three heads as enumerated above, let me now, briefly, set out the facts and circumstances relevant and material to the instant appeal as recited in the petition of appeal by the Appellant.

Pursuant to a notice published in the Extra-Ordinary Gazette of the Democratic Socialist Republic of Sri Lanka (**A2/R7**) under section 7 of the Act, by the Acquiring Officer-Sri Lanka Land Reclamation and Development Corporation who being the Respondent-Respondent to the instant appeal (hereinafter called and referred to as the 'Respondent'), the deceased Appellant had notified his claim for compensation in a sum of **Rs. 112,400,000/-** as the market value thereof at the time of the publication of the notice, namely; **03.01.1994**, to the Respondent in respect of the land intended to be acquired by him, namely; lot 6 containing in extent of 1.871 Hectares or 4 Acres 2 Roods 9.41 Perches, as shown and depicted in the Preliminary Plan bearing No. 7290, dated 10.12.1992, prepared by Surveyor General for the purpose of acquisition under the provisions of the Act (**A1/R1A**); and that the Respondent, had having held an inquiry into the claims for compensation under the provisions of the Act, made a decision under section 17 thereof (**R11**), thereby, determining that the deceased

Appellant is entitled to the entirety of the land intended to be acquired; and thus, awarding **Rs. 1,468,236.73/-** to the deceased Appellant as being compensation; and that being aggrieved by the award made by the Respondent, the deceased Appellant had under section 22(1) of the Act, preferred an appeal to the LABR on the premise that the amount of the compensation allowed to him by the Respondent is insufficient; and that the LABR had in appeal, set aside the award made by the Respondent, namely; Rs. 1,468,236.73/- and substituted thereof, in a sum of **Rs. 3,697,050/-** being compensation payable to the deceased Appellant; and that being aggrieved only by that part of the decision of the LABR with regard to the mode of the assessment of compensation, instant appeal had been preferred to this Court by the Appellant praying for an order to set aside the award of the LABR and to enhance it to a sum of **Rs. 49,056,603/-** being the market value of the land intended to be acquired by the Respondent on the date of the publication in the Gazette, of the notice under section 7 of the Act (**A2/R7**) namely; **03.01.1994**.

Having briefly, set out the facts and circumstances relevant and material to the instant appeal, let me now, examine the legal sustainability of the arguments so advanced by the learned Counsel for the Appellant under those three heads as enumerated above.

It is in this context, I would think it appropriate at this juncture to examine the provisions governing assessment of quantum of compensation under the provisions of the Act and the part VI of the Act comprising of sections 45, 46, 46A, 47 and 48, expressly, enact the special provisions with regard to the assessment of the amount of compensation to be awarded to a person whose land is subject to the acquisition under the provisions of the Act for a public purpose and they read thus;

“45.

(1) For the purposes of this Act **the market value of a land in respect of which a notice under section 7 has been published shall**, subject

as hereinafter provided, **be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that notice in the Gazette :**

Provided that, **in determining that amount, all such returns and assessments of income from, or of the capital or annual value of, that land** as have been made or acquiesced in by the owner of that land **for the purposes of any rate or tax imposed in respect of that land, shall be taken into consideration.**

(2) For the purposes of this Act the market value of a servitude shall-

(a) where it is a new servitude which is to be created by its acquisition under this Act, be the amount by which the market value of the servant tenement of the servitude will be diminished by the creation of the servitude, or

(b) where it is an existing servitude which is to be extinguished by the acquisition of the servitude and its servant tenement under this Act, be the amount by which the market value of the dominant tenement of the servitude will be diminished by the extinction of the servitude.

(3) Where any portion of a land which is to be acquired under this Act is situated within any street lines or building limit defined by or under any other written law, the market value of that portion shall be the market value which that portion would have if it does not fall within such street lines or building limit :

Provided that the acquiring officer shall, notwithstanding anything in this Act, tender and make payment of compensation in respect of that portion of land in the following manner :-

(a) he shall forthwith on the making of an award under section 17 in respect of that portion, pay to the persons entitle to

compensation according to that award in the proportions in which such compensation has been apportioned to such persons by that award, cash in an amount equal to-

(i) the market value of such portion of land on March 31, 1978 ; or

(ii) the market value of such portion of land on the date on which the street lines or building limits within which such portion is situated, were defined, whichever date is later ; and

(b) the difference between the market value of that portion of land on the date on which a notice under section 7 was published in respect thereof and the amount paid under paragraph (a) shall be paid to the persons entitled to compensation according to the award made under section 17 in the proportions in which such compensation has been apportioned to such persons by that award, in the form of Government bonds escapable after ten years and carrying interest at the current rate of interest payable on medium-term Government bonds issued by the Central Bank of Sri Lanka.”[Emphasis is mine]

“46.

(1) The amount of compensation to be paid under this Act to any person interested in a land shall-

(a) where the compensation is for the acquisition of that land, be based on the market value of that land, or

(b) where the compensation is for the acquisition of a servitude over that land, be based on the market value of that servitude,

and shall be proportionate to his interest in that land. No additional compensation shall be allowed to him in consideration of the

compulsory nature of the acquisition, but, where it is the land which is to be acquired, he shall be entitled to"

(i) compensation for any damage sustained by reason of the severance of the land from his other land, the severance being deemed to occur on the date on which the notice under section 7 in respect of the land is published in the Gazette;

(ii) compensation for any damage sustained by reason of the acquisition of the land injuriously affecting, in any manner other than that mentioned in paragraph (i), his adjoining land or any immovable property thereon, the injurious affection being deemed to occur on the aforesaid date;

(iii) compensation for any such loss of earnings from any business carried on the land on the aforesaid date as may be caused by the acquisition of the land; and

(iv) any reasonable expenses of effecting any change of residence necessarily caused by the acquisition of the land:

Provided that-

(a) the total amount of the compensation under paragraph (i) and paragraph (ii) of this subsection shall not exceed twenty per centum of the market value of the land to be acquired;

(b) the amount of the compensation under paragraph (iii) of this subsection shall not exceed three times the average annual net profits from the business, as shown by the books of accounts, for the three calendar years immediately preceding the date on which the notice under section 7 in respect of the land is published in the Gazette; and

(c) no compensation shall be allowed under paragraph (iii) of this subsection if the business is the sale or disposal of the produce of the land to be acquired.

(2) Where any premises which are to be acquired under this Act are, and but for their compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation payable in respect of those premises under this Act may, if the acquiring officer assessing the compensation is satisfied that the persons interested in those premises genuinely intend, when those premises are acquired, to provide for the aforesaid purpose premises equally convenient as the acquired premises, be assessed on the basis of the reasonable cost of providing for that purpose premises equivalent to those which are to be acquired under this Act.”

“46A. In determining under section 46 the compensation to be paid to any person for the acquisition of any land, no account shall be taken of any improvements made on the land by the State whether before or after the date of commencement of this Act.”

“47. Where the compensation assessed under section 46 is for the acquisition of only a part of any land, the amount by which the market value of the remaining part of that land is likely to increase by reason of such acquisition shall be deducted from the amount of such compensation, the amount of the deduction being not more than twenty per centum of the market value of such part of that land as is acquired under this Act.”

“48. In determining under section 46 the compensation to be paid to any person for the acquisition of a land or servitude, none of the following matters shall be taken into consideration:”

(a) the degree of urgency which has led to the acquisition of the land or servitude under this Act;

(b) his disinclination to part with his interest in the land or to allow the acquisition of the servitude ;

- (c) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;
- (d) any damage which, after the award of compensation, is likely to be caused by or in consequence of the use to which the land or servitude will be put after its acquisition under this Act;
- (e) any increase which is likely to occur in the market value of the land by reason of the use to which it will be put after its acquisition under this Act;
- (f) any outlay or improvement made or commenced on the land after the notice under section 4 in respect of the land was given or exhibited unless such outlay or improvement was reasonably for the purpose of maintaining or preserving the land or any plantation, building, fixture, or machinery thereon;
- (g) the special suitability or adaptability of the land for any purpose to which it could be applied only under statutory powers or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department or local authority or of any body of persons constituted by or under any other written law;
- (h) the amount of any such increase in the market value of the land as has been caused by the use thereof or of any premises thereon in a manner which can be restrained by any court or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health.”

In the light of section 46(1)(a) of the Act, the amount of compensation to be paid under the Act to any person interested in a land shall where the compensation is for the acquisition of that land as in the instant case, be based on the market value of that land.

What then, is the market value for the purposes of the Act?

In the light of the section 45 of the Act, the market value of a land in respect of which a notice under section 7 thereof has been published, shall subject to the provisions contained in part VI of the Act, be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of the publication of that notice in the Gazette.

What then is the test/criteria to be applied in determining the market value for the purposes of the Act?

The test/criteria to be applied in determining the market value of a land in respect of which a notice under section 7 thereof has been published shall subject to the provisions contained in part VI of the Act, **be the test/criteria which will determine the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of the publication of that notice in the Gazette.**

[Emphasis is mine]

Applying the test/criteria laid down in section 45 of the Act to the facts of the instant appeal, the test to be applied in determining the market value of the land intended to be acquired by the Respondent in respect of which a notice under section 7 thereof had been published by him, shall subject to the provisions contained in part VI of the Act, **be the test/criteria which will determine the amount which the land intended to be acquired in the instant case might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of the publication of that notice in the Gazette. (A2/R7), namely; 03.01.1994** [Emphasis is mine]

What then is the material to be taken into consideration in determining the market value of the land in respect of which notice under section 7 of the Act has been published?

Answer thereto, can be found in the proviso to section 45(1) of the Act which enacts that “Provided that, **in determining that amount, all such returns and assessments of income from, or of the capital or annual value of,**

that land as have been made or acquiesced in by the owner of that land for the purposes of any rate or tax imposed in respect of that land, shall be taken into consideration.” [Emphasis is mine]

Hence, the material as envisaged by the proviso to section 45(1) of the Act, shall be the material that should be taken into consideration in determining the market value of the land in respect of which a notice under section 7 of the Act has been published.

What then is the date on which the market value should be assessed?

In light of the proviso to section 45(1) of the Act, for the purposes of the Act, the market value of a land in respect to which a notice under section 7 of the Act has been published **shall be the market value thereof, on the date of the publication of that notice in the Gazette (A2/R7)**. [Emphasis is mine]

Applying the test to the facts of the instant action, the date on which the market value shall be assessed, is the date of publication of the notice under section 7 of the Act in the Gazette **(A2/R7), namely; 03.01.1994** [Emphasis is mine].

It is trite principle of law that once a test and/or criteria and/or guideline has been laid down by a Statute itself in determining a particular fact, Court is bound to follow and apply the test and/or criteria and/or guideline so laid down by the Statute itself in determining a particular fact as such in instances where the language of the Statute or the provision thereof, is plain, simple and not lead to any ambiguity and a Court cannot in such circumstances, rely on the judicial precedent in that regard totally, disregarding the law laid down by a Statute without first applying the test and/or criteria and/or guideline so laid down by the Statute itself in determining a particular fact as such and judicial precedent would in such circumstances, be of no assistance or of little assistance, in determining the same.

Hence, not only the Acquiring Officer-the Respondent in the instant action but also LABR in the exercise of its appellate jurisdiction is bound to follow the test and/or criteria and/or guideline so laid down by section 45 of the

Act in determining the market value of the land in respect of which a notice under section 7 of the Act had been published by the Respondent in the instant action for the purpose of determining the amount of compensation to be awarded to the owner thereof, and neither the Acquiring Officer-the Respondent in the instant action nor LABR has in such circumstances, power to look elsewhere without first following and/ or applying the test and/or criteria and/or guideline so laid down by section 45 of the Act in determining the market value of the land in respect of which a notice under section 7 of the Act had been published by the Respondent in the instant action for the purpose of determining the amount of compensation to be awarded to the owner thereof.

However, having properly, directed its mind in the first place to the statutory provisions laying down the test/criteria to be applied in determining the market value for the purpose of computation of compensation to be awarded under the Act as enumerated above, the Acquiring Officer or LABR would then, be entitled to be further guided, by the principle laid down by Court in this regard and it is in this context, let me now, examine the principle laid down by the judicial precedent in determining the market value of a land intended to be acquired under and in terms of the provisions of the Act.

It was *inter-alia*, laid down by Court in **Government Agent Southern Province Vs. Silva 3 NLR 235 at 240** that “The value of a piece of land cannot be determined so easily as that of a commodity like rice, for instance, which has a recognized market price. The value of any given land **depends on its extent, situation, relative position, and its adaptability for any particular use. This value may again be affected by the use made of the property immediately adjoining it. Given all the surrounding circumstances, What is the best use to which the land can be put.? is I think a fair question to be asked in a case of the kind. Then, what are the tests of the market value of a piece, of land? One that naturally suggests itself is the price which any one would give for it at a public auction. Another test is the price given at recent sales for pieces of land**

similarly situated, but the value of this test altogether depends on the circumstances attending such sales. The rent and the rate of interest obtaining in the district are also material for computing the market value. These rules are not of course exhaustive, but I think that they indicate the line of inquiry to be taken in similar cases...” [Emphasis is mine]

In **Government Agent Vs. Perera 7 NLR 313**, at page 320 it was held by Court that “There are undoubtably, several tests by which the market value of any particular allotment of land may be arrived at, **but one of the truest and fairest is the actual amount paid for a similar allotment of land situated in the same vicinity and used for similar purposes**” [Emphasis is mine]

It was *inter-alia*, laid down by Court in **Perera Vs. Fernando 51 NLR 121** at page 128 that “Now it well settled law that **evidence of recent sales in the vicinity, if properly adduced, is an important test in deciding upon the market value provided, that such sales were of property similarly situated;**..... to this I would add that the sales must be shown to have been by a willing seller to a willing buyer.....” [Emphasis is mine]

This Court in the decision in **CA/LA/Acq. 04/2011 & 05/2011**-decided on 12.12.2013, cited with approval a passage from the decision in **Trustee Vs. Rajarathnam 75 NLR 391**, wherein it was *inter-alia*, held that, “In such a case **the prior sale price of a similar land in the vicinity should be taken into account**” [Emphasis is mine]

Applying the test and/or the criteria laid down by section 45(1) of the Act, the market value of the land intended to be acquired in the instant action shall subject to the provisions contained therein, be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of the notice under section 7 of the Act in the Gazette (**A2/R7**), namely; **03.01.1994**.

In the light of the proviso to section 45(1) of the Act, **in determining that amount, all such returns and assessments of income from, or of the**

capital or annual value of, that land as have been made or acquiesced in by the owner of that land for the purposes of any rate or tax imposed in respect of that land, shall be taken into consideration. [Emphasis is mine]

It is no doubt that all such returns and assessments of income from, or of the capital or annual value of, that land as have been made or acquiesced in by the owner of that land for the purposes of any rate or tax imposed in respect of that land should be in the possession of the Appellant in the instant appeal.

Hence, it was incumbent upon the Appellant to have furnished those material before the Acquiring Officer and/or LABR so as to enable the Acquiring Officer and/or LABR to have determined the market value of the land intended to be acquired by the Respondent on the date of the publication of the notice under section 7 of the Act on **03.01.1994** in the Gazette (**A2/R7**) for; it was the Appellant who had asserted before the Respondent in the first place that the market value of the land intended to be acquired by the Respondent on the date of the publication of the notice under section 7 of the Act on **03.01.1994** in the Gazette (**A2/R7**) was **Rs. 112,400,000/-** which was subsequently, amended by the original Appellant to be **Rs 73,941,000/-** in his appeal to the LABR which was further amended by the Appellant to be **Rs. 49,056,156.49/-** in his written submissions furnished by him to the LABR on the basis that market value of a perch thereof, was **Rs. 66,345/-** as observed by the LABR in the impugned order, and therefore, sole burden of proof was on the Appellant to have proved what he had asserted before it in terms of section 3 of the Evidence Ordinance to be read with sections 101,102 and 103 thereof.

However, it manifestly, appears upon a careful scrutiny of the proceedings before LABR, that the Appellant had totally, failed to furnish thereto, any of those documents as envisaged by the proviso to section 45(1) of the Act as enumerated above, so as to enable the Respondent and/or LABR to have determined the market value of the land intended to be acquired by the Respondent on the date of the publication of the notice under section 7 of the

Act on **03.01.1994** in the Gazette (**A2/R7**) on the basis that perch value thereof, was **Rs. 66,345/-** on that day as asserted by the Appellant.

Furthermore, the Appellant had heavily, relied on the documentary evidence produced before LABR through his expert witness-Mr. Kaleel-Private Valuer marked as '**A3**' to '**A12**' in determining the market value of the land intended to be acquired by the Respondent on the basis of the residual or development method, by way of past awards and by way of past sales as a basis of valuation thereof.

Let me now, examine them.

Under and in terms of Section 10(1)(a) of the Act, the original Appellant had been awarded the entirety of the land intended to be acquired by the Respondent being sole owner thereof.

In terms of Section 17 of the Act, the original Appellant had been awarded in a sum of Rs. 1,468,236.73 as compensation. It is against this decision of the Respondent awarding compensation to him as aforesaid, the original Appellant had preferred an appeal to LABR.

The original Appellant had heavily, relied on the valuation prepared by Mr. Kaleel-the private valuer in order to substantiate the claim notified by him to the Respondent to the Land Intended to be acquired by him.

While giving evidence before LABR for the original Appellant, Mr. Kaleel-private valuer had stated that he had valued a perch of the land intended to be acquired by the Respondent at Rs. 66,000/-; and that his valuation was based on the Notional Development Scheme proposed by him in the Notional Development Plan (**A12**); and that it was based on the past sales of the Keels lands which are geographically, located along Gothami Road, situated at Borella within the Municipal Council limit of Colombo; and that the Keels lands that were used as basis for his valuation of the land intended to be acquired by the Respondent were at the time, valuation was prepared by him, were developed lands by Keels Development Limited.

Upon a careful analysis of the Schedule of Deeds of Transfer of Blocks Relating to Keels Development Limited-Sold by Public Auction Sale held on October 1992 (A9), the plan bearing No. 91/40A, dated 26.01.1992 (A10), Estimate of cost of filling as of 1994 (A11) and Notional Development Scheme (A12), it becomes manifestly, clear beyond any doubt that Mr. Kaleel-private valuer had based his valuation in respect of the land intended to be acquired by the Respondent on the basis of the value of the Keels Lands admittedly, sold by public auction by Keels Development Limited **as developed lands**. Conversely, the land intended to be acquired by the Respondent was a paddy land which is now, abandoned and hence, a marsh land at the time of the publication of the notice under section 7 of the Act on **03.01.1994** in the Gazette (A2/R7).

Hence, the pertinent question that arose for consideration before the LABR as manifest from the order sought to be impugned in the instant appeal being; **Can the value of the Keels Lands which are admittedly, the developed lands as aforesaid, be considered as comparable in computing the value of the land intended to be acquired by the Respondent which is admittedly, a marsh land?** This question was answered in the negative by the LABR for the reasons stated in the order and the correctness of it is now, sought to be impugned by the Appellant in the instant appeal before us.

It is in this context, let me now, examine section 45(1) of the Act which enacts thus;

“45.

(1) For the purposes of this Act **the market value of a land in respect of which a notice under section 7 has been published shall**, subject as hereinafter provided, **be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that notice in the Gazette.”**

In the light of section 45(1) of the Act, **the market value of a land in respect of which a notice under section 7 has been published shall**, subject as hereinafter provided, **be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity on the date of publication of that notice in the Gazette.**[Emphasis is mine]

In view of the test/criteria laid down in the judicial precedents quoted above, the market value of any given land depends on its extent, situation, relative position, and its adaptability for any particular use.

Furthermore, the market value of land may again be affected by the use made of the property immediately adjoining it.

Moreover, what are the tests of the market value of a piece of land? One that naturally suggests itself is the price which any one would give for it at a public auction. Another test being the price given at recent sales for pieces of land **similarly situated**, but the value of this test altogether depends on the circumstances attending such sales. [Emphasis is mine]

One of the truest and fairest is the actual amount paid **for a similar allotment of land situated in the same vicinity and used for similar purposes.** [Emphasis is mine]

The evidence of recent sales in the vicinity, if properly adduced, is an important test in deciding upon the market value provided, that such sales were of property similarly situated.

Hence, the prior sale price of a similar land in the vicinity should be taken into account in determining the market value of the land intended to be acquired under the Act provided, that such sales were of property similarly situated.

Let me now, examine the pivotal question that arose for its decision by the LABR namely; **Can the value of the Keels Lands which are admittedly, the developed lands as aforesaid, be considered as comparable in computing**

the value of the land intended to be acquired by the Respondent which is admittedly, a marsh land? and the decision made therein, and the reasons adduced therefor, by it. [Emphasis is mine]

In the light of the definition given to the phrase “**the market value of a land in respect of which a notice under section 7 has been published**” as contained in section 45(1) of the Act and the tests/criteria laid down by Courts as enumerated above, in determining the Market Value of the same, namely; **the prior sale price of a similar land in the vicinity** of the land intended to be acquired in the instant appeal should be taken into account in determining the market value of it **provided, that such sales were of property similarly situated**, the pivotal question that arose before the LABR was; **Can the value of the Keels Lands which are admittedly, the developed lands as aforesaid, be considered as comparable in computing the value of the land intended to be acquired by the Respondent which is admittedly, a marsh land?** [Emphasis is mine]

It may now, be examined.

For the value of the Keels Lands which are admittedly, the developed lands as aforesaid, to be taken into consideration as comparable in computing the value of the land intended to be acquired by the Respondent, as being **prior sale price of a similar land in the vicinity** of the land intended to be acquired in the instant appeal, they too, ought to have been similarly, situated in the vicinity of the land intended to be acquired in the instant appeal.

Point to be noted here is that, the land intended to be acquired by the Respondent under the Act, is an abandoned paddy field which is now, a marsh land with a depth of 4 to 5 ft as admitted by all the parties before LABR whereas, Keels Lands are developed lands at the time of the notice under section 7 of the Act being published by the Respondent and therefore, Keels Lands are not the lands similarly, situated as the land intended to be acquired and as such the sale price of the Keels Lands cannot in any manner, be considered as comparable in computing the sale price of the land intended to

be acquired it being a marsh land as rightly, held by the LABR in rejecting the valuation of Mr. Kaleel-private valuer being one of the grounds adduced therefor.

Moreover, the land intended to be acquired by the Respondent is situated 1Km away from Rajagiriya and located along Madinnagoda Road within the Urban Council Limits of Kotte, whereas the Keels Lands are located at Gothami Road, Boraella within the Municipal Limits of Colombo, and hence, Keels Lands are situated in a prime location closer to Colombo and the land intended to be acquired is situated about 1Km off Rajagiriya along Madinnagoda Road and access thereto therefrom through a private pathway and hence, Keels Lands and the land intended to be acquired by the Respondent under the Act are not only not similarly, situated but also not situated in the same vicinity but rather in two different geographical areas and therefore, Keels Lands are not the lands similarly, situated in the same vicinity as the land intended to be acquired and as such the sale price of the Keels Lands being developed lands at the time of the publication of notice under section 7 of the Act, cannot in any manner, be considered as comparable in computing the sale price of the land intended to be acquired it being a marsh land as rightly, held by the LABR in rejecting the valuation of Mr. Kaleel-private valuer being one of the other grounds adduced therefor.

Besides, Mr. Kaleel-private valuer had under cross-examination, expressly, admitted his ignorance as to the date on which the property had been purchased by Keels Development Limited or as to the price at which it had been purchased by it. Furthermore, Mr. Kaleel-private valuer had under cross-examination, expressly, admitted that he was unaware of the ground situation of the Keels Lands that existed at the time it was purchased by Keels Development Limited.

Hence, point to be noted here is that, although these two lands cannot be compared in terms of its geographical location, however, the only sale that has been submitted to the LABR in order to show the market value of the lands referred to as swamps is the Keels Lands.

Hence, the past sales submitted to the LABR by the Appellant are undoubtedly, the sales made after development and in the circumstances, the point to be taken into consideration is that neither the Appellant nor the Respondent had submitted to the LABR any sales of marsh land or high land near the land intended to be acquired by the Respondent under the provisions of the Act to indicate the value of that area. Also, since the sales of high lands have not been submitted to the Board, it appears that the area in question is an area where there has been not many sales.

Therefore, the only land presented by the Original Appellant to the LABR with a swampy commercial value is the one shown by the Keels Development Limited.

The other material point to be noted here is that, evidence of Mr. Kaleel-private valuer before LABR does not appear to have been consistent for; he had one occasion, stated in evidence that the depth of the land intended to be acquired by the Respondent under section 7 of the Act, is 3Ft whereas he had on the other occasion, stated in evidence that the depth of the land was 4 to 5Ft thereby, clearly, showing his ignorance of this point which is very vital in computing the market value of the land intended to be acquired. Hence the pivotal question was; how did Mr. Kaleel-private valuer prepare a valuation for the land intended to be acquired by the Respondent in the absence of correct and accurate market data?

Hence, it clearly, appears that Notional Development Scheme **(A12)** proposed by Mr. Kaleel-private valuer was not based on correct and accurate market data and hence, the valuation based on the Notional Development Scheme **(A12)** which is based on the sale price of the developed Keels Lands, cannot in any manner, be considered to be accurate and precise showing the market value of the land intended to be acquired by the Respondent for want of correct and accurate market data as rightly, held by LABR.

In view of the above, the pivotal question that arose before the LABR for its consideration was; Under those circumstances can the valuation of Mr. Kaleel-private valuer be accepted and acted upon as one accurately, and precisely, showing the market value of the land intended to be acquired by the Respondent? This question too, was rightly, answered in the negative in its order by the LABR for the same reasons as set out by me as hereinbefore.

It was the original Appellant who had asserted before LABR in appeal that the award made by the Acquiring Officer-the Respondent to the instant appeal, was insufficient and therefore, the sole burden of proof was rested on the original Appellant under and in terms of section 3 of the Evidence Ordinance to be read with sections 101, 102 and 103 thereof, to have proved his assertion in the affirmative before the LABR as held by the Supreme Court in **SC(Appeal) No. 12/2006-Decided on 18.06.2009**. However, the Appellant had totally, failed to establish before the LABR that the award made by the Acquiring Officer-the Respondent to the instant appeal, was insufficient and the market value of the land ought to be **Rs. 49,056,156.49/-** as stated in his post argument written submissions filed by the original Appellant before the LABR as rightly, held by LABR in rejecting the valuation of Mr. Kaleel-private valuer.

In view of my findings as aforesaid, I would hold that the LABR is entirely, justified in rejecting the valuation submitted to it through the expert witness of the Appellant Mr. Kaleel-private valuer.

Mr. Kaleel-private valuer while giving evidence for the Appellant before the LABR in appeal, had sought to heavily, rely on the past decisions of LABR in appeals bearing No. CL 1293 and CL 1294, CL 1257, CL 1151 and CL 1152 and CL 1221(**A4**) in support of the valuation submitted by him in respect of the land intended to be acquired by the Respondent and the decisions of LABR pertaining thereto had been submitted to LABR by the original Appellant through Mr. Kaleel-private valuer marked as '**A5**', '**A6**', '**A7**' and '**A8**'.

However, it is to be observed that the LABR in its decisions in CL 1293 and 1294(A5) had observed that the lands-the subject matter of three past decisions of the LABR in CL 1221(A8) and CL 1151 and CL 1152 (A7) which were heavily, relied on by the Appellant in order to substantiate the valuation submitted by Mr. Kaleel-private valuer, are situated within the Municipal Council Limits of Colombo and therefore, they are in my opinion, in much superior situation and are therefore, not comparable.

Furthermore, the findings of the LABR that the property-the subject matters of those past decisions are situated along Gothami Road, Boraella and its surroundings and that the value stated therein, was the value after development of the property- had never been challenged by the Appellant in the instant appeal and therefore, those findings of LABR remains unchallenged. It therefore, appears that they would fall not within the Sri Jayawardenapura Kotte, Urban Council Limit but within the Colombo Municipal Council limit and as such they are in my opinion, in much superior situation and are therefore, not comparable using the comparable method of valuation as the basis of the valuation in determining the market value of the land intended to be acquired by the Respondent on the date of the publication of the notice under section 7 of the Act in the Gazette (A2/R7) on 03.01.1994 as rightly, held by LABR.

Hence, it clearly, appears that the valuation submitted by Mr. Kaleel- Private Valuer for the original Appellant, of the land intended to be acquired by the Respondent on the date of the publication of the notice under section 7 of the Act in the Gazette (A2/R7) on 03.01.1994 had not been supported by any evidence oral or documentary by the Appellant and therefore, it is without any basis and as such it cannot, sustain both in fact and law and therefore, it should be rejected as rightly, held by LABR.

These findings of LABR had been well, supported by the evidence of Ms. Geetha Fernando-the Government Valuer before LABR that the past sales of marshy lands pertaining to a similar allotment of land situated in the same vicinity and used for similar purposes, could not be traced by her.

in view of the foregoing, I would hold that the Appellant had not established in evidence either before the Respondent or LABR that market value of the land intended to be acquired by the Respondent on the date of the publication of the notice under section 7 of the Act in the Gazette (**A2/R7**) on **03.01.1994** is the value as notified to the Respondent in the first place or as indicated in the petition of appeal filed in the LABR in the second place or as stated in the post argument written submissions filed by the Original Appellant in the LABR as enumerated above.

In the circumstances, LABR had having considered the evidence oral and documentary adduced before it by both the Appellants as well as the Respondent, proceeded to assess the amount of compensation to be awarded to the original Appellant on the basis that the market value of a perch thereof is Rs. 5000.00/- thereby, setting aside the decision of the Respondent with regard to the award of compensation to the original Appellant and substituting therefor the amount of compensation to be awarded to the original Appellant as determined by LABR in its decision now under challenge before us.

It is significant to observe that the original Appellant had not shown to us any reason in the course of the argument why the order of LABR with regard to the assessment of the amount of compensation to be awarded to the original Appellant should be set aside or varied rather than contending that LABR had not adduced any reason as to the manner in which compensation had been so assessed by it. However, it is to be observed that a careful consideration of the order in its totality, clearly, shows the very basis of the computation of the compensation so awarded to the original Appellant in appeal by the LABR

Hence, I would see no legal basis to interfere with the order of LABR with regard to the assessment of the amount of compensation to be awarded to the original Appellant in the absence of any evidence to the contrary.

I would thus, affirm the order of LABR under appeal.

In the result, I would dismiss the appeal.

In view of all the above circumstances, I make no order for costs.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL