

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

**CA Case No:  
CA/BOR/0001/2023**

**CA/Land/Acq./  
Land/Acquisition  
Board of Review No.  
BR/282/2008/CL**

In the matter of an appeal filed in terms of Section 28 (1) of Land Acquisition Act against the order dated 16/11/2022 given by the Land Acquisition Board of Review in Appeal No: BR/2822008/CL

1. **I. S. Thotahewa,**  
No.66  
Madinnagoda Road,  
Rajagiriya.
  
2. **Appu Hennadi Totahewage  
Dawson Silva,**  
No.66  
Madinnagoda Road,  
Rajagiriya.  
  
(Now Deceased)

**Petitioners**

**Vs.**

**Acquiring Officer,**  
Divisional Secretary,  
Divisional Secretariat  
Sri Jayawardenapura Mawatha,  
No. 341/2 Kotte Road,  
Rajagiriya.

**Respondent**

**AND THEN**

1. **I. S. Thotahewa,**  
No.66  
Madinnagoda Road,  
Rajagiriya.

**1<sup>st</sup> Petitioner-Appellant**

**Vs.**

1. **Mandadige Dharimi Swarnamali Silva (nee) Fernando**, No.66  
Madinnagoda Road,  
Rajagiriya.  
  
(Now Deceased)
2. **Appu Hennedi Dilhan Nandika Totahewage**, also knowns as Dilhan Nandika Totahewa  
No.66  
Madinnagoda Road,  
Rajagiriya.
3. **Appu Hennadi Ranga Ravinath Totahewa**,  
(Appeared via Power of Attorney of Appu Hennedi Dilhan Nandika Totahewage).  
All at No.66, Madinnagoda Road,  
Rajagiriya.
4. **I. S. Thotahewa**,  
No.66, Madinnagoda Road,  
Rajagiriya.

**1<sup>st</sup>-4<sup>th</sup> Substituted-Petitioner-Appellants**

**Vs.**

**Acquiring Officer**,  
Divisional Secretary,  
Divisional Secretariat  
Sri Jayawardenapura Mawatha,  
No. 341/2 Kotte Road,  
Rajagiriya

**Respondent-Respondent**

**AND THEN BETWEEN IN THE LAND  
ACQUISITION BOARD OF REVIEW**

1. **I. S. Thotahewa,**  
No.66  
Madinnagoda Road,  
Rajagiriya.

**1<sup>st</sup> Petitioner-Appellant**

**Vs.**

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2. **Appu Hennedi Dilhan Nandika  
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**1<sup>st</sup>.4<sup>th</sup> Substituted-Petitioner-Appellants**

**Vs.**

**Acquiring Officer,**  
Divisional Secretary,  
Divisional Secretariat  
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**Respondent-Respondent**

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Rajagiriya.

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**1<sup>st</sup>-4<sup>th</sup> Substituted-Petitioner-Appellant-Appellants**

**Vs.**

**Acquiring Officer,**  
Divisional Secretary,  
Divisional Secretariat  
Sri Jayawardenapura Mawatha,  
No. 341/2 Kotte Road,  
Rajagiriya

**Respondent-Respondent-Respondent**

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

Counsel : Shamalie de Silva with Sandun Batagoda  
and Shabnam Mohamed instructed by  
W. M. D. M. B. Wasala for the 1<sup>st</sup>  
Petitioner-Appellant-Appellant and 1<sup>st</sup> to  
4<sup>th</sup> Substituted-Petitioner-Appellant-  
Appellants.

Mihiri de Alwis, SSC for the Respondent-  
Respondent-Respondent.

Argued on : 04.08.2025

Written Submissions  
of the Petitioner-Appellant-  
Appellants tendered on : 13.05.2024

Written Submissions  
of the Respondent-Respondent

-Respondent tendered on : 01.11.2024

Decided on : 20.02.2026

**K. M. S. DISSANAYAKE, J.**

Instant appeal arises from an order dated 16.11.2022 made by the Land Acquisition Board of Review (hereinafter called and referred to as ‘the LABR’) a copy of which was annexed to the petition of appeal marked as ‘**X**’ (hereinafter called and referred to as ‘the Order of LABR’) in the exercise of its appellate jurisdiction vested in it by part III 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 1<sup>st</sup> Petitioner-Appellant-Appellant and the 2<sup>nd</sup> Petitioner-Appellant-Appellant who had died during the pendency of the proceedings and in whose place, the Substituted 1<sup>st</sup> to 4<sup>th</sup> Petitioner-Appellants-Appellants had subsequently, been substituted (hereinafter called and referred to as ‘the 1<sup>st</sup> and the 2<sup>nd</sup> Appellants’) on the ground that the amount of compensation so determined and awarded to them by the Acquiring Officer/Divisional Secretary who has been named as the Respondent-Respondent-Respondent in the petition of appeal (hereinafter called and referred to as ‘the Respondent’) under and in terms of the provisions of section 17 of the Act for the acquisition of a plot of Marshy land for a public purpose which is called and known as ‘Kosgahaliyadda’ and ‘Yakbaddakumbura’ and as morefully, described as Lot 1 in the Plan bearing No. ඉ.පි.කො.6787 prepared by the Surveyor General and containing 0.4099 Hectares in extent (hereinafter called and referred to as ‘the land intended to be acquired’) in pursuant to an inquiry held by the Respondent under the provisions of the Act in terms of the notice dated 25.04.1989, published by him in the Gazette of the Democratic Socialist Republic of Sri Lanka bearing No. 555/5 and dated 25.04.1989 (hereinafter called and referred to as ‘the Gazette’) a copy of which was annexed to the petition of appeal marked as ‘**A2**’, is insufficient wherein, LABR had increased the amount of compensation by increasing its perch value from Rs. 4500/- as determined by the Respondent to Rs. 6000/- and the total

value accordingly, that was so determined and awarded by the Respondent. It is this order of the LABR that the Appellants now, seek to canvas before us in the instant appeal on the grounds of appeal urged in paragraph 7(i) to (vii) of the petition of appeal among any other grounds of appeal that may be urged by the Counsel before us at the hearing of this appeal, and they may be re-produced *verbatim* the same as follows;

“(i) L.A.B.R has erred in law in evaluating the weight of evidence in arriving at their Order;

(ii) L.A.B.R has erred in fact and/or law in failing to take into consideration the evidence led both in terms of past decisions of the L.A.B.R and sales which are situated within the limits of Kotte Urban Council and the evidence of the Appellants valuer which demonstrates that the said sales in the year 1991 and in 1990 and informed that those sales are useful in arriving at the market value of the acquired land. (submitted by Appellants as A8). (5<sup>th</sup> question and answer at Pg.9 of the proceeding on 15/12/2011) which demonstrates market value under Section 45 of the Land Acquisition Act;

(iii) L.A.B.R has erred in law in failing to appreciate that the Market Value of the Appellants land cannot be correctly derived by assessing the compensation based on a valuation used for lands acquired under the Colombo District (Low-Lying Areas) Reclamation And Development Board Act (No. 15 of 1968);

(iv) L.A.B.R erred in law in evaluating the correct market value of the compensation payable to the Appellants;

(v) L.A.B.R erred in law in failing to evaluate the evidence led by both the Appellant's value that the acquired land can be developed. (Last question in Pg. 6 of proceeding on 15/12/2011 and the evidence of the Respondent's valuer that the land could be filled. (3rd question

and answer in Pg.8 of proceedings on 07/10/2015 which has a bearing on the determination of the market value;

(vi) L.A.B.R erred in law in failing to appreciate that as a result of the failure to publish a notice in terms of Section 38(a) of the Land Acquisition Act, the Government by the acts of the Respondent has unjustly enriched themselves;

(vii) L.A.B.R erred in law in taking into consideration a previous valuation of the Valuation Department (which situated abutting the land acquired) and was acquired for a sewerage project in 20/04/1983 (CDS/S/LA/394) of where one perch was valued at Rs.2,698/- per perch. (This is a valuation made by the Valuation Department six years before 25/04/1989 (the date the acquired land to be valued)”

As is discernible from a careful scrutiny of the grounds of appeal, the principal contention advanced by the Appellants is that, the order of LABR with regard to the assessment of the quantum of compensation awarded to them, is totally, against the weight of the evidence led before the LABR by both the Appellants as well as the Respondent through their expert witnesses, namely; Mr. Kaleel-Valuer, for the Appellants and Ms. Geetha Fernando-Government Valuer for the Respondent representing the Government Valuation Department, in that it was contented by the Appellants that had the LABR considered, analyzed and evaluated the evidence led before it with regard to the assessment of the amount of compensation to be awarded to them in its totality and in its correct perspective, it could have valued a perch of the land intended to be acquired by the Respondent at Rs. 34,500/- and the total amount of compensation to be paid to the Appellants accordingly, in view of the evidence led before it by way of past decisions of the LABR and sales which are situated within the limits of the Kotte Urban Council. The Appellants therefore, urge in prayer ‘b’ of the petition of appeal that the amount of compensation awarded to them by LABR by increasing the perch value of the land intended to be acquired by the Respondent from Rs.

4500/- to Rs. 6000/-, be further increased by increasing the perch value thereof, to Rs. 34,500/-.

While, totally, denying the contention so advanced by the Appellants at the hearing of this appeal before us, it was on the other hand, contented by the Respondent that assessment of quantum of compensation awarded to the Appellants in its order by the LABR is based on the evidence led before it and therefore, it can be sustainable both in fact and law and therefore, the appeal should be dismissed with costs.

It is in this context, let me now, briefly, set out the facts relevant to the instant appeal.

Pursuant to a notice published by the Respondent in the Gazette (**A2/R3**) under section 7 of the Act, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had made their claims for compensation to the Respondent in respect of the land intended to be acquired by him thereby, quoting the market value of a perch thereof to be Rs. 120,000/- at the time of the publication of the notice; 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 a copy of which was annexed to the petition of appeal marked as **A4**, thereby, determining that the 1<sup>st</sup> Appellant and 2<sup>nd</sup> Appellant are entitled to 15.80 perches and 146.19 perches respectively, from the land intended to be acquired; that accordingly, the amount of compensation payable to the 1<sup>st</sup> Appellant and the 2<sup>nd</sup> Appellant is Rs. 71,201.92/- and 6,58,758.08/- respectively; and that being aggrieved only by that part of the decision (**A4**) with regard to the mode of the assessment of compensation, instant appeal had been preferred to this Court by the 1<sup>st</sup> and 2<sup>nd</sup> Appellants praying for an increase at the rate of Rs. 34,500/- per perch 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**) namely; **25.04.1989**, of the amount of compensation awarded to each of them by LABR as contained in his decision of the Respondent (**A4**).

It is in this backdrop of the case, let me now, examine the provisions governing assessment of compensation and the part VI of the Act comprising of sections 45, 46, 46A, 47 and 48, specifically, 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.”

“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), namely; 25.04.1989** [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.** [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**), namely; **25.04.1989** [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.

Bearing in mind the law governing the assessment of the amount of compensation and the mode of determination of the market value of a land in

respect of which a notice under section 7 of the Act has been published as laid down by Part VI of the Act, let me now, examine the judicial precedent cited to us by the Appellants in the submissions and its bearing on the resolution of the issue at hand before us.

It was held by Court in decision in **Stevens Vs. Munasinghe 42 NLR 446** cited to us by the Appellants in the submissions that, where it is claimed that the market value of a land acquired by the crown should be determined by the best use to which it could be put, there must be evidence that there would be a demand for the land when put to such use having regard to its nature and situation. It is to be borne in mind that this being a decision pronounced by Court on 08.04.1903-long before the Act came into being on 09.03.1950.

**Peiris vs. Acquiring Officer, Kolonnawa 2003 [3] SLR 189** concerns an application for an order in the nature of a writ of *certiorari* to quash the award made by the Acquiring Officer under the provisions of the Act and an order in the nature of a writ of *mandamus* directing the acquiring the officer either to resume in a lawful manner the inquiry to compute the compensation payable to the Petitioner under section 9 of the Act in respect of the acquisition of the land morefully, described in the para 2 of the petition filed in Court whereas, the instant appeal arises from an award made by LABR in the exercise of its appeallate jurisdiction and therefore, the facts in the case referred to hereinbefore can be clearly, distinguishable from the facts of the instant case and therefore, the case cited to us as aforesaid, is of no assistance or of little assistance in determining the issue at hand before us as enumerated above. Besides, an application for a writ is governed by a different set of laws while, an appeal is governed by a set of laws different to that of the one governing an application for a writ. In this respect too, this case can be clearly, distinguishable from the instant case.

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]

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”

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**), namely; **25.04.1989**.

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 Appellants.

Hence, it is incumbent upon the Appellants to have furnished those material before the Acquiring Officer and/or LABR so as to enable them 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 25.04.1989 in the Gazette (**A2**) for; it was the Appellants who had asserted that perch 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 25.04.1989 in

the Gazette was Rs. 120,000/- and therefore, sole burden of proof will lie on the Appellants to prove what they 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 Appellants had totally, failed to furnish thereto, any of those documents as envisaged by the proviso to section 45(1) of the Act 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 25.04.1989 in the Gazette (**A2**) on the basis that perch value thereof, was Rs. 120,000/- on that day as asserted by the Appellants.

Furthermore, the Appellants had heavily, relied on the documentary evidence produced before LABR through their expert witness the said Mr. Kaleel-Private Valuer marked as '**A9**' and '**A12**' in determining the market value of the land intended to be acquired by the Respondent on the basis of the comparable method of valuation and/or on the basis of past awards and/or past sales as a basis of valuation.

Under and in terms of Section 10(1)(a) of the Act, the 1<sup>st</sup> Appellant had been awarded 15.80 perches from and out of the land intended to be acquired by the Respondent while, the 2<sup>nd</sup> Appellant had been awarded 146.19 perches therefrom. In terms of Section 17 of the Act, the 1<sup>st</sup> Appellant had been awarded Rs. 71201.92/- as compensation and the 2<sup>nd</sup> Appellant had been awarded Rs. 658,798.08/- as compensation. It is against this decision of the Respondent awarding compensation to each of them as aforesaid, the 1<sup>st</sup> and 2<sup>nd</sup> Appellants had filed an appeal before LABR.

The 1<sup>st</sup> and 2<sup>nd</sup> Appellants had notified their respective claims to the Respondent in respect of the land intended to be acquired by him on the basis that, perch value thereof being Rs. 120,000/- on the date of the publication of the notice under section 7 of the Act in the Gazette (**A2**) on 25.04.1989. However, it is

significant to observe that the Private Valuer-Mr. A. R. M. M. Kaleel, who was called by the Appellants before LABR had valued a perch at Rs. 34,000/-. In arriving at the said valuation by the Private Valuer-Mr. A. R. M. M. Kaleel, the past decisions of LABR in Review Board Nos. CL 1151, CL 1152, CL 1221 had been heavily, relied on by him when the Appellants had produced those past decisions through their expert witness the said Mr. Kaleel marked as 'A9' and 'A12' before the LABR.

However, upon a careful consideration of those past decisions of LARB (A9 and A12) it clearly, appears that the property-the subject matters of those past decisions would fall not within the Sri Jayawardenapura Kotte, Urban Council Limit but within the Colombo Municipal Council limit in the first place; and that they all are prime residential plots in terms of location in the second place; and that those decisions were decisions admittedly, made in the year 1991 and 1992-two or three years after the publication of the notice under section 7 of the Act in the Gazette (A2) on 25.04.1989 in the third place, so it is not in any manner, possible to directly, compare them with the land intended to be acquired by the Respondent 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) on 25.04.1989 as rightly, held by LABR.

Hence, it clearly, appears that the valuation submitted by the Private Valuer Mr. Kaleel for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants valuing a perch at Rs. 34,000/- 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) on 25.04.1989 had not been supported by any evidence oral or documentary by the Appellants 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, found 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.

Moreover, the documentary evidence, produced by the Respondents through his expert witness Ms. Geetha Fernando, the Government Valuer attached to the Government Valuation Department marked as 'R11' too, is of no assistance in determining the market value of the land intended to be acquired by the Respondent for a public purpose on the date of the publication of the notice under section 7 of the Act in the Gazette (A2) on 25.04.1989 for; it only shows a number of past sales of residential plots and not the past sales pertaining to a similar allotment of land situated in the same vicinity and used for similar purposes as rightly, held by LABR.

in view of the foregoing, I would hold that the Appellant had not established in evidence either before the Respondent or LABR any of the two different positions so adverted to by them respectively, before the Respondent and LABR that perch value of the land intended to be acquired by the Respondent is Rs. 120,000/- on the date of the publication of the notice under section 7 of the Act in the Gazette (A2) on 25.04.1989 as notified to the Respondent by them; and that perch 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) on 25.04.1989 is Rs. 34,000/- as per the valuation submitted by the Private Valuer Mr. Kaleel for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants.

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 each of the Appellants on the basis that the market value of a perch thereof is Rs. 6000.00/- thereby, setting aside the decision of the Respondent with regard to the award of compensation to each of the Appellants and substituting therefor the amount of compensation to be awarded to each of the Appellants as determined by LABR in its decision now under challenge before us.

However, it is significant to observe that the Appellants 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 each of the Appellants should be set aside or varied.

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 each of the Appellants 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***