

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

In the matter of a Petition of Appeal under
Section 22 of the Land Acquisition Act No.09 of
1950.

Application No: BR/22/2018/CL

Case No: CA/BOR/02/2025

Value: Rs.45,000,000

Kekulawalage Don Dayakeerthi Piyasundara,
No. 452/1, Highlevel road,
Gangodawila, Nugegoda.

Appellant

Vs.

Buddhi Tharanga Karunasena,
Divisional Secretary Maharagama and
Land Acquisition Officer,
Divisional Secretariat Maharagama,
Maharagama.

Respondent

And between

In the matter of an application under Section
28 of the Land Acquisition Act No. 09 of 1950
and Appeal, Revision and Restitutio in
Integrum under Section 138(1) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Kekulawalage Don Dayakeerthi Piyasundara,
No. 452/1, Highlevel road,
Gangodawila, Nugegoda.

Appellant- Petitioner

Vs.

Buddhi Tharanga Karunasena,
Divisional Secretary Maharagama and Land
Acquisition Officer,
Divisional Secretariat Maharagama,

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsel: Maura Gunawansa, PC with Dilanya Munasinghe instructed by
Dineth Gunasekara for the Appellant – Petitioner.
Rajika Aluwihare, SC for the Respondent – Respondent.

Argued: 30.07.2026

Written submissions 17.07.2026 & 07.10.2026 by Respondent- Respondent.
tendered on: 28.08.2025 by Appellant – Petitioner.

Judgment Delivered: 23.10.2026

Thotawatte, J.

Introduction

The Appellant-Petitioner (hereinafter sometimes referred to as the “Appellant”) appeals against the order dated 27th August 2024 in Board of Review case No. BR/22/2018/CL. The Board of Review (hereinafter sometimes referred to as the “Board”) assessed Lot A in Identification Tracing No. 3179, corresponding to Preliminary Plan No. 9380, at Rs. 455,000 per perch after allowing for development costs, and awarded Rs. 13,650,000. The acquiring officer had awarded Rs. 224,625 under section 17 of the Land Acquisition Act, No. 9 of 1950 (hereinafter sometimes referred to as “the Act”). The Appellant seeks to have the Board’s order be set aside and his claim before the Board allowed.

Factual Matrix

The land, stated to comprise 29.95 perches, was acquired for the Delkanda Public Market. The Appellant claimed Rs. 1,500,000 per perch and appealed to the Board under section 22. He contends that the land was a highland, that historical documents

and the compensation awarded for neighboring paddy lots were not properly considered, and that the Board's findings about the land's condition were contradictory. He also challenges the Rs. 545,000-per-perch deduction for development costs as lacking an evidential basis.

The Respondent-Respondent (hereinafter sometimes referred to as the "Respondent") supports the Board's order. The Respondent submits that the land was valued in the condition in which it stood at the time of acquisition; that the historical documents do not establish its condition then; and that the Appellant did not produce a valuation report or other cogent evidence supporting his claimed rate. Reliance is also placed on section 45 of the Act and the Appellant's failure to produce relevant returns or assessments made or accepted for rating or taxation purposes.

Scope of the Court's Jurisdiction

Section 28(1) of the Act provides for an appeal to the Court of Appeal against a decision of the Board of Review on a question of law. Under section 28(5) of the Act, this Court may, after determining that question, confirm, reduce or increase the compensation, subject to the statutory ceiling tied to the claim originally notified to the acquiring officer. The appeal is not a fresh inquiry into what compensation this Court might award on its own appraisal.

In *Hewage v. Weerasena and Others*¹, this Court held that an appeal under section 28(1) of the Act is confined to questions of law, and that matters falling outside the jurisdiction of the Board or not contested before it cannot form the subject of such an appeal. A challenge to a factual finding may raise a question of law if, for example, the Board excluded material evidence, applied the wrong legal test, relied on an irrelevant consideration, or reached a conclusion the evidence could not reasonably support. It is not enough to invite this Court to prefer a different inference.

In *N.S.D. Gunawardena v. Divisional Secretary, Katana*², this Court set aside the Board's decision after finding that it had failed to consider relevant, admissible evidence of nearby transactions and had deferred to the State valuation without a proper evidential basis. In *W.A.G. Wickramasinghe v. C.W. Abeyesuriya*³, the Court likewise examined whether the Board's conclusion about the condition of the acquired land was supported by the evidence and the Act. These decisions require a

¹ [2003] 3 SLR 49.

² CA/LAND/ACQ/03/2011 decided on 10 August 2018.

³ CA/BOR/01/2016, decided on 16 June 2020.

lawful and rational assessment by the Board; they do not authorise this Court to retry the valuation.

The Statutory Test

Section 45(1) of the Act defines market value as the amount the land might have realised if sold by a willing seller in the open market as a separate entity on the date the section 7 notice was published. The proviso requires consideration of relevant returns and assessments of income, capital value or annual value made or acquiesced in by the owner for rating or tax purposes. The statutory date governs; the section 22 appeal date and the Board's inquiry date do not replace it.

The land's physical condition and character on that date are relevant. Historical deeds, plans and descriptions may help establish its nature and potential, but do not, without more, prove its condition years later. Nearby sales may also be probative where the evidence shows that the properties were similarly situated and the transactions were between willing parties. That principle appears in *Perera (G.A., N.W.P.) v. Fernando et al.*⁴ and was applied in *N.S.D. Gunawardena*⁵.

The absence of material under the proviso to section 45(1) does not itself defeat a compensation claim. The market value must be determined from the evidence as a whole. Where such material is absent, however, a party may lack evidence needed to establish the value asserted.

Condition and Character of the Land

The Appellant relies on partition plans, the final decree in District Court case No. 2022/P, the deed of gift dated 8 January 2009, and earlier descriptions and boundaries to show that the land was highland. The Respondent relies on the preliminary tracing and acquisition status report, which described it as open or barren, and on evidence that the Urban Development Authority or the Army had filled the land.

The historical material is relevant, but does not by itself establish the land's condition on the section 7 date. Nor does evidence that the acquired portion was neither paddy land nor barren compel a finding that it was highland. The Board could consider the descriptions of open or barren land together with the evidence that it had been filled and remained undeveloped. The Appellant has not shown that the Board's treatment

⁴ (1949) 51 NLR 121 at 128.

⁵ *N.S.D. Gunawardena v. Divisional Secretary, Katana*, CA/Land/Acq/03/2011 decided on 10 August 2018.

of this evidence was legally impermissible or that it ignored the historical material; his complaint is that the Board should have given it greater weight.

Comparable Lots and Valuation

The Appellant relies on the compensation awarded for Lots C, D, E and F in Tracing No. 3179, which he describes as adjoining paddy lands valued at Rs. 1,600,000 to Rs. 1,700,000 per perch. A valuation of other land in the same tracing may be relevant, but proximity alone does not establish comparability. The evidence must permit comparison of the lots' condition, character, use, development, access and valuation dates. The higher rate awarded for paddy land does not, without evidence of comparability and the basis of that valuation, establish the market value of Lot A.

The circumstances differ from *N.S.D. Gunawardena*⁶, where the Board excluded nearby sale agreements solely because they post-dated the section 7 notice by approximately one year, and also relied on an unsupported preference for the state valuation. Here, the Appellant relies on awards for different lots and historical land descriptions. He has not shown that the Board excluded a comparable sale transaction or treated the State valuer's opinion as conclusive merely because it was a state valuation.

The Appellant produced no private valuation report and, on the submissions before this Court, identified no comparable sale transactions at or about the material date supporting his claimed rate. A private report is not a legal prerequisite to compensation, but the absence of one is relevant to whether the Appellant established the higher value sought. Although the decision-maker must apply section 45, the Appellant must identify evidence showing error in the Board's determination or supporting an increase.

The Board assessed the land at Rs. 455,000 per perch after allowing for development costs. The Appellant contends that the Board adopted Rs. 1,000,000 per perch and deducted Rs. 545,000 without justification. He has not shown that the deduction was unrelated to the land's condition, duplicated another allowance, or otherwise departed from the statutory measure of market value. Nor has he shown that the resulting rate was one no reasonable decision-maker could reach on the evidence.

The Board's assessment is not displaced merely because the Appellant considers it too low or another rate could be argued. The Appellant has not established that the Board misapplied the market-value test, failed to consider a material category of evidence,

⁶ *Ibid.*

or used an irrational method. No question of law warranting appellate intervention has therefore been shown.

Conclusion

The grounds advanced principally invite this Court to treat the historical descriptions as conclusive of the condition of Lot A at the statutory date and to infer the market value of that lot from higher awards made for neighboring paddy lands. Neither inference is compelled by the evidence submitted. The Board was required to assess the land as a separate entity at the date fixed by section 45 and to consider the evidence of its condition and value. The Appellant has not established a question of law warranting an increase in compensation or interference with the Board's determination.

Accordingly, the appeal is dismissed. The order of the Land Acquisition Board of Review dated 27 August 2024 is affirmed. There shall be no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal