

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

In the matter of an application for Revision
made under and in terms of the provisions of
Article 138 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal

Case No: RV/0009/2016
(REV)

Nawalage Gunathissa Cooray,
No. 266, Nawala Road,
Rajagiriya

Petitioner

VS

The Acquiring Officer,
Greater Colombo Flood Control Project,
Divisional Secretariat,
Sri Jayawardhanapura Mawatha,
Welikada, Rajagiriya.

Respondent

AND NOW

Nawalage Gunathissa Cooray
No. 266 Nawala Road,
Rajagiriya
(Deceased)

Petitioner-Petitioner

Nawalage Viraj Chandima Cooray
No. 266, Nawala Road,
Rajagiriya

Substituted-Petitioner-Petitioner

Vs.

The Acquiring Officer,
Greater Colombo Flood Control Project,
Divisional Secretariat
Sri Jayawardhanapura Mawatha,
Welikada, Rajagiriya

Respondent-Respondent

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Padma Bandara, P.C. with Shanil Rajapaksa
And Hansana Gamage instructed by
Vidyanandage Pasindu Prabath
for the substituted-Petitioner-Petitioner

J. Sourjah, S.C.
for the Respondent-Respondent

Argued on : 09-02-2026

Decided on : 29-04-2026

JUDGMENT

R. Gurusinghe, J.

The subject property and some other Lands were acquired for the purpose of the Greater Colombo Flood Control and Environmental Improvement Project. The property acquired from the petitioner comprises portions of Lot 44 (part) and Lot 45 (part), as outlined in Clarification Tracing No. 2001/96, dated 30-04-2001, prepared as per the preliminary Plan No. CO 7927.

The acquired land is situated at Nawala Nugegoda, within the municipality of Kotte. There is no dispute that the petitioner (now deceased) was the owner of 348 perches and 180 perches, respectively, of Lot 44 and Lot 45 of

the Land acquired. Initially, the Acquiring Officer declared that the petitioner was entitled to award compensation in respect of 348 perches out of 490.55 perches in respect of Lot 44 at the rate of Rs. 6,500/- per perch, and 180 perches out of 261.11 perches in respect of Lot 45 at the rate of Rs. 7,500/- per perch, under Section 17 of the Land Acquisition Act (Act).

A notice under Section 7 of the Act was published on 08-06-1999, in the Gazette. As per the provisions of Section 9 of the Act, the Acquiring Officer is required to give consideration to the market value of the Land sought to be acquired when determining the amount of compensation payable, which has to be granted to the owner of such property.

The petitioner appealed to the Board of Review on being aggrieved by the inadequacy of the compensation so determined by such Officer.

The respondent contended that the petitioner's application is misconceived in law, both in terms of the provisions of the Act and as well as the scope of Article 138 of the Constitution, and that none of the circumstances set out in the petition are of an exceptional nature and warrant the exercise of the discretion of this Court. However, it is observed that the Order of the Board of Review does not disclose any reasons for its determination. The Board of Review was under an obligation to set out the reasons for its determination, and its failure to do so could be considered as constituting exceptional circumstances.

It is an admitted fact that the appeal preferred by the petitioner was not filed within the time prescribed in the Act, and hence, the said appeal was withdrawn by the petitioner with the leave of the Court, reserving his right to invoke the revisionary jurisdiction of this Court.

The petitioner has set out the following matters as exceptional circumstances warranting the exercise of such revisionary jurisdiction of this Court.

- a. The Petitioner states that, though the date of the said order is 6/5/2015, the said Board of Review issued a copy of the same only on 29th June 2015.
- b. The Petitioner was a person who was 95 years of age at the time the said impugned order was made, and a person taking treatments for various sicknesses and ailments. The Petitioner has submitted true copies of his National Identity Card and Diagnosis Cards marked as P9, P10 and P11 to support this position.

- c. The Petitioner states that due to his old age and ill health, he could not take steps to prefer an appeal against the order made by the Land Acquisition Board of Review within the prescribed period.
- d. the learned members of the Land Acquisition Board of Review have failed to give sufficient reasons for their decision, which is mandatory in terms of section 25(5) of the Land Acquisition Act.
- e. the Land Acquisition Board of Review has not given reasons for not accepting the evidence given by the Senior Valuer, Mr. Denzil De Alwis, in respect of the valuation given by him to the subject Lands.
- f. The Land Acquisition Board of Review has failed to give reasons for their Valuation of Rs. 7500/- per perch in respect of Lot 44 and also of Rs. 7500/- per perch in respect of Lot 45 of the said Land.
- g. The Land Acquisition Board of Review has neither accepted nor rejected the valuation given by Mr. Denzil De Alwis, incorporated Valuer, in determining the award of compensation to the petitioner.
- h. The Land Acquisition Board of Review has neither accepted nor rejected the valuation given by Ms. Geetha Fernando, the District Valuer, in the determination of the market value of the subject land.
- i. The Land Acquisition Board of Review has determined a fresh valuation for these two separate Lots, but has not stated on what basis the said valuation was determined.
- j. The Land Acquisition Board of Review has misdirected and erred in law in arriving at the impugned decision.
- k. The decision of the Land Acquisition Board of Review is not in conformity with the evidence and the documents tendered before the said Board.
- l. According to Section 9 of the said Act, the market value of Land acquired has to be determined, and such value has to be given as compensation to the owner of land. Since there was no proper valuation report, the decisions of the Land Acquisition Officer and those of the Board of Review are completely erroneous.

No valuation report has been tendered on behalf of the respondent. Document marked- R7 is not a report prepared by a Government Valuer of the Valuation Department. Although an affidavit given by Ms. Geetha Fernando was produced, it is evident that she has not undertaken any valuation of the acquired land. She merely states that the report of the Chief Valuer is correct. However, no such report has been filed by the Chief Valuer before this Court. She refers to document R7 and states that, as the acquired land was marsh land and the property was not land capable of development, she was of the opinion that there would be no demand for the Land in the open market.

It is necessary to ascertain the market value of the property in question. Ms. Geetha Fernando had not ascertained the market value of the property, as she was of the opinion that the Land has no demand in the open market. However, in terms of Sections 9(a) and 46(1) of the Act, the Acquiring Officer should have ascertained the market value of the property sought to be acquired.

Before the Board of Review, Mr. D.S.J. de Alwis, a Graduate Member of the Institute of Valuers, commenced giving evidence on behalf of the petitioner. After his evidence was partially recorded over two days, the Board directed the petitioner to file an affidavit from Mr. Alwis instead of giving oral testimony. Accordingly, Mr. Alwis filed an affidavit with annexed documents marked A, A1, A1a, A1b, A1c, A1d, A3, A4, A5, A6, A7, and A8, elaborating on the valuation of the Land acquired. Mr. Alwis stated that the lands in the vicinity have been sold to Keels Limited and Vajira House Developers at rates of Rs. 190,000/- and Rs. 215,000/- per perch, respectively. Having regard to the relevant factors considered in his assessment, Mr. Alwis valued the land acquired from the petitioner at Rs. 150,000/- per perch.

The Board of Review had not rejected Mr. Alwis's affidavit regarding the valuation of the acquired property. Section 25 (5) of the Act specifically states, *“Every decision of the Board shall contain the reasons therefor.”* Accordingly, the board decided that the compensation for both acquired lands should be at the rate of Rs. 7,500/- per perch. However, the Board of Review has not set out reasons in support of its decision. Therefore, the decision is not in conformity with the provisions of Section 25 of the Act. Therefore, that decision is illegal and unreasonable. In the above circumstances, we decide that the petitioner is entitled to the reliefs prayed for in paragraphs b, c, and g of the petition.

The Court directs the Land Acquisition Board of Review to rehear the appeal brought by the appellant-petitioner and to make an appropriate order, duly taking into account the market value of the property acquired, in accordance with the provisions of the Land Acquisition Act. No order as to costs.

Judge of the Court of Appeal.

Dr. S. Premachandra J.
I agree.

Judge of the Court of Appeal.