

AMARASINGHE
v
ACQUIRING OFFICER, KEGALLE

COURT OF APPEAL

IMAM, J.

SARATH DE ABREW, J.

CA/LAQ/BR 1/ 2005

CAB OF R KG/200

NOVEMBER 22, 2007

JANUARY 24, 2008.

Land Acquisition Act-S10 (5), section 12 (4), section 17, section 27, section 28 – Compensation awarded – Appeal to Board of Review – Appeal to the Court of Appeal Should the appellant state the questions of law to be argued in the petition of appeal? Is the appeal on a question of law only? Industrial Disputes Act section 31D – compared – Finality clause – Constitution Article 128 (1).

The Land Acquisition Board awarded compensation in respect of a land acquired under the Land Acquisition Act. The Board of Review enhanced the compensation. Thereafter an appeal was lodged in the Court of Appeal seeking a further enhancement.

The respondent raised a preliminary objection that the appellant has failed to state the question of law to be argued in the appeal as required by section 28 (2) of the Land Acquisition Act – Therefore the appeal should be dismissed in limine.

The petitioner contended that, the points of law enumerated in the body of the petition of appeal constituted questions of law as they came under one or more categories of questions of law defined in *Collettes* case. It was also contended that there is no legal requirement to specifically formulate the questions of law in the petition of appeal as long as on a plain reading of the petition the points or questions of law to be argued are apparent and easily discernible.

Held:

- (1) In terms of section 28 – where a party is dissatisfied with the Boards decision on the appeal, he may by written petition appeal against that decision on a question of law. Section 28 (2) states that the petition of appeal should state the question of law to be argued, it shall bear a certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal.

Per Sarath de Abrew, J.

"Since an appeal on question of law is intended to be a beneficial remedy, the provisions of section 28 of the Land Acquisition Act, have to be interpreted broadly and liberally. A litigant who is aggrieved of the quantum of compensation awarded to him with regard to the state acquiring valuable land and property- affecting the substantial rights should not be denied the statutory right of appeal on a mere technicality".

- (2) Section 31D – Industrial Disputes Act (IDA) could be distinguished from section 28 of the Land Acquisition Act, as the IDA requires – stating the question of law to be argued in the petition of appeal and a certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal.
- (3) Section 28 of the Land Acquisition Act when interpreted broadly and liberally, does not confine an appellant to one single questions of law but an appellant could lodge his appeal on several questions of law. This provision does not stipulate that the question or questions of law should be specifically and categorically enumerated and listed in so many words in the petition. It would suffice for the question or questions of law to be stated in the averments in the petition which would be easily discernible and apparent on the face of the petitioner.
- (4) Applying the observations in *Collettes* case, it is clear that the points of law – paragraphs 8 – 11 of the petition of appeal could be construed as questions of law. The appellant has fulfilled the other requirements of a certificate by an Attorney-at-Law to the effect that the questions of law embodied in the averments to the petition of appeal are fit for adjudication by the appellate court.

APPEAL from an order of the Board of Review under the Land Acquisition Act.

Cases referred to:-

1. *De Silva v Nuwara Eliya Tea Estates Co. Ltd* – 75 NLR 265
2. *Collettes Ltd. v Bank of Ceylon* – 1982 – 2 Sri LR 514
3. *General Manager, Ceylon Electricity Board and another v Gunapala* – 1991 – 1 Sri LR 304
4. *Lanka Wall Tiles Ltd. v K. A. Cyril* – 1998 – 2 CALA 344
5. *The Public Trustee v D. Rajaratnam* – 75 NLR 391

Upul Fernando for appellant-appellant.

Priyantha Nawana SSC for respondent-respondent.

March 5, 2008

SARATH DE ABREW, J.

This is an appeal from a decision of the Land Acquisition Board of Review dated 06.08.2004 awarding compensation to the appellant in respect of a land acquired situated in Anguruwella in Kegalle District. The corpus acquired consisted of 105.12 perches of land in which a building was situated. The appellant who owned a half share of this land and the entirety of the building was awarded total compensation of Rs. 51,700/- by the Acquiring Officer under section 17 of the Land Acquisition Act. Following an appeal to the Board of Review the compensation was enhanced to Rs. 127,225/- by order of 06.08.2004. Being aggrieved of this order, the appellant-appellant (hereinafter referred to as the appellant) has appealed to this Court seeking the total compensation to be increased to Rs. 226,875/-.

When the matter was taken up for hearing, the learned Senior State counsel for the respondent-respondent (hereinafter referred to as the respondent) raised a Preliminary objection that the appellant had failed to state the question of law to be argued in the petition of appeal as required by section 28(2) of the Land Acquisition Act as amended, and therefore this appeal is misconceived in law and should be dismissed. After tendering oral submissions on this preliminary objection, both parties have filed written submissions. Henceforth, this order is confined to the preliminary objection raised by the learned counsel for the respondent.

The learned Senior State Counsel submitted that an award made in appeal by the Land Acquisition Board of Review is protected by a "finality clause" as contained in section 27 of the Land Acquisition Act. It was further submitted that section 28 of the said Act has provided for an appeal on a very restrictive manner and such an appeal has been declared valid only on "a question of law" under section 28(1) when submitted in conformity with the elaborate procedure laid down in section 28(2) of the said Act. The learned Senior State Counsel for the respondent further argued that even though section 28(2) requires the appellant to "State the question of law to be argued" in the petition of appeal, the petition

of appeal of the appellant in his case does not disclose any question of law whatsoever thought it contains a purported certificate by an Attorney-at-Law, which only reads "the questions of law set out in this appeal are fit questions for adjudication by the Court of Appeal."

It was further submitted that this Court could assume jurisdiction and proceed with the appeal only upon determining the question of law to be argued at the appeal. Therefore the preliminary objection was raised that in the absence of formulation of question or questions of law, the appellant is disentitled from seeking relief by way of an appeal against the quantum of compensation payable. In support of his argument the learned Senior State Counsel cited the case of *De Silva v Nuwara Eliya Tea Estate Co. Ltd*⁽¹⁾ where Tennekoon CJ reiterated the legal position that the Supreme Court would not interfere with a decision of the Land Acquisition Board of Review awarding compensation except upon a question of law.

In support of the preliminary objection raised, the learned Counsel for the respondent took up the following position.

- (a) Section 28 of the Land Acquisition Act invariably requires a specific formulation of a question or questions of law embodied in the petition of appeal to be argued at the appeal.
- (b) A careful perusal of the petition of appeal clearly reveals that the appeal is based purely on questions of fact.
- (c) Even at the hearing before this Court the learned counsel for the appellant failed to enlighten Court as to the existence of such a question of law.

In view of the above, the learned Senior State Counsel for the respondent urged that the appeal in this case is misconceived in law and should be dismissed.

The learned counsel for the appellant in reply, took up the position that commencing from paragraph 08 of the petition several questions of law are embodied in the petition of appeal as enumerated in the written submissions filed on behalf of the appellant. He also cited in support the decision of a divisional bench of four Justices of the Supreme Court in *Collettes Ltd. v Bank of Ceylon*⁽²⁾ where Sharvananda, J. specifically spelt out what

can be considered " a question of law" and "a substantial question of law." Accordingly, the learned counsel for the appellant argued that the points of law enumerated in the body of the petition of appeal commencing from paragraph 08 clearly constituted questions of law as they came under one or more categories of questions of law defined in the above decision of the Supreme Court in Collettes case.

The learned counsel for the appellant further took up the position that there is no legal requirement to specifically formulate the question or questions of law in the petition of appeal as long as on a plain reading of the petition the points or questions of law to be argued are apparent and easily discernible. In support of the above contention the following cases were cited.

- (1) *General Manager, Ceylon Electricity Board and another v Gunapala*⁽³⁾ – D.P.S. Gunasekera, J.
- (2) *Lanka Wall Tiles Ltd. v K. A. Cyril*⁽⁴⁾ Jayalath, J.

In view of the above, the learned counsel for the appellant argued that the petition of appeal filed in this case was in conformity with the requirements laid down in section 28 of the Land Acquisition Act, and therefore the preliminary objection raised on behalf of the respondent should be overruled.

Having perused the proceedings before the Board of Review, the impugned order of 06.08.2004 of the Board of Review, the petition of appeal filed in this case and the totality of the written submissions and case law authorities submitted by both parties I am inclined to overrule the preliminary objection raised by the respondent for the following reasons.

Section 28 of the Land Acquisition Act states as follows: 28(1) Where a party to an appeal to the board is dissatisfied with the board's decision on that appeal, he may, by written petition in which the other party is mentioned as the respondent, appeal to the Court of Appeal against that decision on a question of law.

Provided that no such appeal may be preferred on any question determined by any decision which is declared by section 10 (5) or section 12 (4) to be final.

28(2). A petition of appeal under subsection (1) shall state the question of law to be argued, shall bear a certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal, and shall be presented in duplicate to the board by the appellant within twenty-one days after the date of the board's decision against which the appeal is preferred.

Since an appeal on a question of law is intended to be a beneficial remedy, the provisions of section 28 of the Land Acquisition Act have to be interpreted broadly and liberally. Authority for this proposition is the view taken by four Justices of the Supreme Court in the divisional bench landmark decision in *Collettes Ltd v Bank of Ceylon*, (*supra*) where the Supreme Court, in interpreting provisions of Article 128(1) of the Constitution as to the right of appeal to the Supreme Court on a substantial question of law, took a similar liberal view. A litigant who is aggrieved of the quantum of compensation awarded to him with regard to the State acquiring valuable land and property affecting his substantial rights should not be denied his statutory right of appeal on a mere technicality.

The two cases cited in support by the counsel for the appellant are based on section 31D of the Industrial Disputes Act, where there is no statutory requirement to state the question of law to be argued in the petition of appeal. However, section 28 of the Land Acquisition Act could be distinguished from section 31D of the Industrial Disputes Act, in that the latter requires:-

- (1) Stating the question of law to be argued in the petition of appeal.
- (2) A certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal.

Section 28 of the Land Acquisition Act, when interpreted broadly and liberally, does not confine an appellant to one single question of law but an appellant could base his appeal on several questions of law. Similarly, this provision does not stipulate that the question or questions of law should be specifically and categorically enumerated and listed in so many words in the petition of appeal. In my view, it would suffice for the question or questions of law to be stated in the averments in the petition which would be easily

discernable and apparent on the face of the petition. I am satisfied that the appellant has subscribed to the above requirement for the following reasons.

On a perusal of the petition of appeal, paragraphs 08-11 disclose the following questions of law.

- (a) The Board had erred in law as it has failed to make proper evaluation of the evidence of the valuer ...
- (b)the Board has failed to give any reason whatsoever for not accepting the evidence of Mr. Ubert (the valuer) ...
- (c)sufficient evidence was led on behalf of the appellant to prove that correct date of the actual taking over of possession and that the building was in a good condition at the time of vesting and taking over, which fact the Board erred in law in not taking into consideration.
- (d) The Board has also erred in law in not considering the comparable sales on the ground that they are long after the relevant date.
- (e) The Board had erred in law in considering only the previous acquisition of land for the children's park which was four fold in extent.
- (f) The Board had failed to make a proper analysis and judicial evaluation of the comparable sale prices of lands in the immediate neighbourhood.
- (g) The Board has ... erred in law in not awarding costs of appeal to the appellant.

In the Collettes case referred to above the following have been determined as question of law.

- (a) The proper legal effect of a proved fact is necessarily a question of law. A question of law is to be distinguished from a question of "fact." Questions of law and questions of facts are sometimes difficult to disentangle.
- (b) Inferences from the primary facts found are matters of law.
- (c) The question whether the tribunal has misdirected itself on the law or the facts or misunderstood them or has taken into

account irrelevant considerations or has failed to take into account relevant considerations or has reached a conclusion which no reasonable tribunal directing itself properly on law could have reached or that it has gone fundamentally wrong in certain other respects is a question of law. Given the primary facts, the question whether the tribunal rightly exercised its discretion is a question of law.

- (d) Where the evidence is in the legal sense sufficient to support a determination of fact is a question of law.
- (e) If in order to arrive at a conclusion on facts it is necessary to construe a document or title of correspondence then the construction of the document or correspondence becomes a question of law.
- (f) Every question of legal interpretation which arises after the primary facts have been established is a question of law.
- (g) Whether there is or is not evidence to support a finding, is a question of law.
- (h) Whether the provisions of a statute apply to the facts; what is the proper interpretation of a statutory provision; what is the scope and effect of such provision are all questions of law.
- (i) Where the evidence had been properly admitted or excluded or there is misdirection as to the burden of proof are all questions of law.

On a construction of the above, it is clear as crystal that the points of law averred by the appellant in paragraphs 08-11 of the petition of appeal could be construed as questions of law. On a perusal of the proceedings and the impugned order of the Board of Review, it is apparent that the Board has not analysed nor given reasons for the rejection of the expert evidence of the valuer W. D. A. Ubert. In *The Public Trustee v D. Rajaratnam* ⁽⁵⁾ the Supreme Court reversed the decision of the Board of Review and enhanced compensation awarded to the appellant due to the Board assessing the value of the corpus arbitrarily, which amounted to a question of law.

The appellant has fulfilled the other requirement of a certificate by an Attorney-at-Law to the effect that the questions of law embodied in the averments to the petition of appeal are fit for adjudication by the Court. The proviso to section 28(1) of the Land Acquisition Act which qualifies the right of appeal has no relevance to this matter as section 10(5) and 12(4) deal with references to the District Court.

On a corollary of the above findings, I hold that the petition of appeal is in conformity with the provisions of section 28 of the Land Acquisition Act and therefore overrule the preliminary objection raised by the learned counsel for the respondent and direct that the matter be fixed for further hearing.

IMAM, J. - I agree.

Preliminary objection overruled.

Matter set down for argument.