

1973 Present : Wijayatilake, J., and Walgampaya, J.

W. UDUGAMPOLA and 3 others, Appellants, and ASSISTANT GOVERNMENT AGENT, GALLE, Respondent

S. C. 2-5/72—*Land Acquisition Board of Review*  
Nos. GL 277—280

*Land Acquisition Act, as amended by Act No. 28 of 1964—Sections 7, 17, 22, 23—Interpretation and effect of S. 23—Computation of the appealable period of 21 days—Interpretation Ordinance (Cap. 2), S. 8 (1)—Delay in filing the appeal—Whether it can be waived by delay and acquiescence on the part of the Board.*

Section 23 of the Land Acquisition Act reads as follows:—

“No appeal against an award made under section 17 shall be entertained by the board unless it has been preferred within twenty-one days after the date on which notice of that award was received by the appellant.”

Notice of award was received on 16th October 1971 and appeals dated 6th November against the award were lodged at 9 a.m. on 8th November which was a Monday. There was nothing to show that any attempt was made to lodge the appeals on Saturday, 6th November, within the working hours 8 a.m. to 12 a.m.

*Held*, that the appeals were out of time as the appealable period of 21 days expired on Saturday 6.11.71. The Saturday could not be excluded in computing the appealable period and the provisions of section 8 (1) of the Interpretation Ordinance were of no avail.

*Held further*, that the delay in filing the appeal was an irregularity in procedure which could be said to have been waived by the Board of Review in the present case by its own delay and acquiescence during a period of several months.

## APPEALS under the Land Acquisition Act.

*H. W. Jayewardene with B. A. R. Candappa and Basil de Silva*, for the appellants.

*G. P. S. de Silva*, State Counsel, for the Attorney-General.

*Cur. adv. vult.*

October 17, 1973. WIJAYATILAKE, J.—

The respondent in his capacity as Acquiring Officer gave notice of his intention to acquire a land called and known as Radawatte *alias* Pansalawatta under the provisions of the Land Acquisition Act. The appellants as the co-owners of the said land preferred their claims to the Acquiring Officer and claimed a sum of Rs. 93,560 as compensation. By a notice dated 15.10.71 and received by the appellants on 16.10.71 the respondent awarded a sum of Rs. 12,255 as compensation. The appellants being dissatisfied with the amount of compensation awarded appealed to the Land Acquisition Board of Review under section 22 of the

Land Acquisition Act *inter alia* on the ground that the Award does not represent the free market value as at the date on which the notice under section 7 of Chapter 460 was published in the Gazette 24.9.64. They pleaded the instance of the Commissioner of Stamps under the Stamps Ordinance valuing three properties belonging to the 1st, 3rd and 4th appellants situated about 200 yards from the land in question at Rs. 71,500 as at 5.4.1963—these three properties being 127.45 perches in extent whereas the land in question has been valued at Rs. 12,225 when its extent is about 440 perches.

When these appeals came up for hearing on 3.6.72 a preliminary objection was taken by the Legal Officer of the Valuation Department on the ground that the appeals, having been lodged on 8.11.71, they have not been preferred within 21 days, after the date (16.10.71) on which notice of the award was received by the appellants as required by section 23 of the Land Acquisition Act as amended by the Land Acquisition (Amendment) Act, No. 28 of 1964. The Board held that 24 days had elapsed when the appeals were filed and the preliminary objection was upheld and the appeals were accordingly rejected and dismissed.

Mr. Jayewardene, learned counsel for the appellants submits that the Board was in error in making this order as the appellants had preferred their appeals within time and furthermore their appeals had been entertained by the Board and it had taken steps to fix the appeals for hearing. It will be convenient at this stage to note certain relevant dates showing the action taken by the appellants and the Board in this connection.

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| 16.10.71  | Notice of the Award received by the appellants.    |
| 8.11.71   | Petitions of appeal dated 6.11.71 lodged at the    |
| at 9 a.m. | office of the Land Acquisition Board of Review     |
|           | in Colombo   |
| 18.11.71  | Secretary of the Board requested for two more      |
|           | copies of the petitions                            |
| 26.11.71  | Copies as requested despatched                     |
| 6.12.71   | Secretary of the Board sends letter acknow-        |
|           | ledging appeals and calling for lists of witnesses |
|           | and documents                                      |
| 25.3.72   | Appellants forward lists of witnesses to the       |
|           | Board  |
| 24.4.72   | The 2nd appellant moves for early disposal of      |
|           | appeal   |
| 9.5.72    | Secretary gave notice that Appeals would be        |
|           | heard on 3.6.72 at 9.15 a.m.                       |

- 11.5.72      Legal officer of the Valuation Department writes to the Secretary of the Board that the appeals are out of time as they have not been preferred within 21 days
- 3.6.72      Hearing before the Board
- 16.6.72      Board made its order upholding preliminary objection

It has also transpired that although notices of the appeals were sent to the Acquiring officer he was not present at the hearing of the Appeal ; nor was any objection taken on his behalf.

Mr. Jayewardene has stressed that the validity of the preliminary objection has to be adjudged in the light of the steps taken by the Board as set out above. He submits that the lodging of the appeals on Monday 8.11.71 was within time in accord with the practice adopted by the Board. The principal question which has arisen in this case relates to the interpretation and effect of section 23 of the Land Acquisition Act as amended by Act No. 28 of 1964. Admittedly, the Notice of the award was received on 16.10.71 and the appeals dated 6.11.71 were lodged at 9 a.m. on Monday 8.11.71. Section 23 provides that "no appeal against an award made under section 17 shall be entertained by the board unless it has been preferred within twenty-one days after the date on which notice of that award was received by the appellant". In the computation of the 21 days we have no difficulty whatever in excluding the date (16.10.71) on which the notice of the award was received as the section speaks of a period *after* such date. However, Mr. G. P. S. de Silva, learned State Counsel, submits that even if this date is excluded the 21 day period expired on Saturday 6.11.71 and therefore the appeal lodged on Monday 8.11.71 would clearly be out of time.

Mr. Jayewardene submits that section 8 of the Interpretation Ordinance applies to the Land Acquisition Ordinance and therefore we have to compute the time accordingly. Section 8 (1) provides that where a limited time is allowed by any written law for the doing of any act or the taking of any proceeding in a Court or office and the last day of the limited time is a day on which the Court or office is closed, then the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day thereafter on which the Court or office is open. He further submits that section 23 contemplates 21 days of 24 hours each—so that the 21 day period would in the instant case expire only at mid-night on Saturday 6th November ; and accordingly as there is nothing to show that any provision had been made by this Board at its office to accept petitions of appeal after 12 noon on Saturday 6th November the appellants were

well within time in lodging their appeals on the day after Sunday 7th November—namely Monday 8th November in terms of section 8 of the Interpretation Ordinance. Mr. de Silva, on the other hand has made a very cogent submission that it is not necessary for this Government office to be open for reception of appeals such as this for 24 hours in the day as it is well known to the public that offices function during a particular period of the day; so that the appellants if they were preferring their appeals they should have taken steps to tender them to the office within the working hours 8 a.m. to 12 a.m. In the circumstances, he submits, that section 8 of the Interpretation Ordinance is of no avail as the office was not closed on the 6th. He has drawn our attention to the judgment of Megarry J. in *Pritam Kaur v. Russell & Sons Ltd.*<sup>1</sup> where he observed as follows: "It is true, as Russell L. J. pointed out in *Hodgson v. Armstrong* (1967) 1 A. E. R. at 320 (1967) 2 Q.B at 323 that as the offices of the Court close each afternoon, a litigant does not get his full period and may fail to issue writ in time if he arrives an hour or two after the offices have closed on what for him is the last day; but I think that the legislature may be safely assumed to have contemplated that the offices will not remain open until midnight each day, and that a litigant will get the full period intended if the offices are open during the prescribed hours on the last day". See also (1973) 2 W. L. R. 14. On a careful scrutiny of section 8 of the Interpretation Ordinance I am inclined to the view that the section contemplates a closure of the offices as on Sundays and Public holidays when the offices are not open for business. Mr. Jayewardene has relied very strongly on the case of *Zimmerman v. Cowan*<sup>2</sup> where it was held that under a statute authorising the filing of an election petition in the clerk's office of the proper Court within a specified number of days, the petition need not be filed within the hours appointed by law for keeping the office open, but may be filed after the expiration of these hours, at any time up to midnight of the last day". It would appear that the office hours were fixed by Statute unlike here. Thus Mr. Jayewardene submits that it should be more so here—as our office hours have been fixed and changed from time to time administratively. In this context the question does arise whether a petition of appeal delivered at the office by Post either ordinary, registered or express after 12 noon on Saturday 6th November would be within time. In my view such an appeal having been clearly preferred well before closing time on the last day the mere fact of its delivery at the office before the expiry of the period of 24 hours on the last day should not stand in the way of an appellant to pursue his appeal. I do not think this principle could be stretched

<sup>1</sup> (1973) 1 A. E. R. 617.

<sup>2</sup> 47 *American Reports* 476.

to the facts in the instant case as admittedly the petitions of appeal, although they are dated 6.11.71 have been lodged only on Monday 8.11.71 at 9 a.m. There is nothing to show whether any attempt was made to lodge the appeals on Saturday 6.11.71 at any time after office hours. In the circumstances I do not think the principle set out in the American case could be of any avail to the appellants in the circumstances. The application of section 8 of the Interpretation Ordinance in this context would lead to confusion as the time for preferring the appeal would have to be extended, from day to day *ad infinitum*, as every day the office would be closed even for a few hours.

The next question for consideration is whether the Board of Review had the jurisdiction to uphold the preliminary objection and if so whether, in the circumstances of this case, it should have upheld the objection and rejected the appeals. Mr. Jayewardene very strenuously submits that the petitions of appeal having been entertained by the Board of Review and action having been taken to fix the appeals for hearing, having informed the appellants to cite the necessary witnesses and file the necessary documents, it was not open to the Board to uphold this preliminary objection. Mr. de Silva submits that the receipt and acceptance of the Appeals by the Secretary of the Board would not amount to an "entertainment" of these Appeals as contemplated under Section 23 of the Land Acquisition Ordinance, as the entertainment should be by the Board itself. On a reading of Section 23 *et seq.* it appears to me that the Secretary has the authority to entertain such appeals on behalf of the Board and take the necessary steps to fix the appeals for hearing. It is quite clear that he has so acted in these proceedings. The question therefore arises whether an appeal once it has been so entertained can be rejected on a preliminary objection that it is out of time. I am inclined to agree with learned State Counsel that the Board of Review is not precluded from considering such a preliminary objection at the hearing of the appeal. Mr. Jayewardene submits that the conduct of the Board through its Secretary in entertaining these appeals and adopting the procedure of fixing the appeals for hearing should have been considered before the Board upheld the objection. I have given my anxious and careful consideration to the procedure adopted by this Board and as it appears to me even though these appeals were out of time by one day the Board by its conduct during a period of several months has clearly waived its objection to jurisdiction. There is no question that the Board has inherent jurisdiction to hear these appeals. In the circumstances, the delay in filing these appeals being a matter of procedure in my view, if the Board by its conduct has waived its objection by delay and acquiescence

on its own part it would not be open to pursue an objection like this when an aggrieved party seeks a hearing before the Board. Procedure should be an aid to Justice and not a mere trap for the uninitiated. The judgment in *Robinson Fernando v. Henrietta Fernando*<sup>1</sup> lends support to this view. Mr. Jayewardene has submitted that the Secretary has entertained these appeals as it was the practice of this Board to exclude the last day of the 21 day period. On the other hand Mr. de Silva has cited two cases which had come up before this Board which have not adopted any such practice. However, on a scrutiny of the procedure adopted in this case I am inclined to agree with Mr. Jayewardene that the practice of excluding the last date has been recognised ; else one cannot understand the conduct of the Secretary in these proceedings for over seven months. It is also significant that the Acquiring Officer was not present at the hearing.

I would accordingly allow the appeals with costs fixed at Rs. 250 in respect of each appeal. We direct the Board of Review to list these cases for hearing on an early date.

WALGAMPAYA, J.—I agree.

*Appeal allowed.*

<sup>1</sup> (1971) 74 N. L. R. 57.

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