

1973

Present : G. P. A. Silva, S.P.J., and D. Q. M.
Sirimane, J.

C. M. WIJESINGHE, Appellant, and S. GUNARATNAM
(A. G. A., Puttalam), Respondent

S. C. 4/70—*Land Acquisition Board of Review's Appeal*
No. BR/2911/PT/68

Land Acquisition Act (Cap. 460)—Sections 9 (6), 17, 28 (1) (5), 46 (1) (iii)—Inquiry into claim for compensation—Production of documentary evidence by claimant—Duty of the acquiring officer to cause a certified copy of each document to be furnished—Result of non-compliance.

Section 9 (6) of the Land Acquisition Act reads as follows :—

“(6) An acquiring officer who holds an inquiry under this section shall make a summary of the evidence given by each witness and cause a certified copy of each document produced in evidence to be furnished.”

Held, that, when documentary evidence is produced by a claimant at an inquiry into his claim for compensation, the duty is cast on the acquiring officer to cause a certified copy of each document produced in evidence to be furnished. Accordingly, in any subsequent proceedings in appeal before the Board of Review, the claimant should not be penalised for the acquiring officer's non-compliance with this requirement of section 9 (6).

APPEAL from a decision of the Land Acquisition Board of Review.

J. W. Subasinghe, with Miss Nilmini Gunasekera, for the claimant-appellant.

N. Sinnnetamby, State Counsel, for the respondent.

Cur. adv. vult.

September 25, 1973. G. P. A. SILVA, S.P.J.—

This is an appeal from a decision of the Land Acquisition Board of Review in respect of an acquisition of land on which was carried on the business of a Sunday Fair. The claimant-appellant submitted in the first instance a claim of Rs. 415,310 as compensation but at the inquiry, on the advice and with the assistance of a valuer, reduced his claim to Rs. 211,100 made up of the 3 following items :—

	Rs. c.
(a) Land	193,012 50
(b) Demolition value of the buildings on the land	4,100 00
(c) Additional compensation for loss of earnings from the business carried on on the land	14,000 00

At the end of the inquiry the acquiring officer made an "offer" of Rs. 56,000 which the appellant refused to accept and, acting under Section 17 of the Land Acquisition Act, proceeded to make an award, determining Rs. 56,000 as the amount of compensation which should be allowed. The appellant appealed to the Board of Review constituted under the Land Acquisition Act against this award on the ground of insufficiency of compensation and, at the conclusion of the hearing of the appeal, the said Board increased the amount of compensation to Rs. 59,708.44 which was rounded off at Rs. 60,000.

Various grounds were urged in the Petition of Appeal but counsel for the appellant confined himself only to 3 matters—

- (1) Compensation in regard to the actual value of the land ;
- (2) The rejection of the item of Rs. 14,000 claimed by the appellant as having been the income derived by him from the business carried on on the land ; and
- (3) The valuation of Rs. 4,000 in respect of the structures on the land which was reduced to Rs. 1,000 by the Board.

The 1st and 3rd of the above items appeared to us to savour of a question of fact. We so indicated to counsel who was inclined to agree with us and did not press these two items. The appeal in the result was confined to the claim of Rs. 14,000 in respect of the business carried on at the premises acquired which was disallowed by the Board.

At the original inquiry Mr. P. A. V. de Mel, Private Valuer, called by the claimant has given the following evidence regarding the appellant's claim for additional compensation :—

"The claimant has carried on a business of a Sunday Fair at the land being acquired and the following particulars have been extracted from the books maintained :—

Year	1964-65	1965-66	1966-67
Receipts	Rs. 9,556.10	Rs. 9,789.95	Rs. 10,581.90
Expenses	Rs. 5,444.60	Rs. 5,814.60	Rs. 4,506.20
Net Profit	Rs. 4,111.50	Rs. 3,975.35	Rs. 6,075.70

I shall produce the Income Tax Assessment for years 1965-66, 1966-67 and 1967-68 of the claimant, Mr. C. M. Wijesinghe and also the books of accounts.

Taking these facts into account the claim for compensation is assessed as follows :—

Land
 Buildings
 Loss of business Say Rs. 14,000.”

Thereafter the acquiring officer has made a note as follows :—

“All productions have been referred to and returned to the claimant. The claimant is prepared to produce these documents again for summing up if necessary.”

In terms of Section 46 (1) (iii) of the Land Acquisition Ordinance read with the proviso (b) attached thereto, the appellant was entitled in law to a sum slightly in excess of Rs. 14,000 as compensation for the loss of earnings from the business carried on on this said land at the time of the acquisition. The note made by the acquiring officer shows that the appellant had substantiated the claim he put forward on this account with the necessary documents, namely the books maintained by him, supported further by the income tax assessments for the years 1965-66, 1966-67 and 1967-68. According to the same report it would appear that the acquiring officer referred to these relevant documents which were produced and had, after satisfying himself, returned them to the claimant. Ordinarily, therefore, the claimant would have been entitled to the claim of compensation amounting to Rs. 14,000 as he had done everything in his power to substantiate his claim. From the attitude taken by the acquiring officer it seems clear that he was satisfied with the documentary evidence and no serious attack had been directed—nor could such an attack have been seriously directed in view of the income tax assessments—against the receipt by the claimant of this income from the Sunday Fair which he conducted as a business on the land in question. At the appeal before the Board of Review, counsel who appeared for the claimant, who is also the counsel for the appellant in this court, led the evidence of the valuer Mr. P. A. V. de Mel, who had served in the Valuation Department until retirement, whose evidence, *inter alia*, was that he went through the books of accounts maintained by the appellant and then worked out the net profit for the 3 years which was also reflected in the income tax returns. The income tax assessments too in respect of these years of assessment were produced which showed the amounts which I have already referred to earlier. Thereafter counsel moved to put in evidence certain books of accounts for the period 1965-68, which was the relevant period, in order to buttress further the oral evidence

which had already been given and the income tax assessments. This course was objected to by the Proctor who appeared for the acquiring officer and the Board made the following order disallowing the application of counsel for the appellant :—

“ It will appear from the acquiring officer’s notes of the inquiry that when Mr. de Mel gave evidence, he produced certain income tax assessments and books of accounts. The books said to have been produced on that occasion were not identified by being marked in evidence nor were certified copies of any of the entries relied on furnished in terms of Section 9 (6) of the Land Acquisition Act. The acquiring officer seemed to have looked at the books produced, and returned them to the appellant. Under regulation 7 (2) of the Land Acquisition Regulations, 1950, as amended by Regulation made by the Minister and published in the Gazette of 27.12.68, the appellant is not entitled to rely on documentary or oral evidence other than the evidence adduced at the inquiry. This restriction is subject to certain exceptions which are not material for the purpose of the objection under consideration. Mr. Subasinghe seeks to argue that the books produced by Mr. de Mel constitute evidence adduced at the inquiry. We are unable to agree with his submission. The fact that Mr. de Mel referred to certain books of accounts, which were with him and which the acquiring officer also looked into, does not, in our opinion, make them evidence at the inquiry. The proper way to have put the books in evidence, would have been to identify them by marking them as well as the particular entries in them relied on, and also complying with the provisions of section 9 (6). We therefore disallow the application of Mr. Subasinghe.”

Counsel for the appellant submitted before us that the Board of Review erred in law in making this order and that his application should in the circumstances have been allowed and further that he should have received the benefit of his claim for Rs. 14,000. The provision of the Land Acquisition Act on which the Board purported to rely in rejecting the appellant’s application was Section 9 (6) which provides :—

“ (6) An acquiring officer who holds an inquiry under this section shall make a summary of the evidence given by each witness and cause a certified copy of each document produced in evidence to be furnished.”

It seems to me that when the appellant produced the necessary documentary evidence before the acquiring officer on which his claim for Rs. 14,000 for loss of business was based, the duty was cast in terms of this provision on the acquiring officer

who held the inquiry to cause a certified copy of each document produced in evidence to be furnished. If he failed to comply with this provision and caused the documents to be returned to the claimant it would be unjust and inequitable for the claimant to be penalised subsequently by the Board of Review for failure to comply strictly with the provisions of sub-section (6) which did not specifically impose on the applicant any duty to file a certified copy of such documents but by implication, as it were, required him only to produce the necessary evidence. A certified copy of the documents therefore which were produced in evidence by the applicant-appellant should have been caused to be produced by the acquiring officer in terms of this section. In the circumstances even if the strict letter of the law had not been complied with in this instance in that certified copies of documents were not made available to the Board of Review, the evidence was available to the acquiring officer as well as to the Board of Review to be satisfied of the claim of Rs. 14,000 compensation for loss of business by the claimant. Even without the documents themselves there was oral evidence on which it was competent for the Board to act in order to satisfy themselves of the claim put forward. I am therefore of opinion that the Board of Review erred in law in rejecting the application of the appellant to produce the necessary documents in support of his claim of Rs. 14,000 in respect of the loss of business carried on in the premises and the appellant is entitled to succeed in his appeal in respect of this item of the claim.

As I stated earlier, the appeal, so far as it related to the other items, revolved strictly round questions of fact on which no appeal can be entertained by this Court, in view of the provisions of Section 28 (1) of the Land Acquisition Act. I accordingly allow the appeal of the applicant in respect of the sum of Rs. 14,000 and, in terms of Section 28 (5), increase the amount of compensation which has been determined by the Board from Rs. 60,000 to Rs. 74,000.

The appellant is entitled to costs of appeal in the class applicable to the increased compensation which I have allowed.

D. Q. M. SIRIMANE, J.—I agree.

Appeal partly allowed.