

Saman Kariyawasam v Divisional Secretary, Gonapinuwala/ Road Development Authority (RDA)

RTIC Appeal/50/2017 (*Heard as part of the meeting of the Commission on 06.11.2017*)

Acting Chairperson: Ms. Kishali Pinto-Jayawardena

Commission Members: Mr. S.G. Punchihewa

Dr. Selvy Thiruchandran

Present: Director-General Mr. Piyathissa Ranasinghe

Appellant: Mr. Saman Kariyawasam

Notice issued to: L. N. Piyumali Liyanage Divisional Secretary Gonapinuwala (Designated Officer-DO)

D. M. P. R. K. Bandara, Additional Director-General, Road Development Authority

Appearance/ Represented by:

Mr. Saman Kariyawasama

Road Development Authority:

Ms. Wishma Fernando, Resettlement Officer, National Highway Sector Project (NHSP)

Ms. K. G. Kalyani, Resettlement Officer, National Highway Sector Project (NHSP)

Divisional Secretariat, Gonapinuwala:

Ms. L. L. N. Piyumali, Divisional Secretary

Ms. Vimali Sanjeevani, Development Officer

Ms. L. L. N. Piyumali, Divisional Secretary and Ms. Vimali Sanjeevani, Development Officer of the Divisional Secretariat Gonapinuwala were present. Ms. Wishma Fernando, Resettlement Officer, National Highway Sector Project (NHSP) and Ms. K. G. Kalyani, Resettlement Officer (NHSP) were also present to make representations on behalf of the Road Development Authority (RDA). The Appellant was absent during the hearing and presented himself before the Commission after the hearing concluded. The staff of the Commission had attempted to reach the Appellant by phone on 02.11.2017 in order to confirm his presence at the hearing but had failed to contact the Appellant as he did not have a workable phone number, which the Appellant admitted. The Commission extended the benefit of allowing him to speak after the conclusion of the inquiry.

The present Appeal dated 19.06.2017 concerns the request for information dated 25.04.2017 by which certified copies of the Land Acquisition and Resettlement Committee (LARC) decisions relating to compensation for land and property acquired of several landowners, (except for properties over which court cases have been filed), for the project conducted under Financial Aid Contract No 2217-SRI of the Asian Development Bank, to develop the Hikkaduwa-Baddegama-Nilhena (B 153) road. The LARC decisions requested related to acquisition of the properties relating to the lands as specified below;

Survey Plan No: G - 3857

Lot Nos: 22, 99, 110, 28, 29, 30, 06, 07, 62, 112, 113, 111

Survey Plan No: G - 3878

Lot Nos: 19, 30, 53, 71, 121, 124, 158, 146, 147, 129, 130, 149

The DO of the Divisional Secretariat, Gonapinuwala (Divisional Secretary), had forwarded this request as required under Regulation 4 (vi) of the Regulations gazetted on February 3rd 2017 (Gazette No 2004/66) to the Information Officer of the RDA on 28.04.2017 by letter My No: GPN/DS/ADM/ස.නි./03/කොරතුරු-01/03 as the originals were not maintained at the Divisional Secretariat offices. The Divisional Secretary, Ms. L. L. N. Piyumali, explaining this further stated that the originals are maintained at the RDA, NHSP Office where the relevant payments are made.

The RDA's position was as follows and is reflected in the letter to the Commission dated 04.09.2017 asking for advice on how to respond to the request. The IO of the RDA by letter dated 05.05.2017 had asked the Project Director RDA NHSP as to whether he could provide the information, to which the Project Director, (after seeking the advice of the Director (Legal) RDA by letter dated 15.05.2017, on the issue of whether Section 5 (1) (a) of the Right to Information Act No 12 of 2016 is applicable), had responded by letter dated 28.06.2017 stating that since he was not the Chairman of the LARC he has been advised that he cannot provide the information requested (i.e. copies of the relevant LARC decisions). The Appellant had been informed of this decision on 30.06.2017 by the IO of the RDA.

Both Public Authorities present before the Commission submitted that the Chairperson of the LARC was the Divisional Secretary and that therefore, the information must be provided or refused by the Divisional Secretary. A copy of the LARC decision pertaining to each citizen is maintained in their respective file which is in the custody of the Divisional Secretariat. The Divisional Secretary at this point presented for the perusal of the Commission a sample LARC decision which is in fact the agreement between the LARC and the relevant landowners on payments of compensation. She contended that release of the information would therefore attract the privacy exemption under Section 5 (1) (a) of the Act which reads as follows:

[T]he information relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the larger public interest justifies the disclosure of such information or the person concerned has consented in writing to such disclosure.

She also contended that the request by the Appellant would mean release of a large extent of agreements containing personal information of individuals in a background where there is no public interest shown in such release. At this point the Commission determined that the Appellant be permitted to inspect the relevant LARC decisions rather than allowed to obtain copies of the same given that such copies may be distributed among the people in the area and may lead to public agitation. The DO stated on record that she was amenable to the direction and would comply with the same.

The Appellant, who arrived after the hearing had been concluded by the Commission, stated that he was not satisfied with mere inspection and that he wanted certified copies of all the relevant LARC decisions.

Order

In terms of the RTI Act, No 12 of 2016, an Appellant has a right of access to information ‘which is in the possession, custody or control of a Public Authority.’

In this case, a somewhat peculiar factual circumstance has arisen before us wherein requests have been made by this Appellant for copies of LARC decisions relating to compensation paid to other landowners for acquisition of their land. Here, though the original documents are held by one Public Authority (the RDA), the Chairperson of the LARC is another Public Authority (i.e. the Divisional Secretary). The Divisional Secretary (the DO of that Public Authority) has taken note of the same and concedes to such information being within its ‘possession, custody or control.’

On substantive examination of the request which relates to agreements entered into between LARC and each individual landowner, it is apparent that considerations of privacy under Section 5 (1) (a) are attracted. Providing copies of the above mentioned LARC decisions may attract the risk of the documents being circulated in public leading to an unwarranted invasion of the privacy of those land owners.

On the other hand, the Appellant has made generalized allegations regarding the quantum of compensation paid to other landowners. Since public funds are involved in these compensation payments, the Appellant may be allowed to inspect the decisions.

The DO of the PA (Divisional Secretary Gonapinuwala) is hereby directed to allow the Appellant to physically inspect the requested LARC decisions. The Appellant may inspect the relevant documents subject to the caution that no electronic or phone copies are made of the same as this would amount to indirectly engaging in an act which is directly prohibited in this Order.

The Appellant expresses his dissatisfaction with the decision and states that there is a large number of files which he will find difficulty in inspecting. He insists on being given copies of the LARC agreements, affirming that in the alternative, he intends to go to court. The Appellant is at liberty to advise himself of the best course of action available to him in the circumstances.

The appeal is concluded.
