

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

In the matter of an application for an order in the nature of a writ of certiorari to quash the Order made by the 1<sup>st</sup> Respondent under Section 38 Proviso (a) bearing order No. 399 of 2013 (bearing Reference No. 4/3/10/2013/UDA/506 & bearing the Divisional Secretary's Reference No. 100/5/3/1/83) and published in the Extraordinary Gazette No. 1843/20 dated 31/12/2013.

C.A. Writ Application

No: 21/2014

1. Kaalanchiyalage Lily Nona, Of No: 54, Winston Wickremasinghe Mawatha, Kegalle.
2. Hallolu Ralalage Edwin Ranasinghe, Of No: 43, Dutugamunu Mawatha, Kandy.
3. Senevirathnelage Yamuna Kanthi Siriwardena, Of 02/186, Kalugalle Mawatha, Kegalle.
4. Agampodige Gunewardena, Of No: G13 Bulugahadeniya, Hettimulla.

5. Gangoda Devayalage Piyadasa, Of No: A  
35 Beragala Road, Kegalle.
6. NilmalaPuneethawathie Kurukulasooriya  
Of 86/287,  
Bandaranayake Mawatha, Kegalle.
7. Wahumpurayalage  
Manel Chandralatha, Of  
No. 1/88, Kalugalle Mawatha, Kegalle.

**Petitioners**

**Vs.**

1. Janaka Bandara Tennekoon, the  
Minister of Lands and Land  
Development, The Minister of Lands  
and Land Development, "Mihikatha  
Medura", No. 1200/6, Rajamalwatte  
Road, Battaramulla.
2. H.T.R. Nalika Piyasena, Divisional  
Secretary/ Land Acquiring Officer, Of  
Divisional Secretariat, Kegalle.
3. Thusitha P. Wanigatunga, District  
Secretary, Office of the District  
Secretary, Kegalle.

4. Dr. jagath Balasooriya, Minister of National Heritage,  
Ministry of National Heritage,  
4<sup>th</sup> floor,  
Sethsiripaya,  
Battaramulla.
5. Ranjith Siyambalapitiya,  
Minister of Telecommunication and Information Technology, Ministry of Telecommunication and Information Technology, No: 79/1, 5<sup>th</sup> Lane, Colombo 3.
6. G.K. Samarasinghe, Chairman of Kegalle Urban Council, Officer of the Urban Council, Kegalle.
7. Tharaka Balasooriya, Member of Provincial Council, Of No: 183 Bandaranayake Mawatha, Kegalle.
8. Mahipala Herath, Chief Minister of Sabaragamuwa Province, Ministry of Chief Minister of Sabaragamuwa Province, Rathnapura New Town, Rathnapura.
9. Gotabaya Rajapakse, Secretary to the Ministry of Defense and Urban Development, Ministry of Defense and Urban Development, No: 5/15, Baladaksha Mawatha, Colombo 3.

10. Hon. Attorney General, Attorney  
General's Department, Colombo 12.

**Respondent**

BEFORE : P.W.D.C. JAYATHILAKE, J

COUNSEL : Dr. Sunil Coorey with Sudarshini Coorey  
for the Petitioner.

M. Fernando A.S.G. with Yaresha

Fernando for the Respondent.

Decided On : 22.05.2014

**P.W.D.C. Jayathilake J.**

The Petitioners have filed this application for a writ of certiorari to quash the order made by the 1<sup>st</sup> Respondent under proviso (a) of section 38 of land acquisition Act. After the court had issued notice on the Respondents, the 2<sup>nd</sup> Respondent has made an application to the Magistrate, Kegalle under Section 42(2) of the said Act to obtain immediate possession of the land in question. The learned Magistrate has ordered issuing writ to the fiscal to deliver possession of the land in question. Therefore, the Petitioners have made a subsequent application for an interim relief to grant a stay order, staying the operation of the order of the learned Magistrate.

The 2<sup>nd</sup> Respondent, Divisional Secretary of Kegalle has filed an affidavit dated 31.03.2014 stating that the order made in terms of Section 38 proviso (a) was published in extra ordinary gazette No: 1843/20 dated 31.12.2013 and the Petitioners were informed to formally hand over the possession of the acquired lands. It has been further stated that the Petitioners had handed over lot 1, 2 and 3, while they irresponsibly declined to handover the two remaining lots, namely No: 4 and 5. In view of the said refusal by the Petitioners and the urgent nature of the acquisition, steps have been taken in terms of Section 42 of the relevant law. Accordingly, fiscal delivered the possession of the two lots of land in question on 13.03.2014, states the 2<sup>nd</sup> Respondent in his affidavit. The fiscal report has been tendered marked 2 R 7.

The learned Counsel for the Petitioners in support of the application for interim relief submitted that the Petitioners had not been given notice about the delivery of possession by the Magistrate Court and/or the fiscal. Therefore, the mere report of the fiscal shall not be accepted as actual handing over the possession of the lands, he argued. He pleaded to issue interim relief to stay the operation of Magistrate's order to prevent irreparable loss which will be caused to the Petitioners. The learned Additional Solicitor General appearing for the Respondents opposing to the application of Petitioners submitted that it is frivolous to issue a stay order as the Magistrate's order has been already executed. She further submitted the presence of the Petitioners was immaterial in executing the writ as it was the delivery of the possession, of acquired lands.

According to the report of the fiscal (2R7), the 1<sup>st</sup> Petitioner had been present at the time of the delivery of possession and there was no resistance or ejection that had taken place according to the report.

Therefore the Court is of the view that the argument of the Petitioners' Counsel that the writ issued by the Magistrate has not been duly executed, cannot be accepted. Learned Counsel for the Petitioner cited the judgment of His Lordship Samarakoon CJ of *Fernandopulle V. Minister of Land, and Agriculture*<sup>1</sup>. It has been decided in the said case that it is legitimate to hold that the legislature has not intended to remove the Court's power of scrutiny when the Minister made an order that

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1. 79 (11) NLR 115

immediate possession be taken of the land.

Therefore the Respondents must take cognizance that the Court has decided to issue notice on them in the main application, after considering its jurisdiction to review an order in the nature of the order in question in the said application.

However, the Court decides to refuse to grant stay order, staying the execution of Magistrates order as it has been already executed.

**JUDGE OF THE COURT OF APPEAL**