

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

CA (Writ) Application 152/2016

Thushantha Mahindra Ratwatte
The Basnayake Nilame,
Kandy Maha Devale also known as Sri Vishnu Maha Devalaya,
Kandy.

Petitioner

Vs.

1. Hon. John Amaratunga
Minister of Lands,
No. 1200/6, 'Mihikatha Medura,
Rajamalwatta Road, Battaramulla.

2. Divisional Secretary/Acquiring Officer
Divisional Secretariat,
Dehiowita.

3. Urban Development Authority
6th and 7th Floors, Sethsiripaya,
Battaramulla.

4. National Gem and Jewellery Authority
Galle Face Terrace,
Colombo 01.

Respondents

CA Writ 152/2016

BEFORE: Vijith K. Malalgoda, P.C.J. (P/CA) &
P. Padman Surasena, J.

COUNSEL: H. Withananchchi with S. Karunadahar for the Petitioner.

Susantha Balapatabendi DSG for the 4th Respondent.

SUPPORTED ON: 27.06.2016.

Vijith K. Malalgoda, P.C. J. (P/CA)

Heard Counsel in support of this application and also the learned Deputy General representing the Attorney General . The Petitioner who is the Basnayake Nilame of Kandy Mahadewalaya or also known as Sri Vishnu Maha Devalaya had come before this court seeking writ of certiorari and Mandamus in order to quash a decision of acquisition made in the year 2006 with regard to a land in Avissawella area. We observed during the submissions placed before this court that Kelani Valley Sports Club which was in occupation of larger portion of the land which was acquired had come before this court in the year 2007 and the said writ application No: 87/2007 is still pending before this court. In the said application the petitioner to the present application who had intervened to the said application and nearly 100 other parties including the petitioner to the said application have agreed to go before the District Court under Section 10 of Land Acquisition Act to resolve their rights to the claim they are going to make with regard to the acquisition. In the

meantime the Petitioner to the present application had gone before the District Court in another application for a declaration of title and that application too is pending before the District Court of Avissawella. The Petitioner's complaint before this court is that the Respondents have now deviated from the original purpose of constructing a sport complex in the land in question and now they are advertised to lease out a portion of the said land for gemming purposes through the Gems and Jewellery Authority. However by going through the notices filed of record, we observe that the said notices are very clear that the said lands are being auctioned for a temporarily period of one year in order for gemming. Petitioner has failed to establish before this court that the Respondents abandoned the original purpose of this acquisition for a sports complex.

The learned Deputy Solicitor General representing the respondents inform that the said plans have not been given up and the present decision to lease out this land for gemming purpose is for a very limited period of one year. Since the prayer in the earlier application that is the application filed in 2007 also carries a similar prayer to quash Section 38 notice issued by the Respondents, we observe that this is only a repetition of action pending before this Court, if the parties are interested in agitating the issues arisen later they should review the application they have already filed instead of filing fresh application before this Court.

When considering the submissions made by the Counsel, we observe that there is no purpose in issuing notices in this case for several reasons, one being the action has already been filed before this Court which is pending and secondly the petitioner's failure to establish before this Court that the respondents have given up the original plan to construct a sports complex in this premises which has been acquired .

For the above reasons, we see no merit in this application and we therefore dismiss this application. No cost is ordered.

Application dismissed.

PRESIDENT OF THE COURT OF APPEAL.

P. Padman Surasena, J.

I agree.

JUDGE OF THE COURT OF APPEAL.

Mm/-.