

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

In the matter of an application for a mandate in the nature of writ of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Don Aruna Nimalka Karunanayake,
Pahalawalawwa, Sinharamulla, Kelaniya

And presently of:

No.1 Kiandra Mews, Hapton Park,
Victoria 3976, Australia.

Petitioner

CA [Writ] No: 649/2008

Vs.

- 1 C. Ranasinghe,
Acquiring Officer,
Greater Colombo Flood Control Project
Land Acquiring Office
No.03 Sri JayawardanapuraMawatha,
Welikada, Rajagiriya.
- 2 Sri Lanka Land Reclamation –
Development Corporation,
Ministry of Urban Development & Water Supply
No.03 Sri JayawardanapuraMawatha,
Welikada, Rajagiriya.

- 3 Ministry of Urban Development & Water Supply
No.03 Sri JayawardanapuraMawatha,
Welikada, Rajagiriya.
- 4 Secretary,
Ministry of Urban Development & Water Supply
No.03 Sri JayawardanapuraMawatha,
Welikada, Rajagiriya.
- 5 Hon. Jeevan Kumaratunga,
Minister of Lands & Land Development
Ministry of Lands and Land Development
Rajamalwatte Road, Battaramulla.
- 6 Acquiring Officer,
Divisional Secretariat, Rajagiriya.

Respondents

- 7 Hon. Janaka Bandara Tennakoon M.P
Minister of Lands & Land Development
Ministry of Lands and Land Development
Rajamalwatte Road, Battaramulla.
- 8 Hon. M.K.D.S. Gunawardene M.P
Minister of Lands & Land Development
Ministry of Lands and Land Development
Rajamalwatte Road, Battaramulla.
- 9 Hon. John A.F. Amarathunga M.P
Minister of Lands & Land Development
Ministry of Lands and Land Development
Rajamalwatte Road, Battaramulla.

Added-Respondents

BEFORE : Deepali Wijesundera J.
L.U Jayasuriya J.

COUNSEL : Gamini Marapana P.C with Kirthi Sri Gunawardane for the Petitioner
M.N.B Fernando P.C. ASG for the Respondents

ARGUED ON : 13th July, 2016

DECIDED ON : 28th February, 2016

L.U.Jayasuriya J.

The Petitioner is seeking a Writ of Certiorari by the petition dated 29.09.2008 to quash the vesting order published in the Government Gazette Extraordinary No. 671 dated 15.07.1991 produced and marked as p6, and a writ in the nature of mandamus directing the Respondents to divest the Petitioner's acquired land namely Lot No 50 depicted in Plan No 60:5843 dated 25.05.1982 under section 39A(1) of the Land Acquisition Act No.09 of 1950 as amended.

Section 39A reads as follows.

- (1) Notwithstanding that by virtue of an order under section 38 (hereinafter in this section referred to as a "vesting order") any land has vested absolutely in the state and actual possession of such land has been taken for and on behalf of the state under the provision of paragraph 9(a) of section 40, the Minister may subject to subsection (2) by subsequent order published in the Gazette (hereinafter in this section referred to as a divesting order) divest the land so vested by the aforesaid vesting order.
- (2) The Minister shall prior to making a divesting order under subsection (1) satisfy himself that

- a. No compensation has been paid under this Act to any person or persons or persons interested in the land in relation to which the said divesting order is to be made.
- b. The said land has not been used for a public purpose after possession of such land has been taken by the State under provision of paragraph (a) of section 40,
- c. No improvements to the said land have been effected after the possession under paragraphs (a) of the section 40 had been made; and
- d. The person or persons interested in the said land have consented in writing to take possession of such land immediately after divesting order is published in gazette.

As evidenced by the letter dated 28.03.1991 produced and marked as 1R1, the then Minister of Housing and Construction has requested from the Minister of Lands to acquire the land depicted in plan No Co:5843 dated 25.05.1982 for the purpose of Greater Colombo flood water control project. Thereafter by government Gazette dated 1991.07.15, the land in issue was acquired by the Minister of Lands.

The Respondents maintain that the land in issue is still used for the same purpose for which the land was acquired.

The Learned President's Counsel argued that the land in issue is filled with earth and compressed and therefore the same cannot be used for the purpose of which the land was acquired and drew the attention of this court to P21 dated 23.07.2009 which is a report submitted after conducting a site investigation by Geotech (Pvt) Ltd.

On a careful perusal of P21, it appears that the land in issue was filled by building debris and timber pieces; further P21 reveals that the Northern

boundary of the land in issue is a canal, which fact shows that the said land is suitable for Water Retention.

However, this court is unable to ascertain the condition of the land in issue at the time of acquisition as the condition report is not forthcoming from either party.

Admittedly Lot Nos 5,6,8,35,37,22,62,63 and 46 have been divested on a recommendation of a divesting committee.

The Petitioner was awarded compensation as evidenced by the document produced and marked as 1R2 dated 02.05.2008, which fact was suppressed by the Petitioner by his amended petition; which will become a valid ground to dismiss the application.

Further, the Petitioner was requested to take steps to collect the compensation awarded by the document produced as 2R5 dated 08.12.2008 and this in-fact becomes the situation contemplated under section 39A(2)a of the said Act.

It was held in **Urban Development Authority and Another Vs. Minister of Lands** that:

“The exercise of discretionary power vested with the Minister by section 39A of the Land Acquisition Act is not amenable to judicial review in an application for a writ of mandamus”

For the aforesaid reasons, the application of the Petitioner stands dismissed with cost fixed at Rs. 50,000/-

Application Dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J. :

I Agree.

JUDGE OF THE COURT OF APPEAL