

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

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

C.A. (Writ) Application
No.217/2016

Talawakelle Tea Estates PLC,
(formerly known as Talawakelle Plantations Limited)
No.400, Deans Road,
Colombo 10.

PETITIONER

-Vs-

1. **S.P.K. Bodhimana,**
Divisional Secretary (Nuwara Eliya),
Divisional Secretariat,
Nuwara Eliya.
2. **Hon. the Attorney General,**
Attorney General's Department,
Colombo 12.
3. **Sri Lanka State Plantations Corporation**
York Street, Colombo 1.
4. **S. Thambugala,**
Chairman, Land reform Commission,
No.82/C, Gregory's Road,
Colombo 7.

RESPONDENTS

W.M. Ananda,
Divisional Secretary (Nuwara Eliya),
Divisional Secretariat,
Nuwara Eliya.

Substituted 1st RESPONDENT

Sirimewan Dias,
Chairman, Land reform Commission,
No.82/C, Gregory's Road,
Colombo 7.

Substituted 4th RESPONDENT

BEFORE : A.H.M.D. Nawaz, J.

COUNSEL : N. Jayanthan for the Petitioner
Dr. Sunil Coorey for the 4th Respondents
Chaya Sri Nammuni, SSC for the Attorney-General

Argued &

Decided on : 30.01.2019

A.H.M.D. Nawaz, J.

The Petitioner seeks an order in the nature of a writ of mandamus on the 1st Respondent, who is the Divisional Secretary, *Nuwara Eliya*, to compel him to refer the claims of the Petitioner and the 3rd and 4th Respondents to the District Court of *Nuwara Eliya* for determination of their rights as to compensation for the allotments of land that had been acquired. A schedule containing details of the compulsory acquisitions has been appended to the petition. The claims for compensation had been made by the Petitioner, the 3rd Respondent and 4th Respondent. Mr. N. Jayanthan, Counsel for the Petitioner submitted that as far back as 13.01.2012, the then Divisional Secretary had addressed a

letter to the General Manager of the Petitioner stating that since he was unable to decide on the claims made before him owing to disputed claims of ownership, he had decided to refer the matter, under Section 10(1)(b) of the Land Acquisition Act, to the District Court for determination as to the rights of parties. Thereafter, nothing was heard of any such reference to the District Court and for several years the jurisdiction of the District Court was not invoked. Several letters had been addressed by the Petitioner to the 1st Respondent demanding that the statutory duty to refer the dispute under Section 10(1)(b) of the Land Acquisition Act be exercised but they had been of no avail. The Petitioner wrote to the Divisional Secretary by his letter dated 03.12.2015 that since no reference had been made to the District Court regarding the payment of compensation, he would be interested to know whether the Divisional Secretary had taken any steps to refer the matter to the District Court or whether they would take such steps before the end of the year namely 2015.

By way of a response to this letter, the Divisional Secretary, *Nuwara Eliya* stated that they had decided to deposit the compensation payable in the District Court of *Nuwara Eliya* and they would inform the parties of the steps taken within two weeks.

Thereafter, the Petitioner had written to the 1st Respondent on the 10.02.2016 stating that they would institute legal action within one week if nothing was heard on this matter.

Dr. Sunil Coorey who appears for the 4th Substituted Respondent also made submissions on the failure to perform the statutory duty mandated by law and Mr. N. Jayanthan and Dr. Sunil Coorey both submitted that Section 10(1)(b) of the Land Acquisition Act, No.9 of 1950 as amended casts a mandatory duty on the part of acquiring officer holding the inquiry wither to make a decision on a retain claims or in the event of a difficulty to determine the claims refer the claim or dispute for the determination to the District Court. The aforesaid provision goes as follows:-

- 1) At the conclusion of an inquiry held under Section 9, the acquiring officer holding the inquiry shall either-

- a) make a decision on every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired and on every such dispute as may have arisen between any claimants as to any such right, title or interest, and give notice of his decision to the claimant or to each of the parties to the dispute, or
- b) refer the claim or dispute for determination as hereinafter provided.....

It would appear from the correspondence available on the record that a promise had been made to discharge this statutory duty but, so far the expectation of the Petitioner has yet not been fulfilled. The learned Senior State Counsel, Chaya Sri Nammuni appearing for the Hon. Attorney-General submitted that the extent of the land is so vast that it has taken a while for the steps to be completed in order to file action in this matter and in any event she stated that complaints in regard to two claims pertaining to parcels of land of this land have been forwarded to the 1st Respondent with a view to instituting proceedings in the District Court.

However, it appears that the action under Section 10(1)(b) has yet not be initiated by the statutory functionary namely the 1st Respondent to this application, if at all the complaints have been forwarded.

Having regard to the correspondence and the submissions made by all counsel, it appears to this Court that there has been a delay and failure to refer this dispute to the District Court of Nuwara Eliya.

Though the Petitioners had been agitating for an institution of proceedings since 2015, nothing has been done to facilitate the payment of compensation that pervades the spirit of Section 10(1)(b) of the Land Acquisition Act. The pith and substance of the Land Acquisition Act embodies the concept of eminent domain or no expropriation of private land without compensation.

In the House of Lords judgment of *Colonial Sugar Refining Co Ltd v. Melbourne Harbour Trust Commissioners* (1927) AC 343 at 359, Lord Warrington of Clyffe noted:-

“In considering the construction and effect of this Act, the Board is guided by the well known principle that a statute should not be held to take away private rights of property without compensation unless the intention to do so is expressed in clear and unambiguous terms.”

It is trite law that private property can only be compulsorily acquired or used by the State and not otherwise. The rationale of compulsory acquisition by the State is that private interests may in some circumstances be subordinated to the higher interests of the public. Patanjali Sastri, CJ in delivering the judgment of the Indian Supreme Court in *State of Bihar v. Kameshwar Singh* AIR 1952 SC 252 at 264 said:-

“It is true that under the common law of eminent domain as recognized in the jurisprudence of all civilized countries, the State cannot take the property of its subject unless such property is required for a public purpose and without compensating the owner for its loss.”

However, it must be noted that the laws which enable expropriation of private property must be stated in clear and unambiguous terms and moreover must afford adequate compensation.

In view of these well established principles this Court deems it apt that it should exercise its discretionary powers under Article 140 of the Constitution to grant the relief namely a writ of mandamus on the 1st Respondent ordering him to perform his duty that is required of him under Section 10(1)(b) of the Land Acquisition Act, No.9 of 1950 as amended.

The Divisional Secretary is directed to give effect to the claims that have been forwarded by the Hon. AG and immediately institute this action in the District Court of Nuwara Eliya to proceed with the payment of compensation to the Petitioners and the 3rd and 4th Respondents.

In the circumstances, this Court issues a writ of mandamus ordering the 1st Respondent to refer without delay the claims of the Petitioner and the 3rd and 4th Respondents to the District Court of Nuwara Eliya for determination of their rights to compensation.

JUDGE OF THE COURT OF APPEAL