

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

D.M.T. Ranjani Dissanayake
Bandarathilake,
No. 138,
High Level Road,
Kandalanda,
Homagama.
And 4 Others
Petitioner

CASE NO: CA/WRIT/23/2014

Vs.

Janaka Bandara Tennakoon,
Minister of Land & Land
Development,
Ministry of Land & Land
Development,
'Mihikatha Medura',
Rajamalwatta Road,
Battaramulla.
And 8 Others
Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Rasika Dissanayake with Pasindu Silva for the
Petitioner.
Vikum De Abrew, Senior D.S.G., for the
Respondents.
Decided on: 06.11.2019

Mahinda Samayawardhena, J.

This application concerns the acquisition of lands by the State for the purpose of widening and developing Kirulapone-Godagama road.

Five Petitioners have filed this application seeking to quash by way of writ of certiorari the order made by the 1st Respondent Minister of Lands in terms of the proviso to section 38(a) of the Land Acquisition Act marked P9 and the other steps taken in order to take possession of the portions so acquired insofar as they affect the lands owned by the Petitioners. They also seek to compel the Respondents by way of writ of mandamus to use the road reservation shown in P15 to widen the road instead of acquiring their lands. Further they seek to prohibit the Respondents from taking over possession of the Petitioners' lands based on the Tracing marked P12.

The principal argument of the learned counsel for the Petitioners is that an Advance Tracing prepared by the Surveyor General's Department is a prerequisite to acquisition, and in this instance P12 prepared by the Surveyor General's Department is only a

Tracing and not an Advanced Tracing, and therefore the acquisition is *ultra vires*. The learned counsel further states that P12 is predated to Section 2 Notice, and on that account also P12 is void *ab initio*.

As seen from P12, portions of land along the High Level Road belonging to a large number of persons have been acquired for this road widening purpose. However only the five Petitioners in this case and the Petitioner in CA/WRIT/63/2014 have challenged the said acquisition in this Court. Counsel for the parties in both cases are the same and therefore they agreed to abide by a single Judgment to be delivered in this case.

Let me now consider on what basis the learned counsel for the Petitioner states that Advance Tracing is necessary for acquisition of lands, and why P12 cannot be regarded as an Advanced Tracing, and how it affects the Petitioners in this case.

The learned counsel says that in terms of Regulation 263 of the State Land Manual, an Advanced Tracing made by the Department of Survey shall be obtained before proceeding to take over possession of the acquired portions of land. He further says that the requirement to have an Advanced Tracing has been reiterated in the Circular No. LD/5/D/08 dated 07.10.2002 issued by the Secretary of the Ministry of Lands marked P14.

The 9th Respondent Surveyor General in his statement of objections has *inter alia* producing the request letter for a survey marked 9R1 dated 07.11.2011 states that Detailed Tracing marked P12 was prepared in terms of that request for the purpose of this acquisition and therefore the 3rd Respondent Divisional Secretary

of Homagama was informed by 9R5, that P12 could be used as an Advance Tracing for that purpose.

I cannot accept the argument that P12 made before Section 2 Notice renders P12 void *ab initio*. According to section 2(3) of the Land Acquisition Act, after Section 2 Notice, the acquiring officer may enter the land to be acquired for the purpose of survey. That does not mean that no Tracing can be prepared before Section 2 Notice.

According to Regulation 263 as quoted by the learned counsel for the Petitioners, before taking over possession there shall be an Advance Tracing prepared by the Survey Department. However, the term "Advance Tracing" has not been defined in the Regulation. The Surveyor General in his affidavit tendered with the statement of objections states that P12 could be used as an Advance Tracing.

Let me now consider why the Petitioners state that P12 is not an Advance Tracing. The Petitioners state that, according to P12, Lot 198 belongs to the 1st Petitioner, Lot 204 to the 2nd Petitioner, Lot 196 to the 3rd Petitioner, Lot 207 to the 4th Petitioner and Lot 203 to the 5th Petitioner in this case. Lot 205 of P12 belongs to the Petitioner in CA/WRIT/63/2014.

The complaint of the Petitioners is that no detailed description about those Lots has been given in P12.

Out of these Lots, only the 4th Petitioner and the 2nd Petitioner in this case have specific grievances. The 4th Petitioner's grievance is that although Lot 207 is depicted as a single Lot, it contains three separate properties belonging to three separate owners, and her

house and well have not been shown. It is also said that a part of the 2nd Petitioner's house in Lot 4 is not depicted. It is not clear to me that Lot 4 is a typographical error for Lot 204.

They say that in an Advance Tracing the details of the portions of land are provided and that is very relevant in assessing compensation payable to them. I think that is where their grievance lies. Their grievance is that, because in the Tracing P12 sufficient details are not given, that will adversely affect in the payment of compensation to them.

That grievance can easily be addressed by making a direction to the 3rd Respondent Divisional Secretary to get another detailed survey done from the Surveyor General's Department only in respect of the specific Lots which the Petitioners in both cases claim, which are, if I may repeat, Lots 4, 196, 198, 203, 204, 205 and 207 in P12. That shall be done with notice to the Petitioners in both cases. I make order to the 3rd Respondent accordingly. That is for the purpose of assessing compensation payable to them in future.

The Petitioners in paragraph 18 of the petition referring to another Tracing marked P15 states that there is a Road Reservation along the High Level Road on the opposite side of their allotments, which can be utilized for widening the said road. How Tracing P15 establishes that position is not clear. However the 4th Respondent Road Development Authority in paragraph 18 of its statement of objections states that the extent has been calculated by including the said Road Reservation. Those matters which are in dispute cannot be looked into in this writ application.

Subject to the above direction given to the 3rd Respondent Divisional Secretary of Homagama to resurvey the Petitioners' Lots in order to use in the computation of compensation to be payable, application of the Petitioners is dismissed without costs.

The substituted Petitioner in CA/WRIT/63/2014 will abide by this Judgment.

Judge of the Court of Appeal