

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

Mohammed Ansar Mohammed
Arus,
Kiralagalawaththa,
Pangolla,
Ibbagamuwa.
Petitioner

CASE NO: CA/WRIT/329/2018

Vs.

1. Ibbagamuwa Pradeshiya Sabha,
Ibbagamuwa.
2. Chairman,
Ibbagamuwa Pradeshiya Sabha,
Ibbagamuwa.
3. Secretary,
Ibbagamuwa Pradeshiya Sabha,
Ibbagamuwa.
4. Divisional Secretary,
Divisional Secretariat,
Ibbagamuwa.

5. Gayantha Karunathilaka,
Minister of Lands and
Parliamentary Reforms,
Ministry of Lands and
Parliamentary Reforms,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6,
Rajamalwatta Avenue,
Battaramulla.
6. Secretary,
Ministry of Lands and
Parliamentary Reforms,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6,
Rajamalwatta Avenue,
Battaramulla.

Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Saliya Peiris, P.C., with Anjana Ratnasiri for
the Petitioner.
Dr. Sunil Cooray for the 1st-3rd Respondents.
Madubashini Sri Meththa, S.C., for the 4th-6th
Respondents.

Supported on: 10.07.2020

Decided on: 14.07.2020

Mahinda Samayawardhena, J.

The Petitioner filed this application basically seeking to quash by certiorari the acquisition of the land relevant to this application made under the Land Acquisition Act on the ground the acquisition is a nullity.

The acquisition took place nearly fifty years ago, in 1971/72. The 4th Respondent Divisional Secretary has filed with his limited objections copies of the relevant documents marked R4 (1)-(18) to convince the Court that the proper procedure was followed in acquiring the land and compensation was duly paid.

The Petitioner was not the owner of the land at the time the acquisition took place. A person by the name of Hameed was the owner of the land. The said Hameed, according to the Petitioner, had gifted the property to his (Hameed's) daughter in 1968 by way of a deed. Thereafter, in 2016, Hameed's daughter had allegedly transferred her rights to the Petitioner by way of a deed. The Petitioner admits that a portion of the land is being used for the Ibbagamuwa Weekly Fair. This Fair, according to the *Pradeshiya Sabha*, has been in operation since 1970.

Let me now consider why the Petitioner says the acquisition is a nullity.

The pivotal argument of the Petitioner is, at the time of the acquisition, the owner of the land had been Hameed's daughter (from whom the Petitioner later purchased the property), but compensation for the acquisition was wrongly paid to Hameed. The Petitioner further says, at the time, Hameed's daughter was a minor and therefore, in terms of section 32 of the Land Acquisition Act, compensation should have been deposited in

the name of Hameed's daughter. In other words, the Petitioner's complaint is compensation was not paid to the actual owner of the land.

Even assuming this is factually true, failure to pay compensation to the correct person does not make the acquisition null and void. The acquisition is still valid and the person who is lawfully entitled to compensation may recover the compensation from the person to whom it was wrongly paid or perhaps from the acquiring officer.

It is interesting to note that Hameed's daughter, who is said to be the transferor of this land to the Petitioner, does not support any of these matters before this Court or any other authority. There is not even an affidavit from her affirming these facts. How do we know whether Hameed returned the said compensation to his daughter, in which case the Petitioner has no ground to grouse.

The second argument of the Petitioner is the public purpose had not been described in the section 2 Notice issued for this acquisition under the Land Acquisition Act, and therefore the whole process is null and void. The Petitioner is challenging the section 2 Notice marked R4(1) issued nearly fifty years ago, on 22.10.1971 to be exact. At the time, the Petitioner was admittedly not the owner of this land; he is said to have become the owner in 2016. This is not public interest litigation. Not being the owner at the time of the acquisition, how can the Petitioner challenge the section 2 Notice? He cannot. If at all, such a challenge shall come from the alleged transferor of the land, Hameed's daughter, who the Petitioner says was the owner at the time of the acquisition.

The third argument of the Petitioner is the land has not been vested in the Ibbagamuwa *Pradeshiya Sabha* in terms of section 44(1) of the Land Acquisition Act. The said section says, once acquired, the acquiring officer shall vest the land in such local authority or some other body by way of a certificate issued under his hand.

Even assuming such a certificate has not been issued so far, this shall not vitiate the entire acquisition proceedings. As seen from R4(3), by virtue of an Order made under the proviso to section 38 of the Land Acquisition Act, the land has vested absolutely in the State. The failure to issue the said certificate does not result in passing the land to the original owner.

The Petitioner further says the vesting order has not been registered at the Land Registry. Even if this is true, the Petitioner does not say how the acquisition is thereby invalidated. If the Petitioner is of the view his deed shall get priority, he may establish the same in the appropriate forum.

The Petitioner has already filed a case in the District Court against the *Pradeshiya Sabha* to vindicate his title. There are no grounds for him to invoke the writ jurisdiction of this Court to challenge the said acquisition.

Issuance of formal notice on the Respondents is refused. The application of the Petitioner is dismissed with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal