

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

Liyana Arachchige Sarath
Padmakumara,
No.316A, Balum Mahara,
Imbulgoda.
Petitioner

CASE NO: CA/WRIT/275/2017

Vs.

1. C.P.W. Gunatilake,
Acquiring Officer/Divisional
Secretary,
Divisional Secretariat,
Ananda Mawatha,
Gampaha.
2. Road Development Authority,
'Maganeguma Mahamedura',
No.216,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

3. D.M. Dayaratne,
Director (Lands),
Road Development Authority,
'Maganeguma Mahamedura',
No.216,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.
4. N.R. Suriyarachchi,
Chairman,
Road Development Authority,
'Maganeguma Mahamedura',
No.216,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.
5. Janaka Bandara Tennakoon,
Former Minister of Lands and
Land Development,
'Mihikatha Medura',
Land Secretariat,
No.1200/6, Rajamalwatta Road,
Battaramulla.
6. Gayantha Karunathilaka,
Minister of Lands and
Parliamentary Reforms,
Ministry of Lands,
'Mihikatha Medura',
Land Secretariat,
No.1200/6, Rajamalwatta Road,
Battaramulla.

7. Lakshman Kiriella,
Minister of Higher Education and
Highways,
Ministry of Highways,
“Maganeguma Maha Medura”,
No.216,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.
Respondents

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

Counsel: H. Withanachchi with Shantha Karunadhara
for the Petitioner.
Nayomi Kahawita, S.C., for the
Respondents.

Argued on: 27.08.2020

Decided on: 06.10.2020

Mahinda Samayawardhena, J.

As seen from *inter alia* P3 and P4, a portion of the Petitioner’s land was acquired in or about 2012 under the Land Acquisition Act for the road widening project of the Colombo-Kandy road, apparently for the Imbulgoda-Miriswatta stretch. The Petitioner’s land is in Imbulgoda, in the Divisional Secretary area of

Gampaha. The Petitioner did not object to this acquisition. Thereafter, a subsequent acquisition had taken place in 2014, whereby some other parcels of land along the same road, including a portion of the Petitioner's land, were acquired. By filing this application, the Petitioner challenges the aforesaid second acquisition.

At the argument, learned Counsel for the Petitioner accepted publication of the section 2 notice marked 1R1 dated 14.02.2013 and 2R1 dated 13.01.2014. As described in the said notice, the public purpose for the second acquisition is "*supply of additional facilities in connection with the broadening of Kandy highway and acquiring of additional lands for common relocation.*"

In connection with the second acquisition, the Petitioner in the petition itself accepts publication of the following:

- (a) order in terms of proviso (a) to section 38 of the Land Acquisition Act in the gazette dated 20.06.2014 marked P9;
- (b) notice in terms of section 5 in the gazette dated 14.11.2014 marked P10; and
- (c) notice in terms of section 7 in the gazette dated 17.11.2014 marked P11.

The Petitioner also tenders the Surveyor General's plan marked P12 dated 12.11.2014 depicting the subject land relevant to this application.

As stated in the petition and particularly P15 dated 14.08.2017 (a letter sent to the subject Minister by the Petitioner about two weeks before this application was filed in Court), the Petitioner

knew contemporaneously about the said steps taken for the acquisition of additional parcels of land.

When the land to be acquired was surveyed in 2014, as seen from the tenement list attached to the P12 plan, the Petitioner laid claim to a portion of the land. This shows the Petitioner's awareness of the second acquisition from the early stages of the process.

Although the Petitioner in the petition and in P15 says he objected to the said second acquisition, there is no evidence of such an objection. It appears to me the Petitioner thinks non-participation at the section 9 inquiry into claims for compensation amounts to objection to the acquisition. Non-participation at the section 9 inquiry is not tantamount to objecting to the acquisition in the eyes of the law. The 1st Respondent Divisional Secretary, in paragraph 11 of his statement of objections, and the 2nd Respondent Road Development Authority, in paragraph 10 of its statement of objections, state the Petitioner did not participate at the section 9 inquiry despite repeated notices. This is not disputed by the Petitioner. The Petitioner did not challenge these notices or decisions at the time they were issued or made.

In P15, the Petitioner says "he did not take steps" in this regard. Let me quote the relevant portion of P15 for convenience to understand the Petitioner's grievance in his own words:

ඉහත සඳහන් මාගේ ඉඩම හා ඊට යාබදව පිහිටි අනෙකුත් ඉඩම් අයිතිකරුවන්ගේ ඉඩම්වල කොටස් මාර්ග ව්‍යාපෘතියට පවරාගත් පසු ඉතිරි වූ ඉඩම් කොටස් "මාර්ගය හා සම්බන්ධව අතිරේක පහසුකම් සැපයීම හා පොදු ප්‍රතිස්ථාපනය කිරීම සඳහා අතිරේක ඉඩම් අත්කර ගැනීම යටතේ" යැයි කියා

සිටිමින් ඉඩම් අත්කර ගැනීම පනත යටතේ එවකට ඉඩම් විෂය භාර අමාත්‍යවරයා විසින් රජයට පවරා ගැනීමට කටයුතු කරන ලදී.

අදාළ අමාත්‍යවරයා විසින් ඉඩම් අත්කර ගැනීමේ පනත 38 වන වගන්තියේ (අ) අතුරු විධානය යටතේ අංක ගම්/ගම්/2014/122 හා 2004.05.21 දිනැති ප්‍රගමන අනුරේඛණයේ දක්වා ඇති කැබලි අංක 1, 2, 3 හා 4 කොටස් වල සන්නකය ලබාගන්නා ලෙස අදාළ ප්‍රදේශයේ ප්‍රාදේශීය ලේකම්වරයාට නියම කරමින් එම දැන්වීම අංක 1867/14 හා 2014.06.20 දින දරණ රජයේ ගැසට් පත්‍රයේ පළකරන ලද අතර, පසුව එකී ඉඩම් කැබලි 4 සම්බන්ධව ඉඩම් අත්කර ගැනීමේ පනතේ 5 වන වගන්තිය යටතේ වූ ප්‍රකාශය අංක 1883/43 හා 2014.11.14 දින දරණ රජයේ ගැසට් පත්‍රයේ පළකරන ලදී.

පසුව අදාළ අමාත්‍යවරයා විසින් අංක 1889/3 හා 2014.11.17 දින දරණ රජයේ ගැසට් පත්‍රයේ ඉඩම් අත්කර ගැනීමේ පනතේ 7 වගන්තිය යටතේ දැන්වීමක් සර්වේයර් ජනරාල්වරයාගේ අංක ගම්/3942 හා 2014.11.12 දින දරණ මූලික පිඹුරේ කැබලි අංක 1 සිට 4 දක්වා කොටස් සම්බන්ධයෙන් පළකරන ලදී.

මාගේ කුඹුරු ඉඩමේ ඉතිරි කොටස වන ඉහත කී අංක 3942 දරණ මූලික පිඹුරේ අංක 3 වශයෙන් දක්වා ඇති කොටස කොළඹ-නුවර මාර්ගය පුළුල් කිරීමේදී කිරීමේදී "මාර්ගය හා සම්බන්ධව අතිරේක පහසුකම් සැපයීම හා පොදු ප්‍රතිස්ථාපනය කිරීම" සඳහා යැයි කියමින් දෙවන වරටත් අත්කර ගැනීම සම්බන්ධයෙන් විරෝධතා ඉදිරිපත් කරන ලද අතර, වන්දි ලබාගැනීමටද එකඟ නොවූ නිසා එකී දැන්වීම සම්බන්ධයෙන් මා විසින් පියවර නොගන්නා ලදී.

This letter shows that the Petitioner did not take meaningful steps at the right time, if he was in fact vehemently opposed to the second acquisition.

The Petitioner accepts that the area relevant to this application is famous for wayside pineapple selling and, due to the road widening project, wayside pineapple vendors' businesses were

greatly affected. Those vendors need to be relocated. The land depicted in P12 is to be used to construct stalls for pineapple sellers. This will benefit the sellers as well as the general public, i.e. purchasers.

The Petitioner says the second acquisition is for a commercial purpose and not a public purpose. I am unable to accept this argument given the circumstances of this case. Although these stalls will be leased out for money, that does not mean there is no public purpose. The acquisition is not to construct pineapple stalls for monetary gain, but to supply additional facilities in connection with the broadening of the Kandy highway and for common relocation. There is no political motivation behind this acquisition as the Petitioner vaguely attempted to portray at the argument.

The Respondents tender the Agreement dated 26.06.2017 marked 2R1, entered into between the 2nd Respondent and the Provincial Road Development Authority (Western Province), for the construction of pineapple stalls in accordance with the layout plan dated 11.01.2017 marked 2R3. These steps were taken prior to this application filed in Court.

The project is underway and learned State Counsel for the Respondents informed Court during the argument that 24 stalls have already been constructed and the construction of 16 stalls, as depicted in 2R3, has been temporarily halted because of this case.

The Petitioner, in his counter objections, referring to another Agreement of the same date as 2R1 between the same parties, says that in terms of the said other Agreement, stalls have been

constructed and the objective of the state has been achieved. Therefore, the Petitioner says he has a legitimate expectation of revocation of the vesting order or a divesting order in respect of the subject land. I cannot accept this argument. In my view, this being a writ application, this argument goes against the Petitioner. As a result of filing this application, the Respondents could not complete the entire project, only part of it was completed. Now the Petitioner says the objective has been achieved and therefore there is a legitimate expectation that a revocation of the vesting order or divesting order be made by the Minister in respect of his portion of land. A writ Court will not countenance such conduct. The Respondents do not say the objective (relocation of the pineapple sellers) has been fully achieved.

The Petitioner slept over his rights, if any, and waited for nearly three years from early 2014 before filing this application in the latter part of 2017 when the construction work on the stalls was about to commence.

By filing this application, the Petitioner seeks to quash by certiorari the aforementioned section 5 notice, section 7 notice and section 38 proviso (a) order made in 2014, which he was aware of at that time. The Petitioner is guilty of laches. He also seeks to issue a mandate in the nature of mandamus directing the 6th Respondent subject Minister to revoke the vesting order in terms of section 39(1) of the Act. In the facts and circumstances of this case, no such order can be made. In the alternative, the Petitioner seeks an order directing the Minister to make a divesting order in terms of section 39A(1) of the Act. When steps have been taken to implement the public purpose

for which the land was acquired, the Court cannot compel the Minister by mandamus to make a divesting order.

I dismiss the application of the Petitioner but without costs.

As agreed, the Petitioners in the connected case, CA/WRIT/276/2017, will abide by this Judgment.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal