

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

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

CA/Writ Application 445/16

1. Kalukumara Mudiyansele Somapala
2. Kalukumara Mudiyansele Anura

Both of 'Thurusevana',
Mudurugama Road, Maho.

PETITIONERS

1. Hon. John A.E. Amarathunga
- 1A. Hon. Gayantha Karunatilake

Minister of Land and Land Development,
Ministry of Land and Land Development,
'Mihikatha Medura', Land Secretariate,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardena Kotte.

2. Divisional Secretary
Divisional Secretariate,
Maho.
3. Provincial Land Commissioner
Provincial Land Commissioner Department
of the North-Western Province,
Provincial Council Complex, Kurunagela.
4. Dr. I.H.K. Mahanama
- 4A. A.W.H. Karunaratne
Secretary,
Ministry of Land and Land Development,
'Mihikatha Medura', Land Secretariate,

No. 1200/6, Rajamalwatte Road,
Sri Jayawardena Kotte

5. Land Commissioner General
Land Commissioner General's Department,
Mihikatha Medura', Land Secretariate,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardena Kotte

6. Deputy Commissioner General of Agrarian
Development
Department of Agrarian Development,
District Office, Kandy Road,
Kurunagela.

7. Hon. Duminda Dissanayake

7B. Hon. P. Harrison,

Minister of Agriculture, Rural
Economic Affairs, Livestock Development,
Irrigation and Fisheries and Aquatic
Resources Development

8. B. Wijayarathne

8A. A.K.D.S. Ruwanchandra

Secretary,
Ministry of Agriculture Development and
Agrarian Services.

9. M.A.S. Weerasinghe

9A. W.M.M.B. Weerasekera

Commissioner General of Agrarian.

The 7th, 8th, and 9th Respondents of
Ministry of Agriculture Development and
Agrarian Services,
No. 42, Sir Marcus Fernando Mawatha,
Colombo 07.

10. J.A.M. Gunethilake
Rajaratnam Watte, Maho.
11. R. M. Sunil Herath
Siyadagama Road, Maho.
12. K.M. Keerathirathne
Siyadagama Road, Maho.
13. K.M. Ajantha Priyadarshini
Bhagya', Rest House Road,
Kekunawa, Maho.
14. J.M. Nalin Ranga
Jayanthi Mawatha,
Nikaweratiya.
15. K.M.C.M. Priyadarshinai
Mudurugama Road, Maho.

RESPONDENTS

Before: M. T. MOHAMMED LAFFAR, J. and
K. K. A. V. SWARNADHIPATHI, J.

Counsel: Lakshman Perera PC instructed by Niluka Dissanayake for the
Petitioners.

Sabrina Ahmed SC for the 1st to 9th Respondents.

E. Thambiah for the 10th Respondent.

Written Submissions on: 08.08.2019 & 06.08.2020 (by the Petitioners).

19.02.2020 & 06.08. 2020 (by the 1st to 9th Respondents).

26.06.2019 & 06.08.2020 (by the 10th Respondent).

Decided on: 03.08.2021

MOHAMMED LAFFAR, J.

The Petitioners in this application have invoked the writ jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, for the following relief:

- c) a mandate in the nature of a writ of *mandamus* directing the 1st Respondent to acquire the land in terms of the Land Acquisition Act as stated in the Parliamentary Sub Committee Proposal No. 829 dated 05.05.2009 (2/2/7/පා උප/2009/28) and morefully set out in the document marked P-06.
- d) a mandate in the nature of a writ of *mandamus* directing the 2nd to 9th Respondents as stated in the Parliamentary Sub Committee Proposal No. 829 dated 05.05.2009 (2/2/7/පා උප/2009/28) and morefully set out in the document marked P-06 and the establish the '*Andaragasyaya Wewa*' in terms of the said proposal.

When this matter was taken up for argument, both parties had consented to dispose the matter by way of written submissions that have already been tendered.

The Petitioners state that themselves and the 10th Respondent are paddy cultivators of adjoining lands situated in Mahawa. The Petitioners claim that they have been using water from the *Andaragasyaya Wewa* and due to a personal dispute between themselves and the 10th Respondent, the 10th Respondent obstructed the said *Andaragasyaya Wewa* and prevented the water from the said stream from reaching the Petitioners' paddy land for cultivation.

The Petitioners state that by a Proposal bearing No. 829 dated 05.05.2009 (2/2/7/පා උප/2009/28), the Parliamentary Advisory Sub Committee of Kurunagela District was recommended to the 2nd Respondent that the said *Andaragasyaya Wewa* situated at Maho, in the Kurunegela District and morefully described as Lot No. 296 of Form 5 of the Final Village Plan (FVP) No. 1851 should be acquired by the State for use of the said reservoir to retain water and to serve paddy land in the vicinity.

The Petitioners state that thereafter, there were numerous correspondence and communications exchanged between the Respondents and/or various State

institutions with copy to the 1st Petitioner on the preliminary acquisition process (vide P-07 to P-21). However, the Petitioners state that notwithstanding the decision taken on 05.05.2009 that the said land falling with the *Andaragasyaya Wewa* is required for a public purpose, one or more of the 1st to 9th Respondents have failed to take steps towards acquiring the said land in terms of the Land Acquisition Act¹.

The Petitioners state that the 10th Respondent is in the process of filling up the said *Andaragasyaya Wewa* and thereby depriving the Petitioners the use of the said *Andaragasyaya Wewa* for cultivation of their paddy lands. The Petitioners also state that due to the failure on the part of one or more of the 1st to 9th Respondents in taking steps towards acquiring the said land which forms part of the *Andaragasyaya Wewa* the Petitioners are unable to cultivate on their paddy fields and are suffering grave loss.

The Petitioners further submitted that, they are being recipients of water from *Andaragasyaya Wewa* for cultivation of the paddy field and view of the proposal to acquire the said land for the public purpose of establishment of the said *Andaragasyaya Wewa*, they have Legitimate Expectation, in view of Proposal No. 829 dated 05.05.2009 (2/2/7/ඔ උප/2009/28) of the Parliamentary Advisory Sub Committee of the Kurunagela District, the said land would be acquired for the public purpose of *Andaragasyaya Wewa* as per the direction given to the 1st to 9th Respondents.

Having carefully scrutinise the materials before this Court, it is observed that the land the Petitioners are cultivating is a state land and they appear to be in illegal possession of such land (vide P-09). The land of the 10th Respondent is also a state land given to him by way of a Grant dated 07.10.1996 (vide 2R3).

It is also apparent from the FVP bearing No. 1851 that at the time of the preparation of the FVP there had been no such *wewa* as there is no depiction the theme FVP (vide 1R1 and 2R2). Furthermore, the Grant given to the 10th Respondent also does not intimate the boundaries to include a *wewa*. Thus, the said corpus *wewa* has been developed only recently. It is also clear that after the state land alienated by way of Grants and Permits, the Petitioners had erected a barrier (bamma) on Lots 432 and

¹ No. 09 of 1950 (as amended).

434 and directed water from the natural *wewa* to create the new corpus *wewa* that is in issue in the instant application.

It is also apparent from the document marked 2R4 that although the acquisition of the land has been discussed, the 3rd Respondent has written to the 4th Respondent stating that there is no possibility to acquire the said land for a *wewa* that is not in existence in the Plans and upon the mere request of an individual. He has however stated that in the event that there is a request made by the Agrarian Development Department any alternate land falling outside the Grants land may be released.

In any event, by 2R6 dated 03.04.2014, the Land Ministry clearly determined that since the said *wewa* is enjoyed by an individual person, it is not feasible for them to acquire the land without a public purpose. In the same document, the Ministry has noted that, however, steps may be taken to be explore the possibility of obtaining the consent of the Grant holder (i.e., the 10th Respondent) through whose land the *wewa* is said to accumulate, on the promise of an alternative land to him. However, there is no material before this Court to show that any such settlement is reached between the parties.

In view of the above, this Court further observed that the State still has not taken a firm decision to demarcate the portion of the land included in the respective Grants for the purposes of the *wewa*. The question whether the land should or should not be acquired is one of policy to be determined by the relevant Minister [vide *Gunasekara vs. Minister of Lands and Agriculture* (1963) 65 NLR 119] after carrying a careful study. Therefore, this Court will not compel the State to acquire a land where the policy decision has not been arrived to do so.

The Petitioners have also premised this application on Legitimate Expectation². They submitted that in view of P-06, they are legitimately expecting that the said land will be acquired for the purposes of constructing the said *wewa*.

P-06 is a document which the Petitioner claim is a resolution of a meeting of the District Land Use Planning Committee of Kurunegela to approve Proposal No. 829 of

² Vide para 20 of the Petition.

the Parliamentary Advisory Sub Committee. However, the said Proposal is not placed before this Court. Therefore, this Court is of the view that the Petitioners have failed to put forward any sufficient materials to show that *a clear, unequivocal and unambiguous promise* was made to them³. There was no lawful promise or assurance given by the Minister or any proper authority to the Petitioners that the land will be released and utilise for the construction of *wewa*. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence [vide *Union of India vs. Hindustan Development Corporation* 1994 AIR 988 at para 28].

In the circumstances, I see no merit in this application.

Therefore, I unhesitatingly dismiss the application of the Petitioners without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

K. K. A. V. SWARNADHIPATHI, J.

I agree.

JUDGE OF THE COURT OF APPEAL

³ Vide CA/Writ Application 262/18, CA Minutes of 02.08.2021.