

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

CA Writ 40/2012

Waste Management Authority
Western Province,
Swasthi Mandiraya,
No:32,
Sir Marcus,
Fernando Mawatha,
Colombo 07.

Petitioner

Vs.

Hon. Janaka Bandara Tennakoon
Minister of Land and Land Development
“Govijana Mandiraya”
No:80/05,
Rajamalwatta Avenue,
Battaramulla.

And 07 Others

Respondents

C.A. 40/2012

Writ Application

Before : S. Sriskandarajah, J. (P/CA)

Counsel : Palitha Kumarasinghe P. C. with
Viran Fernando for the Petitioner.

S.S. Sahabandu P.C. for the 5th
Respondent

G. Alagaratnam with M.
Sithambaram for the 6th Respondent

Argued &
Decided on : 10.09.2012

S. Sriskandarajah, J. (P/CA)

The petitioner in this case is seeking for a writ of certiorari against the 1st respondent to quash the decision published in the Government Gazette Extraordinary no: 1736/25 dated 14th December 2011, divesting the land called " Mikewatta" in an extent of 2.0238 Hq. . The learned President's counsel who is appearing for the petitioner informs Court that he is not seeking relief prayed for in prayer "C" of

his petition. The said order was made under section 39A of the Land Acquisition Act. The Section 39A has specifically provided that the Minister prior to making the divesting order under Section 39A(1) has to satisfy certain conditions and the section provides that the Minister shall prior to making a divesting order under Section 39A(1) to satisfy himself four conditions that are laid under sub Section 2 (a), (b), (c), and (d). Therefore the Law has laid down a mandatory requirement that the minister has to satisfy these four conditions.

According to the objections filed it appears that the 5th respondent and the 6th respondent are the persons interested in the land.

There is no document submitted to this Court that the 5th and 6th respondents had made any application to the Minister to divest the said land or that they have given consent in writing to take possession of such land immediately after the divesting order published in the gazette. Therefore it appears that the conditions laid down in Section 39A (2)(D)

was not full filed and therefore the Minister would not have satisfied himself in relation to the particular condition that was laid down in the Section.

The learned counsel for the 6th respondent submitted that the question of divesting will not arise as the acquisition itself under Section 38 proviso a is not valid as the land that was acquired belongs to the 5th respondent. Therefore the process of acquisition under the Land Acquisition Act is invalid and in these circumstances the divesting order should not have been made and quashing of that order does not arise.

The petitioner in this application has challenged the divesting order of the Minister made under Section 39A. The 5th respondent has not sought to challenge the acquisition of the said land. As the issue in relation to the acquisition of the land is not before this Court this court cannot go into the question of acquisition of the said land and cannot decide on the question of acquisition. But as far as the divesting order

is concerned which is challenged in these proceedings the said order is ultra vires to the provision of Section 39A (2) as one of the mandatory condition on which the Minister has to satisfy himself has not been satisfied and therefore this Court issues a writ of certiorari quashing the divesting order published in the gazette extra ordinary No: 1736/25 dated 14.12.2011 and this Court issues a writ of certiorari as prayed for in prayer " b" of the petition and allows this application for a writ of certiorari without costs.



President of the Court of Appeal

Jmr/-