

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.*

K.A. Susantha Devapriya
Kariyapperuma,
No. 395,
Lumbini,
Siyabalape – North.

CA (Writ) App. No. 715/2025

PETITIONER

Vs.

1. Hon. K.D. Lal Kantha,
The Minister of Lands,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.
2. D.P. Wickramasinghe,
The Secretary,
The Ministry of Lands,
12th Floor,
Sethsiripaya,
Battaramulla.
3. R.P.R. Ranasinghe,

The Director (Lands),
The Ministry of Lands,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.

4. S.L. Dammika Wijayasinghe,
Chief Secretary of the Western
Province,
Office of Chief Secretary-Western
Province,
No. 204,
Densil Kobbekaduwa Mawatha,
Battaramulla.
5. T.W.L. Samanpriya
Provincial Land Commission,
No. 787/3,
New City Building,
Kaduwela Road,
Malabe.
6. S.A. Chandima Suriyaarachchi,
Divisional Secretary,
Biyagama Divisional Secretariat,
Sapugaskanda,
Makola.
7. H. Nandana Niroshan,
Principal,
Daranagama Primary School,
Daranagama,
Siyabalape.
8. Surveyor General,
The Department of Surveys,
No. 150,
Kirula Road,
Narahenpita,
Colombo 05.
9. Mr. S. Alokabandara,

The Secretary,
Ministry of Public Administration,
Independent Square,
Colombo 07.

10. Mr. K.M.G.S.N. Kaluwewa,
The Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.

RESPONDENTS

Before: S. U. B. Karalliyadde, J

Dr. D. F. H. Gunawardhana, J.

Counsel:

Sandun Senadhipathi with Sithara Abeywardena instructed by K. Danuka Lakmal for the
Petitioner.

Amasara Gajadeera, S.C. for the Respondents.

Supported on: 25.08.2025

Order delivered on: 17.09.2025

Dr. D. F. H. Gunawardhana, J.

Order

Introduction

According to the Petition, the Petitioner's grandfather, Mr. Daniel Appuhamy, had been the original owner of the land known as 'Dambugahawatta', which is an extent of one acre, three roots, and fifteen perches. The said Mr. Daniel Appuhamy had donated a certain portion of the land known as 'Dambugahawatta' to the Daranagama Primary School; and thereafter, the Petitioner's grandfather donated the remaining One Acre of land to his daughter (Padmaseeli), and the remaining 3 roots and 15 perches to his son (Wijayasiri), who is the father of the Petitioner.

However, later, Padmaseeli and the Petitioner's father (Wijayasiri) amicably partitioned the entire land and executed cross-conveyances. Since the Petitioner's father (Wijayasiri) subsequently continued to possess Padmaseeli's portion of the land, the Petitioner asserts that his father acquired prescriptive title to that portion as well. Thereafter, the entirety of the land was gifted to the Petitioner, and thereby the Petitioner became the owner of the land. Accordingly, the Petitioner claims the entirety of the land in question.

The Petitioner has further stated that when his father was one of the co-owners, after partitioning the land with his sister, a part of the Petitioner's father's land was acquired by the Government on payment of compensation.

The 6th Respondent, who is the Divisional Secretary of the area within whose jurisdiction the land is situated, has issued a notice under Section 2 of the Land Acquisition Act No. 09 of 1950 (as amended) (hereinafter referred to as the "Land Acquisition Act"), to acquire one acre out of the land in question. It is alleged that, thereafter, in terms of Section 38A of the Land Acquisition Act,

the 10th Respondent took immediate possession of the land for the public purpose for which it was proposed to be acquired.

Subsequently, the Petitioner alleges that notices under Sections 4, 5, and 7 of the Land Acquisition Act were issued, and the Petitioner claimed compensation from the acquiring officer, the 6th Respondent.

In the meantime, the Petitioner had already made an application to this Court bearing number CA (Writ) 713/2024, seeking a *Writ of Certiorari* to quash the order by which the 6th Respondent sought to acquire a portion of the land, as well as the decision of the 10th Respondent to take immediate possession thereof.

However, since the Respondents gave an undertaking that they would not take immediate possession, the said application *in toto* which challenged even the notice issued under Section 2 of the Land Acquisition Act, was withdrawn by the Petitioner.

The Petitioner has now instituted this application, alleging that immediate possession of the land has been virtually taken by the 6th Respondent, as depicted in the photographs annexed to the Petition, since the 7th Respondent had initiated certain programs with the participation of members of the public.

Therefore, the Petitioner seeks to reurge similar grounds in order to obtain the following reliefs:

“(a) Issue notice on the Respondents;

(b) Issue a Writ of Certiorari to quash the Gazette Notification bearing No. 242/24 dated 18th February 2025, published under Section 5 of the Land Acquisition Act, which purports to declare the State’s intention to acquire a portion of the Petitioner’s land, as morefully described in the document marked ‘P31’;

(c) Issue a Writ of Certiorari to quash the Land Application, as morefully described in the said document marked 'P8';

(d) Issue a Writ of Mandamus directing the Respondents and/or relevant authorities to forthwith abandon the acquisition proceedings initiated in respect of the Petitioner's land, under and in terms of section 50(1) of the Land Acquisition act and/or Rule 268 of the Land Manual;

(e) Issue a Writ of Prohibition restraining the Respondents, their servants, agents, or any other persons acting under their authority or direction, from taking any further steps whatsoever towards, or in connection with, the purported acquisition of the Petitioner's land;

(f) Issue an interim order restraining the Respondents, their servants, agents, or any persons acting under their authority or on their behalf, from taking any steps whatsoever, including but not limited to acts of possession, alienation, or interference, in relation to the land allotted to the Petitioner morefully described as Lot No. 3, in extent of 0.3035 hectares, which forms the subject matter of Gazette Notification bearing No. 2424/24 dated 18th February 2025, published under and in terms of Section 5 of the Land Acquisition act, referred to in the document marked 'P31', until the hearing and final determination of this application;

(g) Grant costs;

(h) Grant such other and further reliefs as to Your Lordship's Court shall seem meet."

The following arguments were advanced in support of this application; hence, this order.

Arguments

Mr. Senadhipathi's first contention is that, without initiating proceedings under Section 38A of the Land Acquisition Act for the urgent acquisition of the land, the 6th and 7th Respondents have taken de facto and effective possession of the land intended to be acquired. Consequently, the Petitioner is entitled to move for the issuance of notice and interim relief as prayed for in the Petition.

The second contention advanced by Mr. Senadhipathi is that the 6th and 7th Respondents have violated the undertaking given by them, as recorded in the order marked ‘P28’. The third contention is that the Petitioner withdrew the application related to ‘P28’ solely because the Respondents had provided an undertaking not to proceed with immediate possession. Therefore, even the actions undertaken under Sections 2, 4, 5, and 7 of the Land Acquisition Act are rendered unlawful, and accordingly, the Petitioner is entitled to the relief sought in the Petition.

Conversely, Ms. Gajadeera argued that the Respondents, particularly the 6th and 7th Respondents, had initiated the process of acquiring the land by taking preliminary steps in compliance with the Land Acquisition Act. Ms. Gajadeera contended that steps were taken to issue notice under Section 2, followed by a notice under Section 4, and, as of 2025, Section 5, to identify the land and publish the relevant Gazette notification.

In response to a question raised by the Court, Ms. Gajadeera submitted that, at the time the Petitioner sought the information referred to in ‘P26’, none of the procedural steps or information sought had taken place. Accordingly, she argued that this application is not maintainable and that notice ought not to be issued.

In addition, Ms. Gajadeera argued that no vesting order has yet been made under Section 30 of the Land Acquisition Act, as the Respondents are still in the process of identification, to be followed by the procedures outlined in Sections 7, 9, and 10 of the Land Acquisition Act.

Ms. Gajadeera further contended that a third party named Malmi had submitted an application under Section 4 of the Land Acquisition Act, objecting to the acquisition, which led to a compromise; importantly, the present Petitioner neither filed an application nor raised any objection under Section 4 of the Land Acquisition Act, nor did he raise his objections, as evidenced in ‘P12’, thereby acquiescing to the acquisition proceedings.

Undisputed facts

On a perusal of the Petitioner's application, I found that the notice issued under Section 2, proposing to acquire part of a larger land, has been issued and is marked as 'P9'. The said 'P9' notice was followed by a notice issued under Section 4, dated 17.07.2019, calling for objections, which is marked as 'P11' and annexed to the Petition. In response to the said notice, the Petitioner wrote to the 6th Respondent (the acquiring officer), claiming title to the land and denying any title in another person, including Ms. Yashika Malmi Kariyapperum. Nevertheless, in the same response (the letter), he indicated that he was prepared to accept the compensation paid to him at the inquiry to be held in that behalf and requested to be informed if there would be such an inquiry to pay him compensation.

The notices issued under Sections 2¹ and 4² of the Land Acquisition Act, and the steps taken under Sections 5³, 6, 7, 9, and 10⁴ of the Land Acquisition Act, can be challenged by way of an application made in terms of Article 140 of the Constitution in this Court. Nevertheless, the success of such an application challenging the said steps depends on the circumstances of each and every individual case. I will now consider whether the Petitioner has successfully challenged the notices issued under Sections 2 and 4 of the Land Acquisition Act in this case.

The Petitioner has acquiesced

The Petitioner, as mentioned above, by 'P12', has indicated that he has no objection to the land being acquired; however, he has expressed his willingness to accept the compensation.

¹ De Silva v Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another, (1993) 1 SLR 283
Dayaratne v Rajitha Senaratne, Minister of Lands and Others (2006) 1 SLR 7

² Mrs. Mallika Ratwatte v The Minister of Lands [1972] 72 NLR 60

³ Gunasinghe v. Hon. Gamini Dissanayake & Others [1994] 2 SLR 132

⁴ Jamis Perera and another v Charles Dias and Other [1999] 2 SLR 159

Therefore, it is a clear indication that he has acquiesced to the steps or process taken by the 6th Respondent to acquire the land, on the basis that it was to be utilized for the public purpose for which it was proposed to be acquired.

Accordingly, the Petitioner cannot now, in this application, object to the notices under Section 2 or 4, nor can he claim that the notices were issued *mala fide*; nor can he raise any objection to the acquisition on the basis that part of the land had once been donated by the original owner (his grandfather), or that another part was acquired later when his father was the owner.

Repetition of the application

In addition to that, the Petitioner had instituted an application in this very Court challenging the *vires* of the notice issued under Section 2 of the Land Acquisition Act and the purported immediate possession allegedly taken by the 10th Respondent in terms of Section 38A of the Land Acquisition Act. However, with the undertaking given by the learned Deputy Solicitor General, as reflected in ‘P28’, the same Petitioner withdrew that application bearing No. CA (Writ) 713/2024.

The Petitioner cannot now reurge the same matters in this application, particularly in challenging the notices issued under Sections 2 and 4 of the Land Acquisition Act. In addition, the Petitioner’s original Petition in that case, namely case bearing No. CA (Writ) 713/2024, was withdrawn without reserving any rights to challenge the Section 2 notice or any steps taken thereafter.

Furthermore, we do not have the original Petition in that application (No. CA (Writ) 713/2024) before us, except for the proceedings of the final step, as reflected in ‘P28’, which only indicates the withdrawal of the application and the undertaking given by the counsel for the Respondents.

Therefore, the Petitioner cannot now take a second bite at the same cherry. In addition to that, the Petitioner, as I have mentioned, has acquiesced to the process and steps taken by the 6th Respondent. Therefore, it is my view that no writ lies in respect of the claim made by the Petitioner in this case.

Ms. Gajadeera indicated on behalf of the acquiring officer and all other Respondents that, having now identified the land, the acquiring officer must publish the Gazette with reference to a plan, and thereafter call for any claims and give notices in terms of Sections 7, 8, and 9 of the Land Acquisition Act to the interested parties, so that their claims may be considered for compensation.

Therefore, this application is premature as far as the steps under Sections 5, 6, 7, 8, and 9 of the Land Acquisition Act are concerned.

Conclusion

As such, for the reasons I have adumbrated above, I refuse the formal notice and dismiss this application *in limine*.

Dr. D. F. H. Gunawardhana, J.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL