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 and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Henry Nelson Rathnayake,
"Nisalki Enterprises",
Lanka Filling Station, Thihagoda.

PETITIONER

C.A. Case No. WRT/0391/21

Vs.

1. Umesha Matarage – Divisional Secretariat,
   Divisional Secretariat office,
   Thihagoda.

1. (a) Dumingu Hewage Udayangani Sandamali,
   Divisional Secretariat,
   Divisional Secretariat Office,
   Thihagoda.

2. S.M. Chandrasena,
   Minister of Lands,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatte Road,
   Sri Jayawardenapura Kotte.

2. (a) K.D. Lalkantha,
   Minister of Lands,
   "Mihikatha Medura",

Land Secretariat,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

3. R.A.A.K. Ranawake,
Secretary,
Ministry of Lands,
"Mihikatha Medura",
Land Secretariat,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

3. (a) D.P. Wickramasinghe,
Secretary,
Ministry of Lands,
"Mihikatha Medura",
Land Secretariat,
No. 1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

4. P.P.D.S. Muthukumarana,
Chief Valuer/ Assessor,
Valuation House,
No. 748, P De S Kularatne Mawatha,
Colombo 01.

5. W.W.D. Sumith Wijesinghe,
Chairman,
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister De Silva Mawatha,
Colombo 09.

5(a) D.J.A.S.DE.S. Rajakaruna,
Chairman,

Ceylon Petroleum Corporation,
No. 609,
Dr. Danister De Silva Mawatha,
Colombo 09.

6. D.M. Dayaratne,
Director (Lands),
04th Floor, No. 216,
"Maganeguma Mahamadura",
Denzil Kobbekaduwa Mawatha,
Battaramulla.

7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Srilal Lankathilaka for the Petitioner.

Panchali Witharana, SC for the Respondents.

ARGUED ON : 27.06.2025

DECIDED ON : 30.07.2025

JUDGEMENT

K.M.G.H. KULATUNGA, J

1. The petitioner is seeking *inter alia* a writ of *certiorari* to quash the application made under Section 42 (2) of the Land Acquisition Act (hereinafter referred to as 'the Act') and also a writ of *mandamus* directing the 1st, 2nd, and 3rd respondents to exercise their powers in accordance with Sections 9, 10, and 17 of the Act in order to determine and award compensation taking into consideration the cost and

expense of relocation of the fuel tanks before taking possession of the said land.

2. The petitioner is not challenging the acquisition, and the learned Senior Counsel for the petitioner, Mr. Srilal Lankathilaka, informed that he would only pursue with the relief as far as the computation of the compensation. When this Court issued notice by order dated 22.07.2022, His Lordship Justice Sobhitha Rajakaruna has issued notice on the respondents only in reference to prayer (d) of the petition. I also observe that the interim relief initially issued has also been vacated on that day. Accordingly, the only matter to be considered in this application is the computation of the compensation under Sections 9, 10, and 17.

3. When this was taken up for argument on 27.06.2025, the learned State Counsel informed this Court that the Section 17 award had been published on 23.06.2025 and tendered to Court a copy of the same. Then, as permitted by Court, a certified copy of said Section 17 determination was tendered by motion dated 14.07.2025 along with the supporting affidavit. It was the submission of learned State Counsel that in view of the said Section 17 award. This application is now futile and academic.

4. Since the issue of futility may determine this application, it is prudent to consider the same at the outset. A court exercising discretionary jurisdiction has the discretion to refuse relief where the Order sought is likely to be futile. This is so when the Order sought is likely to lack practical effect, have no real consequences or cannot be enforced. Courts may refuse to make such Orders. The rationale, as I see, is *judicial economy* so to say and doing so may have the propensity of undermining the respect for the legal system and the administration of justice. Thus, when a court is called upon to exercise the discretionary

writ jurisdiction, it will deny and refuse such an application which evidently has no practical utility and is futile.

5. This principle is settled law, and in the case of ***Samastha Lanka Nidahas Grama Niladhari Sangamaya vs. Dissanayake*** (2013) BLR 68, it was held that,

> "*It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile."*

Then Marsoof PC., J., in the case of ***Ratnasiri and others vs. Ellawala*** (2004) SLR 180, and others held that;

> "*This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. The court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that 'A writ... will not issue where it would be vexatious or futile.' See, P.S.* ***Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board****. (61 NLR 491, 496)."*

6. The petitioner does not dispute the fact that the Section 17 determination had been made. According to the copy tendered to Court, the said inquiry and determination had been in respect of the claim of Rs. 3,513,000.00. This is the initial claim made by the petitioner. Upon considering this claim the 1st respondent had determined to award the sum of Rs. 281,590.00 as compensation.

7. The argument of the petitioner is that the application will remain alive and not became futile as the 1st respondent has not followed the mandatory provisions of Sections 9 (1) (a), (b), (c), and (d) as well as Section 17 (1) (a), (b), (c) of the Act. Further, as asserted in Paragraphs 15, 16, and 17 of the post argument written submissions, the amount

of the compensation determined is *"so unrealistic and it's a violation of the petitioner's legitimate expectation."* It is then submitted that "*the award dated 23.06.2025 is not sufficient to absolute* [sic. 'absolve'] *the statutory duties bestowed upon the 1st respondent towards the petitioner."*

8. The sum total of the present application is the prayer for an Order directing the respondents to exercise their power under Sections 9, 10, and 17 and to declare and determine the award of compensation. It is also sought that the respondents to be directed to take in to consideration the valuation reports and the additional cost of relocation of the fuel station. That is no more than an application for a *mandamus* directing the respondents to make the award under Section 17 of the Act. The same has now been made on 23.06.2025. So, for all purposes, the relief sought has now been obtained. No doubt, this application was filed on 17.08.2021. At that point of time the Section 17 award had not been made upon considering the claim of compensation, considering the relocation cost based on the valuation and estimation. Now that has been satisfied and is done. Since, the interim order was vacated and no specific interim relief was granted, the respondents were barred or prevented by proceeding with Section 7 and 9 inquiry and making another award under Section 17 of the Act. Therefore, to that extent, the application is now futile.

9. The petitioner in their submission now calls upon this Court to consider the adequacy and correctness of the amount of compensation awarded by the said Section 17 award. In the first place, this Court cannot and does not have the jurisdiction to embark upon the re-evaluation of the compensation or reviewing of the compensation at this stage. It is settled law that a Court is required to determine the issues which were in issue at the point of instituting action. In any event, the petitioner has the right of appeal under Section 16(2) of the said Act which he may prefer within 21 days. In these circumstances, this Court is left with no

option but to accept the objection raised by the learned State Counsel. Section 17 reads as follows:

> *"17. 1. The acquiring officer who holds an inquiry under section 9 shall, as soon as may be after his decisions under section 10 have become final as provided in that section or after the final determination of any reference made under that section and subject to the other provisions of this section, make an award under his hand determining -*
>
> *(a) the persons who are entitled to compensation in respect of the land or servitude which is to be acquired;*
>
> *(b) the nature of the interests of those persons in the land which is to be acquired or over which the servitude is to be acquired;*
>
> *(c) the total amount of the claims for compensation for the acquisition of the land or servitude;*
>
> *(d) the amount of the compensation which in his opinion should, in accordance with the provisions of Part VI of this Act, be allowed for such acquisition; and*
>
> *(e) the apportionment of the compensation among those persons. Such acquiring officer shall give written notice of the award to the persons who are entitled to compensation according to the award.*
>
> *(2) Where no person having any right, title or interest to, in or over the whole or any part of a land which is to be acquired or over which a servitude is to be acquired is known, then, in regard to the whole of the land or in regard to that part only, as the case may be, it shall not be necessary to determine in the award under this section the matters specified in paragraphs (a), (b), (c) and (e) of subsection (1) and to comply with the provisions of that subsection relating to notice of the award.*

(3) Where a claimant for compensation has notified his claim to the acquiring officer within the time allowed therefor by this Act, the amount of compensation awarded to that claimant under subsection (1) shall not exceed the amount of his claim.

(4) An award under subsection (1) shall, where a reference under section 10 has been made to a District Court or a Primary Court in respect of the land or servitude to which the award relates, accord with the decision of that court on that reference or, where an appeal against that decision has been made to the Court of Appeal with the decision of the Court of Appeal on that appeal."

10. According to which, upon the making of an award under Section 17, the acquiring officer is required to give a written notice of such award to persons who are entitled to compensation. The petitioner's only and substantive relief sought a *mandamus* directing the acquiring officer or 1st to 3rd respondents to exercise their powers in accordance with Sections 9, 10, and 17 of the Act. The award and the notice under Section 17 has been made and issued. This was tendered to Court by way of a motion, along with an affidavit, and is now common ground. There is nothing more this Court is now required to do. The relief as prayed for by prayed (d) is thereby satisfied. However, the learned Counsel Mr. Srilal Lankathilaka endeavoured to impress this Court that this application will not be futile and move that the Court consider the reasonableness, adequacy, and the correctness of the computation of compensation. His position is that the Section 17 award was made long after the filing of this application and thus cannot now stultify this application, which was pending. At paragraph 27 of the written submissions, it is submitted that "*Still the relief sought by the petitioner remains effective and the mandamus cannot be refused on futility."* The learned Counsel is inviting this Court to look into the merits, correctness and the adequacy of the award made under Section 17 on 23.06.2025.

11. The petitioner comes to this Court seeking to compel the respondents to act under Section 9, 10, and 17 of the Act. That is the parameter of his application here. That step is now taken and computation of the compensation is now made. The relief sought does not extend to anything beyond taking steps under Section 9, 10, and 17. The petitioner is now seeking to consider the merits of the award made under Section 17. As stated above, the relief sought does not encompass or cannot be extended to go beyond the cause of action which the petitioner had as at the date of filing this application. The basis of this legal impediment is referrable to the principle in civil matters as determined in ***Jayaratna vs. Jayaratne and others*** **[2002] 3 Sri LR 331**, where it was held by Gamini Amaratunga, J., that,

> *"The cause of action based on adultery has arisen after the defendant has filed his answer. It is a different and independent cause of action. Rights of parties are determined as at the date of plaint."*

Similarly, in ***Hatton National Bank vs. Silva and another*** **[1999] 3 Sri LR 113**, it was held by De Silva, J., that,

> *"The plaintiff cannot amend the plaint to include a new cause of action which arose after the institution of the action."*

Accordingly, the petitioner is not entitled in this application, to have the merits of the award reviewed.

12. The petitioner, no doubt, came to Court as far back as 2021. The process under Sections 9, 10, and 17 of the Act may have been pending. His complaint was that the relocation cost and expense as per the valuation and estimates should be considered in computation of the due compensation. No interim relief was granted in this circumstances, the process has continued and now it has culminated in determining and making the award under Section 17 and due notice has been given. According to the additional documents tendered, it is apparent that a

claim of Rs. 1.553 million and Rs. 16.183 million have been considered and determined to award Rs. 2560 as compensation for land Rs. 434,375 for the other claim which appears to be the cost of relocation. Be that as it may, the award now is made. The relief sought is so satisfied. This Court cannot now venture into consideration of the reasonableness of this award as this decision was not in existence at the point of filing this application. The petitioner has a right of appeal specifically provided and been informed of against such award. Accordingly, this Court cannot lawfully embark upon the consideration of the merits of the award, as argued by the learned Counsel for the petitioner. As I see, this application is futile as futile can be. Accordingly, the said submission is misconceived in law.

13. As such this Court does not have to embark upon the consideration of the other matters agitated by the petitioner in this application. Accordingly, I hold that this application is now futile and the petitioner is not entitled to have and maintain this application.

14. This application is accordingly dismissed. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL