

**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 Writs of *Certiorari*, *Prohibition and Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 195/ 2013

Sumanalatha Kodikara

No. 26/1,

Sir Marcus Fernando Mawatha,

Colombo 07.

By and through her Power of Attorney holder

S. V. Kodikara,

No. 23A, Balahenmulla Lane,

Kirulapone, Colombo 06.

PETITIONER

Vs.

1. Hon. Janaka Bandara Tennakoon,
Minister of Lands and Land Development,
Ministry of Lands and Land Development,
No. 80/5, 'Govijana Mandiraya',
Rajamalwatta Road,
Battaramulla.

2. Buddhi Tharanga Karunasena,
Divisional Secretary,
Divisional Secretariat,
Maharagama.
3. The Secretary,
Ministry of Urban Development,
3rd floor, Sethsiripaya, Battaramulla.
4. The Maharagama Urban Council,
Maharagama.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Sanjeewa Jayawardhena, P.C. with Lakmini Warusevithana for the
Petitioner instructed by Indunil N. Bandara.

Manohara Jayasinghe, D.S.G. for the 1st to 3rd Respondents.

Argued on : 10.11.2025

Decided on : 13.02.2026

Adithya Patabendige, J.

The Petitioner has filed this application seeking, *inter alia*, a mandate in the nature of a *writ of certiorari* to quash the decision to acquire the land under proviso (a) of Section 38 of the **Land Acquisition Act No. 9 of 1950** (hereinafter referred to as the Act), which decision was published in the Gazette Extraordinary No. 1735/7 dated 05th December 2011 and marked **P15**.

The Petitioner further seeks a *writ of certiorari* to quash the decisions reflected in documents marked **P14**, **P17**, and **P25**, as prayed for in paragraphs (c), (d), and (e) of the prayer to the petition dated 11th July 2013; a *writ of certiorari* quashing all consequential orders issued by the 1st to 3rd Respondents in respect of the Petitioner's land, as prayed for in paragraph (f) of the petition; and a *writ of prohibition* restraining the 1st to 3rd Respondents from entering upon the Petitioner's land or dispossessing her pursuant to the impugned acquisition process.

In the alternative, the Petitioner seeks a *writ of mandamus* directing the 1st and 2nd Respondents to grant alternative land or pay compensation based on the prevailing market value, along with certain other incidental reliefs.

The Petitioner claims title to the land described in the schedule to the Petition dated 11th July 2013. Upon Consideration of the totality of the pleadings and the submissions advanced by learned counsel appearing for all parties at the stage of argument in the instant application, there is no dispute that the Petitioner has a legally cognizable proprietary interest in approximately 2 roods and 25 perches of the land acquired in terms of **P15**.

Given the nature of this application, I would like to discuss briefly the acquisition procedure under the Act.

The Act stipulates two distinct acquisition procedures, namely,

- the ordinary procedure,
- the procedure on the ground of urgency.

A common feature of both procedures is that the acquisition must be for a **public purpose**. Sections 2 to 17 and 38 of the Act govern the ordinary acquisition procedure, whereas Section 2, read with the proviso to Section 38, prescribes the acquisition procedure applicable when made on the ground of urgency. It is also common to both procedures that the requirements of Section 2 must be complied with in all cases.

Ordinary Procedure of Acquisition

The acquisition procedure under the Act is initiated by Section 2, in which the acquiring officer shall cause notice to be exhibited in Sinhala, Tamil, and English languages in conspicuous places in the area with the direction of the Minister. The underlying purpose of Section 2 is to notify the general public of the **necessity** to acquire land for a specific public

purpose. This constitutes the initial statutory step that the state is required to take in the acquisition process.

Upon the direction given by the Minister, it is the duty of the acquiring officer to comply with the above and take all necessary actions prescribed in subsection 3 of Section 2 to identify a suitable land for the specific public purpose.

If the Minister is satisfied with the suitability of the identified land for the public purpose mentioned in the notice under Section 2, the acquiring officer shall be directed to cause a notice as per Section 4(3) of the Act to be given to the owner or owners of the land, and to exhibit the notice in some conspicuous place or near the land.

The said notice shall state,

- a description of the land or servitude intended to be acquired,
- the intention of the government to acquire the land or servitude,
- the public purpose,
- that written objections to the intended acquisition may be made to the secretary of the specified Ministry (herein after referred to as the appropriate secretary),
- the specific duration that objections can be made.

It is the duty of the appropriate Secretary or any other officer appointed by him to consider any objections and make his recommendations to the appropriate Minister. The appropriate Minister shall thereafter make his recommendation to the Minister of Lands. The Minister of Lands, upon considering the recommendations of the appropriate Minister, decides whether the land should be acquired or not.

It is apparent from the procedure set forth in the Act that the Minister of Land bears the ultimate responsibility to reach a rational conclusion regarding the necessity and suitability of the land for the specific public purpose specified in the notices under Sections 2 and 4.

If the Minister of Lands decides to acquire the particular land, he shall make a declaration in terms of Section 5 and direct the acquiring officer to cause the declaration to be published in the Gazette in all three languages and exhibited in some conspicuous places on or near that land.

Once the above declaration is published in the Gazette, the acquiring officer, in accordance with Section 6 of the Act, may cause a survey and a plan to be prepared through the Survey General.

The acquiring officer mentioned in Section 5(1) of the Act is required to cause a notice under Section 7 of the Act to be published in the Gazette and to be exhibited in some conspicuous places on or near the land, thereby allowing the lawful owners to submit their claim for compensation.

The procedure and manner of the inquiry into compensation are stipulated in Section 9 of the Act. As per Section 10(1) of the Act, at the conclusion of the inquiry under Section 9, the acquiring officer can make the following decisions.

a) Make a decision on every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired and on every such dispute as may have arisen between any claimants as to any such right, title or interest, and give notice of his decision to the claimant or to each of the parties to the dispute, or;

(b) Refer the claim or dispute for determination to the District Court.

Under Section 38 (a) of the Act, possession of the land can be obtained only after an award of compensation is made under Section 17, in accordance with the ordinary procedure for acquisition.

Acquisition Procedure on the Ground of Urgency

This procedure is stipulated in the proviso to Section 38, which states as follows;

Provided that the Minister may make an Order under the preceding provisions of this Section-

(a) where it becomes necessary to take immediate possession of any land on the ground of any urgency, at any time after a notice under Section 2 is exhibited for the first time in the area in which that land is situated or at any time after a notice under Section 4 is exhibited for the first time on or near that land, and

(b) where it becomes necessary immediately to acquire any servitude on the ground of any urgency, at any time after a notice under Section 4 is exhibited for the first time on or near the land over which that servitude is to be acquired.

For the invocation of the proviso to Section 38, there must exist circumstances constituting urgency, and the burden of establishing such urgency lies squarely on the State.

Facts of the Instant Application

The Petitioner primarily sought a *writ of certiorari* to quash the decision to acquire the land described in the petition. One of the principal grounds of challenge raised by the Petitioner is that no prior communication was given to him before the Order was published in the Gazette dated 05th December 2011, marked **P15**.

According to the objections of the 1st to 3rd Respondents dated 13th May 2015, the acquisition procedure was initiated in accordance with the Cabinet memorandum dated 12th March 2007, submitted by the Minister of Urban Development and Sacred Area Development, marked **R2**, which was approved by the Cabinet on 21st March 2007. Pursuant to the said Cabinet decision, the Acting Director General of the Urban Development Authority made an

application marked **R3b** to take the necessary steps to acquire the land depicted in the Plan marked **R3c**.

Thereafter, the Director of Lands, on behalf of the Secretary to the Ministry of Lands, directed the Divisional Secretary, Maharagama, the 2nd Respondent, to take steps in terms of Section 2 in his letter dated 24th August 2007, marked **R4**.

The 2nd Respondent caused the notice under Section 2 to be exhibited on 12th November 2007, marked **R5**, and communicated it to the Secretary of the Ministry of Lands by his letter dated 18th December 2007, marked **R6**. In their objections, the 1st to 3rd Respondents stated that the Section 4 notice was exhibited on 20th or 30th March 2009, marked **R8**.

According to the chronological order of the objections of the 1st to 3rd Respondents, the Minister of Lands made a declaration under Section 5 and published it in the Gazette Extraordinary, No.1738/24, dated 29th December 2011, marked **R9**. Although published on 29th December 2011, the declaration indicates that the Minister signed it on 22nd July 2011, a date that precedes the publication of the Order under the proviso to Section 38.

The Minister of Lands decided to acquire the land under the proviso to Section 38 on grounds of urgency. The decision was published in the Gazette Extraordinary No. 1735/7, dated 05th December 2011, and marked **P15**, directing the acquiring officer to take possession of the land. The acquiring officer, the 2nd Respondent, had taken possession of the land on 23rd February 2012, marked **R10A**, and communicated the fact to the Secretary, Lands, in her letter dated 05th March 2012, marked **R10B**.

Petitioner's Knowledge of the Impugned Acquisition Proceedings, the Abandonment of the Prior Acquisition Processes, and the Litigation between the Petitioner and the 4th Respondent before the District Court of Nugegoda, Case No. SPL 059/2008.

The Petitioner contended that she became aware of the acquisition proceedings only when learned counsel appearing for the 4th respondent in Case No. SPL 059/2008, before the District Court of Nugegoda, informed the Court that acquisition proceedings were being processed.

It is an undisputed fact that, prior to the impugned acquisition proceedings in the present application, the Divisional Secretary of Maharagama, in the capacity as the acquiring officer, caused a notice to be exhibited under Section 2 of the Act, dated 30th August 1995, marked **P3**, and that the land sought to be acquired was depicted in the plan marked **P4**. The Petitioner claimed Lot B of the said plan and objected to the acquisition. However, the 1st to 3rd Respondents stated in their objections that the said acquisition proceedings were thereafter abandoned in terms of Section 50 of the Act.

Further, the Divisional Secretary caused notice to be exhibited under Section 2 of the Act, marked **P5**, to acquire the lands known as Gorakagahadeniya and Gorokgahakumbura, approximately 12 acres in extent. Pursuant to the said notices, an order under the proviso to Section 38 was published in the Gazette No. 1059/9, dated 23rd December 1998, marked **P6**. However, the Petitioner disputed the identity of the land to be acquired.

However, the Divisional Secretary had sought clarification from the Surveyor General regarding the boundaries. It was determined, as reflected in the document marked **P10(a)**, that the land claimed by the Petitioner lay outside the land sought to be acquired.

The Petitioner further states that the 4th Respondent commenced dumping garbage on the land claimed by her, and whereupon she lodged her objections with the 4th Respondent, marked **P11**, and also made a complaint to the Police on 18th February 2003, marked **P11 (a)**.

After failing to resolve the issue amicably, the Petitioner filed the aforesaid action in the District Court of Nugegoda, marked **P12**. According to the proceedings dated 2nd August 2012 in the above-mentioned Case before the District Court of Nugegoda, the counsel appearing for the 4th Respondent stated that the land in dispute is being acquired by the Urban Development Authority.

Thereafter, the Petitioner informed the 2nd Respondent by her letter dated 7th August 2012, marked **P13**, that she had vested the title to the land depicted in Lot Bb of the Plan bearing No. 316, dated 22nd September 1957, prepared by K.M. Samarasinghe, Licensed Surveyor.

In response to the aforesaid letter, the 2nd Respondent directed the Petitioner to hand over possession of the land claimed by her to the State on 4th September 2012, as marked **P14**. The Petitioner, through her Attorney at Law, objected to the handing over of possession as directed by **P14**, on the ground that the impugned acquisition procedure was illegal and prejudicial.

The 2nd Respondent caused a notice in accordance with Section 7(2) to be published in Gazette Extraordinary No. 1806/2 dated 10th April 2013, marked **P25**, and also informed the Petitioner to appear on 12th July 2013 for the claim inquiry, marked **P24**.

Arguments of the Petitioner

- Failure to serve notices on the Petitioner under Sections 2 and 4;
- Notice under Section 2, dated 12th November 2007, was issued contrary to the mandatory requirements of the Act;
- The 1st Respondent failed to satisfy the grounds for urgency under the proviso to Section 38;
- There is no necessity to acquire the land of the Petitioner, as the unutilized area of the already acquired land is available for the public purpose specified in the aforesaid notices.

Arguments of the 1st to 3rd Respondents

- The Application is misconceived in law,
- The Petitioner has misrepresented the material facts,
- The Petitioner has not substantiated grounds to issue a *writ of certiorari*,
- The Petitioner has failed to disclose facts relevant to the instant application,
- The Petitioner has filed the instant application without any basis.

There is no dispute that the land claimed by the Petitioner is part of the land specified in the impugned acquisition proceedings relevant to the instant application.

Question of necessity and validity of the Section 2 notice

According to paragraphs 65 to 72 of the Petitioner's petition, the Petitioner contended that there was no necessity to acquire her land, as a substantial extent of land already acquired remains unutilized. In essence, her position is that the acquisition of her land was unnecessary.

It follows from Section 2 of the Act that land may be acquired only where it is required for a specific public purpose, and such purpose must be disclosed in the notice issued under that Section. As noted earlier, the Section 2 notice was issued in response to the cabinet decision marked **R2**.

The purpose of the said Cabinet memorandum is stated as follows;

“Background

In accordance with the draft Development plan for Maharagama Urban Council (MUC) area, a low-lying site opposite Arpico Factory at Navinna is being acquired by the Urban Development Authority (UDA) for the Navinna Sports Complex Project. The drainage master plan has been prepared by the Sri Lanka Land Reclamation & Development Corporation (SLLR & DC), and the layout plan prepared by the UDA.

The total site is approximately 16.3 acres in extent. Following a decision at a meeting of the Ministerial Sub – Committee on Investment Promotion on 9th September 1996, a plot of land 2A 3R.0P in extent from this site was released to Orient Holding Company Ltd. for a Board of Investment sponsored electronic industry project. Rest of the land approximately 13.5 acres are under acquisition at present.

Present Status

The validity of the BOI permit for the industrial project has already lapsed and the entire stretch of land is needed for the sport complex and related facilities for the public, including vehicle park, a swimming pool, sports hall, gymnasium, and games courts. For this purpose, UDA has to acquire the entire 16.3 acres which is originally identified the project. It has been agreed that UDA will bear a part of the cost of acquisition.

In recent years the site had been used as a garbage dump by the MUC, raising the levels of the middle of the stretch of land and polluting the site and surroundings. The garbage dumping was stopped in 2005 and the dump was covered with a thin layer of soil. Approximately 1 acre near the entrance, close to the High-Level Road, is currently used as a solid waste transfer station by the MUC and the UDA has initiated its relocation. A high-tension electricity line runs over the site, hampering the implementation of the sports field layout and the UDA is arranging for the Ceylon Electricity Board to re-route the line under this project.”

The land was to be acquired pursuant to **P3**, as follows;

“කොළඹ දිස්ත්‍රික්කයේ, මහරගම ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ, අංක 527 නාවික ග්‍රාම නිලධාරී වසමේ පිහිටි, බලයලත් මිනින්දෝරු, ක්ලෙමන්ට් එච්.පී. ප්‍රනාන්දු මහතා විසින් පිළියෙල කරණ ලද අංක 3792 දරණ සැලැස්මේ කැබලි අංක ඒ, බී, සී, ඩී වශයෙන් දැක්වෙන ප්‍රමාණයෙන් අක්කර 02 රූඩ් 03 ක් පමණ වූ ඉඩම.

මායිම්: -

උතුර: - කොළඹ අවිස්සාවේල්ල පාර (හයිලෙවල් පාර)

දකුණ: - ඉසිපතන මාවත (පුරාණ පාරේ සිට හයිලෙවල් පාර)

නැගෙනහිර: - පී. ඩී. එච්. ජිනදාස සහ එස්. සමරණායක යන අයට අයත් ඉඩම

බස්නාහිර: - කේ. එච්. ඩී. ආනන්ද මයාට අයත් වරි. අංක 44 දරණ නිවස සහ පී. ජූලියන් සිල්වාට අයත් කුඹුර.”

The Petitioner claimed the lot B of the aforesaid land.

The land to be acquired in this application is described in the document **R5** as follows.

“බස්නාහිර පළාතේ, කොළඹ දිස්ත්‍රික්කයේ, මහරගම ප්‍රාදේශීය ලේකම් කොට්ඨාශයේ, අංක 529 නාවික ග්‍රාම නිලධාරී වසමේ පිහිටි නාගරික සංවර්ධන හා පුජා භූමි සංවර්ධන අමාත්‍යාංශයේ ලේකම්ගේ අංක 12/2/4/LA/1142 හා 2007.06.13 දිනැති ඉඩම් අත්පත් කර ගැනීමේ ඉල්ලුම් පත්‍රයේ අමුණා ඇති දළ සැලැස්මේ කැබලි අංක A වශයෙන් දැක්වෙන,

උතුරට - අගල,

දකුණට - ඉසිපතන පාර,

නැගෙනහිරට - එච්. සමරනායක හා පී. ඩී. එච්. ජිනදාසට අයත් ඉඩම,

බස්නාහිරට - ආනන්ද ජිනදාසට අයත් ඉඩම, කුඹුර සහ මෙම ඉඩමේ කොටසක්,

යන මායිම් තුළ පිහිටි ප්‍රමාණයෙන් අක්කර. 02 රූඩ්. 03 ක පහත නම් සඳහන් අය හිමිකම් කියන ගොරොක්ගහකුඹුර හෙවත් ගොරොක්ගහදෙණිය නමැති ඉඩම.”

A comparison of the description of the land in **P3** with that contained in **R5** reveals substantial similarity in location, extent, and boundaries. In those circumstances, it is reasonable to conclude that the land sought to be acquired in **P3** and the land sought to be acquired in the present proceedings refer to the same property.

When the above Cabinet memorandum, marked **R2**, was presented to the Cabinet on 21st March 2007, it was disclosed that approximately 13.5 acres of land were under acquisition pursuant to the Gazette Notification marked **P6**.

The Cabinet memorandum does not disclose any reason for the acquisition of additional land beyond the extent already under acquisition pursuant to Gazette notification **P6**, nor does it indicate any insufficiency in respect of the land already acquired. It states that the total extent of the proposed sports complex is approximately 16.3 acres, of which 2 acres and 3 roods had been released for a Board of Investment project. It further asserts, in general terms, that the entire land is required for the sports complex.

According to paragraph 11 of the objections of the 1st to 3rd Respondents, the public purpose of acquiring additional land is to construct a swimming pool and parking facilities (vide. Paragraph 11 b.). However, according to the cabinet memorandum marked **R2**, the entire 16.3 acres is to be utilized for the construction of a sports complex and related public facilities, including a vehicle park, a swimming pool, a sports hall, a gymnasium, and games courts. On the other hand, the public purpose specified in the Section 2 notice (**P17** and **R5**) is to construct a sports complex, whereas the Section 4 notice indicates that the additional land is for the zonal playground of Maharagama Urban Council.

However, the memorandum does not explain why the land already under acquisition was inadequate or why additional land became necessary.

In *Horana Plantations Limited v Hon. Anura Kumara Dissanayake and others SC Appeal No. 06/2009, decided on 02.07.2012*, the Supreme Court held that;

“The inconsistency rendered the true purpose of the acquisition doubtful and emphasized that the public purpose must be clearly and accurately stated.”

Applying the principle of Manel Fernando v D.M.Jayaratne, Minister of Agriculture and Lands, and others 2000 (1) SLR 112, Justice Suresh Chandra in Horana Plantation Ltd. supra stated that;

“Section 2 notice must state the public purpose, although exceptions may perhaps be implied in regard to purposes involving national security and the like. In the present case, although the purpose was stated in the Section 2 notice, namely “alternative lands for flood victims,” the subsequent correspondence shows that there was a collateral purpose as well, which was not disclosed in the said notice, namely, to provide for people in other divisions, without any evidence to show that such persons were flood victims. The nature of the public purpose sought to be achieved by the proposed acquisition, thus becomes seriously doubtful due to the said collateral purposes, and therefore the true purpose of the proposed acquisition is not spelt out in the said Section 2 notice.

Justice Suresh Chandra, in this judgment, further stated that when lands are acquired for public purposes, it is important to spell out the true purpose for which such acquisition is being made to justify such acquisition.”

In a highly urban and densely populated area, an extent of 13 acres of land is substantial, and any insufficiency or need for additional land should be clearly specified. As noted, it is apparent in this situation that the Respondents failed to provide plausible reasons for the necessity of additional land.

The Purpose of Issuing Notice under Section 2

In Manel Fernando, Justice Mark Fernando stated as follows;

“The purpose of Section 2 is to ascertain whether land in any area, and if so, which land, is suitable for a public purpose. If, without resort to that provision, a particular land has already been identified, then it is section 4 (and not section 2) which should be resorted to. In this instance, the 2nd Petitioner’s land had already been determined to be suitable, and there was no purpose in issuing a section 2 notice.

*The language of the Section 2 notice issued in this case clearly disclosed that it was no more than a pretext. Besides non-disclosure of the alleged public purpose, it stated that “Land in the area described below is required for a public purpose.” The “area” described was just the 2nd Petitioner’s property. The notice went on to authorize an officer “to enter any land in the aforesaid area” (i.e. any land within the 2nd Petitioner’s property), and “to ascertain whether that land is suitable for the public purpose. for which land in that area is required.” By the time that notice was issued, the 2nd Petitioner’s land already had been identified for acquisition, and if that had been validly done, what should have been issued was a notice under section 4. **The issue of a Section 2 notice instead was a pretext.***

I therefore hold that the Section 2 notice was a nullity and the provisions of Section 4A were inapplicable.”

Upon reviewing the Section 2 notice in the instant application, it is clear that it is similar to the Section 2 notice in the case of *Manel Fernando supra*. For ease of reference, the Section 2 notice states as follows.

“Having been duly directed by the Minister of Land and Land Development under Sub-section (1) of Section 2 of the Land Acquisition Act, as amended by the Land Acquisition (Amendment) Act, No.28 of 1964, I hereby give public notice as required by sub – section (2) of that Section that land in the area described below is required for Construction of a Sport Complex.

SCHEDULE

The land called Gorakagahakumbura, alias Gorakgaha Deniya, depicted as Lot No. “A” in the sketch plan attached with the application No. of 12/2//4/LA/1142 dated 13/06/2007 of the Secretary of Urban Development & Sacred Area Development bounded, North by trench, East by. Land belongs to H. Samaranayake.....”

The above schedule demonstrates that it describes the specific land, not the area, which is inconsistent with Section 2 of the Act.

Upon consideration of the foregoing factors, this Court is of the view that the Respondents have failed to place before the Court sufficient material to justify the acquisition of additional land for the construction or expansion of the sports complex of Maharagama, particularly in circumstances where approximately 13 acres had already been acquired for that purpose.

Grounds of Urgency

According to the Gazette notification marked **P15**, the Minister of Lands directed the acquiring officer to take immediate possession of the land in question in the present application, in terms of the proviso to Section 38 of the Act.

In her Petition dated 11th July 2013, the Petitioner states in paragraph 63 that it is the duty of the 1st Respondent to establish, on objective grounds, the existence of urgency that warrants the taking of immediate possession and justifies departing from the ordinary procedure.

It is significant to note that the Respondents, in their objections dated 13th May 2015, did not specifically respond to the said averment. Instead, they confined themselves to a general denial and failed to place before the Court any material that would constitute urgency within the meaning of the proviso to Section 38.

In the case of *Maria Indira Fernandopulle and Another v E.L. Senanayake, Minister of Lands and Agriculture 79 (ii) NLR 115*, it was observed that;

“The Minister is the person primarily vested with the decision regarding urgency, who is in possession of the relevant facts, and that the reasoning must therefore emanate from him.”

In the case of *Horana Plantation Limited, supra—Justice Suresh Chandra*, citing an Indian Supreme Court judgment, states as follows;

“In the case of *Ram Dhari Jindal Memorial Trust v Union of India and Others C.A. No.3813* of 2017 it was held that the urgency clause can be invoked by the government only in exceptional cases after “applying its mind.” The apex court in India said that the burden of justifying acquisition by invoking the urgency clause under Section 17(1)(4) of Land Acquisition Act solely rests on the government, as otherwise it amounts to depriving a person of his or her property.”

Gunathilake and Others Vs. Minister of Lands and Others 2020 3 SLR 144, His Lordship Arjuna Obeysekera, in page 166 states as follows;

“The starting point of this discussion, I believe should be the provisions of the Evidence Ordinance. It is the Minister who is claiming that the public purpose is of such importance that immediate possession of the land must be taken over on an urgent basis in order to give effect to the public purpose for which the said land is required, without following the ordinary procedure laid down in the Act. In terms of Section 101 of the Evidence Ordinance, “Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. Similarly, in terms of Section 103, ‘The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Thus, in my mind, there is no doubt that whether immediate possession must be taken over on the ground of urgency is a fact which is known only to the Minister and other Officials of the relevant Ministries that are involved in the said acquisition, and therefore the burden of proving urgency is with the Respondents. The question that begs an answer is how an innocent landowner could assume the reasons that led to a Minister to conclude that there was in fact urgency.”

Upon consideration of the above authorities, it is evident that the burden of establishing urgency rests upon the State.

In the case of *Gunathilake supra*, the Secretary, Ministry of Higher Education and Highways, requested the Secretary, Ministry of Lands, on 16th December 2016 as follows;

“කරුණාකර මෙම අත්පත් කර ගැනීම සඳහා 2 වගන්තිය යටතේ නියමය නිකුත් කිරීමට කටයුතු කරන්නේ නම් මැනවි.

38(අ) අතුරු විධානය යටතේ කටයුතු මෙහෙයවීම සඳහා ගරු උසස් අධ්‍යාපන හා මහාමාර්ග අමාත්‍යතුමාගේ නිර්දේශය සහ උපලේඛන අංක 11 (යෝග්‍යතා වාර්තාව) පසුව එවීමට කටයුතු කරමි.”

Subsequently, by letter dated 7th February 2017, a further request was made explicitly seeking the issuance of an order under proviso to Section 38(a) on the basis of urgency, which stated as follows;

“ගනේමුල්ල ගුවන් පාලම ප්‍රවේශ මාර්ගය ඉදිකිරීම සඳහා ඉඩම් අත්පත් කර ගැනීම 2 වන වගන්තිය යටතේ නියමය

ඉහත විස්තර සඳහන් කාර්යයෙහි කටයුතු කඩිනමින් නිම කළ යුතු වන අතර, ඒ සඳහා අත්පත් කර ගත යුතු බිම් කැබලිවල නිරවුල් භුක්තිය රජයට පවරා ගැනීමේ කටයුතු ද කඩිනමින් කළ යුතු වේ.

02. අදාළ ඉඩම් අත්පත් කර ගැනීම සඳහා වූ අයදුම්පත් හා විස්තර ප්‍රකාශය මෙම අමාත්‍යාංශ ලේකම් විසින් මාගේ සමාංක හා 2016.12.16 දිනැතිව ඔබ අමාත්‍යාංශය වෙත ඉදිරිපත් කර ඇත.

03. මෙම බිම් කැබලි වල නිරවුල් භුක්තිය නොපමාව රජයට පවරා ගැනීමට හැකිවනු පිණිස ඉඩම් අත්කර ගැනීමේ පනතේ 38(අ) අතුරු විධානය යටතේ ආඥාවක් නිකුත් කරන මෙන් කාරුණිකව ඉල්ලමි.”

In contrast, in the application before this Court, Respondents (1st to 3rd) have failed to produce any contemporaneous material demonstrating that a request was made to invoke the proviso to Section 38 on the ground of urgency.

In these circumstances, this Court is of the view that the 1st to 3rd Respondents have failed to discharge the burden of establishing the grounds of urgency to act upon the proviso to Section 38 of the Act.

Conduct of the 2nd and 4th Respondents and the Failure to Notify the Petitioner of the Acquisition

It is undisputed that the acquisition of the land in question was initiated at the request of the then Maharagama Urban Council, the 4th Respondent (vide 11c of the Objections of the 1st to 3rd Respondents).

According to Annexure II to the Application submitted by the Secretary, Urban Development and Sacred Area Development, marked **R3A**, the persons identified as claimants for the purpose of issuing notices under Sections 2 and 4, were;

- Kushan Kodituwakku, Orient Distribution System (pvt) Ltd,
- T.R.Kodituwakku and others.

The name of the Petitioner or the names of any other persons claiming an interest in the land were not identified therein.

However, by letter dated 24th August 2007, marked **R4**, the Director of Lands, on behalf of the Secretary, directed the 2nd Respondent to serve copies of the Section 2 notice on the claimants of the land sought to be acquired. The Paragraph (අ) of the aforesaid letter expressly directed that copies of the notice be furnished to the claimants in addition to its exhibits on the land and other suitable places.

The Paragraph (අ) stated as follows;

“(අ) 2 වගන්තියේ නියමයට අදාළ දැන්වීම භාෂාත්‍රයෙන් පිළියෙල කොට ඉඩමේ සහ වෙනත් සුදුසු ස්ථානවල ප්‍රසිද්ධ කරන්න. අත්පත් යෝජනාවේ සඳහන් හිමිකම් දක්වන්නන්ට ද එහි පිටපත් ලැබීමට සලස්වන්න. (මෙම දැන්වීම සඳහා මුද්‍රිත ආකෘති සපයා ගත නොහැකි නම් අනුපිටපත් කර ආකෘති පත්‍ර සුදානම් කර ගත හැකිය.)”

Notwithstanding the aforesaid direction, it is apparent from the documents marked **R5** and **R6** that the Petitioner was not served with either the Section 2 or Section 4 notices. This omission assumes particular significance in view of the fact that, as reflected in the document marked **P3**, the disputed land in the present application had previously been the subject of acquisition proceedings, and that a notice under Section 2 had on that occasion been published and served on the Petitioner. The 1st to 3rd Respondents admitted this in their objections.

Further, the letters marked **P8**, **P9**, **P10**, and **P10(a)** demonstrate that the Petitioner had communicated with the 2nd Respondent regarding her claims relating to the land that was the subject of acquisition proceedings under the proviso to Section 38, as reflected in **P6**, until 26th March 2003. Despite such communication over a considerable period, the 2nd Respondent did not make any attempt to notify the Petitioner of the issuance of the Section 4 notice. The 2nd Respondent, being a responsible Public Officer, should have made every possible effort to identify the owners of the land in question.

In terms of Section 4(1) of the Act, notice of the intended acquisition is required to be given to the owner or owners of the land, unless their names and addresses cannot be found or ascertained. In the circumstances of this case, where the Petitioner had been in

correspondence with the 2nd Respondent and was clearly identifiable, the statutory condition for dispensing with personal service under the proviso to Section 4(1) was not satisfied.

When the Petitioner was informed of the acquisition proceedings at the District Court of Nugegoda, he wrote to the 2nd Respondent asserting his rights as set out in **P13**. In response to it, the 2nd Respondent sent the letter marked **P14** directing the Petitioner to hand over Possession of a portion of the land that she claimed on 04th September 2012, and further, she was informed that the land described in the said letter was acquired by the state in terms of the proviso to Section 38(a).

As noted earlier, the 2nd Respondent, by her letter dated 05th March 2012, informed the Secretary, Ministry of Land, that she had taken possession of the land in question from the owners and had handed it over to the Urban Development Authority. This raises serious questions about the *bona fides* of the 2nd Respondent. If she had taken possession of the entire land and handed it over to the Urban Development Authority, she would have informed the Petitioner of this and not asked the Petitioner to deliver possession.

Having considered the totality of the pleadings and the submissions advanced by learned counsel for the parties, there is no dispute that the Petitioner has a legally recognized proprietary interest in approximately 2 roods and 25 perches of land purportedly acquired in terms of **P15**.

Upon considering the aforementioned lapses, this Court observes that non-compliance with the mandatory safeguards of the Act undermines public confidence in the lawful and fair exercise of statutory power by public authorities. The Respondents have failed to give due effect to the Petitioner's statutory safeguards and the procedural protections embodied in the Act, thereby rendering the impugned acquisition proceedings illegal and irrational.

As noted earlier, the acquisition procedure was initiated at the request of the 4th Respondent. The Petitioner had written a letter dated 17th February 2003, raising objections regarding the actions of the 4th Respondent, including the installation of a gate, and had lodged a complaint with the Maharagama Police on 18th February 2003. Although the application for the acquisition procedure was prepared by the Secretary, Urban Development and Sacred Area Development, it is evident from Annexure B of **R3** that Maharagama Urban Council failed to furnish the details of the Petitioner to the 1st to 3rd Respondents, thereby contributing to the failure to comply with the mandatory notice requirements under Section 4 of the Act.

The petitioner instituted the action marked **P12** before the District Court of Nugegoda on 27th March 2008, and the 4th Respondent's objections were tendered on 2nd July 2008. The trial commenced on 13th November 2009. The said action was instituted by the Petitioner, seeking a declaration of title to the land in dispute, and to eject the 4th Respondent therefrom.

Notwithstanding the fact that the Cabinet Memorandum dated 12th March 2007, initiating the acquisition process, had been submitted to the Cabinet at the request of the 4th Respondent. The 4th Respondent did not inform the District Court of the impugned acquisition proceedings until 2nd August 2012.

This conduct is of serious concern, as the 4th Respondent remained silent regarding the initiation of acquisition proceedings for more than five years after the Cabinet decision and nearly four years after the institution of the District Court action, despite being directly involved in requesting such acquisition.

In the case of *Manawadu v The Attorney General (1987) 2 SLR 30*, Chief Justice Sharvananda held that;

“Among the important rights which individuals traditionally have enjoyed is the right to own property. This right is recognised in the Universal Declaration of Human Rights (1948). Article 17 (1) of which states that everyone has the right to own property and Article 17(2) guarantees that no one shall be arbitrarily deprived of his property. The contention of State Counsel negates this right. An intention to provide for arbitrary infringement of human rights cannot be attributed to the legislature unless such intention is unequivocally manifest. When Parliament is enacting a statute, the courts will assume that it had regard to the Universal Declaration of Human Rights and intended to make the enactment accord with the Declaration and will interpret it accordingly (Vide Lord Denning in R v. Chief Immigration Officer).”

The 4th Respondent, being an elected local authority representing the residents of the area, is under a public duty to act in accordance with the law and to exercise its statutory powers fairly and responsibly. In the circumstances disclosed in this case, the sequence of events gives rise to serious concerns as to whether the actions of the 4th Respondent were consistent with those obligations.

Considering this application as a whole, the alleged unauthorized use of private land by the 4th Respondent, the resistance and litigation instituted by the Petitioner, and the subsequent initiation of acquisition proceedings collectively raise serious doubts as to the *bona fides* of the acquisition. The acquisition process appears to have been resorted to in order to legitimize an earlier unauthorized use of private land.

Conclusion

Upon consideration of the totality of the materials before this Court, it is established that,

- The Respondents failed to place before the Court material demonstrating the necessity to acquire additional land for the sports complex;
- The Respondents failed to furnish sufficient material to establish an urgency warranting immediate possession under the proviso to Section 38;
- The 2nd Respondent failed to comply with the mandatory requirements of Sections 2 and 4, including notice to the Petitioner;
- There were material inconsistencies in the stated public purpose underlying the acquisition.

The cumulative effect of these circumstances demonstrates disregard for **procedural fairness** and the statutory safeguards governing compulsory acquisition. The exercise of powers under the Land Acquisition Act must be strictly in conformity with the law, particularly when such powers result in the deprivation of proprietary rights.

For the reasons set out above, it is my considered view that the Respondents acted illegally, irrationally, and unlawfully in invoking the proviso to Section 38 (a) to take immediate possession of the land in question as reflected in Gazette Extraordinary marked **P15**.

When a public authority, especially the 4th Respondent, acts in a manner that undermines statutory protections and causes unnecessary litigation, this Court is entitled to express its disapproval in an appropriate manner.

In the circumstances of this case, I am of the view that the conduct of the 4th Respondent warrants an award of exemplary costs.

Accordingly:

A mandate in the nature of a *writ of certiorari* is hereby issued quashing the Order published in Gazette Extraordinary No. 1735/7 dated 05th December 2011, marked **P15** as prayed for in the paragraph (b) of the Petition dated 11th July 2013.

In addition to above, the court issue a *Writ of Certiorari* quashing the decisions reflected in documents marked **P14**, **P17** and **P25** as prayed for in the paragraphs (c), (d) and (e) of the Petition.

Further, this court issue a *Writ of Certiorari* as prayed for in the paragraph (f) of the Petition and a *Writ of Prohibition* as prayed for in the paragraph (g) of the Petition.

The 4th Respondent shall pay costs to the Petitioner in a sum of Rs. 100,000/- (One Hundred Thousand Rupees) as exemplary costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL