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

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

Balangoda Plantations PLC
No. 110,
Norris Canal Road,
Colombo.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/226/2022

1. The Honourable Minister of Lands,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatta Raod,
   Battaramaulla.

2. Divisional Secretary,
   Divisional Secretariat Badulla,
   Badulla.

3. Secretary to the Ministry of Education,
   Isurupaya,
   Battaramulla – Pannipitiya Road,
   Battaramulla.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Shivaan Cooray with Damithu Surasena instructed by Sajuni Seneviratne for the Petitioner. Nayomi Kahawita, S.S.C. for the State.
Argued on:	30.07.2025
Written Submissions:	For the Petitioner on 08.09.2025.
Decided on:	31.10.2025

Mayadunne Corea J

The Petitioner in this Application sought, *inter alia*, the following reliefs:

"*(d) An order in the nature of a writ of certiorari against the order and/or decision and/or notice set out in the document marked P9 dated 8th November 2019 and/or any other decision of the 1st Respondent and/or 2nd Respondent in respect of the same.*

(e) An order in the nature of a writ of certiorari against the order and/or decision and/or notice set out in document marked P14 dated 17th December 2020 of the 1st Respondent and/or 2nd Respondent.

(f) An order in the nature of a writ of certiorari against the order and/or decision and/or notice set out in document marked P17 dated 20th April 2021 and/or any other decision of the 3rd Respondent in respect of the same.

(g) An order in the nature of a writ of certiorari against the order and/or decision and/or notice set out in document marked P20 dated 8th November 2021 and/or any decision of the 1st Respondent in respect of the same.

(h) *An order in the nature of a writ of prohibition against the Magistrate's Court of Badulla preventing the said court from delivering possession of the land described in P6 to the 2nd Respondent and/or depriving the Petitioner of the possession of the said land.*

(i) *An order in the nature of a writ of prohibition against the 1st Respondent preventing the 1st Respondent from making a declaration in terms of section 5 of the Land Acquisition Act in respect of the land described in P6 and/or any other decision of the 1st Respondent in respect of the same*."

The facts of the case briefly are as follows. The Petitioner is a public listed company that engages in the cultivation of tea and rubber in several estates, including the Wewasse Estate. The Wewasse Estate had been vested with the Land Reform Commission until 1982 and had thereafter had been vested in the Janatha Estate Development Board (hereinafter referred to as 'JEDB') by an order made by the then Minister of Lands. In 1992, the Cabinet of Ministers considering that the functions of the JEDB should be taken over by a company, directed the Registrar of Companies to incorporate the Petitioner company under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987. Thereafter, the JEDB leased out the Wewasse Estate to the Petitioner company for 99 years. The term of the lease was subsequently reduced to 53 years.

In 2005, the Minister of Lands acquired 37 acres from another closeby estate, the Glen Alpine Estate managed by the Petitioner for the purposes of establishing the Uva Wellassa University. Thereafter, in 2013, the Minister of Lands published another notice to acquire a further extent of 100 acres from Glen Alpine Estate. The Petitioner opposed this acquisition and instead entered into a compromise with the 2nd Respondent for the acquisition of 27.92 acres from Glen Alpine Estate. However, the Petitioner states that no development had taken place on the acquired land and that no compensation was received by the Petitioner company for the aforesaid acquisition.

In 2019, the Petitioner received a notice dated 27.08.2019 from the 2nd Respondent stating that the 1st Respondent had decided to acquire 44 acres from the Wewasse Estate for the purposes of developing the Uva Wellassa University. Further, on 11.11.2019 the Petitioner received another notice that a further extent of 12 acres would be acquired from the Wewasse Estate for the same purposes. The Petitioner received another letter dated

27.11.2019 communicating the 2nd Respondent's decision to rely on a finding of the Survey Department that the land was not owned by any party.

The Respondents, thereafter, issued a notice under section 2 and subsequently under section 4 of the Land Acquisition Act, No. 9 of 1950 (herein sometimes referred to as 'Act') to acquire the aforesaid 12 acres and the Petitioner's cooperation was requested to release the property. Furthermore, the 1st Respondent directed the 2nd Respondent to take immediate possession of the land under section 38 proviso (a) and section 42(2) of the Act. Thereafter, the 2nd Respondent instituted proceedings before the Magistrate's Court of Badulla. Hence, this Writ Application.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The land acquired from the Glen Alpine Estate had not been developed to date. Hence, the necessity of another acquisition does not arise.
- The notice of acquisition was issued contrary to the Land Acquisition Act, as the 2nd Respondent had failed to name the JEDB as the owner of the land.
- The lessor of Wewasse Estate is the JEDB, incorporated under the State Agricultural Corporations Act, No. 11 of 1972. Any land in the control of an entity created by the State Agricultural Corporations Act is considered State land for the purpose of the State Lands (Recovery of Possession) Act, No. 7 of 1979, and therefore, it cannot be acquired.
- The inquiry into the objections concluded without any findings nor reasons to reject the objection raised.

In the written submissions the Petitioner also contended that:

- The publication of a notice under the proviso (a) to section 38 is *ultra vires*.
- The Petitioner has a legitimate expectation to enjoy the lease of the land.

The Respondents' contention

The Respondents raised the following objections:

- The land subject to acquisition is in an extent of 12 acres.
- Notices were published pursuant to sections 2 and 4 of the Land Acquisition Act.
- Inquiry pursuant to section 4 was held and the decision was conveyed.
- The declaration pursuant to section 5 has been made and published. Hence, the Petitioner cannot now challenge the purpose of the acquisition.
- The notice pertaining to the proviso (a) to section 38 has been published.
- The procedure laid down has been followed and there is no illegality in the acquisition process.

Analysis

This Court will now consider the Petitioner's contention along with the objections of the Respondents.

It is common ground among the parties that the land which is the subject matter of this Application, namely the Wewasse Estate, was vested with the Land Reform Commission and subsequently, by the Gazette Extraordinary No. 183/10 dated 12.03.1982 marked as P2, the land was vested with the JEDB. Subsequently, by Gazette Extraordinary No. 718/2016 dated 11.06.1992, marked as P3, a public company was incorporated by the name of Balangoda Plantations Limited. By the said Gazette, a land by the name of Wewasse, which was originally administered by the JEDB was leased to the Petitioner.

However, it is pertinent to note that the Petitioner had only been given the movable assets and liabilities, but not the title to the land. Accordingly, the title to the land remains with the JEDB. The Petitioner contends that they had originally been given the said land by a lease indenture for a period of 99 years (P4), which had later been reduced to 53 years by a subsequent instrument (P5). While the Petitioner was in possession of the Wewasse Estate, the Petitioner had received a notice pursuant to section 2 of the Land Acquisition Act that an extent of 44 acres of land from the Wewasse Estate was to be acquired (P7) for the development purpose of the Uva Wellassa University. Upon receiving the said letter, the Petitioner had sent a letter to the Divisional Secretary of Badulla informing him that on

a previous occasion, an extent of 37.9 hectares had been acquired from an adjoining estate by the name of Glen Alpine, which too was possessed by the Petitioner and the said land had not been properly utilized (P8).

Thereafter, on 11.11.2019, the Petitioner received another notice dated 08.11.2019 pursuant to section 2 of the Land Acquisition Act to acquire an extent of 12 acres from the Wewasse Estate for the development purposes of the Uva Wellassa University (P9). The Petitioner had once again written to the acquiring officer, the Divisional Secretary of Badulla, stating that in the event of acquisition, the Petitioner would be compelled to stop the work of employees who were employed in the portion of the land that was to be acquired, and had sought an inquiry. This letter was followed by another letter to the Divisional Secretary of Badulla marked as P11, whereby the Petitioner objected to the said acquisition of 12 acres. Thereafter, by P12, the Petitioner had been informed that an opportunity would be given to object once the section 7 notice is published. Subsequently, a section 4 notice (P14) had been published pertaining to the 12 acre block to be acquired from the Wewasse Estate, to which the Petitioner has tendered its objections.

Section 2 notice and purpose to acquire the land

It was the contention of the Petitioner that there is no purpose to acquire a new land for the development of the Uva Wellassa University as land acquired by the State for the same purpose from the Glen Alpine Estate has not been fully utilized. It is common ground that the procedure for acquisition is clearly laid down in the Land Acquisition Act. The said procedure commences with the notice pursuant to section 2(1), which reads as follows:

> "*where the minister decides that the land in any area is needed for a public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous place in that area*."

Upon a plain reading of the section, it is clear that the commencement of the acquisition process starts with the need to acquire the land for a public purpose. Hence, the section 2(1) notice demonstrates the necessity to acquire land for the public purpose. Section 2(3) allows the acquiring officer to consider the suitability of the land for the public purpose. If the acquiring officer is satisfied that there is a necessity to acquire the land for a public

purpose and if it is suitable for the said public purpose only, shall the acquiring officer proceed to the next step.

The learned Senior State Counsel tendered the notice under section 2 marked as R2. Further, it was conceded by the Petitioner that the section 2 notice had been handed to the manager of the estate by the Gramasevaka of the area. This fact is evident in the documents marked as P11 to P13. The document P13 acknowledges the handing of the notice by the Gramasevaka.

In this instance, the section 2 notice has been published and upon being satisfied that the land is suitable for the public purpose, section 4 notice too has been published. Upon being satisfied that the land is suitable for the public purpose and notice under section 4(3) would be given to the owner.

Section 4 notice under the Land Acquisition Act

As per the Land Acquisition Act, a section 4 notice should be issued to the owner or owners of the land and be exhibited in a conspicuous place on or near that land. However, the proviso to the said provision states that if the owner cannot be found or ascertained, the requirement to give notice can be dispensed with. In this instance, the notice has been given, which is marked as P14. However, I observe that the document marked by the Petitioner does not disclose the party to whom it is addressed. It is also pertinent to note that the Petitioner does not deny receiving the said notice. It is observed that pursuant to receiving the said section 4 notice, the Petitioner has tendered objections.

The purpose of section 4 is to enable the land owner to object to the acquisition of the land. As per the provisions of the section, upon being satisfied with the suitability of the land, notice under section 4(3) should be given to the owner or owners of the land. The purpose of the section is to enable the owner to object to the acquisition on the ground that the land is not suitable for the public purpose stated under section 2(1). This was elaborated in the case of ***Manel Fernando and another v. D.M. Jayaratne, Minister of Agriculture and Lands and others*** **2001 (1) SLR 112**, where it was held:

"*the object of section 4(3) is to enable the owner to submit his objections which would legitimately include an objection that his land is not suitable for the public purpose which the state has in mind or that there are other or more suitable lands*."

Once the said objection is preferred, the Secretary to the Ministry for which the land is required should consider the said objection and afford an opportunity for the objecting person to be heard before he recommends to the minister in charge of the subject of the land. Upon being satisfied on the grounds that there is a public purpose for which a land is to be acquired and the land where the section 2(1) notice was published is suitable for the purpose, the acquisition would proceed.

In my view, this opportunity has been given and it has been availed of in this instance by the Petitioner. Further, it is not disputed that the Petitioner has objected to the acquisition and subsequent to an inquiry, the Petitioner has received the document P17 from the inquiring officer.

Has the JEDB been notified of the acquisition and is there sufficient compliance with the provisions of the Act?

It was the contention of the Petitioner that, as the owner of the land to be acquired, the JEDB should have been served with a section 2 notice and the Respondents have failed to do so**.** As stated above, the law requires a notice to be exhibited in some conspicuous place in the land area.

In the instant case, it is common ground that the notice of acquisition has been handed over to the manager of the estate. If so, it is the duty of the manager to inform his superior of the acquisition. Further, if the Petitioner is the lessee of the JEDB and the occupant, then the Petitioner should have notified the JEDB of the acquisition. Though the Petitioner brought in this argument, it is pertinent to note that there is no material to demonstrate that the Petitioner, after receiving the section 2 notice has informed the JEDB. Especially the document marked as P11, which acknowledges the receipt of the section 2 notice, does not even disclose that the Petitioner is not the owner nor does it disclose that the JEDB is the owner. Also, I observe that there is no material to establish that the manager to whom the section 2 notice had been delivered had disclosed to the Gramasevaka or the author of the section 2 notice about the true ownership of the estate being vested with the JEDB. It is

also pertinent to note that the Petitioner, who argues that the failure to inform the JEDB is bad in law, has not thought of making the JEDB a party to this Writ Application.

In the circumstances, it is my view that, as per the material submitted to this Court, there is sufficient compliance with section 2 of the Act. However, it is also pertinent to note that though I have made my observations pertaining to compliance with section 2, the acquisition procedure has now gone forward and the compliance with section 2 would not arise. This I would advert to elsewhere in this judgement.

However, it is apparent by P14 that the Petitioner was in receipt of the section 4 notice to which the Petitioner has replied and tendered objections marked as P15 dated 12.01.2021. In the said objections, the Petitioner had taken the position that the Petitioner company was unable to release the 12 acres of land on two-folds namely, the said land is cultivated with tea and secondly, on the ground that if the land is to be released the workers in the said section would lose their jobs, which seems to be basically an objection based on the economic downfall the Petitioner and the workers would suffer as a result of the acquisition.

Strangely, the said letter containing the objections does not contemplate that the section 4 notice should have been referred to the purported owner, the JEDB. Subsequent to receiving this letter, another letter had been tendered, marked as P16, which appears to be a letter relevant to a section 9 compensation inquiry. In the said letter, the Petitioner had specifically quoted on page 13 under clauses 3.5, 4 and 6 as follows:

> "*බදු කාලය තුලදී බදු දේපල හෝ එහි කොටසක් රජය විසින් අත්පත් කර ගැනීමක දී එහිදී බදු දීමනාකරුට හිමිවිය යුතු සියලුම වන්දි මුදල් බදු ගණුම්කරුට හිමි විය යුතු බව දැක්වෙයි.*"

It appears, as per the correspondence, that the Petitioner had made a representation to the effect that any compensation that would be paid should be paid to the Petitioner as per the understanding between the lessor (the JEDB) and the lessee (the Petitioner).

In the said letter, the Petitioner had made specific representations to the effect that during the period of the lease, if there is an acquisition of the property by the State, the compensation should be given to the lessee. In this context, it is the Petitioner who made a

claim for compensation subject to its objections for the acquisition at the inquiry. Strangely, one of the main grounds the Petitioner's argument was based on was the inability of the acquisition officer to notify the JEDB of the acquisition of the land. It was the contention before this Court that pursuant to section 4, notice should have been given to the owner of the land, JEDB, and in the absence of such, the acquisition was bad in law. Yet the Petitioner, who represented the owner, decided to stake a claim for the compensation subsequent to utilizing the opportunity availed to the owner to object to the acquisition.

In my view, considering the above representation made by the document P16 and the argument forwarded before this Court, the Petitioner's contention that the acquisition proceedings are bad in law as no notice was given to JEDB, is an attempt by the Petitioner to blow hot and cold. If the Petitioner's stance was that there should have been strict compliance with the provisions of the statute and that JEDB should have been sent a section 4 notice, then the Petitioner should explain why it has represented itself by P16 and stake a claim to obtain compensation which is payable to the owner. Further, the Petitioner has failed to disclose whether the Petitioner, as the lessee and the occupant, has informed the lessor of the acquisition of part of the estate. The Petitioner has failed to give an explanation to this effect. Further, in the last paragraph of page 2 of P16, the Petitioner makes a specific representation stating that whatever compensation is being given, the lessee should take steps to obtain the compensation on behalf of the lessor. The Petitioner made further representations to state that the lessor had given powers to the lessee to obtain compensation on behalf of the lessor. Further, as I have observed above, the Petitioner has failed to make the purported owner of the land, namely the lessor of the lease agreement through which the Petitioner derives authority (i.e., the JEDB), a Respondent to this Application.

Further, it is submitted that the inquiring officer had failed to consider that the land to be acquired is leased land, and therefore, the Petitioner is in possession of a leased land. However, as stated above in this judgement, the Petitioner has represented to be holding more than the leasehold rights, as the Petitioner contends that it is entitled to obtain compensation and that it has been empowered under the lease agreement to take the said compensation. The Petitioner is the occupant of the land and accordingly notices have been sent to the occupant. Considering the circumstances of this case, in my view, sufficient notice pursuant to section 4 has been given and there is sufficient compliance with section 4 of the Act.

Without prejudice to the above finding, in the absence of JEDB being made a party to this Application, this Court is not in a position to ascertain independently whether there was a notice under section 4 issued to the JEDB. However, it was the contention of the learned Senior State Counsel that not only had the notice under section 4 been given to the occupant but that it had been published as well. Therefore, the position of the learned Senior State Counsel for the Respondents at the hearing was that they had complied with the requirements of the Act and the notice in addition was exhibited in the estate and published in the government Gazette giving sufficient notice to the interested parties. Thus, whether the JEDB was specifically served with a notice or not becomes a disputed fact. This situation could have been resolved if the Petitioner had named the JEDB a party to this Application. This substantiates the Respondents' objection as to whether the Petitioner has brought all necessary parties before Court. This will be addressed elsewhere in this judgment.

Hence, in the given circumstances peculiar to this case, the Petitioner's contention that the Respondents' failure to issue notice on the JEDB is fatal to this acquisition cannot be accepted as there is sufficient compliance with the provisions of the Act. This takes me to the next ground urged by the Petitioner at the argument that the inquiry into the section 4 objections was concluded without a decision, as no reasons were given pertaining to the objections raised by the Petitioner.

Section 4 inquiry and the consideration of the objections raised

The Petitioner also contended in his submissions that the Respondents have failed to carry out an inquiry subsequent to section 4. However, this Court observes that there had been an inquiry and the Petitioner had taken part in the said inquiry and had made representations under P16 to obtain compensation in the event of an acquisition. This fact is further substantiated by the reply subsequent to the inquiry sent by the Secretary to the Ministry of Education marked as P17. In view of the above, I come to the conclusion that there had been a section 4 objections inquiry. I also observe that the Petitioner's assertion of the Respondents not holding an inquiry pursuant to section 4 of the Act is a clear misrepresentation of a material fact. Especially after receiving notice and making representations before the inquiry.

In the first instance, it was the contention of the Petitioner that pursuant to section 4 of the Act, there was no inquiry held. Then the Petitioner contends that there was an inquiry but

the inquiring officer had failed to give a decision or order pursuant to the inquiry. In my view, the Petitioner cannot approbate and reprobate pertaining to the holding of the inquiry.

Thereafter, the Petitioner alleges that by the failure to give a decision pertaining to the objections raised by him at the inquiry, the acquiring officer had failed to exercise the duty cast on him by section 4 of the Land Acquisition Act. I am unable to agree with this contention for the reasons set out below.

The Petitioner has received a communication subsequent to the inquiry, which is marked as P17. In the second paragraph, the author of P17 had clearly stated that when the original section 4 notice under the Act had been published, they had not identified the owner of the land. It appears to this Court that this paragraph explains why a section 4 notice had not been sent to the JEDB at the commencement. However, as per the submissions made by the Respondents and the available documents, it appears to this Court that the acquiring officer, in the absence of identifying an owner, had decided to resort to section 4(1) of the Land Acquisition Act. Subsequently, the Petitioner, being in possession of the land, had received the said notice. A plain reading of the said letter also indicates that at the inquiry, the Petitioner had not disclosed the ownership of the JEDB. Therefore, in the letter dated 20.04.2021 marked as P17, the inquiring officer had clearly addressed the two main objections raised by the Petitioner. Firstly, that the probability of laying off the workers who were working within the 12 acre plot could be remedied by redeploying them elsewhere within the estate. Secondly, the author had disregarded the said land having a tea plantation by stating that there is no other alternate land identified for the purposes of development of the university. Finally, the author had further stated to support the acquisition process, that it is considered a national requirement, thus overruling the objection pertaining to the acquisition.

However, it is pertinent to note in the objections tendered, the Petitioner has not challenged the acquisition on the basis of suitability for the public purpose the land was to be acquired for.

Thus, the Petitioner’s contention that no decision had been given at the inquiry pursuant to section 4 of the Act is not tenable.

Publication of the declaration pursuant to section 5 of the Act

The parties are not at variance and it is common ground that in the instant case, notice pursuant to section 5 too has also been published. This Court observes that this publication is made by the minister upon him being satisfied that the land should be acquired and that it is suitable for the public purpose it is intended to be used for. It was brought to the attention of this Court that the declaration had been published and exhibited in a conspicuous place on the land. Importantly, section 5(2) states that a declaration made would be conclusive evidence of the fact that the land is needed for a public purpose. Section 5(2) reads as follows:

> "*a declaration made under subsection (1) in respect of any land or servitude shall be conclusive evidence that such land or servitude is needed for a public purpose*."

Hence, pursuant to the publication of a declaration under section 5(2), a party cannot question the need for the public purpose and the suitability of the land to be acquired. In the instant case, it is common ground that a declaration under section 5(2) had been made and was published (R5).

The Petitioner's further objections to the acquisition

The Petitioner also contended that the Respondents have already acquired 37 acres of land from the Glen Alpine Estate. Further, another 27.92 acres from the same Glen Alpine Estate had been acquired by the Respondents. It is the contention of the Petitioner that though the Petitioner company had participated in the inquiry under section 9, it had not been paid any compensation. The Court observes that the inquiry proceedings are not before this Court and in any event, the Petitioner is not canvassing the said acquisition of Glen Alpine Estate in these proceedings.

However, it is sufficient to state that if the land is being acquired, it is the responsibility of the State to pay the compensation pursuant to the provisions of the Act.

Even after the conclusion of the inquiry held pursuant to section 4 of the Act, the Petitioner has failed to hand over the possession of the land. It was contended by the Respondents

that the refusal and the delay to hand over the possession of the land had caused a delay in commencing the construction for the public purpose for which the land was acquired. Accordingly, the Respondents have taken steps to publish the Gazette notification pursuant to proviso (a) to section 38. This would be an appropriate time to consider the ground of urgency.

Urgency to make a publication under proviso (a) to section 38

The Petitioner contended that, in any event, there is no public necessity or an urgency which warranted the circumvention of a regular acquisition process.

It is pertinent to note that with the publication of notice under section 5 of the Land Acquisition Act and pursuant to the provisions of section 5(2), the Petitioner is now precluded from challenging the purpose of the acquisition. Hence, the acquisition process has now commenced. It appears as per the materials tendered to this Court, that the Petitioner has repeatedly informed the Divisional Secretary of Badulla that the Petitioner is still objecting to the acquisition and subsequently, has refused to give possession of the land. As per the scheme of the Land Acquisition Act, in normal circumstances, once a section 5 notice is published, it has to proceed with the inquiry under sections 7 and 9 to ascertain the landowner's claims. It is trite law that once the claims are ascertained, the compensation process has to commence reaching a finality under section 17. Thereafter, compensation has to be paid. This Court agrees with the submission that until the compensation is paid, the acquiring authority should not take possession of the land.

In my view, this was the main contention of the Petitioner when the Petitioner challenged the need to act under the proviso (a) to section 38 of the Act.

However, the legislature in its wisdom has provided an exception to the above-mentioned scheme. That is, if there is an urgency, the legislature itself has provided to act under proviso (a) to section 38 to obtain immediate possession. Upon the publication of notice pursuant to the proviso (a) to section 38, the title of the land to be acquired vests with the State. Hence, the State can take possession of the acquired land. This bypasses the requirements to proceed with the normal acquisition procedure and to await the payment of compensation before the landowner departs with the possession. This would be an appropriate time to consider proviso (a) to section 38 of the Act. It reads as follows:

"provided that the Minister may make an order under the preceding provision of this section-

(a) where it becomes necessary to take immediate possession of any land on the ground of 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 the land, and

(b) …"

Hence, it is clear that pursuant to a notice being published in terms of section 2(1) stipulating the necessity to acquire, or pursuant to a notice being published under section 4(1) of the Act determining the suitability of the land required for the public purpose stated in section 2(1), the minister may make an order to take possession of the land on the ground of urgency by publishing an order pursuant to proviso (a) to section 38. Thus, it is the minister who is vested with the power to take a decision as to whether there is an urgency to take possession of the land. Therefore, if there are sufficient material and grounds that justify the immediate need for possession, the minister can resort to making an order pursuant to proviso (a) to section 38. This position has been decided by Courts in the case of ***Fernandopulle v. Minister of Lands and Agriculture*** **79 NLR 115**, where it was held that:

"*Section 38 nowhere refers to 'public purpose'. It only refers to the sections where the need for such purpose has been decided. The only decision it is concerned with is the 'urgency' which necessitates 'immediate possession' of the land being taken. The Minister's sole power under that section is to decide the question of urgency to meet the need for which an order was made under section 2 and/or section 4*."

The said case also discusses proviso (a) to section 38 where it is held:

"*the proviso to section 38 is a departure from this general rule. It empowers the Minister on behalf of the state to take immediate possession where it becomes necessary to take immediate possession of any land on the ground of any urgency*"

Further, in the case of ***Gunathilake and others v. Minister of Lands and others*** **2020 (3) SLR 144**, it was held that:

"*The proviso to section 38 provides for an exception where the Minister may make an order to take immediate possession of a land on the ground of urgency at any time after a notice has been published in terms of section 2(1) indicating necessity,*

or where a notice under section 4(1) has been published indicating suitability of a particular land for the public purpose mentioned in the section 2(1) notice."

In the case of ***W. Palitha De Zoysa Gunasekara v. Hon. Minister of Lands and 10 others*** **CA Writ 441/2020 decided on 27.04.2021,** it was held that:

"*taking over possession of a land that is to be acquired can happen at different stages of the acquisition process. Unless it is urgent, the earliest point of time at which possession can be taken is after the publication of an award under Section 17. However, on the ground of urgency, the Minister can make an order under proviso (a) to Section 38 to take immediate possession of the land any time after the publication of a notice under Section 2*."

In this instance, I observe that the acquisition process had commenced in November 2019. The process had been ongoing until 2021, with the Petitioner refusing and objecting to the acquisition. As per the documents before this Court, it appears that the necessity for acquiring the land is for the Uva Wellassa University. The necessity of the acquisition was further elaborated by the learned Senior State Counsel, drawing our attention to document R7. It was strenuously argued that the need for the acquisition of the 12 acres was for the purpose of the construction of hostels for the students of the university. As per the said document, it was brought to the attention of this Court that there are 2290 students who are not in hostels and that there are 1308 students residing in 48 rented houses and the rent for the said 48 houses per month totals to a staggering amount of Rs. 43 million, which would result in a huge financial loss. Thus, it was the contention of the learned Senior State Counsel that by resorting to section 38 proviso (a), especially in the face of the objections and the refusal to hand over land by the Petitioner, the authorities had acted to expedite the acquisition process. Coming back to consider whether publication of a notice under section 38 proviso (a) is justifiable and whether there is an urgency, in my view, the process of acquisition that commenced in 2019 had not concluded even by 2021, i.e., three years after the commencement of the acquisition process. Leave alone the construction of hostels for the students, the State has not been able to even conclude the acquisition process of the land. In my view, coming to a conclusion as to whether there was an urgency depends on the facts and circumstances of each case. In this instance, the burning issue of constructing hostels for the students even after the lapse of three years from the commencement of the proceedings to acquire the land is yet to be concluded. I am satisfied that the Respondents have demonstrated the urgency for the acquisition through the document marked as R7, on the other hand, considering all these factors, in my view, the Petitioner has failed to impress

this Court that there was no urgency for the publication of the notice pursuant to proviso (a) to section 38. Hence, the said argument is not tenable.

Further, I observe that a notice pursuant to proviso (a) to section 38 has been published in the Gazette Extraordinary No. 2253/6 dated 08.11.2021. The said Gazette was marked as P20, whereby the government has published an order of acquisition under proviso (a). Subsequent to this Gazette, the Divisional Secretary of Badulla had directed the Petitioner to hand over possession of the land by letters dated 14.12.2021 (P21), 10.01.2022 (P22) and 19.04.2022 (P23). The Petitioner replied to the above letters through its letters dated 20.12.2021 (P24), 01.02.2022 (P25) and 22.04.2022 (P26).

It appears that by the letters marked as P21, P22 and P23, the Divisional Secretary had further attempted to amicably obtain possession of the land. This too had been resisted by the Petitioner through its letters marked as P24, P25 and P26, which resulted in the Divisional Secretary sending a final notice dated 03.05.2022 stating that they would resort to legal action to obtain possession. The said letter is marked as P27.

It was also argued by the Petitioner that the acquisition is not for a *bona fide* public purpose but tainted with *mala fides* and arbitrariness. If a land is to be acquired for the development of a university, especially to construct hostels for the students, which the general public has already been informed of, is not a public purpose, I am at a loss to understand what else could be considered as a public purpose. Though the Petitioner argued that the acquisition process is riddled with *mala fides,* the Petitioner company has failed to establish the said ground with any material before this Court.

Have the Respondents complied with the mandatory provisions of the Land Acquisition Act?

In summary, the Respondents have identified the land that ought to be acquired and, thereafter, have published the notice under section 2 of the Land Acquisition Act (P9). In the said notice the Divisional Secretary of Badulla has specifically stated that the land is to be acquired for the development purposes of the Uva Wellassa University. They have also given the correct boundaries to the extent of 12 acres that are to be acquired. Subsequently, the Respondents have published the section 4 notice (P14) and proceeded with the advanced tracing for the purposes of the acquisition. Subsequently, they have held the

objections inquiry pursuant to section 4 and given its decision (P17) and also published the notice pursuant to section 5 (R5). The section 5 notice was published in November 2022. Thereafter, due to the Petitioner's failure to handover possession of the land, it appears that there have been several correspondences exchanged between the Petitioner and the land acquisition officer and the Petitioner's refusal to hand over the possession of the land caused a delay to commence the project to which the land was acquired which resulted in the publication of a notice under the proviso (a) to section 38, which is marked as P38. Accordingly, as per the observations I have made above, the Petitioner's contention that the Respondents have failed to follow the mandatory provisions of the Land Acquisition Act has to fail.

The Petitioner also contends that without resorting to the normal acquisition proceedings, the Respondents have then resorted to publishing a notice under proviso (a) to section 38, which the Petitioner argues, is *ultra vires* the powers of the acquisition officer. This argument has to fail as I have answered the contention above.

Legitimate expectation of the Petitioner to enjoy the leased land

This takes me to the next ground argued by the Petitioner. It is contended that the acquisition is in violation of the Petitioner's legitimate expectation and economic rights. In my view, no person would like his or her land being acquired, especially a plantation company that has leased out a land to obtain economic benefits. The Petitioner's contention is based on the premise that the lot acquired is cultivated by them with tea. However, the Respondents have tendered documents and argued that the said lot is uncultivated land which consists of a scrub jungle. Therefore, they contend there is no economic benefit derived from the lot acquired. As the two conflicting contentions make the issue of cultivation a disputed fact, in my view, this Court would not be the correct forum to canvass the said contention. However, it is sufficient to state that for the acquisition, the statute itself provides compensation and as I have held elsewhere in this judgement, it is for a public purpose and for the benefit of a larger section of the society. It is also pertinent to note that the Petitioner cannot have any legitimate expectation against the state pertaining to a land that has been leased out by the JEDB. For a legitimate expectation to arise against the State, a representation should be made to the Petitioner by the State to the effect that the leased-out land would not be acquired. This argument could have been considered if the acquisition had been done for the JEDB or if the lessor was the State and the land was State land. Hence, the said contention has to fail.

According to the ***Council of Civil Service Unions v. Minister for the Civil Service*** **[1985] AC 374**, for a decision to give rise to a legitimate expectation it:

> "*must affect [the] other person … by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the* ***decision maker*** *to enjoy and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the* ***decision maker*** *will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn*." (Emphasis added).

Further, on the ground of legitimate expectation, I observe the Petitioner's own representation made at the inquiry, whereby the Petitioner claimed compensation would militate against the argument of legitimate expectation. When I consider the document marked as P16, the Petitioner has informed the inquiring officer of the section 4 inquiry regarding the Petitioner's right to obtain compensation. The said letter in paragraph 12, quoting page 13 in paragraphs 3.5, 4, and 6 of the agreement, has contemplated the event of acquisition. As per the Petitioner's own representation, it is stated that the lessee would be entitled to any compensation awarded pursuant to the land being acquired. Hence, when the land was leased out, the Petitioner was aware of the possibility of the leased-out land being acquired. Thus, the Petitioner's argument that it had a legitimate expectation to possess the land has to fail.

I have also considered the cases of ***Abeysinghage Chandana Kumara v. Kolitha Gunathilake, Air Vice Martial and others*** **CA Writ 333/2011 decided on 01.06.2020** and ***Ariyaratne and others v. IGP*** **2019 (1) SLR 100** and find the said two cases are irrelevant to the facts contended in this case, especially in view of my reasoning above.

<u>Necessary parties are not before the Court</u>

The Petitioner contended that land is owned by the JEDB and section 2 and section 4 notices should have been given to the said JEDB as the JEDB are the lessors. It was the Petitioner's contention in impugning the acquisition proceedings that JEDB is a necessary

party to the acquisition proceedings. However, the Petitioner has decided not to make the JEDB a party to this action in their Petition.

Accordingly, the Petitioner itself has decided not to make the owners of the land a party to this case. In my view, once again, the Petitioner's own contention is militating against them as the Petitioner failed to make the JEDB a party to this Application. As per the above contention, if the JEDB was a necessary party for the purposes of the acquisition, then it is incumbent on the Petitioner to demonstrate why the JEDB is not a necessary party for this Application, where the acquisition is challenged. Which the Petitioner has failed to explain. This takes me to the next ground argued.

Can JEDB land be acquired as it is considered State land?

The JEDB was created in 1976 under the State Agricultural Corporation Act. In 1975, with the Land Reform Commission law coming into operation and the said law being extended to cover company-owned plantations, the said company-owned plantations were vested in the Land Reform Commission. However, for better and productive management of the said lands with the creation of the JEDB, the said lands were vested with the Sri Lanka State Plantations Corporation and the JEDB. In the instant case before me, the land in question has been vested with the JEDB by Gazette Extraordinary No. 183/10 dated 12.03.1982 (P2). Thereafter, under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987, came into operation and by the said law, the management and the movable property of the said estates were vested with the Petitioner company by Gazette Extraordinary No. 718/16 dated 11.06.1992 (P3). However, by this Gazette, the title of the land was not vested. Accordingly, the Petitioner argues that the land belongs to the JEDB and it is State land. Further, to substantiate the said argument, it is contended that the JEDB land is considered State land under the State Lands (Recovery of Possession) Act. Thus, it is argued that the State cannot acquire State land. In my view, this argument is not tenable as I have stated above, JEDB is a creature of a statute which makes it a statutory board. However, to evict illegal occupants and to take possession of the land belonging to the said statutory body, the JEDB land, for the purposes of the State Lands (Recovery of Possession) Act is considered as State land. In the instant case before this Court, the State has decided that a land is required to be acquired for public purposes, namely for the purposes of the development of the Uva Wellassa University. For this particular purpose, the State cannot take a land that is vested with the JEDB for the said public purpose. Therefore, correctly, the State has decided to acquire the required portion of 12 acres from the Wewasse Estate for the above-mentioned

public purpose. In my view, I cannot see any statutory provision that prevents the action that has been taken by the State. At the argument stage, the learned Counsel for the Petitioner failed to bring to my attention any statutory provision which prevents the State from acquiring the said land. Hence, the said contention of the Petitioner has no merit.

Let me now consider the prayers to the Petition.

The substantive reliefs sought by the Petitioner

By prayer (d), the Petitioner is seeking a Writ of *Certiorari* against the contents of the document marked as P9. The said document is the section 2 notice. As I have stated above in this judgement, subsequent to the publication pursuant to section 5, by section 5(2) the Petitioner cannot challenge the notice under section 2.

By the way the relief is prayed in prayer (e) is drafted, it appears that the Petitioner itself is not sure whether the document P14 is an order/decision or a notice. The document P14 is the notice pursuant to section 4 of the Land Acquisition Act. Hence, it is clear that there is no order or decision contained in P14. Further, the Petitioner has failed to impugn the said document on any grounds of illegality. As stated earlier, the Petitioner has failed to establish any malice towards the Petitioner by the said notice.

The Petitioner has failed to impugn the document P17 on any illegality in the prayer (f). In any event, it was not its contention that P17 is illegal. Paragraphs 2 and 4 of the said letter give the reasons for rejecting the Petitioner's objection and paragraph 3 is an observation to reject the ground of loss of employment pertaining to the workers who were employed in the extent to be acquired.

By relief (g) the Petitioner is attempting to challenge the document P20, which is the Gazette containing the notice pursuant to section 38 proviso (a). The said notice is dated 08.11.2021. The Petitioner has filed this Application on 17.06.2022, which is more than seven months after the publication, and it has failed to explain the delay. Thus, the said relief anyway has to fail due to two grounds. Firstly, the unexplained delay and secondly, my findings above pertaining to the urgency in the project.

The relief prayed in prayer (h) is to quash the proceedings in the Magistrate's Court to prohibit the delivery of the order giving possession of the land to the Respondents. Since I have held that the process adopted in this case is done pursuant to the provisions envisaged in the Land Acquisition Act, the Petitioner's contention of illegality cannot succeed. Hence, in the absence of illegality, the prayer has to fail.

Prayer (i) is to prevent the publication of the declaration pursuant to section 5 of the Land Acquisition Act. It was common ground that section 5 has already being complied with. Hence, this prayer too has to fail.

Further, the said prayers are vague in nature. It is trite law that if the relief sought is vague, the said relief has to fail. It is the observation of this Court that a Petitioner who invokes the Writ jurisdiction of this Court should be specific about the reliefs it seeks.

In the case of ***H.K.D. Amarasinghe and others v. Central Environmental Authority and others*** **CA Writ 132/2018 decided on 03.06.2021**, it was held that:

> "*A Petitioner invoking the jurisdiction of this Court must seek relief that would address their grievance and must not refer to each and every section in an Act hoping and praying that his case would come under at least one of the said sections. In other words, the relief that is* ***sought must be specific*** *and should address the concerns of the Petitioner. This would then enable the respondents to respond to the averments of fact and law raised by the Petitioner.* ***The fact that the relief is vague is an indication that the Petitioner is unsure of the allegations that he/she is making against the respondents*** *and makes the task of Court to mete out justice that much harder*" (emphasis added).

Hence, in my view, the Petitioner's prayers seeking the substantive reliefs have to fail.

Conclusion

Accordingly, after considering the material submitted to this Court and the lengthy submissions of the learned Counsel, this Court is not inclined to grant the reliefs prayed for. Hence, for the above stated reasons, I refuse to grant the reliefs sought by the Petitioner and proceed to dismiss this Application. The parties are to bear their own costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal