

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of *Mandamus* and
Prohibition.

Upali Amarasiri,
No. 195/20, Weera Mawatha,
Depanama, Pannipitiya.

PETITIONER

Vs.

**Court of Appeal Case No:
CA/WRIT/432/2021**

1. R.A.A.K. Ranawaka,
Secretary,
Ministry of Lands,
“Mihikatha Madura”,
Land Secretariat,
No. 1200/6, Rajamalwatha Road,
Battaramulla.
- 1A. D.P. Wickramasinghe,
Secretary,
Ministry of Lands,
“Mihikatha Madura”,
Land Secretariat,
No. 1200/6, Rajamalwatha Road,
Battaramulla.
2. Hon. S.M. Chandrasena,
Minister,
Ministry of Lands,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6, Rajamalwatha Road,
Battaramulla.

- 2A. Hon. K.D. Lal Kantha,
Minister,
Ministry of Lands,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6, Rajamalwatha Road,
Battaramulla.
3. Sirinimal Perera,
Secretary,
Ministry of Urban Development and
Housing,
17th and 18th Floors,
“Suhurupaya”,
Subhuthipura Road,
Battaramulla.
- 3A. Ranjith Abeyratne,
Secretary,
Ministry of Urban Development and
Housing,
17th and 18th Floors,
“Suhurupaya”,
Subhuthipura Road,
Battaramulla.
4. Government Agent,
Galle District Secretariat,
Galle.
5. Project Director,
Strategic Cities Development
Programme
(Moragoda Ela Development
Project)
4th Floor, 1st Stage,
“Sethsiripaya”,
Battaramulla.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Upul Jayasooriya, P.C. for the Petitioner
Nayomi Kahawita, S.S.C. for the State.

Argued on: 07.10.2025.

Written Submissions: For the Petitioner on 22.10.2025
For the Respondent on 23.12.2025

Decided on: 27.02.2026.

Mayadunne Corea J

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

- “b) grant and issue a Writ of Mandamus compelling the 1st to 5th Respondents to take steps in terms of the provisions of the Land Acquisition Act to acquire the land of the Petitioner in the extent of 14.02 perches as depicted in Lot C of the Plan bearing No. 1672*
- c) grant and issue a Writ of Mandamus compelling the 1st to 5th Respondents to take steps in terms of the provisions of the Land Acquisition Act to acquire the land of the Petitioner in the extent of 26.36 perches as depicted in Lot B of the aforesaid Plan bearing No. 1672*
- d) grant and issue a Writ of Mandamus compelling the Respondents or any one or more of them to grant the Petitioner compensation in terms of the provisions of the Land Acquisition Act with regards to the land in an extent of 14.02 perches as depicted in Lot C of Plan bearing No. 1672*
- e) grant and issue a Writ of Mandamus compelling the Respondents or any one or more of them to grant the Petitioner compensation in terms of the provisions of the Land Acquisition Act with regards to the extent of 26.36 perches as depicted in Lot B of the said Plan bearing No. 1672*
- f) grant and issue a Writ of Mandamus compelling the Respondents or any one or more of them to take immediate steps to remove any impediments to the usage and enjoyment of the Petitioner of the upper region of the Petitioner’s land wherein approximately 4 perches of land as depicted on Plan bearing No. 1672 dated 18.01.2017 prepared by P.A. Chandrapala*

and marked P-11A which has not been acquired by the State; or in the alternative to acquire the said portion of land in terms of the Land Acquisition Act and pay the Petitioner compensation in terms of the provisions of the Land Acquisition Act

- g) *grant and issue a Writ of Prohibition preventing the Respondents or any one or more of them from alienating the transferring and/or conveying the land more fully described in the Schedule to any person other than the Petitioner”*

The facts of the case briefly are as follows. According to the Petitioner, portions of the Petitioner’s land were sought to be acquired for the purpose of the Moragoda canal development project as follows: an extent of 14.02 perches to widen the canal, and 26.36 perches to construct a road. Nevertheless, the Petitioner alleges that the Gazette Extraordinary No. 1981/86 dated 25.08.2016, through which the land was sought to be acquired, erroneously declared that lot 375 was owned by the Galle Municipal Council, although a portion of the said lot also belonged to the Petitioner. Due to this error, the Petitioner was unable to make a successful claim for compensation in respect of the portions of land acquired from him. Subsequently, this error was corrected by Gazette Extraordinary No. 2084/47 dated 16.08.2018. The Petitioner states that although substantial development work had been carried out on the Petitioner’s lands, the Respondents have not taken any steps to acquire the land in terms of the Land Acquisition Act, No. 9 of 1950 and no compensation has been paid to the Petitioner. Hence, this Writ Application.

The Petitioner’s contention

The Petitioner contends that the acts of the Respondents, namely, the acquisition of the Petitioner’s land and the failure to pay compensation, is unreasonable and arbitrary, and are in violation of the principles of natural justice and the legitimate expectations of the Petitioner.

However, in his prayers, the Petitioner has sought a Writ of Mandamus to compel the State to acquire the lots containing the extents stipulated above, which means the said lots have not been acquired.

In his prayer (g), he sought a Writ of Prohibition against the Respondents from alienating the above stated lots to any other person other than to him, meaning that the Petitioner concedes that the said lots have been acquired by the State.

The Respondents' contention

The Respondents raised the following objections:

- A portion of the Petitioner's land has already been acquired by the State and compensation has been paid.
- The Petitioner has failed to come to Court with clean hands.
- The Petitioner has failed to establish a prima facie case against the Respondents.
- The Respondents have acted in conformity with the law at all times.

Analysis

The Petitioner's main contention is that the land depicted in survey plan no. 1672 namely, lots A, B, C are owned by him. To establish the said fact, he has marked and tendered his title deed no. 50 executed on 04.03.1997 (P(1a)). The corresponding survey plan no. 1672 is marked as P2a and also as P10a. I observe this plan the Petitioner relies upon is made by a private surveyor. It is his contention that lots marked as B and C of the said plan are acquired by the State. While lot B consists of 26.36 perches, lot C consists of 14.02 perches. In the said plan, lot B is depicted as a roadway. The Petitioner's contention is that while lot C was acquired for the Moragoda canal development project, lot B had been developed into a road.

It is observed that subsequent to the acquisition, for payment of compensation, there had been an error where the owner of the said lot B was wrongly identified as the Galle Municipal Council. Hence, the Petitioner had not been able to claim any compensation. The Respondents did not dispute the said fact.

The Respondents' contention is that the particular lot where the road had been constructed is depicted within lot 205 of the cadastral map no. 810012 and the Commissioner of Land Settlement had published the Gazette containing the declaration of determination of the Commissioner of Title Settlement pursuant section 14 of the Registration of Title Act, No. 21 of 1998, in the Gazette Extraordinary No. 1850/15 marked and tendered as P4. The said gazette declares the said lot to be owned by the Galle Municipal Council. However, subsequent to several correspondences with the Petitioner, it has been decided that the said Gazette notification was erroneous. This had resulted in the cancellation of the said Gazette. This is further elaborated in the letter written by the Assistant Commissioner of Lands who had inquired in to the dispute by his letter dated 19.06.2019, to the Surveyor General marked and tendered as P6. By the

said letter, the Assistant Commissioner had requested the Survey Department to rectify the said error. Further, by his letter dated 11.02.2021, the Director of Land Acquisition has confirmed the correction of the error and has observed that the State on a wrong assumption that the said land belonged to the State had developed the said lot. The Respondents contended that the acquisition of the land has been done pursuant to an advance tracing no. GA/SG/GFG/2014/701, which is marked and tendered as X1.

To summarise the Petitioner's contention, at the hearing the Petitioner complains that two lots of his land have been acquired but he has not been paid compensation. The Petitioner has not been able to stake a claim for one lot as there was a title dispute due to it erroneously being settled in favour of another party and not the Petitioner. Subsequently, this has been cleared and the other party's name has been withdrawn. It was also contended that the second lot has been developed by the State but subsequently, has been divested. Therefore, the Petitioner is seeking that both the lots be acquired and the Petitioner be paid compensation. The two lots the Petitioner alleges have been acquired, are depicted in a plan made by a private surveyor bearing number 1672 marked as P(2a) and P10(a). The disputed lots in the said land are marked as B and C. As per the said plan itself, lot B consists of 26.6 perches and lot C of 14.02 perches. The Petitioner's contention is that lot C has been acquired and used for development purposes of Moragoda canal while lot B had been developed as a roadway.

Has the Petitioner's land been acquired?

The Petitioner in his Petition does not directly state that his two lots have been acquired. The wording used is "*sought to be acquired by the state*". Further, the Petitioner has failed to tender any Gazette notification through which the lands have been acquired, although in his oral submissions the Counsel for the Petitioner contended that lot B which has been developed as a road was acquired and subsequently divested. The Petitioner has failed to establish this by producing any Gazette notification to demonstrate that the land has been divested. The learned Counsel for the Respondents, too has failed to submit any Gazette to establish that the said two lands have been acquired by the State for the purpose of the development of the Moragoda canal. Hence, there is no material to establish that the lots mentioned by the Petitioner in the plan marked as P(2a) and P(10a) have been acquired by the State.

However, the Respondents contended that there were several lands acquired for the purpose of the development of the Moragoda canal and the land that was to be acquired is depicted in the cadastral map no. 810019 and among other land parcels lot no. 375 of the said cadastral plan had been acquired. The said Gazette notification of acquisition

according to the learned State Counsel bears the no. 1950/7 and date 18.01.2016. It is also contended that the said land had been acquired under proviso (a) to section 38 of the Land Acquisition Act. Although in the objections, the Respondents submit that the said Gazette is marked as R1, this Court observes, the said document R1 had not been tendered with the objection but had been tendered only with the written submissions. I have considered the said Gazette and I observe the said Gazette is based on an advance tracing no. GA/SG/GFG/2014/701 (amended) dated 08.12.2015. However, the said advanced tracing nor the Gazette refers to a cadastral map no. 810019. Hence, both Counsels have failed to demonstrate whether the Petitioner's land had been acquired.

This Court observes while the Petitioner contemplates that the two lots depicted in plan no. 1672 sought to be acquired and the Respondents contending that what was acquired is reflected in the advance tracing, we do not find a superimposition of plan no. 1672 on the advance tracing nor on the cadastral map bearing number 810019. Hence, in my view, whether or not the lots B and C depicted in plan no. 1672 were acquired is not established. However, this Court finds the cadastral map no. 810019 being marked and tendered as R2, reflects the lot no. 375 but whether lots B and C in plan no. 1672 falls within the said lot 375 is not clear and is not established by either party.

Ownership of lots B and C in the Petitioner's plan no. 1672

The learned Counsel for the Petitioner submits that ownership of lots B and C in plan bearing no. 1672 is with him. To substantiate this contention, he has annexed his title deed marked as P(1a). I have examined the deed P(1a). In the schedule, P(1a) refers to a plan bearing number 119/1997. The schedule to the said deed refers to two lots, namely lot A1 which contains 1 acre, 0 roods and 11 perches, and the second lot containing 1 acre, 1 rood and 19 perches. The Petitioner has annexed the said plan marked as P(1b) and pleads that lot A1 which contains 1 acre and 11 perches is the land in dispute. However, the Court observes that in plan no.1672 is a plan which has been superimposed on the plan no. 119/1997. The said superimposed plan contains 1 acre and 4 perches which does not correspond to the extent of land depicted in lot A1. In the circumstances, I am of the view that the Petitioner has failed to establish his corpus correctly.

However, as per deed P(1a) it appears the land depicted as A1 in the 1st schedule, depicted in plan no. 119/1997 marked as P(1b) is with the Petitioner. It is his contention, that part of this land however, has been settled by Gazette no. P4 in favour of the Municipal Council of Galle which is alleged to have been acquired.

Accordingly, as per P4, it appears that the land the Petitioner owned through P1 had been erroneously settled in the name of the Galle Municipal Council. However, with several representations being made, the Registrar of Title has published the Gazette marked and tendered as P(5b) bearing number 2084/47 dated 16.08.2008 (marked as R1 by the Respondents) whereby an amendment had been made to the Gazette no.1850/15 stating that “*all the particulars are expunged*”. The said Gazette states as follows:

“AMENDMENT
REGISTRATION OF TITLE ACT, NO.21 OF 1998
(Section 14)

In regard to the title to parcel of land No. 205 of Block 02 contained in the Cadastral Map No.810019 situated in the village of Maligaspe within the grama Niladhari Division of No.101 E Maligaspe in the Divisional Secretary’s Division of Four Gravets in the District of Galle in the Province of Southern published in the Gazette Extraordinary No. 1850/15 of 17th February, 2014.

‘All the particulars are expunged’”

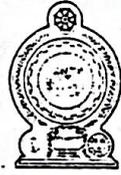
However, this Court observes that by this Gazette, although an amendment has been made the title to the land has not been settled in favour of the Petitioner and the Petitioner has not tendered any other Gazette to demonstrate that the title to the land has been settled in his name. It appears by letters marked as P6 and P7 the Assistant Secretary of Land Title Settlement Department has made an observation that the title to lot no.375 of cadastral map no. 810019 should be with the Petitioner. However, the Petitioner has failed to establish his title by failing to produce a Gazette publishing the settlement of said lot in favour of the Petitioner. Hence, in my view, the Petitioner has failed at this stage to establish his title to lot no. 375. In the absence of such, an issue arises as to whether the Petitioner has *locus standi* to maintain this Application.

Leaving it as it may, I will now consider the Petitioner’s next contention namely, the land acquired and developed by the State has been divested.

Has the Petitioner’s land been divested?

Although the Petitioner contends that the land has been divested, the Petitioner has failed to tender any Gazette to establish the said divestment. However, the Court observes by the document marked as R3 by the Respondents, published pursuant to the

proviso to section 39A(1), certain portions of an acquired land have been divested. The said Gazette is reproduced and states as follows:



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The Gazette of the Democratic Socialist Republic of Sri Lanka

අති විශේෂ EXTRAORDINARY

අංක 2324/52 - 2023 මාර්තු මස 24 වැනි සිකුරාදා - 2023.03.24
No. 2324/52 - FRIDAY, MARCH 24, 2023

(Published by Authority)

PART III - LANDS

Land Redemption Notices

THE LAND ACQUISITION ACT (CHAPTER 460)

SCHEDULE

REVOCATION UNDER SECTION 39(1)

BY the Order made under Proviso (a) to Section 38 of the Land Acquisition Act (Chapter 460) and published in the *Gazette Extraordinary* No. 1950/7 dated 18.01.2016, the allotments of land specified more fully in the Order No. 08 of 2016 dated 11.01.2016, were vested in the Democratic Socialist Republic of Sri Lanka. But the possession of the allotment of Land herein under specified more fully has not yet been taken for and on behalf of the Democratic Socialist Republic of Sri Lanka. Therefore, I Nalaka Jude Harin Fernando, Minister of Tourism and Lands, by virtue of powers vested in me under Section 39 (1) of the Land Acquisition Act, do hereby revoke the aforesaid order No. 08 of 2016 dated 11.01.2016 published in the *Gazette Extraordinary* No. 1950/7 dated 18.01.2016 of the Democratic Socialist Republic of Sri Lanka.

Harin Fernando,
Minister of Tourism and Lands.

My Ref No.: 4-3/11/2014/UD/239 - A.
Divisional Secretary's No.: DS/GFG/L&L/5/2014/7.
Ministry of Tourism and Lands,
"Mihikatha Medura",
Rajamalwatta Avenue, Battaramulla.
15th March, 2023.

The Allotment of land depicted in below name and extent in the Sheet No. 05, Block 2 of the Cadastral Map No. C. M. 810019 dated 28.07.2016 prepared by the Surveyor General, situated in the Village called Maligaspe in the Grama Niladhari Division No. 101E of Maligaspe in the Divisional Secretary's Division of Galle Four Gravets in Galle District of Southern Province and bounded as follows. :

01. Lot No. 375 -- Extent: 0.2208 Hectare

North: Lot Nos. 373,372,374,177,330,331,352,333,334,337, 338,341,342,345,344,346,347,348,349,352,353,354,351,355,356, 357,358,359,360,361,362,365,366 and 369; East: Lot Nos. 330, 331,332,333,334,337,338,341,342,345,344,346,347,348,349,352, 353,354,351,355,356,357,358,359,360,361,362,365,366,369 and 370; South: Lot No. 370 and Moragoda Stream; West: Moragoda Stream, Lot Nos. 373,372,374,177,330,331,332,333,334,337, 338,341,342,345,344,346,347,348 and 349.

EOG 03 - 0329

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(Signature)



By this Gazette, it is stated that lot no. 375 containing an extent of 0.2208 hectares has been divested by revoking the order no. 08 of 2016 dated 11.01.2016 published in Gazette Extraordinary no. 1950/7.

The said Gazette no. 1950/7 is marked as R1. However, the said Gazette tendered to Court does not contain a lot no. 375 as it stops with lot no. 370. The Counsel for the Petitioner nor the Counsel for the Respondent have failed to clarify the said discrepancy in their submissions. The learned State Counsel in her submissions submitted that lot no. 375 in plan no. 810019 is featured as lot no. 205 in the cadastral survey plan bearing no. 810012. However, the said cadastral survey plan has not been tendered to this Court. In view of the above, this Court is inclined to come to the conclusion that the Petitioner has failed to establish that the lot B in plan no. 1672 has been divested.

The material facts are in dispute

This Court observes that although the Petitioner seeks a Writ of Mandamus compelling the 1st to 5th Respondents to take steps to acquire the lots bearing B and C in plan no. 1672 containing in extent 14.02 perches and 23.6 perches, the Petitioner has failed to establish that the said two lots have been settled in the Petitioner's name as the amended determination under the land settlement and the Registration of Title Act. I come to this conclusion as the Petitioner has failed to tender to this Court any material to substantiate the said contention. Hence, the Petitioner's title has not been established. Further, the Petitioner is claiming his reliefs based on survey plan no. 1672. However, the Petitioner has failed to superimpose the said plan on cadastral plan bearing no. 810019 or on the advance tracing prepared for acquisition of the land. Hence, the corpus that was acquired and the corpus that has been subsequently divested are in dispute. Further, this Court observes that even if we are to consider that lot no. 375 in cadastral map no. 810019 is the same land that is depicted in plan 2A bearing no. 1672, the extent of the land parcels still differs. Hence, the material facts required to determine this application are in dispute. It is trite law that when material facts are in dispute, the Writ Court will be reluctant to act. In coming to this conclusion, I have considered the judgement of ***Kumudu Akmeemana v. Hatton National Bank & others CA Writ 72/2020, decided on 30.04.2021*** where it was held,

“The jurisdiction of this Court under Article 140 of the Constitution is to examine whether a statutory authority has acted within the four corners of its enabling legislation. It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact. Therefore, this Court cannot in these proceedings determine whether the Petitioner has, in fact, signed the said Deed or not.” (emphasis added)

Further, in *Dr. Puvanendran and another v. Premasiri and two others* (2009) 2 SLR 107, it was held that,

“The Court will issue a Writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”
(emphasis added)

Has the Petitioner proved his claim to obtain relief?

This Court has held in many occasions that in a Writ application, the burden of proof lies on the Petitioner. In the case of *Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others* SC Appeal 10/2009 decided on 15.12.2014, at page 5, it was held that;

“The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies”

In *Handapangoda Mudalige Mahendra Gunasekara, and another v. Ms. W.A.S. Chandrasekara, Commissioner General of Inland Revenue and 5 others* CA/WRIT/313/24 decided on 29.08.2024, it was stated;

*“Further, it is observed that though the Petitioners contend that they were not the directors as per the evidence submitted through their own pleadings, it is clear that this business entity had been in operation since 2006. It is also clear that the entity had been submitting its returns to the IRD which means it had been operating. Then there should have been a workforce under the entity and their salaries and statutory dues would have been paid. The profits of the entity would have been collected and some person would have been responsible for the losses if any. None of these facts were addressed by the Petitioners though **the burden of proof in a Writ application lies with the Petitioners.**”*(emphasis added)

In the instant case, the Petitioner has failed to establish title over lot B and C with the Gazette notification under the Registration of Title Act. Further, the Petitioner has failed to establish that the lots B and C in plan no. 1672, for which he is seeking a Writ of Mandamus compelling the State to acquire, is depicted in any of the plans made for the development of the Moragoda canal.

It is also pertinent to note that in the absence of a correct superimposition the Petitioner has failed to establish with material evidence that lot B in plan no. 1672 has been developed by the State, that the Petitioner has a legal right to demand the State to acquire the said lot and that such a request has been refused by the State.

Prayers of the Petitioner

The Petitioner in prayers (a) and (b) is seeking a Writ of Mandamus compelling the 1st to 5th Respondents to take steps to acquire the land depicted in lot C and B in plan no. 1672 bearing an extent of 14.02 perches and 26.36 perches. As stated above, the Petitioner has failed to establish his title for the said two lots by producing the title registration certificate issued in his favour. Further, by only referring to plan no.1672 without any reference to the cadastral maps or the advance tracing which demonstrates the lots that are needed for the development project, the Petitioner has failed to establish that the said two lots are essentially needed for the aforesaid development project. In the circumstances, it is the view of this Court that the Petitioner has failed to establish his legal right to compel the 1st to 5th Respondents to acquire his land. Hence, prayers (a) and (b) have to fail.

In view of the observation of this Court pertaining to prayers (a) and (b), prayers (c) and (d) have to fail. Further, the Petitioner has failed to establish that there is a legal right accrued to the Petitioner to seek the Writ of Mandamus that is sought in the above prayer and the State has a duty owed to the Petitioner to acquire the said lands which has been refused by the state.

In prayer (e), the Petitioner is seeking a Writ of Mandamus compelling the Respondents to remove the impediments for the usage of the said land depicted as P11a in plan no.1672. The Petitioner has failed to establish the impediment that is pleaded, nor has he established that he has sought from the Respondents to remove whatever the alleged impediments and that this has been refused by the Respondents. It is trite law that in the absence of a refusal to exercise a duty owed to the Petitioner, the Writ Court will be reluctant to issue a Writ of Mandamus. Hence, prayer (e) has to fail.

The Petitioner is seeking a Writ of Prohibition, prohibiting the Respondents from alienating, transferring or conveying the said land described in the schedule to the Petition. This Court observes that the Petition does not contain a schedule. Further, there was no material produced to demonstrate that there are any attempts by the Respondents to alienate or transfer a land. Hence, this prayer is vague and has to fail.

It is further observed that, in any event, the Petitioner's prayers have to fail due to the manner in which the prayers are pleaded. As per the prayers pleaded it appears that the Petitioner himself is uncertain as to whether his land has been acquired or not, as by prayers (a) and (b) the Petitioner is seeking a Writ of Mandamus to compel the State to acquire his property, meaning that he concedes that his land has not been acquired as of yet.

By prayers (c) and (d), the Petitioner is seeking for a Writ of Mandamus to compel the State to pay compensation to him, meaning that he concedes that his land has been acquired. These two prayers contradict with each other.

By prayers (e) and (f) the Petitioner is pleading for a Writ of Prohibition to prohibit the lots being alienated to any person other than himself on the premise that the lots have been acquired. These two prayers are, once again, contradictory to prayers (a) and (b).

Conclusion

In my view, the disputed facts in this application have to be established in the correct forum through evidence. Further, I observe the Petitioner has failed to establish the grounds he is relying on to obtain the reliefs prayed for in this Writ application. Accordingly, for the aforesaid reasons this Court refuses to grant the reliefs prayed for and proceed to dismiss this Writ application. However, before parting with this judgement, I wish to state that this judgement should not be a bar for the parties to enter into an amicable settlement if they so desire. Costs of this Writ application are to be borne by the respective parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal