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

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

Mr. B.P. Kulathilaka,
No. 245,
Kaduruwela.

PETITIONER

CA (Writ) application No: 627/2023

-Vs-

1. Mr. H.S.K.J. Bandara,
   Divisional Secretary,
   Thamankaduwa Divisional Secretariat,
   New Town,
   Polonnaruwa.

   (The "Acquiring Officer", in terms of the Land Acquisition Act, No. 9 of 1950 (as amended))

2. Mr. R.M.S.K. Ratnayaka
   The Chairman,
   Land Acquisition Board of Review,
   "Mihikatha Medura",
   Land Secretariat,
   No.1200/6, Rajamalwatte Road,
   Battaramulla.

3. Mr. T.A.A. Aryaratne
   Member,
   Land Acquisition Board of Review,
   "Mihikatha Medura",
   Land Secretariat,
   No.1200/6, Rajamalwatte Road,
   Battaramulla.

4. Mr. B, Manawadu,
   Member,
   Land Acquisition Board of Review,
   "Mihikatha Medura",
   Land Secretariat,
   No.1200/6, Rajamalwatte Road,
   Battaramulla.

5. Ms. T. Vidanapathirana,
   Member,
   Land Acquisition Board of Review,
   "Mihikatha Medura",
   Land Secretariat,
   No.1200/6, Rajamalwatte Road,
   Battaramulla.

6. Mr. S. Sivanantharajah,
   Surveyor General,
   Sri Lanka Survey Department,
   No. 150, Bernad Soysa Road,
   Narahenpita,
   Colombo 5.

6A. Mr. W. Sudath. L. C .Perera
   Surveyor General,
   Sri Lanka Survey Department,
   No. 150, Bernad Soysa Road,
   Narahenpita,
   Colombo 5.

7. Mrs. P. D. D. S. Muthukumarana,
   Chief Valuer,
   Valuation Department,
   No. 748,
   Maradana Road,
   Colombo 10.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Counsel: Ruwantha Cooray, Joshua Moraes, Dimuthu Priyashantha instructed by Thushara Amarasiri for the Petitioner.

Dilantha Sampath, SC for the 1st, 6th and 7th Respondents.

Written submissions tendered on:

24.07.2025 by the Petitioner

07.08.2025 by the 1st, 6th and 7th Respondents

Argued on: 19.05.2025

Decided on: 25.08.2025

S. U. B. Karalliyadde, J.

The Petitioner in the instant Application is a co-owner of the subject land to this Writ Application, and the other five co-owners are his siblings. The Petitioner states that his mother was a beneficiary of the Permit (P2(a)) issued under the Land Development Ordinance, No. 19 of 1935 (as amended) (the Ordinance) for a land in the extent of 1 Acres 1 Rood and 5 Perches and a Grant marked as P2(b) has been issued in the name of the Petitioner's mother under Section 19(4) of the Ordinance. Owing to the two conditions stipulated in the Grant marked as P2(b), the land could not able to be divided equally among the Petitioner and his siblings and to remedy that situation, the Grant P2(b) was returned to the State and a new Grant bearing No. GR/21/025705 dated 08.02.2916 marked as P3 was issued in the name of the Petitioner's mother for Lot

1651 of the Final Topo Plan No. 9 Inset No. 76 dated 15.09.1969 marked as P4 for the extent of 0.5934 Hectares. While the Petitioner and his siblings were in the process of dividing the said Lot 1651 among themselves, the notice dated 28.09.2016 marked as P5 was issued by the Divisional Secretary of Thamankaduwa (the 1st Respondent) in terms of Section 2 of the Land Acquisition Act, No. 9 of 1950 (as amended) (the Act) notifying that lands described in the list annexed to the notice (P7) will be acquired by the State for the purpose of expanding Kaduruwela alternative road. The Petitioner's position is that, accordingly, the State has acquired certain portions of Lot 1651. The said acquired potions are shown as Lots 9086, 9087 and 9089 in the Survey General's Plan marked as P6 prepared for the purpose of the acquisition. The Petitioner states that, according to the list marked as P7 and the Survey Plan marked as P6, the portions of land that were to be acquired are erroneously described as paddy lands, where these lots are actually high land. The Petitioner drew the attention of this Court that the land in question has been described as a high land (ගොඩ ඉඩම) in the Grant in favour of his mother marked as P3 and in the plan attached to the Grant marked as P4.

The Petitioner, at the inquiry regarding the compensation held under Section 9 of the Act on 09.04.2019 (P9), has raised his concerns regarding the erroneous description before the 1st Respondent, who was the Acquiring Officer. The Petitioner has received a notice under Section 10 of the Act dated 07.08.2019 stating that the 1st Respondent has decided to pay compensation for Lots 9086, 9087 and 9089 in the plan marked as P6. The Petitioner, agreeing to the findings of the 1st Respondent at the inquiry by the

letter dated 15.08.2019 marked as P11, once again requested the 1st Respondent to amend the description of the land as "high land". Then, on 07.07.2020, the 1st Respondent decided to pay Rs. 701,600/- compensation to the Petitioner under Section 17 of the Act (P12) for the Lots 9086, 9087 and 9089 in the plan marked as P6 and by the letter dated 07.07.2020 marked as P13, an additional sum of Rs. 80,150/- was awarded as compensation to the Petitioner. In response to the Petitioner's request to amend the description of the land in the P6, the 1st Respondent by letter dated 28.12.2020 marked as P14 informed the Petitioner that he has requested from the Valuation Department to change the description but, the Valuation Department has informed that the land had been valued as a paddy land in accordance with the Standard report prepared in relation to those land plots and in accordance with the provisions of the Agrarian Services Development Act. Thereafter, the Petitioner, on 31.03.2021, had appealed to the Board of Review (P15) against the award of compensation marked as P12. However, by order dated 03.05.2023 marked as P19, the Board of Review has rejected the Petitioner's appeal on the basis that the Appeal has not been filed within 21 days as stipulated in Section 23 of the Act. The Petitioner states that the delay in filing the appeal was due to the Covid-19 pandemic prevailing at that time in the country.

Being aggrieved by the decision of the Board of Review, the Petitioner has invoked Writ jurisdiction of this Court seeking the following substantive reliefs, *inter alia*,

b. Grant and issue a writ of Certiorari to quash the award made by the 1st Respondent Divisional Secretary of Thamankaduwa (the Acquiring Officer), acting in terms of section 17 of the Land Acquisition Act (as amended) as contained in document marked P12:

c. Grant and issue a writ of Certiorari to quash the impugned decision by the 2nd to 5th Respondents, namely the members of the Board of Review, to reject the Petitioner's appeal *in limine* as morefully depicted in document marked P19:

d. Grant and issue a writ of Mandamus directing the 1st Respondent, the Divisional Secretary for Thamankaduwa (the Acquiring Officer) to determine and/or cause to be determined compensation in terms of Section 17 of the Land Acquisition Act (as amended) on the basis that the subject matter of this application is a high land "ගොඩ ඉඩම"

e. Grant and issue a writ of Mandamus directing the 7th Respondent, the Chief Valuer of the Valuation Department of Sri Lanka, to assess or cause to be assessed the subject matter of this application on the basis that the said allotment of land is a high land "ගොඩ ඉඩම"

The Petitioner has drawn the attention of Court that, in the Grant marked as P3, the land has been described as "high land", and in the Supplementary Land Description List of Final Topo Plan No. 9, Inset No. 76, Sheet No. 42, prepared by the Survey Department of Sri Lanka dated 16.03.2015 marked as P16, it has been described as a "garden with

four permanent buildings and a mixed plantation". Furthermore, the 1st Respondent has requested the Senior Superintendent of Survey, Polonnaruwa, to look into the matter concerning the description of the land in question and to take the necessary steps, as evidenced by the letter marked P18(i). In response, by letter dated 27.11.2019 marked P18(ii), the Senior Superintendent of Survey, Polonnaruwa, has informed the 1st Respondent that the land had been used as mud land in the year 1967. It has been further stated in the letter marked as P18(ii) that, following the acquisition of the land by the State for the road widening, only the column reserved for "remarks" was amended, while the column titled "land use" continues to reflect the details in the old plan. Furthermore, since the land is no longer used as a paddy land, it has been recommended to request a new survey be conducted after an on-site inspection in order to amend the land description in the Plan marked as P6. Thereafter, the 1st Respondent has requested the Senior Superintendent of Survey, Polonnaruwa, to carry out a survey and amend the land description (P18(iii)). Subsequently, the description of the land in the Plan marked as P6 has been amended as "ගෙවත්ත" in the column titled "land use". Petitioner's contention is that under such circumstances, the granting of compensation mentioned in P12 on the basis that the land lots that have been acquired a paddy land is irrational, arbitrary and illegal.

When this matter was taken up for argument before this Court, the learned State Counsel appearing for the 1st, 6th, and 7th Respondents drew the Court's attention to two matters. Firstly, it was submitted that material facts in the present Application are in

dispute, particularly regarding the classification of the land in question. In this regard, it was pointed out that the land is described as "high land" in the Grant marked as P3, as a "paddy land" in the Survey Plan marked as P6, and later, has been amended in P6 to say that the land is a "garden".

The Petitioner relies heavily on the Grant marked as P3 to establish that the lots acquired by the State (Lot Nos. 9086, 9087, and 9089) are "high land". The Petitioner also relies on the Survey Plan marked as P16, which refers to the land as a "garden", and a subsequent amendment made to P6 marked as P18(iv), which also describes it as a "garden". Notably, the Survey Plan marked as P16 was prepared in 2015. The learned State Counsel appearing for the Respondents brought to the attention of this Court that the Survey Plan No. PO/TMK/2016/369 dated 29.12.2016, marked as 1R4, also classifies the land Lots 9086, 9087 and 9089 depicted as Lot AF in the said plan as "paddy land". However, it is the view of this Court that this Court does not have the expertise to determine that Lot AF of the Plan marked as 1R4 is in fact the Lots 9086, 9087 and 9089. The Survey Plan marked as P6 was prepared in 2018. All three Survey Plans, P16, 1R4, and P6, were prepared by the Survey Department and approved by the Senior Superintendent of Surveys, Polonnaruwa. According to the letter issued by the Senior Superintendent of Surveys, Polonnaruwa, dated 29.07.2020 and marked as 1R5, a site visit has been carried out in pursuance of a request made by the 1st Respondent (P18(iii)) to amend the description of the land. However, it has been reported that since road construction had already been commenced at the time of the site visit, it is not

possible to conclusively determine whether the land is “high land” or “paddy land”. Therefore, the Court can conclude that the amendment made to the description of the land in the Survey Plan P6 was made without a base. Whether the land lots that were acquired by the State come under the category of “paddy land”, “high land” or a “garden” is a material fact in determining the amount of compensation. The Petitioner contends that there is no argument that the lots acquired are high land or garden, as the Department of Agrarian Services, the authority legally empowered to determine the nature of a land, by its letter dated 15.03.2021 marked as P17(ii), already determined that the land in question is not paddy land. In the letter marked as P17(ii) it states that, “ඒ අනුව කැබලි අංක 1651 දරණ ඉඩම කුඹුරු ඉඩමක් ලෙස ලේඛන ගත නොවූ ඉඩමත් බව කාරුණිකව දන්වා සිටිමි”. It is the view of this Court that the letter marked as P17(ii) does not say exactly whether it’s a high land or paddy land, but simply says that the land has not been registered as a paddy land. Hence, it is the view of this Court, considering the above-stated facts, that to which category the said lots of land fall into is a disputed fact. When material facts are in dispute, Writ Courts are reluctant to grant relief in the nature of writs. A.S. Choudri in “Law of Writs and Fundamental Rights” (2nd edn, Vol 2) on page 449 states thus;

> *“Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue.”*

In the case of *Thajudeen v. Sri Lanka Tea Board and Another*[1], referring to the above-stated quoting, this Court has held that,

> *"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation, Porraju v. General Manager B. N. Rly."*

In *Francis Kulasooriya v. OIC-Police Station-Kirindiwela*[2] Supreme Court observed that,

> *"Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words when the facts are in dispute."*

In the case of *Dr. Puvanendran and Another v. Premasiri and Two Others,*[3] the Supreme Court held that;

---

[1] (1981) 2 Sri LR 471 at page 474.

[2] SC Appeal No. 52/2021, SC Minute of 14.07.2023.

[3] (2009) 2 SLR 107 at page 112.

"The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by Court. 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."

The relief sought by the Petitioner revolves solely around the question of whether the land lots acquired are "high land" or "paddy land". It is the view of this Court that this Court cannot decide this matter based only on affidavit evidence. In "Administrative Law", by H. W. R. Wade and C.F. Forsyth (9th edn, at page 260), it has been stated that,

"Although the contrast between questions which do and do not go to jurisdiction was in principle clear-cut, it was softened by the court's unwillingness to enter upon disputed questions of fact in proceedings for judicial review. Evidence of facts is normally given on affidavit: and although the rules of the court made provision for cross-examination, interrogatories, and discovery of documents, and for the trial of issues of fact, the court did not often order them. The procedure was well adapted for trying disputed facts. If the inferior tribunal had to self-tried them, the court will not interfere except upon very strong

grounds. There has to be a clear excess of jurisdiction' without the trial of disputed facts de novo. The questions of law and questions of facts were therefore to be distinguished, as was explained by Devilin J. (R. v Fulham etc. Rent Tribunal exp. Zerek).

Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there. But where the dispute turns to a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere. Lord Wilberforce (R v Home Secretary Zamir) similarly described the position of the court, which hears applications for judicial review:

It considers the case on affidavit evidence, as to which cross-examination, though allowable does not take place in practice. It is, as this case will exemplify, not in a position to find out the truth between conflicting statements.

In case of conflict of evidence, the court will not interfere in the decision, where there is evidence to justify a reasonable tribunal reaching the same conclusion."

Arjuna Obeyesekere, J., P/CA (as he then was) in the case of *Kumudu Samanthi Akmeemana v. Hatton National Bank and Others*[4], held that,

[4] CA (Writ) Application No: 72/2020, CA Minutes of 30.04.2021

"*The petitioner denies having signed the said Deed of Transfer, even though the said deed had been attested by the same Attorney-at-Law before whom all other deeds and agreements relating to the said properties had been signed by the petitioner. 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*."

The second argument advanced by the learned State Counsel is that the Petitioner has an alternative remedy available under Section 28 of the Act, namely, an appeal to this Court. In response, the Petitioner contends that this alternative remedy has already been exhausted by filing an appeal before the Board of Review. However, the Board of Review has rejected the appeal solely on the ground that it has not been filed within the appealable period stipulated in Section 23 of the Act. The Board of Review had delivered its order nearly two years after the appeal was filed. The Petitioner argues that under such circumstances, dismissing his appeal without considering the merits of the appeal is unlawful. In support of this argument, the Petitioner relies on the following paragraph in the case of *Udugampola v. Assistant Government Agent*[5].

[5] (1973) 77 NLR 203

"*I have given my anxious and careful consideration to the procedure adopted by this Board, and as it appears to me even though these appeals were out of time by one day the Board by its conduct during a period of several months has clearly waived its objection to jurisdiction. There is no question that the Board has inherent jurisdiction to hear these appeals. In the circumstances, the delay in filing these appeals being a matter of procedure in my view, if the Board by its conduct has waived its objection by delay and acquiescence on its own part it would not be open to pursue an objection like this when an aggrieved party seeks a bearing before the Board. Procedure should be an aid to Justice and not a mere trap for the uninitiated*"

First, this Court observe that the above case was an appeal filed under the Act. In the case at hand, the Petitioner, without filing an appeal to this Court against the order of the Board of Review, has invoked the Writ jurisdiction of this Court. In the instant application, the award for compensation under Section 17 of the Act was made on 07.07.2020, whereas the Petitioner had logged the appeal to the Board of Review on 31.03.2021, more than 8 months after making the award marked as P12. Petitioner argues that the delay was a result of the Covid-19 pandemic prevailing in the country at that time. In terms of Section 22 of the Act, if a person is dissatisfied with the amount of compensation awarded under Section 17 of the Act, such person has a right to appeal to the Board of Review under the Act. If the appeal has not been preferred within twenty-one days from the date of Notice of that award, in terms of Section 23 of the

Act, the Board of Review shall not hear such appeal. In terms of Section 28(1) of the Act, a party dissatisfied with a decision made by the Board of Review can appeal to this Court against such a decision on a question of law. It is trite law that writs are discretionary remedies and are granted only upon the establishment of grounds such as illegality, irrationality, or procedural impropriety (vide *Council of Civil Service Unions v Minister for the Civil Service*[6]). Accordingly, as mentioned above, the exercise of the writ jurisdiction by this Court is confined to determining whether the statutory authority has acted within the four corners of law. It is the view of this Court that the Board of Review, by rejecting the Petitioner's appeal in its order marked as P19 on the ground of non-compliance with the stipulated time period for filing an appeal under the Act, has acted within the powers conferred upon it by law. Therefore, considering the fact that the Petitioner had the ability to appeal to this Court under Section 28 of the Act, this Court is of the view that the Petitioner has failed to exhaust the alternative remedy available to him. Furthermore, apart from making a general assertion that the said order is unlawful, the Petitioner has failed to demonstrate, to the satisfaction of this Court, how or on what basis the said order can be deemed unlawful.

The Petitioner further argues that even if the Board of Review heard the Peitioner's appeal, it has jurisdiction to make only a determination on the amount of compensation

[6] (1985) AC 374(HL)

in terms of Section 25(3) and 25(4) of the Act and the question at hand is whether the land in question is a "high land" or not. Section 25(3) and 25(4) of the Act reads thus,

> *(3) Where the board disallows an appeal against an award made under section 17, the decision on the appeal shall confirm or reduce the amount of compensation allowed to the appellant by that award.*
>
> *(4) Where the board allows an appeal against an award made under section 17, the decision on the appeal shall determine the amount of compensation payable to the appellant:*
>
> *Provided that the board shall not allow as compensation to the appellant an amount which exceeds the amount of the claim for compensation which he had originally notified to the acquiring officer who made such award.*

It is the view of this Court that the classification of the acquired land, whether as "paddy land", "high land", or a "garden", is directly relevant to the determination of the quantum of compensation, as the nature of the land is a critical factor in such assessment. When considering the above facts and circumstances, the view of this Court is that it is not in a position to agree with that contention of the Petitioner. Furthermore, considering the fact that the Board of Review has acted according to the provisions of the Act, this Court is not inclined to grant the writ of Certiorari prayed for in prayer (c) to the Petition quashing the order of the Board of Review rejecting the Petitioner's appeal.

Considering all the above-stated facts, this Court is of the view that the Petitioner is not entitled to the reliefs prayed for in prayers (b) to (e) of the Petition. Accordingly, this Writ Application is dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL