

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

Banduwathie Punyadeera  
Nee Bandu Mamuhewa, Sirisevana,  
Unawatuna,  
Galle.

CA (Writ) App. No. 19/2023

**PETITIONER**

**Vs.**

1. Mrs. A. G. Nelumi,  
The Divisional Secretary,  
Divisional Secretariat,  
Habaraduwa.
- 1A. Mrs. N.V.S. Sulochana,  
The Divisional Secretary,  
Divisional Secretariat,  
Habaraduwa.
2. Mr. Harin Fernando,  
Minister of Lands, Ministry of Lands  
"Mihikatha Medura",  
Land Secretariat,  
No. 1200/6,  
Rajmalwatta Road,

Battaramulla.

2A. Mr. K.D. Lal Kantha,  
Minister of Agriculture, Livestock,  
Land and Irrigation,  
Ministry of Agriculture, Livestock,  
Land and Irrigation,  
"Mihikatha Medura",  
Land Secretariat,  
No. 1200/6,  
Rajmalwatta Road,  
Battaramulla.

3. Mr. Chulananda Perera,  
Secretary to the Ministry of Lands,  
Ministry of Lands,  
"Mihikatha Medura",  
Land Secretariat,  
No. 1200/6,  
Rajmalwatta Road, Battaramulla.

3A. Mr. D.P. Wickramasinghe,  
Secretary of Agriculture, Livestock,  
Land and Irrigation,  
Ministry of Agriculture, Livestock,  
Land and Irrigation,  
"Mihikatha Medura",  
Land Secretariat,  
No. 1200/6,  
Rajmalwatta Road, Battaramulla.

4. Dr. Susil Premajyantha,  
Minister of Education,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

4A. Dr. Susil Premajyantha,  
Minister of Education,  
Ministry of Education,

Isurupaya,  
Battaramulla.

5. Mr. M. Nihal Ranasingha,  
Secretary to the Minister of  
Education,  
Ministry of Education,  
Isurupaya,  
Battaramulla.

5A. Mr. Nalaka Kaluwewa,  
Secretary of Ministry of Education,  
Higher Education, and Vocational  
Education,  
No. 18, Ward Place, Colombo 07.

6. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Lakshan Dias with Maneesha Kumarasinghe and Nimansa Meetiyyagoda for the  
Petitioner.

Shemanthi Dunuwille, S.C. for the Respondents.

**Argued on:** 11.12.2025

**Delivered on:** 06.05.2026

**Dr. D. F. H. Gunawardhana, J.,**

## **Judgement**

### **Introduction**

The Petitioner claims that she is the owner of part of a land which has been acquired by the Government. However, she claims that there is an unutilised part of the said land as against the public purpose for which it was acquired. As such, the Petitioner has pursued an application for divesture.

However, the Respondents have failed to divest the said unutilised part of the land in suit; therefore, the Petitioner instituted the above-styled application before this Court, to obtain a *Writ of Mandamus* compelling the Respondents for a divesture.

The Respondents have filed their Objections, and along with their Objections, they have filed a document marked as **1R1**. Accordingly, the Respondents have taken up *inter alia* that the Petitioner is not entitled to any divesture since she claims only a share of the land, when in fact there are rival claimants as well. Therefore, the Respondents stance is that the Petitioner cannot maintain this Application.

This was argued before me on 11.12.2025, and the following arguments were advanced by the counsel; hence, this judgement.

### **Arguments**

The thrust of the main argument advanced by Mr. Dias is that the Petitioner's Application falls within the ambit of Section 39A of the Land Acquisition Act, No. 9 of 1950 (as amended) (hereinafter referred to as "the LA Act") to be entitled to divesture of a part of the land in suit, as

she and her predecessors-in-title who were the members of her family owned the property before the acquisition. The Petitioner further asserts that after acquisition, only part of the land was utilised, and the remaining part is left out; therefore, the Petitioner is entitled to have a divesture in respect of the unutilised part of the land in suit.

In addition to that, he argued that no compensation has been paid to the Petitioner yet.

On the other hand, Ms. Dunuwille, S.C. argued that though the Petitioner has not been paid compensation directly, there is a rival claim, and as such, now the matter has been referred to the District Court of Galle to resolve the issue of entitlement as to the compensation, by an interpleader action which is clearly referred to in **IR1**.

In addition to that, the Petitioner has failed to disclose **IR1** when she made this Application, though she is in receipt of the same document.

### **The Petitioner's claim**

The Petitioner claims that she is the owner of 9 out of 16 shares of the land in question, and she claims her title by virtue of the Deed marked **P2(a)** annexed to the Petition. The Petitioner further claims that the said land had been in the possession of her family, including her parents. After she became the owner, she and her family members lived on the income derived from the cinnamon plantation standing on the said land.

It is her position that during the year 2005, Rev. Gnanaratana Thero had forcibly cleared the land and later claimed to have handed it over to the Government. The Petitioner also asserts that the Government appears to have acquired the land after publishing a Section 2 notice of the Land Acquisition Act in 2005 and thereafter taken immediate possession under Section 38A of the Land

Acquisition Act. In the meantime, the Petitioner states that a Section 7 notice had also been published.

In response to the Section 7 notice, the Petitioner has made a claim; however, she asserts that no proper inquiry was held. Meanwhile, the Petitioner further states that cases filed between herself and Rev. Gnanaratana Thero in the District Court of Galle are still pending.

The Petitioner states that the acquired land is depicted in the plan prepared by the Government Surveyor, marked as **P5(a)** annexed to the Petition.

In addition, the Petitioner asserts that the entire land has not been utilised for any public purpose, as only a portion has been used for a school. Therefore, the Petitioner requested a divesture from the relevant authorities, including the Presidential Secretariat, and in proof thereof she has annexed documents marked as **P10**, **P11(a)**, and **P17** to the Petition.

However, the Petitioner complains that her grievance has not been addressed by any of the authorities, including the Divisional Secretary and the Minister of Lands, under whom the acquisition was completed.

Accordingly, the Petitioner seeks the intervention of this Court to direct the Respondents to divest the unutilized portion of the land to her, on the basis that the said portion therein has not been used for a public purpose, no improvements have been made, and no compensation has been paid. Therefore, the Petitioner asserts that the appropriate course of action is to invoke the jurisdiction of this Court under Article 140 of the Constitution and seek a divesture.

## **The Respondents' position**

According to the Objections, it is the position of the Respondents that “Sumanajothi Vidyalaya” had been damaged by the tsunami, and there was no place to conduct the school; as such, the school became defunct, and temporarily it was conducted in a nearby temple. Subsequently, Rev. Gnanaratana Thero, who also claims the land in suit, decided to donate the land in suit to the Government and requested the Government to take over the land.

Accordingly, on behalf of the Government, the Divisional Secretary took steps to formally acquire the said land under the LA Act. Following the commencement of acquisition proceedings, immediate possession of the land was taken under Section 38A of the LA Act in 2006. Thereafter, the land was handed over to the Minister of Education, and it is presently held under the Ministry of Education.

The Respondents contend that no divestiture can be made, and no portion of the land acquired cannot be divested without the consent of the Secretary of the Ministry of Education. Based on these facts, a letter was sent by the Divisional Secretary (the 1<sup>st</sup> Respondent) to the Petitioner in response to her multiple requests made to various government authorities, including the Secretary to the President; the said letter is dated 13.12.2017 (**1R1**).

Nevertheless, it is their position that the Petitioner has not accepted this and continues to seek divestiture from the Government.

In those circumstances, the Respondents maintain their position that no divestiture can be granted without the consent of the Ministry of Education. They further contend that the Petitioner cannot seek a divestiture unless she establishes title to the land, especially since a partition case is still pending in which title is in dispute.

In addition, they have taken up the position that several parties have claimed compensation during the inquiry conducted under Sections 7 and Section 9 of the LA Act. The compensation payable to the claimants has already been deposited in court after the filing of an interpleader action.

Therefore, the Petitioner must first establish her title before claiming divestiture. In those circumstances, the Respondents seek the dismissal of this Application.

On a perusal of the record, I found that the Respondents have filed along with their Objections, the document marked as **1R1**, which is a letter dated 13.12.2017. According to which, the Sumanajothi Vidyalaya, a school situated in the Peellagoda area, had been damaged and thereafter, had been relocated in the Unawatuna Gananandharama Viharaya, and conducted in the dhamma hall of Gananandharama Viharaya. However, Rev. Aluthwala Gnanarathana Thero, who also claims the land in suit, having decided to donate the land in question for the purpose of establishing the said school there, had informed the Secretary to the Ministry of Education. Accordingly, the Secretary to the Ministry of Education has requested the Secretary to the Ministry of Lands to acquire the relevant land and release it to the Ministry of Education after acquisition.

Accordingly, after the issuance of Section 2 notice, dated 12.09.2005, and published the same, immediate possession thereof has been taken by the Divisional Secretary of the area. After identifying the said land properly by the District Survey Superintendent, the same has been gazetted in the Gazette dated 10.01.2006, in terms of Section 38A for immediate possession.

After taking over the possession of the said land on 20.02.2006, by the Divisional Secretary, the same has been handed over to the Education Director of the area. Thereafter, the said school is now being conducted on the same premises belonging to the Ministry of Education.

According to the said reports, thereafter, there had been a claim inquiry, and according to which, several people including the Petitioner and Rev. Aluthwala Gnanarathana Thero have claimed. Nevertheless, since the dispute could not be resolved by the Divisional Secretary as the acquiring officer, the matter has now been referred to the District Court. The said matter is now pending before the District Court in the case bearing No. LA 523 of the Galle District Court.

The said report further states that the Petitioner pursued an application for a divesture, and according to it, the same cannot be complied with, without first sanctioning an approval of the Secretary to the Ministry of Education. Therefore, it is the Respondents' position that first the Petitioner has to establish her title and thereafter, she can ask for a divesture. Accordingly, the said letter has been copied to the Petitioner, but the Petitioner has never disclosed the said letter along with the Petition.

In addition to that, after this was disclosed in the Objections of the Respondents, the Petitioner has flatly denied it without answering it adequately. For clarity, I reproduce the answer given in the Counter Objections of the Petitioner;

*“11. The Petitioner states that the Petitioner denies the averments in Paragraph 13(c)(i), 113(c)(ii), 13(c)(iii), and 13(c)(iv) of the objection and states that the Petitioner has come before Your Lordship's Court since the Petitioner has not received a fair relief from the Respondents.”*

Therefore, it is very clear that the Petitioner, before coming to this Court in 2023, is well-aware of the situation of the Petitioner in relation to her claim in respect of the land and divesture. It must also be noted that the Petitioner has not adequately countered the document marked as **1R1** or

matters stated therein. Therefore, the matters referred to therein remain as proven facts, and the document itself stands as so.<sup>1</sup>

As such, it is my view that there are certain issues that arise in this Application;

- (i) Whether the Petitioner can claim a divesture when she only claims only a share of the entirety of the land in suit
- (ii) Whether the Petitioner can claim a divesture in terms of Section 39A, when she has not established her title
- (iii) Whether the land in suit that has been handed over to the Education Ministry, can be divested by the Divisional Secretary or Land Ministry, without their approval or their consent

Now I will consider the above-stated questions.

### **Section 39A not satisfied**

Firstly, in this Application, the Petitioner has not established her title. In fact, her title is only derived from the document marked as **P2** annexed to the Petition, by which she is only entitled to a 9/16 share of the land; therefore, she is not the sole owner of the land in question to have a divesture in her favour.

Secondly, there are other rival claims when it came to the stage of compensation, and the issue of compensation could not be resolved since there were several claims by several parties, including the Petitioner; thus, the matter has now been referred to the District Court of Galle for the resolution of the issue on compensation by way of an interpleader action in case bearing No. LA

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<sup>1</sup> *Edrick de Silva v. Chandradasa de Silva* [1968] 70 NLR 169; *Cinemas Limited v. Sounderarajan* [1998] 2 Sri L.R. 16.

523. Therefore, the Petitioner has to first establish her title to the land for a divesture. Thus, the Petitioner cannot fall within Section 39A as well.

Thirdly, now the land has been given to the Education Ministry for the purpose of establishing the school. Therefore, as the Petitioner has so far not established that the land in suit has not been utilised for such a purpose, it is my view that the Petitioner's Application should fail.

### **Conclusion**

For the reasons adumbrated above, I am compelled to dismiss this Application, without costs.

**JUDGE OF THE COURT OF APPEAL**