

**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.*

1. Kamburugamuwa Gam Acharige
Susantha

2. Kamburugamuwa Gam Acharige
Priyantha

Both of
No. 12, Sri Sarnangara Road,
Dehiwela.

CA (Writ) App. No. 318/2024

PETITIONERS

Vs.

1. Mr. S.K. Edirisinghe, Vice Chairman,
Land Acquisition Board of Review,
"Mihikatha Madura",
Land Secretariat,
No. 1200/6, Rajamalwaththa Road,
Battaramulla.

2. Mr. A.A.M. Fathihu,
Valuer Member,
Land Acquisition Board of Review,
"Mihikatha Madura",
Land Secretariat,
No. 1200/6, Rajamalwaththa Road,

Battaramulla.

3. Mr. K.A.D.N.J. Nanayakkara,
Valuer Member,
Land Acquisition Board of Review,
"Mihikatha Madura"
Land Secretariat,
No. 1200/6, Rajamalwaththa Road,
Battaramulla.
4. Divisional Secretary,
Divisional Secretariat,
Beruwala.
5. Secretary to the Ministry of Lands,
Ministry of Lands,
"Mihikatha Madura",
Land Secretariat,
No. 1200/6, Rajamalwaththa Road,
Battaramulla.
6. Hon. Minister of Lands,
Ministry of Lands,
"Mihikatha Madura",
Land Secretariat,
No. 1200/6, Rajamalwaththa Road,
Battaramulla.

RESPONDENTS

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

Counsel:

Migara Doss with Madara Gunawardana instructed by Dinesh Silva for the Petitioners.

Jemial Sourajah, S.C. for the 4th to 6th Respondents.

Argued on: 30.01.2026

Delivered on: 25.09.2026

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

Judgement

Introduction

The issue in this case is whether compensation determined by the Acquiring Officer should be based on the Section 7 Notice published in 1987 or the Section 7 Notice published in 2016.

The 1st Respondent is the Vice Chairman of the Land Acquisition Board of Review, while the 2nd and 3rd Respondents are valuer members of the Land Acquisition Board of Review. The 4th Respondent is the Divisional Secretary of Beruwala, the 5th Respondent is the Secretary to the Ministry of Lands, while the 6th Respondent is the Minister of Lands.

After the issuance of formal notice, this matter was argued before Justice Karalliyadde and me on 15.10.2025. However, following His Lordship's demise, counsel agreed that this matter may be disposed of by me. Further, the written submissions have already been filed; hence, this judgement.

Factual matrix

According to the Petitioners, they have become owners of certain shares of the property, and the Petitioners have been owners of the parcels of land depicted in the Survey General's Plan marked as **X2(b)**, by virtue of Deed No. 1688 marked as **X2(a)**, dated 27.04.1989.

However, by the time the Petitioners became entitled to shares of the land in suit by virtue of **X2(a)**, a Section 2 Notice had already been issued by the Divisional Secretary, who is the 4th Respondent, to acquire the land for a public purpose, which is marked as **X3**.

Thereafter, a Section 4 Notice was also issued and, according to the Survey General's Plan, Lots Nos. 1 and 2 were to be acquired by the Government; the said Section 4 Notice is marked as **X4**

and the Survey General's Plan is marked as **X5**. Further, a Section 5 Notice was also issued, which is marked as **X6**, followed by a Section 7 Notice in 1987, which is marked as **X7**.

Thereafter, a Section 38A Notice of immediate possession was issued by the Government, which is marked as **X8** annexed to the Petition, and immediate possession was thereafter taken. However, according to the Petitioners, the land has not been put to any public purpose, though it was acquired for the purpose of constructing a playground for 'Padagoda-Model Junior School'.

However, the Petitioners allege that though they responded to the Section 7 Notice published in 1987 marked as **X7**, no compensation was paid. In the meantime, the Petitioners made applications seeking the divestiture of the unutilised portion of the land.

Thereafter, the Acquiring Officer divested a certain portion of the land on the application of the Petitioners. Subsequently, in 2016, a new plan was prepared pursuant to which a Section 7 Notice dated 24.11.2016 was issued afresh, which is marked as **X16**. However, in respect of the acquired portion, the Petitioners made their claims for compensation by responding to **X16**. Nevertheless, no compensation was paid, and later, it transpired that the compensation was calculated according to the **X7** Notice as at 1987, which amounted to only Rs. 42,000/-.

Subsequently, after preparing a plan in terms of Section 5, a notice was issued in terms of Section 7 calling for applications for compensation. Thereafter, the Petitioners responded thereto, and after inquiry, the Acquiring Officer decided to pay a sum of Rs. 42,000/- (Forty-Two Thousand Rupees) as compensation; being aggrieved by the said amount of compensation, the Petitioners appealed to the Board of Review established under the Land Acquisition Act, since there was a huge discrepancy between the market value and the compensation awarded. In the meantime, since no

relief was granted, the Petitioners instituted another writ application in this Court bearing No. 477/2015.

Thereafter, there had been a settlement and, according to the Petitioners, the Counsel appearing for the State agreed to consider the compensation in accordance with the application.

Upon the withdrawal of the said application, the Petitioners pursued their claim for compensation. Nevertheless, it was decided to award compensation only in accordance with X7 published in 1987, which the Petitioners have challenged in the instant Application on the basis that the said decision is unreasonable.

The Respondents' Objections

The Respondents state that, after identifying the land to be acquired and publishing the Section 5 Notice and Section 7 Notice, the Petitioners made an application to divest a certain portion of the land. Thereby, the authorities agreed to the said request and divested the relevant portion of the land. Thereafter, a new plan was prepared by the Surveyor General and based on that plan, a further Section 5 Notice and Section 7 Notice were published in 2016.

However, since the first acquisition notice marked as X7 was published in 1987, the acquiring authority decided to pay compensation in accordance with X7, being the first acquisition notice.

Nevertheless, the Petitioners complain that compensation should be paid in accordance with the 2016 Section 7 Notice. However, the Acquiring Officer was not able to consider the same for the simple reason that certain portions of the land had already been divested upon the Petitioners' application, and a new plan had to be prepared by the Surveyor General for the revised acquisition. As such, the Respondents contend that the Petitioners' application is not tenable in law.

Further, it is the position of the Respondents that it was due to the Petitioners' application that a new Section 7 Notice had to be issued in 2016, after a certain portion of the land was divested at the request of the Petitioners. Thus, it was only on the basis of the new plan that the new Section 7 Notice was published.

Accordingly, it is the Respondents' position that the present Application cannot be maintained and, therefore, ought to be dismissed.

Arguments

It is argued for and on behalf of the Petitioners by the learned Counsel, Mr. Doss, that the Acquiring Officer had decided the compensation as at the valuation of 1987 based on X7, which is the first Section 7 notice issued calling for claims; however, after several years, there was a divestiture of the part of the acquired land, which resulted in a second Section 7 notice published in 2016, as it is in respect of the remaining part of the land. Therefore, the Acquiring Officer should have decided the compensation to be paid based on the valuation as at 2016, and not on the 1987 value.

On the other hand, Ms. Sourajah, S.C., for and on behalf of the Respondents argued that with regard to the compensation, without going to the Board of Review first, the Petitioner cannot seek to invoke the jurisdiction of this Court. Therefore, she argues that this Application should be dismissed.

Issues to be considered

In view of the current pleadings of the parties and the arguments advanced, it is my view that the following questions arise for my consideration;

- (i) Whether the said acquisition was the subject of two notices published at two different times calling for claims in terms of Section 7 notices under the Land Acquisition Act;
- (ii) If so, in the circumstances of this case, which Section 7 notice ought to be followed for the purpose of determining the compensation payable to the Petitioners;
- (iii) Whether the Petitioners had entertained a legitimate expectation to receive compensation based on the recent valuation.

Section 7 notices

It is common ground that the Government had proposed to acquire the land as far back as the 1980s. By the time the two Petitioners became the owners of the shares of the land in suit by virtue of Deed marked as **X2(a)**, a Section 2 notice had already been published on 28.03.1980, as reflected in the Counter Affidavit submitted by the Petitioners.

However, despite the fact that the land had been proposed to be acquired for a public purpose, the Petitioners purchased their respective shares of the land by **X2(a)**. Thus, by the time the Petitioners acquired title to their respective shares of the land, the acquisition of the said land had already been proposed.

In the present case, it is common ground that the Government acquired the land for a public purpose. However, it appears that the land was not utilised for some time. Therefore, the Petitioners sought a divestiture of a part of the property in suit successfully.

Nevertheless, a portion of the land remained acquired and the title thereto continued to be vested in the Government.

However, following the divestiture, **X16** was issued in terms of Section 7 of the Land Acquisition Act calling for claims. Accordingly, the Petitioners again put forward their claims.

Thus, a fresh invitation to submit claims was made by **X16**, as opposed to the initial notice calling for claims. In my view, once the subsequent Section 7 notice was issued calling for claims, and the Petitioners were thereby invited to submit their claims afresh, the compensation payable ought to be determined accordingly, having regard to the valuation applicable at that stage.

The second Section 7 Notice 'X16'

The first Section 7 notice calling for claims is marked as **X7**; however, issued as way back as in 1987, thereafter, the entire possession of the land in suit was taken over after publishing Section 38A notice on 10.06.1993, which is reflected in **X8**.

However, thereafter, since the land was not utilised for public purpose, for which the land was acquired and was just laying unutilised. In those circumstances, the Petitioners have sought a divestiture in terms of Section 39A of the Land Acquisition Act, which was accommodated, and part of the land was divested.

However, thereafter, only a new Section 7 notice was issued calling for claims in respect of the present acquired land as it remains now. The second acquisition notice is in 2016, as annexed to the Petition and marked as **X16**.

It is the position of the Petitioners that the Respondents, and the Acquiring Officer, should have followed and adhered to **X16**, the second Section 7 notice published in 2016, whereas the acquisition by the Respondents, including the Acquiring Officer, followed only **X7**, the Section 7 notice issued way back in 1987, about 33 years back from today.

Therefore, as argued by Mr. Doss, when one considers the entire scheme of acquisition, and in respect of compensation, they must pay the compensation as of the market value at the Section 7 notice which they rely on now. Therefore, it always has to be the recent one which has to be

adhered to; otherwise, it is very unfair by the owners whose properties have been acquired for a public purpose, and since a private land is going to be utilised for public purpose; compensation has to be paid to the owners.

On a careful perusal of the entirety of the Land Acquisition Act, it is my view that the intention of the Legislature is that whoever the private owner of the land proposed to be acquired may be, the Government is required to pay reasonable compensation based on the market value of the property in suit.

In addition to that, no private property is to be acquired without payment of compensation. That, in my view, is the rationale underlying the Land Acquisition Act; vide His Lordship Justice Mark Fernando's judgement in *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another*.¹

In addition to the above, the authorities and judgments cited before Court suggest that private property cannot be acquired merely on the basis that it is required for a public purpose without properly establishing such public purpose. Further, where land is acquired for a public purpose but is not thereafter utilised for the purpose for which it was acquired, the question of divesting of such land may arise in appropriate circumstances.²

Even where possession of the land has been taken by the Government prior to the completion of the entirety of the acquisition procedure, divestiture may be made in suitable cases in terms of Section 39A, particularly where the land has not been utilised for the public purpose for which it

¹ [1993] 1 Sri L.R. 283.

² *Mahinda Katugaha v. Minister of Lands and Land Development and Others* [2008] 1 Sri L.R. 285.

was acquired, no development activity has been carried out by the Government, and compensation has not been paid to the owner.

Thus, it is clear that the intention of the Legislature is to ensure that due compensation is paid to the party from whom the Government acquires the land.

Accordingly, the Petitioners are entitled to have the value at least as at **X16**.

Therefore, it is my view, on the total scheme of the Land Acquisition Act, that it should be the second Section 7 notice on which the compensation should be calculated, as the land remaining is a new land after the divestiture; this is the reason as to why the new Section 7 notice was published, because the new land created after divestiture remained vested with the Government.

Legitimate expectation of the Petitioners

Though the Petitioners became entitled to the land in suit as way back as in the 1980s by **X2(a)**, having known that it had been proposed to be acquired by that time, since the Section 2 notice had already been published, they purchased the land, maybe for valuable consideration as indicated in the said deed **X2(a)**.

Nevertheless, compensation so far has not been paid. They made claims as co-owners of the land and, in that case, it is my view that the Respondents have also published **X7** calling for claims for compensation on 16.11.1987.

Thereafter, after divestiture of part of the land, **X16** was published. Therefore, compensation has to be calculated in terms of **X16**. The Petitioners never had compensation, although they made a claim; if the private land owned by the Petitioner is acquired by the Government for a public purpose, they should have been given compensation as soon as possible, since they have legitimate

expectation of such compensation being decided in their favour, according to the existing position, not otherwise.

Furthermore, being aggrieved by the discrepancy between the market value and the compensation awarded, the Petitioners had instituted another writ application before this Court bearing No. 477/2015, where a settlement was reached into between the parties. According to the said settlement, the Respondents had agreed to consider the claim of compensation as at the time of 2016 based on **X16**. Thus, the Respondents now cannot go back on their word, as the Petitioners have a legitimate expectation.

Preliminary objection on maintainability of this Application

In this case, at the Argument stage, Ms. Saroujah, by way of oral submissions, raised a preliminary objection as to the maintainability of this Application on the basis that without going to the Board of Review, the Petitioners cannot come before this Court directly by this Application since it is a discretionary remedy that they seek to invoke. However, countering that, it was Mr. Doss's argument that the Petitioners are not challenging the mode or amount itself, but the basis on which the Acquiring Officer has decided the compensation, which was affirmed by the Board of Review.

It is the said decision of the Board of Review that was challenged by the Petitioner in the writ application bearing No. 477/2015, which culminated in a settlement. Therefore, it is clear that the Acquiring Officer had agreed to decide the amount of compensation payable in terms of **X16**. In spite of the said settlement in the writ application bearing No. 477/2015, where the Respondents agreed to consider the claim made by the Petitioner, responding to **X16**; therefore, the amount of compensation decided as Rs. 42,000/- and affirmed by the Board of Review is challenged in this

instant Application. Thus, the Respondents have to abide by **X16** to pay the new compensation, as at the market value at 2016.

Accordingly, it is my view that the writs sought by the Petitioners lie in their favour.

Conclusion

Based on the reasons adumbrated above, I grant relief as prayed for in prayers *(b)*, *(c)*, and *(d)* of the Petition. Thus, the decision to pay compensation which was estimated at Rs 42,000/- (Forty-Two Thousand Rupees) is quashed, since it is based on **X7**; thereby compelling the Respondents to decide the compensation in terms of **X16**. In addition to that, I wish to grant Rs. 10,500/- (Ten Thousand Five Hundred Rupees) as cost of litigation.

JUDGE OF THE COURT OF APPEAL