

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 *Certiorari* and *Mandamus*.

Court of Appeal Case No:
CA/WRIT/187/2022

Maddumage Chandralal Fernando,
No. 65,
Melwatta,
Kaludawala,
Panadura.

PETITIONER

Vs.

1. The King George The Fifth Silver
Jubilee Commemoration Society,
No. 37,
Fonseka Road,
Panadura.
2. Mrs. Irangani Weerasinghe,
The Divisional Secretary,
Divisional Secretariat,
Panadura.
3. S.M. Chandrasena,
Hon. Minister of Lands,
“Mihikatha Medura”,
Land Secretariat,
1200/6,
Rajamalwatta Road,
Battaramulla.

- 3A. S.M. Chandrasena,
Hon. Minister of Lands,
“Mihikatha Medura”,
Land Secretariat,
1200/6,
Rajamalwatta Road,
Battaramulla.
4. A.H.M. Aberathne,
Commissioner General of Agrarian
Development,
Department of Agrarian Development,
No. 42,
Sir Marcus Fernando Mawatha,
P.O. Box 537,
Colombo 07.
- 4A. U.B. Rohana Rajapaksha,
Commissioner General of Agrarian
Development,
Department of Agrarian Development,
No. 42,
Sir Marcus Fernando Mawatha,
P.O. Box 537,
Colombo 07.
5. Hemantha Fernando,
Chairman,
Pradeshiya Sabha,
Panadura.
- 5A. L.H. Nuwan Sanjaya Fernando,
Chairman,
Pradeshiya Sabha,
Panadura.
- 5B. Dharmasiri Perera,
Chairman,
Pradeshiya Sabha,
Panadura.

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

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Lakshan Dias with Maneesha Kumarasinghe for the Petitioner.
Sachitha Fernando, S.C. for the 2nd to 4th and 6th Respondents.
Murshid Maharoo with Manil Madugalle instructed by Nadeeka Senanayake for the substituted 5B Respondent.

Argued on: 04.03.2026.

Written Submissions: For the Petitioner on 29.04.2026.
For the 2nd to 4th and 6th Respondents on 05.06.2026.
For the 5B Respondent on 24.03.2026.

Decided on: 31.07.2026.

Mayadunne Corea J

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

- “c) Grant/issue an order in the nature of Writ of Certiorari to the 3rd Respondent to quash the decision taken by gazette no. 2273/34 dated 29th of March, 2022 as per the document marked P16
- d) Grant/issue an order in the nature of Writ of Mandamus compelling the 5th Respondent to act according to the law”

Factual matrix

The facts of this case, in brief, are as follows. The Petitioner is a tenant cultivator of a parcel of land known as “Eluwila Wela” and it is alleged that he has engaged in agricultural activities and animal husbandry on the said land for approximately 25 years. The Petitioner states that the 5th Respondent, the Chairman of the Pradeshiya Sabha, Panadura, made several attempts to prevent the Petitioner from cultivating the said land by, *inter alia*, filling it with tsunami debris. The Petitioner further states that the 5th Respondent subsequently persuaded the relevant authorities to acquire the land on the basis that cultivation thereon was no longer possible. The land was acquired by Gazette No. 2273/34 dated 29.03.2022 (marked as P16) for the purpose of constructing a playground. Hence, this Writ application.

The Petitioner’s contention

The Petitioner challenges the acts of the Respondents on the basis that the acquisition of the subject land was purportedly undertaken in contravention of the provisions of the Land Acquisition Act and in violation of the principles of natural justice. It is his specific contention that the acquisition is bad in law due to procedural impropriety namely non-compliance with the provisions of the Land Acquisition Act by failing to give section 2 notice under the land acquisition Act, thus making the acquisition an act of *ultra vires*. The Petitioner further contends that the 5th Respondent acted in bad faith, with malice, and in excess of the powers vested in him.

The Respondents’ contention

The Respondents raised the following objections:

- The Pradeshiya Sabha, Panadura passed a resolution for the acquisition of the Petitioner’s land for a public purpose long before the 5th Respondent became a member of the said Pradeshiya Sabhawa.
- The Respondents have acted in accordance with the provisions of the Land Acquisition Act, No. 9 of 1950 as amended.
- The Petitioner has no *locus standi* to maintain this Writ application.
- The Petitioner has suppressed and misrepresented material facts.
- The Petitioner is guilty of laches.

I will now consider the grounds urged by the Petitioner along with the objections raised by the Respondents.

Acquisition process of the disputed land

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 කරදන මෙම මැල්වස්.

This letter clearly demonstrates that the proposal to acquire the land had not been made by the 5th Respondent but, by the Pradeshiya Sabha member by the name of M. Lionel Ariyaratne and had been seconded by the Pradeshiya Sabha member W.N. Soysa. As per the letter it appears that the said disputed land is not a paddy field which is being cultivated but an abandoned paddy field. This letter had been written even prior to the tsunami on 26.12.2004 and hence, the Petitioner's contention that he could not cultivate the paddy land due to the tsunami debris being dumped, is negated. This letter also demonstrates that the acquisition proposal had not come from the 5th Respondent, and the original proposal to acquire is dated in 1999. The learned Counsel for the 5th Respondent submitted that this is long before the 5th Respondent became a member of the said Pradeshiya Sabha.

The Petitioner then submitted that there was no request to have a playground and the suggestion of a playground is a cover up story by the 5th Respondent. The Petitioner further contends that it is the duty of the Respondents to promote agricultural cultivation rather than convert agricultural land to other uses. The Petitioner further submits that the rice cultivated on the said land is supplied to the elders' home, thereby serving an important public purpose. Accordingly, the Petitioner argues that preserving the land for cultivation is of greater benefit to the community than constructing a playground, and that its acquisition would cause greater detriment to the community.

In response, the 5th Respondent's Counsel drew this Court's attention to the documents 5A-R3 to 5A-R8 which bears dates from 2004 to 2005 where members of several political parties have made requests to the then Minister of Mass Media to acquire land to construct a playground. Hence, the Petitioner's contention that there was no need or request for a playground has to fail. It is also observed that even by the letter marked as 5A-R8 which is dated 23.02.2005, it appears that another resolution had been passed by Panadura Pradeshiya Sabha to acquire the disputed land as the said land had not been cultivated and was abandoned. The said proposal too had been made by one member Kamal C. Illangage and has been seconded by one member A.A.M. Ambrose. Hence, it appears that the disputed land from 1999 to 2005 had not been cultivated and there also had been several requests to acquire the land for the purpose of a playground. The said proposal had been submitted and seconded not by the 5th Respondent but, by other members of the Pradeshiya Sabha. It also appears that from 1999 to 2005 the said land had been an abandoned paddy field. This contradicts the Petitioner's contentions that he was cultivating the said land and that the proposal by the 5th Respondent to acquire the land was due to a personal vengeance. This also negates the allegation that the land had been acquired due to malicious and dishonest intentions of the 5th Respondent as the 5th Respondent's name is not reflected in the proposals or the seconder of the proposals.

Even though the Petitioner submitted that there were several playgrounds in the area and thus, there was no requirement to acquire another land for a playground, this contention has not been established by any material. The Petitioner has failed to establish the existence of any other playground in this area. This takes me to the next ground urged by the Petitioner namely, the procedural impropriety and *ultra vires* of the act of acquisition.

Is the acquisition process tainted with procedural impropriety and ultra vires?

The Petitioner's principal challenge on the ground of procedural impropriety is that the acquisition process is rendered unlawful by the Respondents' failure to comply with the mandatory provisions of the Land Acquisition Act, in particular, their failure to comply with section 2 of the Land Acquisition Act. It is the contention of the Petitioner that prior to the acquisition, no notice under section 2 of the Land Acquisition Act had been published. It is his contention that prior to any acquisition, the section 2 notice should have been published. Further, he contends that section 2 notice could not have been published as there was no public purpose for the acquisition of the land. It is the contention of the Petitioner that the purpose of section 2 of the Land Acquisition Act is to notify the general public about the acquisition and the purpose for which it is to be acquired. It is his contention that as per section 2(1), a proper assessment should be done to assess whether the land is suited for public purpose for which the land is required. Hence, in the absence of a section 2 notice, this objective is defeated and this acquisition becomes bad in law. It was further contended that the Petitioner became aware of the acquisition only at the stage of its execution.

The Petitioner's objection is twofold. First, it is contended that, in the absence of compliance with section 2 of the Land Acquisition Act, no proper assessment was undertaken to determine whether the land was suitable for the stated purpose. Secondly, it is contended that, in any event, the purpose of the acquisition was not disclosed to the public.

In response, the learned State Counsel submitted a document marked and tendered as 2R1 which is a notice pursuant to section 2 of the Land Acquisition Act. The said notice is also marked and tendered by the 5th Respondent as 5A-R9 in 3 languages. It appears as per this document that, the section 2 notice has been given and the public purpose for acquisition, is clearly stated. The said notice clearly states that the acquisition is for the purpose of a public playground. Further, in the said notice, under the heading "Claimant", the 1st

Respondent's name is given. Hence, the Petitioner's contention that section 2 notice has not been given, cannot be sustained and the Petitioner's contention that the public purpose for the acquisition is not given, also fails.

It appears that thereafter, section 5 notice too had been published and the copy of the section 5 notice is marked and tendered as 2R3. Hence, the Petitioner's contention that there is non-compliance with the statutory provision of the Land Acquisition Act prior to the acquisition, has to fail and in view of the section 5 notice being published, the Petitioner's challenge pertaining to the suitability of the land and the public purpose, cannot be sustained. Thereafter, by Gazette Extraordinary No. 2273/34 dated 29.03.2022, notice has been published under proviso (a) to section 38. Subsequent to the publishing of the said Gazette, the Secretary of the 1st Respondent, by document marked 5A-R11, has handed over the land that belonged to them, to the State. Hence, the State has acquired possession of the land pursuant to the acquisition. With the above, the Petitioner's main contention that the act of acquisition is tainted by procedural impropriety and is *ultra vires* on the ground that section 2 notice was not given, cannot be sustained and must fail.

Fair hearing

The Petitioner also contended that he has not been given a fair hearing. The Petitioner contends that by not publishing the section 2 notice, he has been deprived of a fair hearing and has not been given an opportunity to object to the acquisition. The whole basis of this objection is based on the assumption that the authorities have failed to give notice pursuant to section 2 of the Land Acquisition Act. However, as observed above, this argument has to fail in view of the marked and tendered documents pertaining to the notice under section 2. It is also pertinent to note that an opportunity should be given pursuant to section 4 to the owner(s) of the land subject to acquisition. In this instance, it is the contention of the Petitioner that he has not been given notice. However, he himself concedes that he is not the owner of the land. The 1st Respondent, who is the owner of the land, did not file objections to this case and has not taken the position that they have not been given notice. In fact, by 5A-R11, the owners have willingly handed over the possession of the land. Hence, if the owners were objecting to the acquisition, they could have filed objections in this case and particularly informed that they were unaware of the acquisition as they were free to do so. However, they have not filed objections. By the above document, they have voluntarily handed over the possession of the land. It is also observed that in the document 5A-R11, there is a handwritten endorsement to the effect that the said land belongs to the 1st Respondent and they possess the legal deeds for the said land. It is the contention of the

Respondents that although the Petitioner contends that he was the tenant cultivator of the 1st Respondent, he had given the landlord's share to the 5th Respondent only on very few occasions. To establish this contention, they have tendered a letter issued by the 1st Respondent marked as 5A-R1. Hence, it is their contention that when the landowner does not object to the acquisition, the Petitioner lacks *locus standi* to challenge the acquisition. The Petitioner's next contention is whether the whole acquisition process is tainted with malice and personal vengeance.

Malice and dishonest intentions

It is apparent that as per the documents tendered that, the Petitioner and the 5th Respondent had several disputes. The 5th Respondent contends that this has culminated in the relatives of the Petitioner setting fire to the 5th Respondent's house and further, submits that a Magistrate's Court case has been instituted against the said suspects. Be that as it may, this Court observes that the acquisition process of the land had commenced long before the 5th Respondent entered public office and entered the Pradeshiya Sabha. The proposal for acquisition has not been made by the 5th Respondent. Hence, whatever disputes may exist between the Petitioner and the 5th Respondent, the Petitioner has failed to demonstrate that the acquisition commenced as a result of the malicious acts of the 5th Respondent.

The Respondent's failure to name the public purpose

The Petitioner also contended that, the public purpose for which the land is to be acquired had never been informed prior to the acquisition process. In this judgment, I have already addressed this ground. However, it is sufficient to state as per the documents tendered that, the section 2 notice contains the public purpose for which the land is to be acquired namely, for a public playground. I have considered the judgment of ***Mahinda Katugaha v Minister of Land 2008 (1) SLR 285***, which the Petitioner heavily relied on. However, the facts and circumstances of the said case differ from those of the instant case before me. In particular, in the instant case, the section 2 notice has been published and the public purpose of acquiring the land has been clearly stated.

The Petitioner also contended that the Petitioner's rights as a tenant cultivator have been violated by the 5th Respondent. This argument was based on the contention that the 5th Respondent, soon after the tsunami had dumped the tsunami debris in the paddy field (land

in question) and hence, has violated the provisions of the Agrarian Development Act No. 46 of 2000. However, this Court observes that, if there was a violation of the provisions of the Act, the Petitioner should have complained to the relevant authority at the time of the alleged violation, and not several years later by way of a Writ application, by which time the challenge to the impugned decision had become hopelessly belated. Further, in this application, the Petitioner is only contesting the acquisition based on non-compliance with the provisions of the Land Acquisition Act. The learned Counsel for the 5th Respondent in response contended that, the Petitioner has no right as a tenant cultivator as he has failed to submit any evidence pertaining to his tenancy and has also failed to comply with the provision of payment of acreage taxes and supplying the landowners share pursuant to the provisions of the Agrarian Development Act. However, in this application, the said ground of whether there is a violation of the Agrarian Development Act, is not an issue.

Hence, in my view, the Petitioner's main contention to obtain the reliefs in this Writ application is based on the non-compliance with section 2 of the Land Acquisition Act. As the Petitioner was under the impression that no section 2 notice had been published, the tendering of the document demonstrating the publication of the section 2 notice before this Court not only renders the Petitioner's said contention untenable but also establishes that the Petitioner is guilty of misrepresentation and the suppression of material facts, namely, the misrepresentation that no section 2 notice had been published when, in fact, it had been published, and copies of the notice were tendered to this Court. In my view, a Petitioner invoking the Writ jurisdiction of this Court is under a duty to place before the Court true and accurate facts. It is incumbent upon the Petitioner to present established facts rather than beliefs or assertions which, on the material before this Court, appear to be incorrect. In my view, this conduct of the Petitioner amounts to suppression and misrepresentation of material facts. This Court has constantly held that a Petitioner who is guilty of misrepresentation and suppression of material facts disentitles himself from the reliefs he seeks. In this I am guided by the judgment of **Fonseka v. Lt. General Jagath Jayasuriya and five others 2011 (2) SLR 372**, where it was held:

“A Petitioner who seeks relief by Writ which is an extraordinary remedy must in fairness to Court, bare every material fact so that the decision of Court is not wrongly invoked or exercised.

....

material facts are those which are material for the judge to know as dealing with the application as made, materiality is to be decided by Court and not by the assessment of the applicant or his legal representatives.”

Furthermore, the Court in ***Blanca Diamonds (Pvt) Ltd v. Wilfred Van Else & others*** (1997) 1 SLR 360 observed that:

“In filing the present application for discretionary relief in the Court of Appeal Registry, the Petitioner company was under a duty to disclose (uberrima fides) all material facts to this Court for the purpose of this Court arriving at a correct adjudication of the issues arising upon this application. In the decision in Alponso Appuhamy v Hettiarachchi Justice Pathirana, in an erudite judgement, considered the landmark decisions on this province in English Law, and cited the decisions which laid down the principle when that a party is seeking discretionary relief from the Court upon an application for a Writ of certiorari, he enters into a contractual obligation with the Court when he files an application in the registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to this Court.”

It is also observed that the Petitioner’s allegation that the process of acquisition commenced only upon the 5th Respondent’s assumption of the office of Chairman of the relevant Pradeshiya Sabha in 2019 must also fail, in view of the fact that the resolution by the Pradeshiya Sabha to acquire the land had been passed long before the 5th Respondent assumed the said office (5A-R2). Once again, this Court observes this to be a misrepresentation and by not correcting the said submission the Petitioner’s *uberrima fides* is in doubt. The Petitioner’s contention that the public purpose for the acquisition of land is not published, also has to fail as the section 2 notice indicates that it is for a public playground. This contention too becomes a misrepresentation by the Petitioner.

It is trite law that a Petitioner who misrepresents and suppresses material facts and whose *uberrima fides* is in doubt, disentitles himself from the reliefs he prays for in a Writ application.

Conclusion

I have considered the material submitted by the parties and their submissions. However, for the above-stated reasons set out in this judgment, this Court is of the view that the Petitioner's contention must fail as he has failed to establish any procedural impropriety or illegality in the acquisition. Further, by his conduct, he has disentitled himself from obtaining any relief.

Accordingly, for the above-stated reasons, I refuse to grant the reliefs prayed for in the Petition and proceed to dismiss this Writ application. The costs of this application shall be borne by the respective parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal