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

In the matter of an Application for mandated in the under 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.

Court of Appeal Case No:
CA/WRIT/306/2022

1. Umadevi Rajesegaram
   No. 16A-2/36, Pereira Lane,
   Wellawatta,
   Colombo 06.

2. Pathmanathan Nishanthan,
   No. 7/6, Harmers's Avenue,
   Wellawatta,
   Colombo 06.

3. Subaharan Muruganathan,
   No. 18, Valentine Road,
   South Harrow, HA2 BED,
   United Kingdom.

4. Saravanapavan Subramaniam,
   No. 8A, de Fonseka Road,
   Colombo 05.

5. Kumaraswami Subramaniam,
   No. 6, Flower Avenue,
   Colombo 7.

6. Kengatharan Subramaniam,
   No. 8B, de Fonseka Road,
   Colombo 5.

7. Manomanie Subramania,
   No. 8A, de Fonseka Road,

Colombo 5.

8. Kamaladevi Balakrishnan *nee* Ponnambalam,
   No. 33/1, Alfred Place,
   Colombo 5.

9. Sanchuthan,
   No. 33/1, Alfred Place,
   Colombo 5.

10. Subramaniam Gajendran,
    No. 33/1, Alfred Place,
    Colombo 5.

11. Balakrishnan Ganeswaram,
    No. 33/1, Alfred Place,
    Colombo 5.

PETITIONERS

Vs.

1. Harin Fernando,
   Minister of Land,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatta Road,
   Battaramulla.

1A. K.D. Lalkantha,
   Minister of Agriculture, Lands, Livestock and Irrigation,
   Sobadam Piyasa,
   No. 416/C/1,
   Robert Gunawardana Mawatha,
   Battaramulla.

2. R.A.A.K. Ranawaka,
   Secretary,
   Ministry of Land and Land Development,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatta Road,
   Battaramulla.

2A. D. P. Wickremasinghe,
   Secretary,
   Ministry of Agriculture, Livestock, Land and Irrigation,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6, Rajamalwatta Road,
   Battaramulla.

3. The Co-operative Wholesale Establishment,
   No. 27, Vauxhall Street,
   Colombo.

4. Ratnapura Municipal Council,
   Ratnapura.

5. Malani Lokupothagama,
   District Secretary,
   New Town,
   Ratnapura.

RESPONDENTS

Before:	Mayadunne Corea, J Mahen Gopallawa, J
Counsel:	Ranil Samarasooriya with S. Sooriyapatabendi and Madhara de Alwis for the Petitioners. Chaya Sri Nammuni D.S.G. for the 1st – 3rd and 5th Respondents. Kalinga Indatissa, P.C., with H. Sadhahasena, S. Wickremasooriya and Dilmi Paranawitharana for the 4th Respondent.
Supported on:	19.03.2025.
Decided on:	30.04.2025.

Mayadunne Corea J.

The Petitioner filed this Writ Application seeking, inter alia, the following reliefs:

> "*(b) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the order dated 28th May 1971 issued by the then Minister of Lands marked 'P27';*
>
> *(c) Grant and issue a mandate in the nature of a Writ of Mandamus compelling the 1st Respondent and/or anyone acting under the said Respondent to divest the said land to the Petitioners*"

The facts are briefly as follows.

The Petitioners' predecessors were co-owners of the land which is the subject matter of this Application. The said land has been acquired by the Government. The acquisition process has been expedited and the acquisition done pursuant to section 38 (a) of the Land Acquisition Act, No. 9 of 1950 as amended (herein after sometimes referred to as 'the Act'). The acquisition process has commenced in 1970 and section 38 (a) published in the Extraordinary Gazette bearing No. 14,959/14 dated 28.05.1971 (P27). The Petitioners allege that they are the heirs of the original owners and are now challenging the acquisition. The Petitioners have filed this Writ Application and the Petition is dated 24.07.2022. The main relief the Petitioners are seeking is to quash the acquisition Gazette marked as P27 and for a Writ of *Mandamus* to divest the said land to the Petitioners.

The Petitioners' claim.

The Petitioners' claim is that the acquisition is bad in law as the notice issued under section 2 of the Act published is defective and therefore, they contend that the whole acquisition procedure is bad in law.

Further, the Petitioners contend that the acquisition was instigated by *mala fides* and for political vengeance and on racial discrimination.

The Respondents objections.

The 1st, 2nd and 5th Respondent objected to the issuance of notice on several grounds**.** In a summery the objections are;

- The Petitioners do not have *locus standi* to file this Application.
- The Petitioners are guilty of laches.
- The Respondents have at all times acted in accordance with the law and the petition is misconceived in law.
- As the petitioners have been paid the compensation there are no grounds for the corpus to be divested pursuant to the provisions of the land acquisition Act.

While associating with objections of the 1st ,2nd and 5th Respondents, the 4th Respondent objected to notice being issued *inter alia* on the grounds of delay.

This Court will now consider the Respondents' objections with the Petitioners' submissions.

At the commencement of his submissions the learned Counsel for the Petitioners submitted that he will not pursue the relief seeking a Writ of *Mandamus*.

It is not disputed that the land in question was acquired by the State in the year 1971. It has been acquired from one S. Subramaniam and M. Kanapathipillei both of whom have owned ½ a share of the *corpus* acquired. The Petitioners submit that the pedigree is set out in

paragraphs 2 and 3 of the Petition. However, it appears that the Petitioners are claiming on inheritance from the original owners of the land. This position was challenged by the Respondents on the basis that the Petitioners have failed to demonstrate their entitlement with correct documents. Hence, the contention that the Petitioners have no *locus standi* to file this Application. Be it as it may, this Court will now consider the facts of the acquisition.

The acquisition

The parties are not at variance that the original owners of the acquired land were S. Subramaiam and M. Kanapathipillei. By the documents marked as P25 and P26 the State has published a Notice under section 2 of the Land Acquisition Act, dated 04.10.1970 and 11.10.1970 respectively. It is the contention of Counsel appearing for the Petitioners that both P25 and P26 state that approximately an area of 18 Perches is to be acquired and the main thrust of his argument was that what had been acquired is a far greater extent than what is stated in the Notice in terms of section 2. Thus, it is his contention that the acquisition is bad in law. However, it is pertinent to note that the said submission is incorrect as the said documents do not state the exact extent of the land to be acquired as 18 Perches. What is stated is as follows;

> "රත්නපුර දිස්ත්‍රික්කයේ, කුරුවිට කෝරළයේ, උඩපත්තුවේ, රත්නපුර නගර වසමේ, රත්නපුර මහ නගර සීමාව තුල සේනානායක මාවතේ වැටිපනම් අංක 11 දරණ ලැයිම වත්තේ පිහිටි ලක්ෂ්මි සිනමා ශාලාව පැවැත්වෙන ගොඩනැගිල්ල සහිත පර්චස් 18 ක් පමණ වූ බිම් කොටස."

The said Notice does not limit the land to be acquired to 18 Perches but what it states is a land parcel consisting of a building in the extent of about 18 Perches.

Further the note in P25 clearly states that the land intended to be acquired is depicted in the rough sketch attached.

"..ඊට අමුනා තිබූ කටු සටහනට අදාල ඉඩම"

By attaching a rough sketch, it is clear at the time of publication of Notice under section 2 the exact amount to be acquired has not been determined or defined. As correctly submitted by the learned DSG the purpose of section 2 publication is to give Notice to state that the land is required for a public purpose and to carry out investigation to select the land on its suitability for the public purpose.

The crux of the learned Counsel appearing for Petitioners' argument is that what can be legally acquired is only the extent stipulated in the section 2 Notice. It is his contention that any extent acquired in excess makes the notice bad in law. It is his argument that what has been stipulated in the notice is only 18 Perches. Hence, the amount acquired has exceeded the said extent and there by the Notice becomes bad in law. However, as I have stated above the Notice published pursuant to section 2 does not limit the extent to be acquired to be exactly 18 Perches. In view of the above wording, in my view, this argument is not tenable and has to fail.

The parties were also not at variance that thereafter steps have been taken under section 4, 5 (P29) and 6 of the Land Acquisition Act. It is further contended that there was no objection by the original owners for the acquisition.

It is the contention of the learned DSG that subsequent to the due process being followed and pursuant to section 5 of the Land Acquisition Act before acquisition, a final plan is made and the acquisition processes thereafter proceeds on the basis of the said acquisition plan. The learned DSG appearing for the 1st, 2nd and 5th Respondents contended that, subsequently an area of 1 Rood 2.56 Perches had been determined to be acquired. The acquisition has been done pursuant to section 38A of the Land Acquisition Act and published in Gazette No. 14959/14 dated 28.5.1971 (P27). Thereafter, the District Revenue Officer of Ratnapura has issued the certificate of taking over possession of the *corpus* dated 08.06.1971 (P28). Thereafter, a Notice under section 7 has been published calling for the Claimants submit their claims (P30).

As per 1R1, the inquiry pursuant to section 10 of the Act had concluded and the ownership determined (P31). These facts are not disputed by the parties. The learned DSG further brought to the attention of the Court the document marked 1R2 which is the section 17 notice (P32). Is observed that that the lower part of the said notice consists of a hand written note stating that in 1972 compensation has been paid to the owners. It appears to Court that as per the documents tendered there had been no objection to the acquisition or the acquisition processes by the original owners. An inquiry into claims for compensation had proceeded on the basis of acquiring an extent of 1 Rood 2.56 Perches. The parties are also not at variance that the compensation has been paid for the entire lot that has been acquired amounting to an extent of 1 Rood 2.56Perches. Hence, compensation is paid and accepted by the then owners of the *corpus* for the entire land acquired.

It is the contention of the learned DSG that once a decision is made pursuant to section 17 and the payments are made, the acquisition process reaches its finality. If the Claimants were aggrieved by the award, they are given a statutory right to go before a Board of Review. There is no material to demonstrate that such a course of action had taken place. Hence, this Court agrees with the said contention on finality.

At this stage, it is also pertinent to note that as per the above material, this Court cannot find any procedural irregularity in the acquisition processes and in my view the Petitioners have failed to demonstrate any procedural irregularity. Though the Petitioners argued that the acquisition was done for political reasons and with *mala fides*, no documents to substantiate the said contention have been tendered to this Court. In the absence of any material to establish *mala fides* the said contention has to fail. Further, this Court also observes if there was such an allegation the original owners would have taken necessary steps to object to the acquisition. As stated above throughout the acquisition processes there is no material to demonstrate that the original owners had objected to the acquisition.

Public purpose

The Petitioners contended that the *corpus* had been acquired for the purpose of having a Co-operative Wholesale Establishment store (herein referred to as 'CWE store'). It is observed that by the document marked as P33 the said acquired land has been vested with the CWE. The vesting certificate is dated 1973.10.23. Hence, it is clear that the land acquired has been handed over to the CWE for it to be utilized. The Learned DSG submitted that subsequent to the vesting the said land had been utilized for the public purpose it was acquired for.

Though the Petitioners challenged this position, namely, on the premise that the land was not used for the public purpose it was acquired for, the Petitioners were unable to substantiate the said contention with documents or independent evidence. Thus, in the absence of any material to establish the said argument, the Petitioners' contention fails.

Subsequently, after ten long years the *corpus* has been transferred to the 3rd Respondent who is the Ratnapura Municipal Council. The said transfer had been made in 1985, which means that the said land had been with the CWE for nearly a decade.

Now this Court would consider the objections of the Respondents.

Laches by the Petitioners

The Respondents' main objection is that the Petitioners are guilty of laches. Let me now consider the said objections. As per the material before Court it is undisputed that the *corpus* was acquired in the year 1971. Section 38A publication is dated 28.05.1971 (P27). The Petitioners did not challenge the said Gazette and waited till July 2022 to challenge the said Gazette which is nearly 50 years after the acquisition. In explaining the delay, it was submitted by the Petitioners that initially the original owners did not challenge the acquisition as they were afraid of political revenge. This argument cannot be accepted and not tenable, as the Petitioners have failed to place any material independent of what the Petitioners assert, to substantiate any kind of political interference in the acquisition process. Further, the Petitioners contended that they had at various times written to the Minister of Lands of successive Governments after 2014 pertaining to the irregularities in the acquisition procedure. However, the only document that the Petitioners have tendered to this Court to substantiate this contention is the document marked as P40, which is a letter written by an Attorney-at-Law on the instruction of the Petitioners to the Minister of Lands. The said letter does not challenge the acquisition based on a defective Notice pursuant to section 2. In the said letter, the Petitioners' only contention is that the land acquired was not utilized for the public purpose it was acquired for.

It is pertinent to note that the document marked as P40 written nearly after 49 years after the date of acquisition does not disclose any defect in the Notice published under section 2 of the Act. Furthermore, tendering this document does not explain the Petitioners' delay of 49 years.

The Petitioners also contended that in 1980 the original owners were reluctant to visit Ratnapura as they were branded as terrorists. However, even this allegation is not substantiated with any material or independent evidence. As per paragraph 51 of the Petition, the Petitioners submit that they were subjected to ill-treatment and harassment till the end of the war. Yet, the parties were not at variance that the armored conflict ended in the year 2009. Subsequent to the armored conflict ending the Petitioners have failed to

disclose any meaningful steps that have been taken to challenge the acquisition till the filing of this Application.

The Petitioners in explaining the delay further contended that they visited the *corpus* in 2014 and thereafter took steps to appeal to the Minister. The Petitioners failed to establish this position too with any material or independent evidence other than P40, which is dated 26.5.2020. Thus, the Court observes that even after 2014, the Petitioners had waited till 2022 to file this action and seek for Orders to quash the acquisition Gazette. The Petitioners have failed to explain this delay. It is trite law that unexplained delay disentitles the Petitioners from obtaining any relief from this Court.

In ***Dissanayake v. Fernando (1986) 71 NLR 356*** His Lordship Weeramantry J. enunciated that *"where there has been a delay in seeking relief by way of certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court"*. Even in the case *of* ***Gunasekera v. Weerakoon 73 NLR 262*** His Lordship Sirimane J., held that "*the application should be refused because the Petitioner was guilty of undue delay in making the application. In the said matter, a delay of 7 months was considered to be "too long"*.

A similar line of thinking was adopted in the ***Abdul Rahuman v. Mayor of Colombo 69 NLR 453, and Wijegoonawardena v. Kularatne 51 NLR 453.***

This Court has also considered the cases of ***Biso Menike v. Cyril de Alwis 1982 SLR 368***, ***Seneviratne v. Tissa Bandaranayake and another 1999 2 SLR 341*** and ***Ceylon Petroleum Corporation and others v. Dayanthi Dias Kaluarachchi and others SC Appeal 43/2013 decided on 19.06.2019***.

In the absence of any valid explanation to purge the delay this Court upholds the objection of delay and I hold that the Petitioners are guilty of latches.

It is also pertinent to note that subsequent to the acquisition and pursuant to section 44 of the Act, the land had been vested with the CWE. The Petitioners have not challenged the said vesting certificate. Further, after nearly 4 decades by a Deed of Transfer the 3rd

Respondent had transferred the *corpus* to the 4th Respondent for a consideration. There is no material to establish that this Deed has been challenged.

It is also pertinent to note that the original owners of the land had participated in the inquiry into claims for compensation without any objection and have accepted the compensation in full. Half a century after the acquisition, the Petitioners are attempting to challenge the said acquisition on grounds which the original owners did not think it fit to challenge but had accepted the acquisition.

Upon inquiry, the learned Counsel for the Petitioners conceded that when the Petitioners are challenging the acquisition on the basis of the rights of the original owners, they have to accept the basis the original owners accepted the money and handed over the possession as the Petitioners cannot be selective of the rights they intend to canvass. Which leaves the Petitioners with no rights over the *corpus*.

Accordingly, for the afore said reasons stated, I uphold the objections raised by the Respondents and see no Merit in this Application. Hence, this Court refuses to grant formal notice on the Respondents and proceed to dismiss this Application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal