

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 *Mandamus* and Prohibition.

**Court of Appeal Case No:
CA/WRIT/279/2024**

G.W. Kodithuwakku,
No. 390,
Walawwa Junction,
High Level Road,
Homagama.

PETITIONER

Vs.

1. Hon. Prasanna Ranathunga,
Minister of Urban Development and
Housing,
Ministry of Urban Development and
Housing,
12th Floor,
Sethsiripaya,
Battaramulla.
2. Hon. Harin Fernando,
The Minister of Lands,
No. 1200/6,
Rajamalwatta Road,
Battaramulla.
3. W.S. Sathyananda,
The Secretary,
Ministry of Urban Development and
Housing,
12th Floor,
Sethsiripaya,
Battaramulla.

4. B.A.D. Chinthaka,
Divisional Secretary,
Divisional Secretariat,
Homagama.
5. Urban Development Authority,
Sethsiripaya,
Battaramulla.
6. Nimesh Herath,
The Chairman,
Urban Development Authority,
9th Floor,
Sethsiripaya,
Battaramulla.
7. N.P.K. Ranaweera,
The Director General,
Urban Development Authority,
7th Floor,
Sethsiripaya,
Battaramulla.
8. The Director Land,
Urban Development Authority,
Sethsiripaya,
Battaramulla.
9. Director Western Province,
Urban Development Authority,
Phase 1,
Sethsiripaya,
Battaramulla.
10. Y.A.G.K. Gunathilaka,
Director Planning Western Province,
Phase 1,
Sethsiripaya,
Battaramulla.

11. Surveyor General,
The Department of Surveys,
No. 150,
Kirula Road,
Narahenpita,
Colombo 05.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Sandun Senadipathi instructed by Danuka Lakmal for the Petitioner.
Medhaka Fernando, S.C. for the Respondents.

Supported on: 06.05.2026.

Decided on: 19.06.2026.

Mayadunne Corea J

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

- “b) Issue a Writ of mandamus to compel the Respondents or any one or more of them to diverse the allotment of land depicted as Lot No. A of the said Advance Tracing bearing no. CO/HMG/08/212 to the Petitioner, and to compel the 2nd Respondent and/or his officers to publish a notification in the Gazette in respect of the said divestiture.
- c) Issue a Writ of Prohibition preventing the Respondents or any one or more of them from taking any steps and/or actions in terms of section 42(2) of the Land Acquisition Act bearing No. 09 of 1950 and/or from taking over the physical possession of the property acquired from the Petitioner by the Gazette Notification marked P9”

The facts of this case, in brief, are as follows. In 1991, the Petitioner commenced a grocery business establishment on a lease premises in the Homagama town. Subsequently, in 1998, the Petitioner purchased the premises bearing no. 390, Wallawwa Junction, High Level Road, Homagama, constructed a four-storey building thereon, and relocated his residence and business premises. With the expansion of this business, the Petitioner also purchased the adjoining block of land in 2007. Thereafter, the Petitioner's property was acquired on two occasions under the Land Acquisition Act, No. 9 of 1950 for the following purposes:

1. for the expansion and development of the High-Level Road (CRWB Road) and
2. for the widening of the Doowawatttha Road as part of the proposed Homagama town development project.

The Petitioner states that he did not oppose to the first acquisition but vehemently objects to the second acquisition. In 2008, a notice (P7) under section 2 of the Land Acquisition Act was published to acquire an extent of 128 square meters (5.06 perches/0.0128 hectares) of the Petitioner's land for the purposes of widening the Doowawatttha Road. This was followed by the Minister of Lands publishing a Gazette Notification bearing no. 1576/11 dated 17.11.2008 (P9) under proviso (a) to section 38 of the Land Acquisition Act. Thereafter, by letter dated 28.01.2009 (P10), the 3rd Respondent requested the Petitioner to hand over possession of the acquired land. Hence, this Writ application.

The Petitioner's contention

The Petitioner objects to the acts of the Respondents on the following grounds;

- The Respondents have acted contrary to the provisions of the Land Acquisition Act.
- The Respondents have delayed the acquisition process for a period of 15 years or more.
- The acquisition is solely in respect of the Petitioner's land and the land situated opposite the Petitioner's.
- The design plan pertaining to the Homagama town development project was revoked/cancelled by Gazette Notification bearing no. 2206/11 dated 15.12.2020.
- Accordingly, the acts of the Respondents are unfair, unreasonable, irrational, illegal, unlawful, *ultra vires*, and tainted with malice.

The Respondents' contention

The 1st, 2nd, 3rd, 4th and 11th Respondents raised the following objections:

- Acquisitions are only being carried out on private properties falling within the building line, which includes the Petitioner's land.
- The Petitioner is the only party who refused to hand over possession.
- The Petitioner continues to be an illegal occupant of state land.
- Suppression of material facts and misrepresentation of facts.
- The Petitioner has failed to come with clean hands.

Analysis

I will now consider the Petitioner's contention in seeking for a Writ along with the objections of the Respondent. The learned Counsel for the Petitioner in supporting his application confined his grounds for a Writ to three main contentions. They are as follows:

- The land was to be acquired for a public purpose called "Homagama town development project" which the Petitioner alleges is no longer in force and hence, the acquisition is not for a public purpose.
- Even though a notification under proviso (a) to section 38 has been published in 2008, the possession of the land is yet to be taken by the Respondents.
- There is no need for a road as there is another road in existence.

Was the land acquired for a public purpose?

The Petitioner's main contention is that the land was acquired under the Homagama town development project to widen the Doowawatta Road (P6). Subsequently, a section 2 notice dated 05.02.2008 had been published informing the same. Thereafter, it had proceeded to the preparation of an advanced tracing to depict the lands to be acquired. The advanced tracing CO-HMG/08/212 is marked and tendered as P8. Subsequently, on 17.11.2008 by Gazette Extraordinary no. 1576/11, a notification under proviso (a) to section 38 of the Land Acquisition Act has been published. The said Gazette is marked and tendered as P9. Subsequently, on 28.01.2009, the Petitioner had been informed to hand over possession to widen the road (P10).

However, it appears that the Petitioner had objected to the handing of the premises and had made several representations to prevent the handing over process. The Petitioner himself conceded that as per his representations on 12.11.2009, a letter had been sent to the Director General of the Urban Development Authority by the Senior Secretary to the Ministry of Urban Development and Sacred Area Development asking whether the Petitioner's land is still needed for the development project (P12). On a consideration of the said document, it is clear that due to the Petitioner's objections, taking over possession of the acquired land has been stalled. There had been several correspondences between the Petitioner and several government institutions which resulted in the possession of the land not being handed over to the Urban Development Authority.

The Petitioner by way of a motion tendered to this Court the Extraordinary Gazette Notification bearing no. 2288/14 dated 12.07.2022. It was contended as per the said Gazette that, the Homagama town development project has been gazetted under section 8 of Act No. 4 of 1982. While the tussle between the Petitioner and the 5th Respondent had been going on, the Petitioner contends that the project to develop Homagama had been cancelled by Gazette Extraordinary no. 2206/11 dated 15.12.2020 marked and tendered as P16. It is his contention that as per the said Gazette, the Homagama development project had been cancelled. The Petitioner brings to our attention cage 19 of the table depicted in P16, which the Petitioner submits is the cancellation of the project, reads as follows;

19	නෝමාගම සංවර්ධන සැලැස්ම	06.08.2019	2135/25	නෝමාගම ප්‍රාදේශීය සභාව
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It was his contention that as per this Gazette the said entire Homagama development project has been cancelled and, accordingly there is no existing project to develop the town. It is further contended that in the absence of a development project under which the Petitioner's land was to be acquired for the purposes of widening the Doowawatta road, the public purpose depicted under section 2 ceased to exist. Hence, he contends that the section 2 notice becomes bad in law as the public purpose has ceased to exist.

Has the Homagama development project been cancelled?

I have closely examined the Gazette marked as P16, and I observe that the said Gazette does not cancel the said project. Rather, it only cancels the Homagama development plan. In response to the above submission, the learned State Counsel contended that the

Homagama town development project was not cancelled. Further, it was contended that the proposed roadway that needs the acquisition of the Petitioner's land is situated within the boundary of the Homagama town and is earmarked to be utilised as a service road to the Homagama town center and the proposed urban park. It was further submitted that, under Phase I of the project, the said road is to be widened to a width of 40 feet. Since the existing width of Doowawatta road is only 20 feet from the centre line of the road, a decision had been taken to acquire the private lands and properties falling within the building line. The disputed portion of land that is to be acquired falls within the said building line.

The learned Counsel for the Respondent contended that what had been cancelled was the Homagama Development Plan, and that such development plans are revoked and replaced with new plans with the passage of time. However, it was strenuously contended that the project to develop Homagama is still in existence. The learned Counsel for the Petitioner was not in a position to reply to this submission. Hence, the Petitioner's first contention that the acquisition of the land is not for a public purpose as the project to develop Homagama has ceased to be in existence, has to fail.

It is also observed that, the Petitioner contended that only two lands in the said road are being acquired and alleged *mala fides* against the Respondents. In reply, the learned State Counsel submitted that the properties acquired along the road are private properties and not land vested in the State. It was also contended that the narrowest point of the road is where the Petitioner's land is. The Petitioner has not tendered any material to counter this argument and has failed to establish that lands other than his and the neighbour's land, do not belong to the State. Hence, in the absence of any material to demonstrate whether the land adjoining the roads belong to private parties or to the State, this Court will not be in a position to consider the said argument.

In any event, in my view, the Petitioner has failed to establish any ground with material to demonstrate that the acquisition for the widening of Doowawatta road was done with *mala fides*. It is also pertinent to note that the Petitioner has at no time attempted to impugn the Gazette whereby a notification under proviso (a) to section 38 was published. Even in this application, the Petitioner has not sought to quash the said acquisition. In any event, this Court observes that the said Gazette is dated 17.11.2008, and the Petitioner has failed to challenge the said Gazette up to now.

Now I will examine the second ground that was raised at the submissions, namely the Respondent's failure to develop the acquired land.

Failure of the Respondents to take possession of the land following publication of notice under proviso (a) to section 38

The parties were not at variance that subsequent to the Gazette published under proviso (a) to section 38, which was published in 17.11.2008, the Divisional Secretary of Homagama had written to the Petitioner to hand over the possession of the acquired land. The said letter bears the date 28.01.2009 and is marked as P10. However, it was also not disputed that the Petitioner had refused to hand over the possession which resulted in the letters marked as P12, P13 and P14, as well as the Petitioner's letters marked as P17, P18, P20 and P21, all of which are dated in the year 2024.

However, the Respondents with their objections have tendered documents to demonstrate that the Respondents have constantly informed the Petitioner to hand over possession of the acquired land. Commencing with the letter dated 28.01.2009, marked P10 by the Petitioner and X4 by the Respondents, the said correspondence was subsequently followed by letters dated 20.04.2012 (RX5a), 01.05.2012 (RX5b), 07.02.2024 (RX5c), 28.02.2024 (RX5d), and 26.03.2024 (RX5e). The said letters specifically mention the relevant dates and times and inform the Petitioner that a representative of the State would be present to take possession of the land. It is also observed that each letter states that, upon a representative visiting the corpus after due notice to the Petitioner to take possession, the Petitioner had been absent and had failed to hand over physical possession.

It was also brought to the attention of this Court that the Petitioner had filed a case in the Supreme Court bearing no. SC FR 295/2018. The proceedings of the said case had originally been marked as P15 with the Petition. However, the Petitioner tendered the physical copy of P15 only by motion on 10.02.2026. It was brought to the attention of this Court that, in the journal entries of the Supreme Court case dated 18.01.2024, the Petitioner had informed Court that he had no objection to the Urban Development Authority taking possession of the land. Subsequently, the journal entry dated 26.03.2024 states that the Petitioner has informed the Court that they were ready and willing to hand over possession. The Court had observed that although the Petitioner had agreed to hand over possession of the land, the Petitioner has admitted, on 12.07.2024, that he has not handed over possession of the land. Hence, it is apparent why the Respondents were not in possession of the land. The Petitioner has failed to hand over physical possession of the land. Hence, in my view, although the land is still in the possession of the Petitioner, it is because he has, by resorting to various appeals and letters, delayed the handing over of the land that has been acquired by the state.

It is also pertinent to note that in circumstances of this nature the legislature in its wisdom has provided to take possession of the acquired land which is provided under section 42 of the Land Acquisition Act. It appears that the Respondents have not resorted to this as there have been several communications between the parties to obtain possession. It is also observed, that by this application, the Petitioner is seeking a Writ of Prohibition to prevent the Respondents from taking steps under section 42 of the said Act. Accordingly, I observe that the Petitioner, since 2008, has been using various methods to delay handing over possession and by this application, is seeking a Writ of Prohibition to prevent the Respondents from taking possession of the land as per the provisions of the Land Acquisition Act. I will now consider the objections raised by the Respondents.

Suppression of material facts and misrepresentations made by the Petitioner

The Petitioner strenuously contended before this Court that the Homagama town development project has come to an end. He based his submission on the document P16. This Court observed that by P16 what has been cancelled is not the development project of Homagama but, the development plan. However, subsequently, a new development plan has been gazetted with improvements. Hence, the Petitioner's contention that the Homagama town development project has ceased, is a grave misrepresentation. The Petitioner also submitted that the Respondents have failed to take possession of his land from the date it was acquired in 2008. However, the Petitioner failed to disclose that the Respondents had informed the Petitioner pursuant to section 42(1) that he had received many notices to hand over the possession of the land, which he had not done as observed elsewhere in this judgment. The documents marked are X1, RX4, RX5a, RX5b, RX5c, RX5d, RX5e, clearly demonstrates that the Respondents have continuously been seeking to obtain possession of the land. None of the abovementioned documents have been disclosed by the Petitioner.

Further, the Petitioner himself, in the Fundamental Rights application filed in the Supreme Court, had given an undertaking to hand over the possession of the land which he has failed to do. The Petitioner has failed to disclose and plead that he has given an undertaking before the Supreme Court to hand over possession of the land. Even though the Supreme Court proceedings were marked as P15, I observe that the said document was not tendered to this Court when the original Petition was filed and interim orders were obtained by the Petitioner. These amount to a serious suppression of material facts that disentitles the Petitioner from obtaining any reliefs.

In **Sarath Hulangamuwa v. Siriwardana (1986) 1 SLR 275**, the Court held as follows;

*“A Petitioner who seeks relief by Writ which is an extraordinary remedy must in fairness to this Court, bare every material fact so that the discretion of this Court is not wrongly invoked or exercised. In the instant case, the fact that the petitioner had a residence at Dehiwala is a material fact which has an important bearing on the question of the genuineness of the residence of the petitioner at the annexure and on whether this Court should exercise its discretion to quash the order complained of as unjust and discriminatory. On this ground too the application must be dismissed for lack of *uberima fide*”.*

This Court observes that although the Petitioner has marked the proceedings of the Fundamental Rights application to the Supreme Court as P15, it was his duty to separately plead that he had given an undertaking to hand over the possession of the land. Failure to do so and merely tendering three journal entries among other documents contained in P15 cannot be considered as disclosure, especially when the Petitioner contends that the possession of the land has not been taken. He was duty bound to inform this Court, and should have specifically pleaded in his Petition, that he had received notices to hand over possession of the land but he has failed to do so. He should have pleaded in his Petition that on several occasions he had given an undertaking before the Supreme Court that he would hand over possession of the land. The failure to do so, amounts to a serious suppression of material facts. The said non-disclosure of receiving notices and the non-disclosure of his undertakings before the Supreme Court demonstrates that the Petitioner has invoked the jurisdiction of this Court without clean hands. Hence, the Respondents’ objection based on *uberrima fides* succeeds.

In **Alphonso Appuhamy v. Hettiarachchi (1973) 22 NLR 77**, the Court held that

*“when an application for a prerogative writ, or an 405 injunction is made, it is the duty of the petitioner to place before court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts and the petitioner must act with *uberrima fides*. Pathirana J. observed that had the petitioner made a full disclosure of all material facts and appraised the courts, the courts may not have issued notice in the first instance.”*

Further, in the case of **Namunukula Plantations Limited v. Minister of Lands and others (2012) 1 SLR 376** it was *inter alia* held that

“It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose

all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”

The Petitioner also contended that, as possession had not been taken over, the land should be divested to him. The Petitioner contended that he had sent several letters to this effect to divest the said land. However, the Petitioner failed to disclose that he had received a letter marked as RX6 from the Respondents whereby the request to divest had been denied on the basis that the land is needed for the widening of the Doowawatta road. Although the Petitioner has sought a Writ of Mandamus to compel the Respondents to divest the said land, I do not intend to dwell on the said prayer as the Petitioner by his conduct has disentitled himself from obtaining any relief based on prerogative Writs of this Court.

It is also pertinent to note that this Court in ***Sembakutti Mala Damayanthi Gunaratne v. WAC Perera and others CA Writ 285/2022, CA Minutes 31.20.2026*** has followed the judgment of ***Jinapala Senarath Yapa v. Dayananda and others CA Writ 345/2016, CA Minutes 23.01.2020*** and has held that a Writ of Mandamus will not lie against the Minister pertaining to divesting of land under section 39(a) Land Acquisition Act as the Minister's decision thereon is a discretion available to him. Hence, this Court is not inclined to grant a Writ of Mandamus directing the 2nd Respondent on the exercise of his discretion.

The Petitioner has also sought a Writ of Prohibition to prevent the Respondents from taking steps pursuant to section 42(2) of the Land Acquisition Act. In essence, the Petitioner is attempting to prevent the State from taking possession of the property that has been acquired pursuant to the Gazette Notification marked as P9, whereby the State has acquired the land under the proviso (a) to section 38. Strangely, the Petitioner is not seeking to quash the said Gazette of acquisition. Without quashing the Gazette of acquisition, the land vests with the State.

In this instance, as described above, the Petitioner has been informed on numerous occasions to hand over possession of land acquired by the State. As discussed above, it appears that the Petitioner has deliberately attempted by various methods to avoid handing the land over. Once a land is acquired, the Land Acquisition Act itself provides

for the authorities to take over possession of the land, namely, by acting in accordance with section 42(2). The Petitioner in this instance, is attempting the State from exercising its legally authorised powers under the Act and taking possession of a land that has been acquired.

Furthermore, he is attempting to obtain a Prohibition without seeking a Writ of Certiorari to quash the acquisition. It is observed that generally, a Writ of Prohibition lies to prevent a public body or authority exercising public functions from engaging in an illegal act or acting *ultra vires* the powers it possesses. In this instance, the act of the authorities attempting to invoke section 42(2) of the Land Acquisition Act to obtain possession of an acquired land, does not fall within the above stated acts of illegality or *ultra vires*. In my view, it is within their powers to obtain possession of land acquired by the State by utilising the provisions providing for the same in the Act itself. I am surprised that the authorities up to now have failed to exercise the said powers to obtain possession of the said land. Hence, the Petitioner's application in seeking for a Writ of Prohibition has to fail and, in any event, as I have elaborated above in this judgement, the conduct of the Petitioner lacking *uberrima fides* disentitles him from obtaining any relief in the exercise of prerogative Writs of this Court.

Conclusion

I have considered the material tendered to this Court and the submissions of the learned Counsel. For the above-stated reasons, I am not inclined to issue formal notice on the Respondents. Accordingly, I proceed to dismiss this Writ application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree.

Judge of the Court of Appeal