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 Prohibition.

Court of Appeal Case No:
CA/WRIT/891/2025

1. Welipitiye Mudiyanselage Seetha Kumarihamy
   No 244/A,
   Galaluwa, Hureekaduwa South,
   Menikhinna.

   Presently at
   No 61,
   Almavale Street, Carindale 4152,
   QLD, Australia.

   Appearing by Power of Attorney Holder
   Dananja Sampath Doolwala
   Liyangahapaala Waththa
   Rangala, Kandy.

2. Weebadde Weerakoon Mudiyanselage Shermila Kumarai Palamacumbura
   No 244/C,
   Galaluwa, Hureekaduwa South,
   Menikhinna.

3. Weebadde Weerakoon Mudiyanselage Nirusha Kumarai Palamacumbura
   No 244/A,
   Galaluwa, Hureekaduwa South,
   Menikhinna.

4. Weebadde Weerakoon Mudiyanselage
   Shanika Kumarai Palamacumbura

   Presently at
   No 61,
   Almavale Street, Carindale 4152,
   QLD, Australia.

   Appearing by Power of Attorney
   Holder
   Dananja Sampath Doolwala
   Liyangahapaala Waththa
   Rangala, Kandy.

PETITIONERS

Vs.

1. Mr. Nuwan C Hemakumara
   Divisional Secretary - Madadumbara
   Divisional Secretariat
   Madadumbara, Teldeniya.

2. Mr. W.W.M.P.S.C Palamakumbura
   Conservator General of Forests
   No 82, Rajamalwatta Road,
   Battaramulla.

3. Mr. D.B.M Bandara
   District Forest Officer
   District Range Forest Office
   Kandy.

4. Range Forest Officer
   Knucles Project Office
   Dinston, Hunnasgiriya

5. Mr. K. D Lal Kantha
   Minister
   Ministry of Agriculture, Livestock,
   Land and Irrigation

6. Mr. D.P Wickremasinghe
   Secretary
   Ministry of Agriculture, Livestock,
   Land and Irrigation

   Both at
   Ministry of Agriculture, Livestock,
   Land and Irrigation
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6,
   Rajamalwatta Road, Battaramulla.

7. Mr. W.T.M.S.B Tennakoon
   Surveyor General
   Sri Lanka Survey Department
   No 150, Bernad Soysa Road,
   Narahenpita, Colombo 05.

8. Land Reform Commission
   No 82 C, Gregory's Road,
   Colombo 07.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Sapumal Bandara with Vishmi Abeywardhana and Nisali Pieris instructed by Thavisha Hettiarachchi for the Petitioners.
Rajika Aluwihare, S.C. for the 1st to 7th Respondents.

Supported on: 09.03.2026.

Order delivered on: 30.04.2026.

Mayadunne Corea J

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

> *"d. Grant and issue a mandate in the nature of Writ of Certiorari, quashing the Notice issued under Section 2(1) of the Land Acquisition Act No 9 of 1950 (as amended) by the predecessor in office of the 1st Respondent on or about 16.10.1997, at P-4(b), so far as it is relevant to the extent of land owned by the Petitioners.*
>
> *e. Grant and issue a mandate in the nature of Writ of Certiorari, quashing the Notice issued under Section 4 of the Land Acquisition Act No 9 of 1950 (as amended) by the predecessor in office of the 1st Respondent on or about 12.02.2023 at P-5(b) and P-5(c), so far as it is relevant to the extent of land owned by the Petitioners.*
>
> *f. Grant and issue a mandate in the nature of Writ of Certiorari, quashing the Gazette issued under Section 5 of the Land Acquisition Act No 9 of 1950 (as amended) by the predecessor in office of the 5th Respondent on or about 18.05.2004 at P-6(b), so far as it is relevant to the extent of land owned by the Petitioners.*
>
> *g. Grant and issue a mandate in the nature of Writ of Certiorari, quashing the Survey Plan bearing number 5708 comprised on behalf of the office of the 7th Respondent, at P-7(a).*
>
> *h. Grant and issue a mandate in the nature of Writ of Certiorari, quashing the Gazette issued under Section 7 of the Land Acquisition Act No 9 of 1950 (as amended) by the predecessor in office of the 1st Respondent on or about 17.05.2006 at P-8(a) and P-8(b).*
>
> *i. Grant And issue a mandate in the nature of Writ of Certiorari, quashing the Notice issued under section 10(1) of the Land Acquisition Act No 9 of 1950 (as amended) by the 1st Respondent on or about 19.07.2024, at P-14(b)."*

The facts of the case briefly are as follows. The Petitioners allege that the land depicted in the schedule to the Petition in the extent of 25 acres, 0 roods, 11 perches belongs to one Senaratne Banda Palamacumbura, who is the 1st Petitioner's husband and the 2nd to 4th Petitioners' father. It is further alleged that the said land had been an ancestral land of theirs and had been subjected to the Land Reform Law, No. 1 of 1972 (herein referred to as 'LRC Law') after which the title had devolved on the 1st Petitioner's husband and the father of

the 2nd to 4th Petitioners. The corpus is situated in close proximity to the Knuckles Mountain Range, and the Petitioners are carrying on a business on the said land by operating a holiday bungalow in the name of "Silent Bungalow Inn", which is located thereon. It is the contention of the Petitioners that the Respondents have arbitrarily and unreasonably taken an illegal decision to acquire the corpus described in the schedule named "Leenagahapela Estate" on the basis that the said land falls within the Knuckles Forest Conservation Zone. The Petitioners further state that no proper survey has been conducted nor has any lawful declaration been made declaring the said land to be within the Knuckles Forest Conservation Zone. Hence, this Writ application.

The Petitioners' contention

- The Petitioners contend that, in the absence of a Knuckles Forest Conservation Zone and in the absence of a proper survey being conducted, publication of section 2 notice for acquisition of the Petitioners' land is bad in law.
- Prior to initiating the acquisition process, the suitability of acquiring the Petitioners' land had not been considered, particularly since the adjoining lands have not been acquired.

The Respondents' contention

- The Respondents contended that the Petitioners' application has to be dismissed due to laches/delay on the part of the Petitioners.
- The Petitioners' land falls within the Knuckles Forest Conservation Zone.
- The 1st Petitioner's husband and the father of the other Petitioners had consented to the acquisition.
- The Petitioners are precluded from approbating and reprobating the consent given for acquisition.

Analysis

I will now consider the sequence of events leading to this Writ Application in order to obtain a better understanding of the matter. It is the contention of the Petitioners that the

corpus Leenagahapela Estate was originally owned by one Punchi Kumari Palamacumbura, the mother of Senaratne Banda. It is not disputed that the corpus is part of a larger land by the same name which had been declared under the Land Reform Law, and thereafter, the said Punchi Kumari Palamacumbura became the statutory lessee pursuant to section 3(2)(b) of the LRC Law. Accordingly, with the operation of the LRC Law, the entire corpus had vested with the 8th Respondent.

Thereafter, the Petitioner alleges there had been an inter-family transfer between the children of Punchi Kumari Palamacumbura, and Seneratne Banda Palamacumbura was allotted 25 acres, 0 roods, 11 perches – the corpus described in the schedule. However, this Court observes that the Petitioners have failed to tender the statutory determination pursuant to section 19(1)(b) of the LRC Law to substantiate the said contention. The Petitioners failed to provide an explanation as to why the said statutory determination was not tendered to this Court, if any existed. The Petitioners contend that the 8th Respondent had issued a declaration marked and tendered as P2 whereby the 8th Respondent has declared that Weebadde Weerakone Mudiyansalage Seneratne Banda Palamacumbura had been allocated 25 acres, 0 roods, and 11 perches. Hence, the Petitioners submit that they acquired title through the said deed of declaration. This Court observes that the said deed had been attested and the parties had placed their signatures on 15.08.2011.

Acquisition process of the land

It is common ground that in the year 16.10.1997, a notice of acquisition in respect of the Petitioners' land had been published pursuant to section 2 of the Land Acquisition Act, No. 9 of 1950 (P4(a), P4(b)). Thereafter, on 12.03.2003, notice under section 4 of the Land Acquisition Act was published (P5(a), P5(b), P5(c)). Thereafter, section 5 notice was published in the Gazette Extraordinary no. 1341/11 dated 18.05.2004 (P6(a), P6(b)). The corpus to be acquired is more fully depicted in the plan no. 5708 dated 26.12.2005 marked and tendered as P7(a). The attached tenement list is marked and tendered as P7(b), and under the column "Claimant's Name Address & Deed No." it is stated that W.W.M.S.B. Palamakumbura had claimed ownership of the land. On 19.05.2006, under Gazette Extraodinary no.1445/24 dated 19.05.2006, the section 7 notice had been published and also stated that a meeting to clarify titles and claims for compensation would be held on 26.07.2006. The Petitioners have marked and tendered the said notice as P8(a) and P8(b).

Subsequently, the date of the title clarification inquiry had been amended by Gazette Extraordinary No. 1583/8 dated 06.01.20229, marked and tendered as P9, notifying the revised date for the inquiry. It is the contention of the Respondents that Seneratne Banda (the 1st Petitioner's husband and the 2nd to 4th Petitioners' father), the claimant of the corpus, had come for the claim inquiry and had consented to the acquisition of the land. This is established by document marked as P10 dated 08.07.2005, whereby the said W.W.M.S.B. Palamakumbura has specifically stated that he had no objection to the acquisition and had further requested for compensation. By the said letter, the owner of the land had pleaded to expedite the acquisition and to pay the compensation. Let me now consider the Petitioners' contentions with the Respondents' objections.

The Petitioners impugn the section 2 notice

The Petitioners impugn the section 2 notice published in the year 1997 by the instant application filed in the year 2025. Even though the Petitioners submit that the publication of the section 2 notice is bad in law, especially in view of the fact that the suitability of the land has not been considered, I find that this objection has been raised long after the publication of the section 5 notice. The Petitioners' main argument is that the section 2 notice is bad in law on the basis that there was no demarcation of the Knuckles Forest Conservation Zone and that no proper survey was conducted.

In response, the learned Sate Counsel tendered two documents marked as A and B, by way of a motion dated 23.02.2026. The document marked A is a Gazette Extraordinary no. 1130/22 dated 05.05.2000. By the Gazette marked A, the Minister of Forestry and Environment declared, under the Forest Ordinance, that all government lands within the boundaries specified in the Schedules to the said Gazette shall constitute the Knuckles Conservation Zone. By the Google map marked as B, which demarcates the corpus in dispute and the Knuckles Forest Conservation Zone, it is clear that the said corpus and the bungalow fall within the Knuckles Forest Conservation Zone. Hence, the Petitioners' contention of challenging the section 2 notice has to fail. In any event, the parties are not at dispute that by the time this action was filed, notices under sections 2, 4, 5, 7 and 9 of the Land Acquisition Act had been published. Once notice under section 5 was published, the Petitioners cannot question the public purpose of the acquisition nor the suitability of the land for the said purpose. Section 2(1) of the Land Acquisition Act reads as follows:

> *"Where the Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a*

notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area."

By the publication of notice pursuant to section 2(1), the acquisition process commences and the publication demonstrates that the acquiring officer or the state is satisfied that there is a necessity to acquire, in this instance, the corpus for public purpose. With the publication of notice under section 4 of the Act, the parties are permitted to object to the intended acquisition. In this instance, no objections had been filed and the owner of the land at that time had not utilized this provision, nor has he objected to the acquisition of the land. Thereafter, under section 4(5), the Minister has made a decision to acquire the land on the basis that the said land is suitable for the public purpose contemplated. Following the publication of notice under section 5, a declaration was made. Section 5(2) of the Act reads as follows:

"(2) *A declaration made under subsection (1) in respect of any land or servitude shall be conclusive evidence that such land or servitude is needed for a public purpose*."

Accordingly, a notice published under section 5 shall constitute conclusive evidence of both the necessity of acquiring the land for the public purpose and its suitability. Thereby, the statute itself has removed the jurisdiction of the Court to consider the need for the public purpose and the suitability of the land pursuant to the publication of the section 5 notice. This issue was considered in ***D.H. Gunesekara and others v. Minister of Land and Agriculture and another*** **65 NLR 190** where it was held,

"*Counsel for the Petitioners concedes that a declaration under section 5(1) of the Act has been published by the Minister in the Gazette. The consequence of the publication of that declaration is that sub-section (2) of Section 5 operates to render the declaration conclusive evidence that the land was needed for a public purpose. The question whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and even if that question may have wrongly decided, sub-section (2) of section 5 renders the position one which cannot be questioned in the Courts."*

Hence, the Petitioners objections based on the public purpose for acquisition and the suitability of the land for the purpose cannot be sustained. I will now consider the objections raised by the Respondents.

Delay and laches

The Petitioners are seeking a Writ of Certiorari to quash the notice issued under section 2(1) of the Land Acquisition Act. Regarding the maintainability of this relief, and in light of the observations made concerning section 5, I note that the Petitioners have filed the instant application in 2025, seeking to quash a Gazette notice published in 1997. The Petitioners are also seeking to quash the section 4 notice published in 2003 and the section 5 notice published in 2004, through this application filed in 2025. It appears that the Petitioners have awoken from a long slumber and are attempting to quash the said decisions made nearly two decades ago. Their attempt to justify this delay is based on the assertion that they have only recently inherited the property following the death of the original owner, Seneratne Banda. This explanation is unacceptable. In my view, the objection pertaining to delay has to succeed. It is trite law that delay defeats the purpose of filing a Writ application.

In the case of ***Meegasdeniya Kankanamge Munidasa v. J. H. S. P. Jayamaha*** **CA Writ 86/2014 decided on 15.07.2020,** the Court held that:

> "*in any event the Petitioner has come to Court 6 years after the death of his mother. Here again the delay cannot be overlooked. In Bisa Menike v. Cyril De Alwis and Others [(1982) 1 Sri.L.R. 368 at 379] it was held that an application for a Writ of Certiorari should be filed within a reasonable time from the date of the order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However, the time lag that can be explained does not spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a Court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extra legal. One satisfactory way to explain the delay is for the Petitioner to show that he was seeking relief elsewhere in a manner provided by law. The Petitioner in this case has failed to establish any such ground*."

Let me now consider the next objection raised, i.e., whether the original owner of the land had consented to the acquisition. It is not disputed that the original owner had not made any representation or objection to the publication of notices under sections 2 and 4. The Petitioners have failed to submit any material pertaining to any objection subsequent to the publication of the notices under sections 2 and 4 and prior to the publication of the section 5 notice. Further, by P10, the original owner had given his consent for the acquisition, had

specifically stated that he had no objection to the acquisition and he had also requested the authorities to expedite the acquisition process. Hence, I am inclined to agree with the learned State Counsel's position that the original owner had consented to the acquisition. This takes me to the next objection of the State Counsel that a party cannot approbate and reprobate at the same time.

The Petitioners' predecessor in title had consented to the acquisition and later objected

As stated above, after writing the letter marked and tendered as P10 dated 08.07.2005, whereby the Petitioners' predecessor, Seneratne Banda, had stated that he had no objection for the acquisition. However, after participating at the inquiry held under section 9 of the Land Acquisition Act, it was contended that the Petitioners' predecessor in title, by letter dated 19.10.2010, marked and tendered as P11, had objected to the acquisition of the said land. I have examined the document P11.

I find that the said letter is incomplete, representing only a portion of the original correspondence. The letter bears no signature of its author and lacks a proper conclusion. It is also pertinent to observe that by the said letter, in my view, the author of the said letter did not object to the acquisition. Rather, he requested that an inquiry be held and sought permission to continue possessing the said land. In the absence of a signature, this Court is not inclined to accept the said purported letter. In any event, as I have observed, the said letter contains no paragraph other than a request for permission to continue possessing the land, and does not object to the acquisition. It appears that the predecessor in title had sought an alternative land as stated in one of the paragraphs of the said letter. However, the learned State Counsel submits that after the Petitioners' predecessor in title had clearly consented to the acquisition, by objection to the acquisition at this stage the alleged Petitioners are approbating and reprobating at the same time. In view of the material submitted and in view of the submissions made, I am inclined to agree with the said contention. It is trite law that a party cannot approbate and reprobate simultaneously and such conduct ought not to be permitted.

In the case of ***Ceylon Plywoods Corporation v. Samastha Lanka G.N.S.M. & Rajya Sanstha Sevaka Sangamaya*** **(1992) 1 SLR 157** the Court held that,

"The doctrine of approbate and reprobate (quod approbo non reprobo) is based on the principle that no person can accept and reject the same instrument."

Further, in the case of ***Ranasinghe v. Premadharma*** **(1985) 1 SLR 63**, Sharvananda, C.J. provided:

"In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm. Hence a defendant who denies tenancy cannot consistently claim the benefit of the tenancy which the Rent Act provides."

This Court also observes that the Petitioners attempted to establish their title based on the document marked as P2. However, the Petitioners have failed to submit the statutory determination under section 19(1)(b) of the LRC Law. In any event, I observe that the document marked as P2 was executed on 15.08.2011, long after the publication of notices under sections 2,4 and 7, and even after the claim inquiry under section 9 had been concluded. Further, in view of section 4(a) of the Land Acquisition Act, I observe that the declaration made under P2 has no force in law. It was also submitted that pursuant to the section 9 inquiry, compensation has been awarded and the said compensation has been deposited in the District Court under section 10(1)(a) of the Land Acquisition Act. Hence, it is also observed that, although the Petitioners submitted that the land claimed by the Petitioners does not fall within the Knuckles Forest Conservation Zone, the Petitioners have failed to establish this through independent evidence. The Petitioners have also failed to impugn the documents marked A or B. Furthermore, the Petitioners failed to establish the contention that the corpus depicted in the schedule falls outside the demarcation of the Knuckles Forest Conservation Zone. It is trite law that the burden of proof in a Writ application lies with the Petitioners.

In the case of ***Saranguhewage Garvin De Silva v. Lankapura Pradeshiya Sabha and others*** **SC Appeal 10/2009 decided on 15.12.2014, at page 5**, it was provided that,

"The burden of proof in any application for prerogative writ including mandamus is on the person who seeks such relief, to prove the facts on which he relies"

In ***Handapangoda Mudalige Mahendra Gunasekara, and another v. Ms. W.A.S. Chandrasekara, Commissioner General of Inland Revenue and 5 others*** **CA/WRIT/313/24 decided on 29/08/2024,** the Court held as follows:

> *"Further, it is observed that though the Petitioners contend that they were not the directors as per the evidence submitted through their own pleadings, it is clear that this business entity had been in operation since 2006. It is also clear that the entity had been submitting its returns to the IRD which means it had been operating. Then there should have been a workforce under the entity and their salaries and statutory dues would have been paid. The profits of the entity would have been collected and some person would have been responsible for the losses if any. None of these facts were addressed by the Petitioners though* ***the burden of proof in a writ application lies with the Petitioners*** (emphasis added)*."*

In this instance, the Petitioners have failed to establish their contention that the corpus falls outside of the Knuckles Forest Conservation Zone.

Conclusion

I have considered the submissions made and the documents tendered to this Court by the Petitioners and the 1st to 4th Respondents. I observe that the documents tendered by the 1st to 4th Respondents have not been challenged by the Petitioners. Considering all the material tendered, in my view, the Petitioners have failed to establish a *prima facie* case enabling them to obtain formal notices. Accordingly, for the above-stated reasons, I refuse to grant formal notice and proceed to dismiss this Writ application.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal