

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 of the Democratic Socialist Republic of Sri Lanka for a mandate in the nature of writ of Certiorari, Mandamus and Prohibition.

1. Mohamed Rifki Noordeen,
No,4, Bagatale Road,
Colombo 3.
 2. Mohamed Hamza Hilali Idroos Noordeen,
No.42,Addison Road,
London WIG6AL
United Kingdom And /or
No.4A, Bagatalle Road,
Colombo 3.
- Appearing by his Power of Attorney holder
Mahmood Rizvan Sahabdeen,
No.30/12, Bagatalle Road,
Colombo 3

Petitioners

C.A. Writ Application No: C.A. 608/08

Vs

1. Mrs.Fathima Kyria Carder
No 70/1 Davidson Road, Colombo 4.
2. Jeewan Kumaranatunga
Minister of Lands,

Ministry of Lands,
 "Govijana Mandiraya"
 80/5, Rajamalwatta Road,
 Battaramulla.
 And four(04) others.

Respondents

BEFORE : S. SRISKANDARAJAH, J
COUNSEL : M.R.de Silva PC with Vishva Gunaratne,
 for the Petitioner.
 A.Rajapakse
 for the 1st Respondent
 A.Gnanathan PC ASG with Deepthi
 Thilakawardene SC
 for the Respondents
Argued on : 05.05.2011
Decided on : 15.05.2012

S.Sriskandarajah.J.

The 2nd Respondent in order to commence acquisition proceedings to acquire a land bearing Assessment No 99,Sri Rathnajothy Mawatha, published a Section 2 notice on the 07th of March 1980 under the provisions of the land Acquisition Act. The land described in the said notice is in extent of 40 perches. The 2nd Respondent submitted that the Minister of Lands ,upon being satisfied the need to take urgent possession of the said land made order under the proviso to Section 38 of the Land Acquisition Act and published the same on 9th of June 1980 in the Gazette Extraordinary No 92/2. In the said order the extent of the land described as 37 perches based on the Plan No.Co/30. A notice under Section 5 of the land Acquisition Act was published on the 5th of September 1980 declaring that the said land is needed

for a public purpose. The extent of the said land was described in the said declaration as 37 perches based on the said plan No.Co/30.

A Section 7 notice under the Land Acquisition Act was published in the Government Gazette bearing No. 159/16 dated 25th September 1981 requesting all interested claimants to be present and to notify the nature of their interest. The said Section 7 notice described the said land with reference to a plain bearing No.5535 dated 01/03/1981. The total extent of the land referred to in the said Section 7 notice is 39.46 Perches.

The Petitioner's contention is that the notices published under Section 5 and Section 7 in the said acquisition proceedings are incorrect. The Petitioner's allegation is based on the extent of the land described in the said notices they differ from 37 perches to 39.46 perches. The boundaries described in the section 5 notice differ from the Section 7 notice. In these circumstances the Petitioners contended that the said notices have to be cancelled and republished to have identical descriptions in both notices. For this purpose the Petitioners have sought a writ of certiorari to quash the said notices under Section 5 and Section 7 and a writ of mandamus to publish notices under the said section after rectifying the error. The Petitioners have also sought a writ of prohibition to prohibit the acquisition process under Section 9 of the Land Acquisition Act.

It is pertinent to note that the Petitioners have not complained against the Section 2 notice or the order made under the proviso to Section 38 of the Land Acquisition Act. It shows that the Petitioners are not challenging the public purpose for which the land was acquired and the urgency to acquire the land for the said public purpose. Section 2 notice is published to ascertain the suitability of the land for the said public purpose. Section 2 notice is in

relation to an extent of 40 perches. But the order under Section 38 proviso (a) is for an extent of 37 perches.

Section 40 of the Land Acquisition Act provides that when an Order of the Minister under section 38 is published in the Gazette, then that land shall, by virtue of that Order, vest absolutely in the State free from all encumbrances with effect from the date on which that Order is so published. In view of these provisions the said land is vested absolutely in the State. The remaining issue is in relation to the payment of compensation. When the land that is vested in the State is identified by the order under Section 38 of the Land Acquisition Act the owners or who has a claim to the said land could make a claim when Section 9 inquiry is held. At this inquiry if there is a disputed claim between the claimants and State the inquiring officer could refer the matter to the District Court to resolve the issue.

The 5th Respondent contended that the land was acquired for the purpose of the 5th Respondent the National Housing Development Authority. As described in Section 7 notice an extent of 39.44 perches has been handed over to the National Housing Development Authority by vesting certificate bearing No.Ath/1/367 dated 9th September 1987 but when this land was resurveyed in 1999 the land handed over to the National Housing Development Authority and it is in possession of the land only in extent of 36.89 perches. In view of this fact quashing of Section 5 and Section 7 notices and Republishing of the same with the correct extent will not serve any purpose and the error in the extent mentioned in Section 7 notice will not cause prejudice to the Petitioners as the land vested in the State is correctly identified by the Section 38 proviso (a) order. In view of the above reasons I dismiss this application without costs.

President of the Court of Appeal