

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

In the matter of an application for mandates  
in the nature of a Writ of Certiorari and a  
Writ of Mandamus.

1. Babarenda Guruge Wimalaseeli,  
Colombo Hotel,  
Ambalantota.
2. Babarenda Guruge  
Kusumaseeli,  
Opposite post office,  
Netolpitiya.
3. Babarenda Guruge Sunetra,  
(Deceased)  
No.15, Dharmapala Mawatha,  
Ambalantota.

3A. Babarenda Guruge Wimalaseeli,  
(substituted)  
Colombo Hotel,  
Ambalantota.

**Petitioners**

C.A. Application No.962/2007

Vs.

1. Hon. Jeewan Coomaranatunga,  
Minister of Lands,  
Ministry of Lands,  
Battaramulla.
2. Divisional Secretary and  
Acquiring Officer,  
Divisional Secretariat,  
Hambantota.

3. Chief Secretary,  
Southern Provincial Council,  
Galle.

4. Divisional Secretary and  
Acquiring Officer,  
Divisional Secretariat,  
Ambalantota.

**Respondents**

**BEFORE** : **S. SRISKANDARAJAH, J (P/CA)**

**COUNSEL** : Viran Fernando,  
  
for the Petitioner  
  
Vicum de Abrew  
  
For the Respondents

**Argued on** : 25.03.2011

**Decided on** : 28.05.2012

**S.Sriskandarajah.J**

The Petitioner in this Application is seeking a Writ of Certiorari to quash the order made under Proviso (a) to Section 38 of the Land Acquisition Act by the Minister of Lands to acquire a land depicted as Lot C(b) in Plan No.787 dated 1/06/1973 prepared by J. Dharmapala, Licensed Surveyor. The Petitioner became the owner of the said land by virtue of a final partition decree entered in Case No. P/66 of the District Court of Hambantota holden at Tangalle.

The Petitioner submitted that he received a letter dated 18<sup>th</sup> May 1982 from the District Development Council, Hambantota, informing him that it had been proposed to acquire several lands, including the Petitioner's land for the purpose of constructing a Town Hall. The Petitioner, by its letter dated 30/12/1086 forwarded his objections in

terms of Section 4 of the Land Acquisition Act for the said proposal for the acquisition of the land. The Petitioner also attended an inquiry held by the Assistant Commissioner of Local Government, Hambantota in February 1987. Petitioner was thereafter informed by the Assistant Government Agent of Hambantota, by his letter dated 26<sup>th</sup> May 1987, that an order under Proviso (a) to Section 38 of the Land Acquisition Act was made by the Minister of Lands and it was published in Gazette Extraordinary No.447/5 dated 31<sup>st</sup> of March 1987, the said letter requested the Petitioner to be present at the said land to hand over possession of the said land to the Acquiring Officer.

The Petitioner submitted that he made several appeals to various authorities, including His Excellency the President, objecting to the said order of acquisition. On the 4<sup>th</sup> of June 1998, a notice under Section 7 of the Land Acquisition Act was published in Gazette Extraordinary bearing No.1030/22, calling upon parties interested, to prepare their claim for compensation.

The Petitioner's claim is that no development has taken place in the said land for the last 18 years and, therefore, there is no justification in publishing a notice for urgent acquisition of the said land under proviso (a) to Section 38 of the Land Acquisition Act. The Petitioner also contended that as no compensation has been paid, and the said land has not been utilised for the proposed public purpose, and, as there is no improvement made to the said land, that the said land could be divested to the Petitioner under Section 38A(1) of the Land Acquisition Act. Therefore, the Petitioner has prayed, in the alternative, for a Writ of Mandamus to divest the said land to the Petitioner.

The 1<sup>st</sup> Respondent Minister has submitted that on a request made by the Minister of Local Government, Housing and Construction by letter dated 19<sup>th</sup> November 1986, intimating the need for a land for the purpose of constructing a Town Hall, after giving careful consideration to the said request, he was of the opinion that the said land was suitable for the said public purpose, and directed the relevant Acquiring Officers in the Hambantota District to cause a notice in accordance with Section 4 of the land Acquisition Act, as amended. Consequently, a notice dated 16<sup>th</sup> December 1986, under Section 4 of the Land Acquisition Act was exhibited. In the meantime a request was made to the Minister of Lands by the Minister of Local Government, Housing and Construction, by letter dated 13<sup>th</sup> March 1987, that the need to acquire the land was urgent and to take immediate possession of the said land, the Minister in charge of the subject of lands, upon being satisfied of the need to take

immediate possession of the said land for the said public purpose on the ground of urgency, made an order in terms of Proviso A of Section 38 of the Land Acquisition Act. Thereafter a declaration under Section 5 of the Land Acquisition Act had been published on the 7<sup>th</sup> of August 1987 in the gazette bearing No.465/15.

The Petitioner has not challenged the public purpose for which the said land was acquired. The Petitioner's complaint is that the said land was acquired under proviso (a) of Section 38 on the ground of urgency and that no steps have been taken for the last 18 years and, therefore, there is no justification in acquiring the said land under Proviso A to Section 38 of the Land Acquisition Act. The said land was, in fact, acquired on the request of the Minister of Local Government, Housing and Construction. The said Ministry has, in fact, drawn up the necessary plans for the building of a Town Hall, but as the said land that was taken over by the said Ministry on 2<sup>nd</sup> of June 1987 was a marshy land, it has become necessary for the said Ministry to fill the said land for the construction of the Town Hall, and according to the Ministry of Local Government, Housing and Construction, this process of filling and developing the land proceeded stage by stage and had taken quite a considerable time, but this process got delayed as a result of the insurrection that took place between the period of 1987 to 1989. The development of the said land took place after 1991. In the meantime, the said land was occupied by unlawful occupants and it has become necessary for the Pradeshiya Sabhawa to evict the unlawful occupants. The Ministry of Local Government, Housing and Construction has submitted that the said Ministry has incurred an expense of Rs.572,716/- in filling the said land, and that at present, the said land is now filled and an estimate is now prepared to construct the Town Hall, and the sum estimated is Rs.3,761,856/-, steps have been taken to make available the necessary allocation for the said project. The delay in constructing the building was due to the fact that there were unlawful occupants in the said land and steps had to be taken to evict them and also there were insurrections in the country and due to that the development process got delayed for more than 3 years.

Considering the above submissions of the Ministry of Local Government, Housing and Construction, one cannot say that the delay in commencing the construction of the Town Hall building is not due to the fault on the part of the Ministry of Local Government, but due to unforeseen circumstances and, therefore, the submission that the acquisition of the said land under proviso (a) of Section 38 is not justifiable is untenable. As the said land was developed by filling the said land, the Petitioner cannot seek a divesting order under Section 39A(1) of the Land Acquisition

Act. In these circumstances this Court dismisses this application of the Petitioner without cost.

President, Court of Appeal