

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

In the matter of an application for orders in the nature of writs of certiorari and mandamus under Article 140 of the Constitution.

1. Atukorala Arachchige Hema
Mangalika,
Atusevana, Ihalagoda,
Akmeemana.
2. Thiranagama Dayaratne,
No.11, Udugampara,
Makuluwa, Galle.
3. Sushila Malani Dahanayake,
'Senasuma' Uluwitake, Galle.
4. B. Chandrasiri,
Manawila watte, Manawila,
Walahanduwa.
5. Meepe Gamage Jayaratne,
"Chaturanga", Ihalagoda,
Akmeemana.
6. Meepe Gamage Sarath
Wickremeratne, Post Office
Thalgampola.

Petitioners

CA Application No.1488/2006 (writ)

Vs.

1. The Road Development Authority,
"Sethsiripaya", Battaramulla.

2. Mr. Sirisena Amarasekera,
Secretary,
Ministry of Transport and Highways
Sethsiripaya, Battaramulla.

- 2a Admiral Wasantha Karannagoda,
Secretary, Ministry of Transport
And Highways, Sethsiripaya,
Battaramulla.

- 3 PHK. Dayaratne, Secretary
Compensation Appeal
Committee,
Southern Transport Development
Project, Ministry of Highways,
Sethsiripaya, Battaramulla.

- 3a. R M Somarathne,
Land use Plan Supervision,
Sethsiripaya, Battaramulla.

- 4 H.R. de Silva,
Valuer, No.748, 'Valuation
House,
Maradana Road, Colombo.

- 4a P.W. Senaratne,
Valuer, No.748, 'Valuation
House,
Maradana Road, Colombo.

- 5 Mr. D. Somaratne
Co-ordinator of the Southern
Transport Deveopment Project
(STDP) Office, Galle.

- 5a. R.M. Somarathne,
Land use Plan Supervision,
Sethsiripaya, Battaramulla.
6. Mr. W.A.D. Wijesuriya,
Resettlement Officer, Southern
Transport Development Project
(STDP) Office, Galle.
- 6.a Ms. K.G. Kalyani, Resettlement
Officer,
Southern Transport Development
Project (STDP) Office
Galle.
7. Mr. E. Dayasena,
Valuation Officer, Valuation
Office of the Southern Province,
Matara.
8. Mrs. G.A.L.L. Wijewickrema,
Former Divisional Secretary, the
Office of the Divisional
Secretary,
Akmeemana.
- 8.a Ms. Damayanthi Paranagama,
Present Divisional Secretary
The Office of the Divisional
Secretary,
Akmeemana.
9. Ms. D.B. Hettiarachchi,
Surveyor, Provincial Survey
Department, Galle.
10. The Divisional Secretary,

Akmeemana.

11. The Project Director of the Southern Transport Development Project, Ministry of Transport and Highways, Sethsiripaya, Battaramulla.
12. Minister of Transport and Highways, Sethsiripaya, Battaramulla.

Respondents

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

COUNSEL : Dr. Almeida Gunawardena PC with Lasitha Chaminda,
for the Petitioners,
Janak de Silva SSC
for the Respondents.

Argued on : 28.01..2011

Written Submissions on : 26.04.2011 (Petitioners), 23.05.2011 (Respondents)

Decided on : 09.07.2012

S.Sriskandarajah.J,

The Petitioners were formerly land owners, which land was situated on the trace of the Southern Expressway. The Petitioners submitted that they were opposed to the said Express Highway and the acquisition of their land and, therefore, they sought

recourse to the Court of Appeal for redress and, when the Court of Appeal dismissed their application, they appealed to the Supreme Court. The Supreme Court, in the said application, held that the compensation should be paid to the Petitioners subject to 4 binding conditions

The Petitioners referred to paragraph (C)iii of the written submissions filed in the Supreme Court, wherein it is specifically stated that: "The aforesaid compensation would be increased by 25% if the occupier vacates the land on the due date on which possession is required for the construction of the Southern Expressway." The Petitioners in this application have sought a Writ of Certiorari to quash the decision/denial of the 1st Respondent and/or the 2nd to the 5th Respondents and/or the 6th to the 10th Respondents and/or the 11th and 12th Respondents to withhold the 25% of the award of the sum of compensation as computed on the value of the houses on their lands which were legitimately due to them upon leaving their properties on the date notified to them by the Respondents. The Petitioners also have sought a Writ of Mandamus directing the 1st to the 12th Respondents that the said legitimate entitlement of 25% be paid to the Petitioners.

The Petitioners admitted that the statutory compensation and the compensation for the violation of the Petitioners' property rights awarded by the Supreme Court (vide P2) have been paid by the Respondent Authorities. The Petitioners' only complaint is that the 25% of the statutory compensation for vacating the land and premises in question, which the 1st Respondent undertook to pay the Petitioners, as contained in their written submission filed in the Supreme Court, which was incorporated in the Supreme Court judgment, was not fulfilled. The Petitioners submitted that even though the Petitioners cannot claim an express statutory right to the said 25% compensation, they have a legitimate expectation to the said amount of compensation. The Petitioners sought in support of their contention, the judgment in *Multi National Property Development Limited Vs. U.D.A. (1996) 2 SLR 51*, where it was held in the Public

Law Field, individuals may not have strictly enforceable rights, but they have legitimate expectations. The decision affecting such legitimate expectations are subject to judicial review. The Petitioners contended that no reason is disclosed for the failure or refusal to pay the said compensation.

It could be seen that the Petitioners have got their compensation as provided under the Land Acquisition Act and, in addition, a compensation in a sum of Rs.75,000/- was paid to the Petitioners, but the complaint of the Petitioners is that the 25% of the awarded sum of compensation, as computed on the value of the houses on their land, was not paid to them. The said compensation was promised to the owners of the land in order to get possession of the land within a specific time in order to execute the development project. In other words, the Petitioners would have been eligible to have received 25% ex gratia payment if they had complied with the newspaper notice marked P2E annexed to the petition. It is the contention of the Respondents that the Petitioners have not complied with the said newspaper notice as the Petitioners have objected to the Surveyors to survey the land and, as the Petitioners have not vacated or handed over the possession of the land acquired within the stipulated time period, it was decided that the Petitioners were not entitled to ex gratia payment of 25%.

The Petitioners' claim for the additional payment of 25% compensation is based on the promise made by the 1st Respondent, but the said promise was given on a condition that only if the occupier vacates the land on the due date on which possession is required for the construction of the Southern Expressway. As the Petitioners have not vacated the land and handed over the possession of the said land on the required date, the Petitioners cannot claim that they have a legitimate expectation to get the said additional compensation.

A legitimate expectation will arise only when they fulfill the conditions subject to which the promise was made. When the Petitioners have failed to fulfill the conditions, then in those circumstances the Petitioners cannot claim that they have entertained a legitimate expectation to the said additional compensation. The Respondents have categorically stated in their objections and written submissions that the Petitioners did not allow the Surveyors to survey the land. The Surveyors, Project staff and Divisional Secretariat staff were obstructed, threatened and chased out, and the land was finally surveyed in January/February 2005. This shows that the Petitioners have not handed over their lands within the required time. As the Petitioners have not vacated the land on due date on which possession was required for the construction of the Southern Expressway, the Petitioners' claim for the additional compensation of 25% is not justifiable. In those circumstances the Petitioners cannot entertain a legitimate expectation - *The Attorney-General of Hongkong Vs. Ng Yuen Shiu (1983) 2 AC 629*.

For the above reasons the Petitioners are not entitled for a Writ of Certiorari or for a Writ of Mandamus. Therefore, I dismiss this application without cost.

President of the Court of Appeal