

**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 writs of Certiorari and
Mandamus under Article 140 of the
Constitution.

Court of Appeal
Writ Application No: **315/2010**

V.Mahendran
"SAI ILLAM"
5/1 Hathbodhiya Road,
Off Sri Saranankara Road,
Kalubowila,
Dehiwela.

Petitioner

1. Hon :Janaka Bandara Tennakoon
Minister of Lands and Development
"Govijana Manthiriya"
Rajamalwatte Road,
Battaramulla.
2. Divisional secretary
"Govijana Manthiriya"
Rajamalwatte Road,
Battaramulla.
3. Hon Mahinda Yapa Abeyawardene
Minister of Agriculture
"Govijana Manthiriya"
Rajamalwatte Road,
Battaramulla.
4. Mrs S. Theivendiram
Divisional Secretary
Divisional Secretariat office.
Nallur.

5. The Secretary, Ministry of Education
"Isurupaya",
Battaramulla.
6. H.D.C Janaki, Assistant Secretary
(Administration),
Ministry of Education,
Isurupaya,
Battaramulla.
7. The Principal,
Jaffna Hindu College
Vannarponnai,
Jaffna.
8. The President Past Pupils Association of
Jaffna Hindu College
Vannarponnai,
Jaffna.
9. Hon. The Attorney General
Attorney General's Department
Hulftsdorp

Respondents

C.A. Writ Application No. 315/2010

Before : **S.Sriskandarajah, J (P,C/A) & Deepali Wijesundera, J.**

Counsel : S. Mandaleswaran with Tharani
Ganeshanathan for the Petitioner.
M.N.B. Fernando DSG for the 1st, 3rd,
5th, 6th and 9th Respondents.
V.Thevasenathipathy with P. Thabeethal
for the 8th Respondent.

Argued &
Decided on : 10th July,2012.

S.Sriskandarajah, J. (P,C/A)

The Petitioner in this application has sought a writ of certiorari to quash the declaration under section 5 of the Land Acquisition Act published in the Gazette Extraordinary No. 1641/51 dated 19.02.2010. The Petitioner has also sought a writ of certiorari to quash the recommendation made under section 4(5) of the Land Acquisition Act and has sought a writ of mandamus to hold an inquiry under section 4 of the Land Acquisition Act.

From the submissions and the documents submitted to this court it revealed that Section 2 notice was published and thereafter a Section 4 notice was published to acquire the land in

question. After the publication of Section 4 notice, objections were tendered by persons interested and thereafter dates were fixed for an inquiry. The Petitioner contended that the Petitioner attended inquiry on 14.02.2007 and 21.02.2007 and 07.03.2007. The Petitioner submitted that on these days the inquiry was postponed and the authorities had informed the Petitioner that a further date will be communicated to the Petitioner in relation to the inquiry. The Petitioner contended that the Petitioner was not informed of the date of inquiry but the Petitioner came to know that a Section 5 notice under the Land Acquisition Act was published in the year 2010. As the Petitioner was not given a fair hearing as provided under Section 4 of the Land Acquisition Act, the Petitioner is seeking a writ of mandamus to hold an inquiry according to law and to quash section 5 notice and the relevant recommendation for acquisition.

The learned DSG who is appearing for the Respondents submitted that the Inquiring Officer has forwarded his recommendation for acquisition by his letter dated 09.09.2008 and in the said recommendation the Inquiring Officer has specifically stated that *"an inquiry was made by me on 2008.09.08 the inquiry reports of the following are annexed;*

- i. *The inquiry report from the Principal J/ Jaffna Hindu College (No.9)*

- ii. *The inquiry report from the Secretary, School Development Society (No.10).*
- iii. *The inquiry report from the President, Old Boys Association of the School (No.11)".*

The Inquiring Officer has also forwarded the objection letters given by Mr. V. Mahendran, the petitioner and Mr. K.Nagarajah and the trustee of the Gnana Vairavar Temple for consideration.

Section 4 provides for calling for objections and thereafter to hold an inquiry. The document submitted for objections alone is not sufficient to make recommendation but the Inquiring Officer must hold an inquiry to make the recommendation under Section 4. It appears from the letter of the Inquiring Officer that steps taken to contact the owner of the land (the petitioner) was fruitless. But there is no document to support this fact. In these circumstances, this court is of the view that there is no proper inquiry held under Section 4 of the Land Acquisition Act. Therefore this court quashes the recommendation of the Inquiring Officer dated 09.09.2008 to acquire the said land and also quashes the Section 5 notice published in Gazette Extraordinary No. 1641/51 dated 19.02.2010 marked X15. The court issues a writ of mandamus directing the Secretary, Ministry of Education to hold an inquiry based on the objections received for the section 4 notice in relation to the said land

published on 14.06.2006. Application of the Petitioner for writ of certiorari and mandamus is allowed without costs.

PRESIDENT OF THE COURT OF APPEAL

Deepali Wijesundera, J.

I agree.

JUDGE OF THE COURT OF APPEAL

Mm/-