

**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 Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. M.K. Sunil Shantha
Managewatte, Baddegama
And two others.

CA No.180/08(Writ)

Vs.

Petitioners

1. P.S. Gunawardene,
Divisional Secretary, Baddegama.
2. Jeevan Kumaathunga,
Minister of Land and Land
Development,
Govijana Kendaraya,
Rajamalwatta Road, Battaramulla.
3. Amarasiri Dodangoda,
Minister of Justice and Law
Reforms,
Ministry of Justice and Law
Reforms,
Colombo 12.

RESPONDENTS

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

COUNSEL : **M.A.Sumantharan with Shantha Jayewardene**
for the Petitioner.

L.M.K.Arulanandam PC ASG
for the Respondents

Argued on : 14.02.2011
Decided on : 16.5.2012

S.Sriskandarajah, J.

The Petitioner in this application has sought a Writ of Certiorari to quash the order made under the proviso to Section 38(a) of the Land Acquisition Act, and has also sought a Writ of Prohibition prohibiting the Respondent from proceeding with and/or taking any further steps to acquire the Petitioner's land.

The Petitioner claims that he owns approximately 21 acres of an estate situated at Halpathota, Baddegama, in the district of Galle.

On the 1st of November 1996, the Divisional Secretary of Baddegama has published a Section 2 notice under the Land Acquisition Act specifying that the land is required for a public purpose. Thereafter Her Excellency the President by publishing an order under Section 17 of the Southern Development Act No.18 of 1996 in the Government Gazette of 5th November 1996 bearing No.948/08, approved the acquisition of the land, and has stated that the land is required for the purpose of the Southern Development Authority. Thereafter, in September 1999, the Minister of Agriculture and Land, under the proviso(a) to Section 38 of the Land Acquisition Act made an order published in the Government Gazette of 3rd of September 1999 bearing No.1814/46, ordered the Acquiring Officer to take over possession of the said land.

The said acquisition order was challenged on 22nd October 2001 in the Supreme Court by way of a Fundamental Rights application bearing No. SCFR 832/99. The said Fundamental Rights application No.832/99 was settled on the basis that the said order under proviso (a) to section 38 would be rescinded, and a fresh order under proviso (a) to Section 38 would be made in respect of the land, excluding the extent of 15 acres which would include the tea estate and the bungalow of the estate.

In February 2002, the Minister of Land caused an order in the Government Gazette of 26th of February 2002, bearing No.1212/11 under proviso (a) of Section 38 ordering the acquisition of an extent of 66.665 hectares of land. Thereafter, the then Minister of Land, acting under Section 39(1) of the Land Acquisition Act, made an order

divesting the land to the owners. The said divesting order was published in the Government Gazette of 12th December 2002 bearing No.1266/24.

The owners of the said land, between 2003 and 2004 transferred approximately 90 acres to 3rd parties, including the Petitioners. In 2003, the 1st Petitioner purchased undivided 4 acres of land above referred to, the 1st Petitioner, in addition to being the owner of the said portion of land managed the entire land for and on behalf of the owners viz., Kamal Udugampola and his family. The 2nd Petitioner, in November 2003, purchased 9 acres undivided land and in 2004 purchased 4 acres undivided land from the aforesaid land. The 3rd Petitioner purchased 8 acres of undivided land in November 2003, and in October 2004, purchased 4 acres of undivided land.

The Petitioners submitted that on 19th of March 2005, a group of approximately 200 to 300 persons entered the land forcibly. When they inquired, they came to know that these persons are displaced persons due to Tsunami occurred on 26th December 2004.

The Petitioners had made a complaint to the Baddegama Police regarding the criminal trespass.

The Petitioners submitted that on 23rd March 2005, a Section 2 notice under the Land Acquisition Act was published by the 1st Respondent specifying that the land is required for a public purpose. Thereafter the Minister of Land, by an order made under proviso (a) to section 38 of the Land Acquisition Act, published in government gazette No.1390/11 dated 27th April 2005, made an order to acquire the said land and take possession. The Petitioners submitted that the purported order under the proviso to Section 38 of the Land Acquisition Act, as well as the notice under section 2 are ultra vires the provisions of the Land Acquisition Act as it was set in motion at the instance of the 3rd Respondent, the Minister of Justice and Law Reforms for gaining political advantage. Further, the Minister of Land has not made an independent decision on the necessity of the land for a public purpose.

For the aforesaid reasons, the Petitioners state that they are entitled for a Writ of Certiorari to quash the order made under proviso (a) of section 38 of the Land Acquisition Act.

The 1st Respondent contended that the section 2 notice clearly states the public purpose, and the said land was identified as a land suitable for the resettlement of the people rendered homeless by Tsunami, and the public purpose was identified as

'Village Expansion' and the Respondents have acted in good faith and according to the provisions of law.

The Land Acquisition Act provides for acquisition of land by State for a public purpose, and accordingly, a section 2 notice was published, and thereafter, as the land was needed for an urgent public purpose, viz., to settle people who are displaced by Tsunami, a section 38 proviso (a) order was published and the land was acquired, and the possession was taken by the State. If the Petitioner wishes to challenge the said order, the Petitioner has to satisfy this Court that the acquisition is not urgent and, on the other hand, the Respondents have submitted that this land was for the occupation of the persons who were displaced by Tsunami. In *Moris Indira Fernandopillai v E.L. Senanayake Minister of Lands and Lands Development* 79 (2) N.L.R.115 the Court held an order by the Minister under the proviso (a) of Section 38 of the Land Acquisition Act can be made only in case of urgency and an order made under this provision can be reversed by the Court. It is however a matter for the Petitioner who seeks the remedy by way of certiorari to satisfy the Court that there was in fact no urgency and his application cannot succeed should he fail to do so. Under the given circumstances the Petitioner has not shown that the said Section 38 provision (a) was made without jurisdiction or the said order is unreasonable in the given circumstances.

As the Petitioner has not established sufficient grounds to issue a writ to quash the said order, this Court dismisses this application without cost.

President of the Court of Appeal