

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

In the matter of an application for a mandate in  
the nature of writ of certiorari and mandamus in  
terms of Article 141 of the Constitution.

Mohammed Abusally Ahamed Nazeer  
224A, Badur School Road  
Town Division 5  
Akkaraipattu.  
And Presently  
No.60, Al Munawwara Road,  
Akkaraipattu 14

Petitioner

CA (W/A) No.1142/06

Vs.

1. Divisional Secretary  
Divisional Secretariat  
Akkaraipattu
2. Secretary  
Ministry of Agriculture Development  
"Govijana Mandiraya"  
Rajamalwatte Road  
Battaramulla
3. Minister of Agriculture Development  
Ministry of Agriculture Development  
"Govijana Mandiraya"  
Rajamalwatte Road

Battaramulla

4. M.M.M. Nizar

224 Badur School Road

Town Division 5

Akkaraipattu

**Respondents**

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

Counsel: Nizam Kariappar,  
for the Petitioner  
Milinda Gunatillake, Senior State Counsel,  
for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents.  
T. Machado, for the 4<sup>th</sup> Respondent.

Argued On: 04.05.2011

Decided On: 15.07.2011

**S.Sriskandarajah J**

The Petitioner is a resident of Akkaraipattu in the district of Ampara and he owns a property about 250 meters away from the beach of the eastern coast. The Petitioner submitted the tsunami that struck on the 26<sup>th</sup> of December 2004, damaged and destroyed the house of the Petitioner and as a result the Petitioner and his family were displaced. The Petitioner further submitted that about 70 meters east of the Petitioner's property there was a school named Al Badur School which was also affected by tsunami waves and was damaged. The Divisional Secretary of Akkaraipattu caused a gazette notification published in June 2007 in terms of Section 2 of the Land Acquisition

Act to ascertain the suitability of the Petitioner's land to acquire the Petitioner's land for a public purpose.

Thereafter an Order in terms of section 38 proviso (a) of the Land Acquisition Act was published in the Gazette dated the 25<sup>th</sup> of May 2006 acquiring the Petitioner's land. The Petitioner contended that there are alternative lands in the vicinity of the school and the owners of those lands are willing to sell the said lands to the school for the expansion of the school. The Petitioner further contended that the school Development Society has also recommended several other lands in the vicinity of the school that are suitable for the expansion of the school. The 1<sup>st</sup> Respondent has not taken into consideration all those recommendations, but has taken steps to acquire the Petitioner's property which is the property in respect of which the petitioner was intending to obtain assistance to rebuild the house that was affected by tsunami and to go into occupation.

The Respondents' position was that the Al Badur Vidyalaya was destroyed by tsunami and the students of the said school are been accommodated in a temporary shed and they were suffering immense hardship, as a result their school cannot be rebuilt in the same place where it was situated and that there was an urgent need to acquire private lands in that area as there was no government land to put up the said school. In view of this a survey was conducted by the 1<sup>st</sup> Respondent after publishing a Section 2 notice and certain lands were identified for acquisition for the said school. Due to the urgency, to relocate and re-build Al Badur Vidyalaya, a notice under Section 38 Proviso (a) of the Land Acquisition Act was published. The funds for the re-building of the school had been made available by UNICEF, and it is of utmost importance that such funds are utilized for re-location and construction of the said school.

The Petitioner's challenge to the said acquisition is on the basis that there are other alternative lands that could have been acquired. The Land Acquisition Act and the Land Manual provide the procedure for acquisition of land, and the Land Manual states

that after publishing a section 2 notice under the Land Acquisition Act, the relevant officer has to inspect the lands that are available and identify a suitable land that could be acquired for the required public purpose. In this regard Section 2 notice was published and the Petitioner's land and four other lands were identified for the said acquisition and to be utilized for the re-building of the school. As stated by the Respondent, the said school was affected by tsunami and thereafter the children of that school were housed in temporary sheds, hence it has become necessary to acquire the said lands urgently and to put up buildings. The Respondent has also stated that necessary funds were available to accomplish that task.

Orders under Section 38 proviso (a) could only be made if there is urgency exist in acquiring the said land. 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. In this case the Petitioner has failed to establish that there is no urgency, but on the other hand, the Respondent had shown that there is urgency and the acquisition is justified under section 38 proviso (a) in the given circumstances.

In view of the above the Court is of the view that the petitioner has not established sufficient grounds to challenge the acquisition and therefore the Court dismisses this application of the Petitioner without costs.

President of the Court of Appeal