

**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 writ of Certiorari and prohibition
under Article 140 of the Constitution.

Gnanawathie Edirisinghe,
Kagugahagodella,
Batuwangala, Neluwa, Galle.

Petitioner

C.A. Writ Application No: 500/2008

Vs

1. Ministry of Lands and Lands Development, “
Sampathpaya” No. 82, Rajamalwatta Road
Battaramulla.
2. Palitha Sisira Kumara Rathnayake
Weerakoon, Acting Divisional Secretary,
Divisional Secretariat, Neluwa.
3. Nimal Gunewardene, former Divisional
Secretary, Divisional Secretariat, Neluwa.
4. W.W.K. Withanage, Divisional Secretary,
Divisional Secretariat, Neluwa.

Respondents.

BEFORE : **S. SRISKANDARAJAH, J.**
COUNSEL : Dr. Almeida Gunaratne, PC with Lasitha Chaminde
for the Petitioner.
: Vicum de Abrew SSC
for the Respondents.

Argued on : 08.11.2010

Decided on : 21.02.2011

S.Sriskandarajah, J,

The Petitioner submitted that on or about 17th September 2003 permission was sought from the petitioner to use a portion of the Petitioners property as a temporary access road to a housing scheme constructed on foreign funds for flood victims. This request was made by the Acting Divisional Secretary by letter dated 18.09.2003. The said houses were constructed by February 2004 and an access road to the said houses was opened through another property which was an unused paddy -field and work upon that road was completed. Despite the fact that this road was used by the occupants of the Housing scheme steps were taken to acquire a portion of the Petitioner's land used for the temporary access to the said houses.

The petitioner contended that permission given by the Petitioner to use her land as an access route was only on a temporary basis. When there is an alternative access route to the said houses, cutting a sixteen feet wide access road which will affect the whole of the Petitioner's land comprising of 3A.3R.6P is irrational and arbitrary and/or inferentially prompted by improper motive. The Petitioner further contended that there is no public purpose as envisaged by the Land Acquisition Act to be achieved and also the land in question being a rubber cultivated land the very intention to acquire it as being required for urgent possession is misconceived and ultra vires the intent and purpose of the Land Acquisition Act. The Petitioner submitted that in all the circumstances of the case, the Respondents individually and collectively are in breach of the concept of public trust.

The 1st and 2nd Respondents submitted that only a small stretch of land is needed to make an access road for a segment of people affected by floods in 2003, who were resettled by the government on an adjacent State Land called and known as

'Kurunduwatte'. The stretch of land required is in extent of 21.8 perches from the Petitioner's land of 3A 3R 6P a state land made available to the Petitioner by an executive grant.

It is evident from the submissions of the Respondents that nearly 40 families displaced by floods in 2003 were to be allotted plots of land at 'Kurunduwatte'. The Police Department had undertaken to construct 20 houses in order to resettle the affected families. At the stage of construction of these houses an access road to the said land was opened over the Petitioner's Land with the consent of the Petitioner to facilitate the construction of the houses. This shows that there is no convenient access road available to the said land to transport materials to construct houses. There cannot be any rubber plants in this stretch of Petitioner's land as this stretch was used as access road for the construction of houses in the land at 'Kurunduwatte' even on a temporary basis. Hence the Petitioner's contention that acquiring this stretch of land will affect her rubber cultivation has no merit. Even if the Petitioner's position is that she is going to suffer loss she could submit the same at the compensation inquiry.

The Petitioner cannot question the decision of the Minister that a land is needed for a public purpose, it is a decision entrusted to the Minister by the statute and the question whether the land should be acquired is one of policy to be determined by the Minister and therefore cannot be questioned by a Court of Law, *Mendis v Jayaratne, Minister of Agriculture, Lands and Forestry*, [1997]2 Sri L.R 215, *Hewawasam Gamage v Minister of Lands* 76 N.L.R 25. But subsequent development in law as interpreted and pronounced by judiciary a decision to acquire a land by the Minister could be questioned if it is against the public trust doctrine. In this instant case the Petitioner cannot rely on the violation of public trust doctrine as the stretch of land is acquired for the purpose of a roadway which is necessary for a housing scheme of over 40 families.

The Petitioner has not alleged mala fides on any person in the acquisition of the said land and it is not expressly pleaded *Gunasinghe v Hon. Gamini Dissanayake, and others*, [1994] 2 Sri L R 132 therefore this court could presume that the acquisition is bona fida and all official acts have been done in accordance with law.

It is settle law that 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 only if there is no urgency. It is however a matter for the Petitioner who seeks the remedy by way of certiorari to satisfy Court that there was in fact no urgency and her application cannot succeed should she fail to do so *Mendis v Jayaratne, Minister of Agriculture Lands and Forestry* [1997]2 Sri L R 215.

In *Marie Indira Fernandopulle and Another, v E. L. Senanayake, Minister of Lands and Agriculture*,79 (II) N.L.R 115. The Supreme Court held:

“No doubt primarily the Minister decided urgency. He it is who is in possession of the facts and his must be the reasoning. But the Courts have a duty to review the matter. In this case the need for a playground and a farm had been mooted as far back as 1974. Political influences and extraneous forces delayed the takeover of the land. Four years dragged on and school's needs were still waiting to be met. The delay and the need decided the urgency. These being the facts the petitioner has failed to satisfy me that there was no urgency. I would therefore dismiss the application with costs.”

In this application also the delay in acquiring the land by the Petitioner challenging the acquisition at the stage of Section (2) notice and obtaining a stay order has delayed the normal process of acquisition. The delay and the need decided the urgency of acquiring this stretch of land for a road way. As the Petitioner has not established that there is no urgency in acquiring this land this court dismisses this application without costs.

Judge of the Court of Appeal