

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

Court of Appeal No: CALA 78/2006

District Court of Marawila No: 88/T

In the matter of an
application for leave to
appeal

Land Reform Commission

Intervient-Petitioner-
Petitioner

Vs.

M.B. Miurin Fernando

Petitioner-Respondent
& four others

Before: **Eric Basnayake J**
K.T. Chitrasiri J

Counsel: Harsha Soza P.C. with A. Dharmaratne for the Intervient-Petitioner-Petitioner
Dr. S.F.A. Cooray for the Petitioner-Respondent

Written submissions tendered on: 15.10.2007

Decided on: 4.5.2011

Eric Basnayake J

The intervenient-petitioner-petitioner (LRC) filed this leave to appeal application inter alia to have the order dated 7.2.2006 of the learned Additional District Judge, Marawila set aside. This is a testamentary action. The petitioner-respondent (petitioner) filed this testamentary action on 10.2.2004 seeking letters of administration to the estate of her

deceased husband, W.R.T. Fernando. In the petition Rs.3000000.00 (3 Million) is mentioned as an item of movable property. This sum is said to be the compensation due from the State on the acquisition of a land called Kandathoduwawa, Wittalwatte alias Palliwasalkadu which was claimed by the deceased and now forms part of the estate. The LRC sought to intervene in this case to claim this amount. The LRC claimed that the property acquired belonged to them (LRC). The petitioner objected to the intervention. The learned Additional District Judge after inquiry disallowed the application of the LRC for intervention. It is this order the LRC is now seeking to have set aside. Leave to appeal was granted by this court.

The LRC claimed that this land vested with the LRC by operation of law. On 6.4.1995 the Divisional Secretary of Mundal acquired this property and the deceased, Titus Fernando had made a claim for compensation. The Divisional Secretary in terms of section 10 of the Land Acquisition Act filed action in the District Court of Puttalam in case No. 162/Miscellaneous in which Titus Fernando was made defendant. After inquiry the District Court on 9.7.1999 declared the defendant Titus Fernando entitled to compensation (P9). No appeal or revision was filed against this judgment.

The LRC claims that the judgment in case No. 162/Miscellaneous is defective as it violates section 3 (2) of the LRC law and is therefore made *per incuriam*. The LRC states that this land belongs to the LRC and the deceased is not therefore entitled to any compensation.

The learned counsel for the respondent states that the question as to who is entitled to compensation in respect of the land acquired under the Land Acquisition Act is decided under that Act (LAA). Provision is made under this Act for those who claim rights on the properties acquired, to go before the Acquiring Officer and prove their claims. Section 10 of the Act makes provision for the Acquiring Officer to refer any claim to the District Court. Sub section 4 to section 12 of the Land Acquisition Act states that the decision of a District Court on a reference made to it under section 10 shall, if no appeal against that

decision is made to the Court of Appeal under section 14, be final. The District Court in its decision (P9) found the deceased Titus Fernando entitled to compensation.

The LRC is now seeking to challenge the judgment of the District Court made in case No 162/Miscellaneous. The LRC cannot be permitted to challenge in this testamentary case, a judgment pronounced in another case. Therefore the learned Judge has correctly disallowed the application of LRC for intervention. Therefore this appeal is without merit and is dismissed with costs.

Judge of the Court of Appeal

K.T. Chitrasiri J

I agree

Judge of the Court of Appeal