

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

An Application for Writ of Certiorari,
Prohibition and Mandamus under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

1. Mohamed Haneefa
Mohamed Alias
Mohamed Ohudu
(NIC No. 460162521V) of
No.31/32,
Periyakudiruppu, Kalpitiya.
2. Abdul Hameed Marikkar
Fathima Beevi (NIC
No.426822326V) of
Muthuwal Street, Kalpitiya.
3. Abdul Hameed Marikkar
Aysha Beevi (NIC No.
515301810V) of Muthuwal
Street, Kalpitiya.
4. Abdul Hameed Abu Thaheer
(NIC No.521683694V) of
No.75/1, Main Street,
Kalpitiya (Deceased)

C/A Writ Application No.607/2010

5. Abdul Hameed Abdul Rasidu
(NIC No.510093593V) of
Periyakudirippu, Kalpitiya.
6. Greenfield Developments
(Pvt) Ltd.
Of 145, Siridhamma Mawatha
Colombo 10.

PETITIONERS

Vs.

1. Hon. Janaka Bandara
Tennakoon
Minister of Land and Land
Development,
'Govijana Mandiraya', 80/5,
RajmalWatte Avenue,
Battaramulla.
2. The Chairman,
Sri Lanka Tourism
Development
Authority, No.80, Galle Road,
Colombo 03.
3. The Divisional Secretary
Divisional Secretariat
Kalpitiya.
4. Hon. Attorney-General
Attorney-General's
Department,

Colombo 12.

RESPONDENTS

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

COUNSEL : Sunil Abeyratne

for the Petitioner.

A.Gnanathan PC, with ASG Yuresha Fernando SC

for the Respondents.

Written Submission : 29.02.2012

Judgment on : 05.02.2013

S.Sriskandarajah.J

The 6th Petitioner is a company duly incorporated under the Companies Act in Sri Lanka. The Board of Directors of the 6th Petitioner Company passed a resolution dated 16/05/1909 declaring that the company was willing to carry out a project of tourism, and for that purpose to build a hotel in the Island of Ippantivu. The 6th Petitioner further decided to have a joint venture of the said project with the 1st to the 5th Petitioners who are the original owners of the land called Ippantivu Island of Kalpitiya. The 2nd to the 5th Petitioners agreed to sell the same property to the 6th Petitioner, Directors of the company, in the year 2005, agreed to carry out the said project as a joint venture with the 2nd to the 5th Petitioners and to invest the necessary capital for the same project by the 6th Petitioner. Thereafter the 2nd to the 5th Petitioners transferred their rights of the said land to the 6th Petitioner by Deed No.1492 dated 25/10/2009, Deed No.1491 dated 25/10/2009, Deed No.1489 dated 11/10/2009, Deed No.1513 dated 7/02/2009 and Deed No.1506 dated 1/12/2009 attested by U. Nihal Perera,

Notary Public and, by this transaction the 6th Petitioner became the absolute owner of the said property.

The Petitioners further submitted that after the execution of the aforesaid deeds, they came to know that the 1st Respondent has published a notice under the Land Acquisition Act to acquire the said land for a public purpose. The 1st Respondent acquired Ippantivu Island of Kalpitiya, including the aforesaid land by order under Section 38 proviso (a) of the Land Acquisition Act and authorized the 3rd Respondent to take possession of the said land. This order was published in Gazette No.1609/9 dated 8/07/2009. The Petitioners contended, even though a Section 38 proviso (a) order was published, the possession of the said land was not taken over from the Petitioners, and the 6th Petitioner was in possession of the said land. The Petitioners further contended that the 1st Respondent is legally entitled to acquire the land for public purpose only and he has no power to hold such property as acquired property under the Land Acquisition Act to transfer the same land to a private party to carry out a hotel business that has been already proposed by the 6th Petitioner and, such action of the 1st Respondent is ultra vires to the provision of the Land Acquisition Act. In these circumstances the Petitioners seek a Writ of Certiorari to quash the decision of the 2nd Respondent to transfer the said land to a private party to run a tourist business in the said land and also sought a Writ of Mandamus directing the 1st Respondent to divest the said land to the Petitioners.

The Respondents submitted, the area in which the land of the Petitioners is situated had been declared a tourism development area by way of the Tourism Development Act No.14 of 1958 and Gazette Notifications No.1508/18 and 1549/7 dated 1st August 2007 and 13th May 2007 respectively by the Cabinet of Ministers, by a Cabinet decision dated 15th December 2004. The Cabinet Ministers, as far back as 15th December 2004, have decided, by a Cabinet decision, to undertake the Kalpitiya Dutch Bay Island Project to be carried out by the 2nd

Respondent Authority. The Petitioners' land was also within the area in which the Dutch Bay Island Project was to be carried out. In view of the above said policy decision, a Section 2 Notice under the Land Acquisition Act was published to acquire the aforesaid land on the 28th of November 2006 and, thereafter, a Section 38 Proviso (a) Notice was published in Gazette Notification No.1609/9 on the 8th of July 2009. Thereafter, the Section 5 Notice under the said law was also published in the Gazette Extraordinary No.1621/25 dated 1st October 2009. It is the position of the 1st Respondent that subsequent to the publication of the above Gazette Notifications, the possession of the said land has been obtained from the 4th Petitioner and was formally handed over to the Sri Lanka Tourism Development Authority, the 2nd Respondent. A Section 7 Notice to the Land Acquisition Act was also published in Gazette Notification No.167/40 on the 7th of October 2010, and an inquiry under Section 9 is currently conducted to decide upon the compensation payable to the Petitioners.

Pursuant to the acquisition of the land for public purpose, the 2nd Respondent set up a Technical Evaluation Committee according to the established government tender procedure and procurement guide lines and thereafter invited bid proposals from interested parties. After considering the bids submitted for the development of the Island at Kalpitiya, inclusive of the Ippantivu Island, the Technical Evaluation Committee awarded the investment opportunity to M/s Quebec Lanka Leisure Properties. The 2nd Respondent entered into an agreement with M/s. Quebec Lanka Leisure Properties on the 2nd September 2010, pursuant to which the said land was granted to the 2nd Respondent Authority by way of a grant under the Land Development Ordinance on the 29th of October 2010 by His Excellency the President.

In terms of the provision of Section 40(a) of the Land Acquisition Act, the publication of notice under proviso to section 38(a) of the Act would result in the vesting of absolute title of the said land upon the State from the date of the said

publication. Once the title is vested with the State, His Excellency the President has the authority to hand over the said land by way of a grant to the 2nd Respondent Authority. But, in any event, the land was acquired for a public purpose, and to achieve the public purpose, it was handed over to the 2nd Respondent, and the 2nd Respondent has taken meaningful steps to develop the said land for the said purpose. Quebec Lanka Leisure Projects (Pvt) Limited is only authorized to carry on the project for which agreement was entered into with the Government of Sri Lanka (2nd Respondent).

In the above circumstances the Petitioner cannot complain that the said land was not acquired for a public purpose. In fact, the land was acquired for tourism development under Section 38 proviso (a) of the said Act and it was handed over to the Sri Lanka Tourist Development Authority and, in addition, the said land also by virtue of a Presidential grant handed over to the Sri Lanka Tourism Authority. In these circumstances this Court cannot issue a Writ to quash the said acquisition and/or the handing over of the said property by way of a Presidential grant to the 2nd Respondent. In terms of Article 35 of the Constitution, this Court has no jurisdiction to quash the said grant and, therefore, this Court dismisses this Application without cost.

President of the Court of Appeal