

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

Hettige Don Somapala  
No. 715/1, Pannipitiya Road,  
Thalawathugoda.

**PETITIONER**

C.A 739/2009 (Writ)

Vs.

1. Hon. Janaka Bandara Tennakoon (M.P),  
Minister of Lands and Land Development  
No. 80/5, Rajamalwatte Road,  
Battaramulla.
2. Dr. Nihal Jayathilleka  
Secretary  
Ministry of Local Government (W.P),  
Srawasthi Mandiraya,  
Colombo 7.

And 10 others

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Deepali Wijesundera J.

**COUNSEL:** Daya Guruge with R. Wimalaweera for the Petitioner  
Chaya Sri Nammuni S.C., for 1<sup>st</sup> – 6<sup>th</sup> & 11<sup>th</sup> Respondents  
K. G. Jinasena with A.A Nelum Predeepa for 7<sup>th</sup> \* 8<sup>th</sup> Respondents

**ARGUED ON:** 11.06.2013

**DECIDED ON:** 26.08.2013

**GOONERATNE J.**

The Petitioner to this application seeks a Writ of Mandamus to direct the Respondents to take appropriate action to proceed with the acquisition of the land referred to in the Section 2 notice of 3.7.2001 issued in terms of the Land Acquisitions Act. By the prayer 'B' of the petition the Petitioner has also sought an order to grant compensation.

The case of the Petitioner is that he is the owner of the divided portion of land referred to in deed No. 4009 dated 3.2.1988. Petitioner pleads that the 6<sup>th</sup> Respondent had been directed by the Minister of Agriculture Lands & Forestry to publish a notice under Section 2(2) (P1) of the Lands Acquisition Act to acquire an extent of 3 Roods for an access road for the Homagama, Pradeshiya Sabha. It is also stated in the petition that the land described in the section 2 notice, which was a part of Homagama Pradeshiya Sabha came with the limits of the new Urban Council of Maharagama. In paragraph 4 of the petition it is

pleaded that the 7<sup>th</sup> Respondent thereafter constructed the access road referred to in the above Section 2 notice. Petitioner allege that development of the said land was done without obtaining necessary approvals from the UDA and the Provincial Ministry of Local Government. The land was surveyed by the 6<sup>th</sup> Respondent (per paragraph 6 of the petition). The complaint of the Petitioner is that it was reported that the land in question was suitable for a public purpose and that the 6<sup>th</sup> Respondent failed and neglected to take steps for payment of compensation to the claimants mentioned in notice P1.

Petitioner refer to several correspondence marked P2 to P7 and relies on same to establish his claim.

The tone of the several letters (P2 – P7) relied upon by the Petitioner indicates that a proper acquisition procedure had not been followed and the land had subsequently fallen within the territorial limits of the Maharagama Urban Council. Further it is stated that proper approval, also had not been obtained from the authorities concerned and as such since the acquisition process had not been legally regularized it would be not possible to consider payment of compensation to the claimants. It is further stated in the said letter that even the monies due to be paid as compensation had also not been deposited according to the accepted procedure. The letter at P5 (paragraphs 2/3 of same) clearly

indicates the irregularities that had taken place. I would incorporate same in this judgment to indicate as to how exactly the problem surfaced notwithstanding the claim of the Petitioner.

1. මෙම චක්‍රාවලීය තුළ ඉඩම පිහිටි බල ප්‍රදේශ මාරුවීමක් ද සිදුව ඇති අතර, එතෙක් හෝමාගම ප්‍රාදේශීය සභා බල ප්‍රදේශයට අයත්ව තිබූ විෂයගත ඉඩම පිහිටි ප්‍රදේශය පසුව මහරගම නගර සභා බල ප්‍රදේශයට ඇතුළත්ව ඇත. එහෙත් ඉඩම අත්පත් කිරීමේ පනතේ 2 වැනි වගන්තිය යටතේ දැන්වීම් ප්‍රසිද්ධ කිරීමෙන් පසුව නාගරික සංවර්ධන අධිකාරියේ විමසීමකින් තොරව මාර්ගය ඉදිකිරීම මහරගම නගර සභාව විසින් සිදුකර ඇති බවට කැරණු අනාවරණය වී ඇත. ඒ අනුව උක්ත ඉඩම් අත්පත් කර ගැනීම වෙනුවෙන් නාගරික සංවර්ධන අධිකාරිය වෙත මුදල් තැන්පත් කරන ලෙස මහරගම නගර සභාවට ලිඛිතව දන්වා ඇතත් ඔස්ට්‍රේලියා ක්‍රිකට් ක්‍රීඩා සංකීර්ණයට ප්‍රවේශකත්වය ලබ ගැනීමට අදාළ ප්‍රවේශ මාර්ගය ඉදිකර ඇති බැවින්ද මෙම ආයාතනය පොදුගලික ආයාතනයක් වන බැවින් මූල්‍ය ප්‍රතිපාදන ලබා දීමට හැකියාවක් නොමැති බව මහරගම නගර සභාව දක්වා ඇත.

2. හෝමාගම ප්‍රාදේශීය සභාවේ ඉල්ලීම මත ඉහත ඉඩම් අත්පත් කර ගැනීමේ කටයුතු ආරම්භ කර ඇති බැවින් මෙම ගැටළුව නිරාකරණය කර ගැනීම සඳහා වන්දි මුදල් තැන්පත් කරන ලෙස හෝමාගම ප්‍රාදේශීය සභාව වෙත නාගරික සංවර්ධන අධිකාරිය විසින් දන්වා ඇතත් බල ප්‍රදේශ මාරුවීම් නිසා අදාළ ප්‍රාදේශය මහරගම නගර සභාවට පැවරී ඇති බැවින් මූල්‍ය ප්‍රතිපාදන වෙන්කිරීමට හැකියාවක් නොමැති බව එම ප්‍රාදේශීය සභාව විසින් දන්වා ඇත.

This court observes that a grave injustice had been caused to the Petitioner and the above correspondence suggest an absence of the required public purpose contemplated by the Land Acquisitions Act.

I would at this point examine the position of the 1<sup>st</sup> to 4<sup>th</sup> Respondents and that of the 6<sup>th</sup> Respondent. In the objections it is inter alia pleaded as follows:

- (a) P1 admitted and published on a request of the 9<sup>th</sup> Respondent and official direction given therein.
- (b) Construction of road way admitted by unknown parties even before obtaining possession by due process of law under the Land Acquisition Act
- (c) Acts in (b) above done without consent and or authority of the officials.
- (d) 6<sup>th</sup> Respondent Divisional Secretary could not have taken any further steps under the alleged acquisition procedure since necessary monetary allocation for administrative fees for acquisition and amount needed for payment of compensation had not been deposited by the 9<sup>th</sup> Respondent and the 7<sup>th</sup> Respondent.
- (e) Petitioner made several appeals.
- (f) Documents P1 to P4 admitted
- (g) Though the intended acquisition was for the use of the 9<sup>th</sup> Respondent the access road was used as an access road to the Sports Complex of the Auto-Asia Sports Club. The land used by the said Sports Club and the 7<sup>th</sup> Respondent Council.
- (h) In view of (g) above 7<sup>th</sup> Respondent and the 9<sup>th</sup> Respondent cannot release funds to proceed with the acquisition.

At the hearing of this application the learned counsel for Petitioner no doubt convinced this court that a grave injustice had been caused to the Petitioner. However the issuance of the prerogative Writ of Mandamus would not suffice in the absence of establishing the required statutory and public purpose. This court takes note of (a) to (h) above. Further in view of (a) to (g) above it is

apparent that this court cannot exercise its power to grant writs as the material indicates an absence of public purpose in terms of the Land Acquisition Act and that the land had been taken over and a road constructed for an access road to a sports club which is not certainly for any public purpose but illegally and forcefully done by persons who may have had interest in the same named sports club. It is very unfortunate that the Petitioner has suffered in the hands of some known or unknown persons who attempted to resort to the Land Acquisition Act for their personal gain and thereafter abandoned the idea of proceeding in terms of the statute since they could not have moved the state machinery for an illegal purpose by law. The Petitioner no doubt would have a cause of action (if properly advised) to pursue his remedy for compensation in an appropriate forum.

However before we conclude refer to the following authorities:

P. K. Banerjee Vs. L. T. Symond AIR (1947) Cal 307...

Whether the facts show the existence of any or all prerequisites to the granting of the writ is a question of law in each case to be decided not in any rigid or technical view of the question but according to a sound and reasonable interpretation. The court will not grant a Mandamus to enforce a right, not of a legal but of a purely equitable nature however extreme the inconvenience to which the applicant might be put.

The grant of Mandamus is a matter for the discretion of the court. It is not a writ of right and is not issued as a matter of course 1 CLW 306.

In all the above circumstances we are reluctantly compelled to refuse this application. In any event we direct the Registrar of this court to forward a copy of this Judgment to the Hon. Solicitor General for his perusal.

Subject to above application dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL