

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

CA (WRIT) - 421/2009

Gunnanselage Don Harischandra,
No. 286, Kandy Road,
Pahala Biyanwila,
Kadawatha

Petitioner

Vs.

1. The Divisional Secretary,
Divisional Secretariat, Biyagama,
Sapugaskanda.

2. Project Officer,
The project of National High Ways
No. 818A, Sinhapura, Pelawatta, Battaramulla.

3. The Secretary,
Ministry of High Ways and Road Development,
"Sethsiripaya", Battaramulla.

4. Assessor of the LARC committee

5. Surveyor of the LARC committee

6. Road Development Authority
The Divisional Secretary

7. W. A. S. Wickramarachchi Surveyor General,
Ministry of High Ways and Road Development,

8. N. K. L. Neththikumara Deputy Director,
National Highways Sector Project

9. The Attorney General

Respondents

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

In the matter of an application for mandates
in the nature of writs of certiorari and/or
mandamus.

C.A. (Writ) Application No. 421/09

<u>BEFORE</u>	: Deepali Wijesundera J.
<u>COUNSEL</u>	: Mahinda Nanayakkara with Aruna Jayathilake for the Petitioner. Anusha Samaranayake SSC for the 1 st to 5 th and 9 th Respondents Javed Mansoor for 4 th to 6 th Respondents.
<u>ARGUED ON</u>	: 02 nd December, 2013.
<u>DECIDED ON</u>	: 10 th March, 2014

Deepali Wijesundera J.

The petitioner has filed this application seeking the reliefs prayed for in prayer (b), (c) and (d) of the petition. At the outset both parties agreed that prayer (c) and (d) have already been granted and the issue is only regarding prayer (b). Prayer (b) is for a writ of certiorari to grant relief stated in document marked **P15** which is the decision of the Ministerial Appeal Board of LARC Committee dated 17/01/2009. This has been marked as **3R1(a)** by the 3rd respondent who chaired the Ministerial Appeal Board of LARC Committee.

Petitioner's title was accepted by the LARC Committee and compensation was recommended for damages caused to his property. The petitioner's argument was apart from the compensation awarded in **P15** which is Rs. 801,630/= he states he is entitle to Rs 1,472,000/= apart from the statutory compensation and states that the Ministerial Appeal Board of LARC Committee decision is wrong and contrary to law and ultra vires and that the said decision has been taken without considering the relevant facts and documents.

Respondent's argument was compensation was agreed upon at the Ministerial Appeal Board of LARC Committee by the petitioner which is evident in document marked as **P15**. But the petitioner failed to keep his side of the agreement and vacate the premises by 31/01/2009 therefore he is not entitle to the incentive payment of **P15** which is a conditional payment. The respondents further stated that the petitioner is not entitled to the sums of money referred to in paragraph 21 and 22 of the petition.

Respondents further stated that the petitioner is guilty of laches. This action was filed seven months after the decision of the LARC Committee, therefore relief prayed for is misconceived in law and should be dismissed.

The respondents have admitted petitioner's title and documents marked **P12**, **P13** and **P14** which contains the decisions of the LARC Committee as to the sums of money payable to the petitioner as compensation. Respondents have also admitted document marked as **P15**. Document marked by 3rd respondent as **3R1(a)** which is not in dispute states the exgratia amounts payable to the petitioner. In **3R1(a)** the petitioner has signed at the bottom of the document before the Ministerial Appeal Board of LARC Committee and agreed to the

decision of the Board and he has also agreed to handover vacant possession of the said land on the stipulated date. In other wards both parties have agreed the balance payment should be made once the conditions are fulfilled in **3R1(a)**.

The petitioner has failed to handover possession before the stipulated date and the respondents have filed action for eviction. Since the incentive payment mentioned is conditional and the petitioner has failed to vacate on the stipulated date he is not entitled to the payments.

The petitioner has not explained the delay in filing this action. Being aggrieved by the decision of the Ministerial Appeal Board of LARC Committee he has not filed action against the said decision for 7 months.

For the aforesaid reasons I decide that the petitioner's application is baseless and futile, and the relief prayed for can not be granted by law. The application of the petitioner is dismissed without costs.

JUDGE OF THE COURT OF APPEAL.