

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

In the matter of an application for Writ of
Mandamus in terms of Article 140 of the
Constitution.

1. Karunanayake Liyanage Marian
Roshani Perera.
No. 57, Anderson Road, Negombo.
2. Mahipala Mudalige Winnifreda
Paris.
No.57A, Anderson Road, Negombo.
3. Panambarage Nihal Laxman
Fernando.
No.14, Kimbulapitiya Rd, Negombo.

C.A. (Writ) Application No.246/2007

PETITIONER

Vs

1. Negombo Municipal Council
Municipal Council Office,
Negombo.
2. Nimal Lanza
Mayor
Negombo Municipal Council
Negombo.

3. Hon.Janaka Bandara Tennakoon
Minister of Land and Land
Development
Ministry of Land and Land
Development
Sampathpaya, Battaramulla.
4. Divisional Secretary
Negombo Divisional Secretariat
Negombo.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Ruwantha Cooray for the

Petitioners

Widura Ranawaka with Menaka

Warnapura for the 1st and 2nd

Respondents.

Yuresha Fernando DSG for the
3rd and 4th Respondents.

ARGUED ON

: 14th July, 2014

DECIDED ON

: 10th October, 2014

Deepali Wijesundera J.

Municipal Council of Negombo has passed a resolution to acquire the land which is the subject matter of this application to develop the Public Library on 17/12/1998 **(P13)**. A notice under Sec. 2 of the Land Acquisition Act was published and a declaration under Sec. 5(1) of the Land Acquisition Act stating that the land was required for a public purpose was published by the Minister of Lands **(P18)** and thereafter Sec. 38(a) notice was published. The petitioners to this application did not handover possession and an action was filed in the Magistrates Court and an order was issued by court to deliver possession to the Divisional Secretary. The petitioners thereafter have filed an action to stay the Magistrate's order and another application to quash the Sec. 38 order in the Court of Appeal. The application for the stay order was dismissed and the Divisional Secretary has taken over the land in April 2003. Steps have been taken to award compensation under Sec. 17 and the petitioners have appealed against the award to the appeals board. **(3R2 and 3R3)**.

The application filed in the Court of Appeal by the petitioners to quash the Sec. 38 order was withdrawn by them **(P64)** on 15/11/2006. Thereafter they have filed the instant application on 05/02/2007 seeking

a mandate in the nature of a writ of Mandamus directing the 3rd respondent to divest the land in dispute under Sec. 39 A of the Land Acquisition Act.

The learned counsel for the petitioners submitted that the land which was acquired for a public purpose has not been used for such purpose and only a statue of Jesus Christ has been erected and no library was built or commenced work to build the library building. Therefore under Sec. 39A the 3rd respondent could exercise the duty cast upon him under Sec. 39 A to divest the said land. The petitioners submitted that the 3rd respondent has the discretion to determine a question pertinent to divesting and that this discretion can be judicially exercised to arrest the injustice by quashing the vesting order and issuing a writ of Mandamus compelling the 3rd respondent to divest the land. He cited the judgments in *De Silva Vs Athukorala Minister of Irrigation and Mahaweli Development (1993) 1 SLR 283*, *Rashid Vs Rajitha Senaratne Minister of Land and others 2004 (1) SLR 312* and submitted that in both these cases a Writ of Mandamus was issued to compel the Minister to make an order under Sec. 39A to divest the property.

In both cases it was brought to the notice of court by documents and evidence that the land which was acquired for public purpose was not made use of or the public benefit had “faded away”.

The petitioner’s counsel also cited the judgment in *Horana Plantations Limited Vs Anura Kumara Dissanayake and Others 2012 B.L.R.P. 164*. In this case it has been stated that it is the duty of the Minister to act with care since he is the final authority regarding the decision to acquire land under Land Acquisition Act.

The petitioners’ counsel submitted that their actions did not cause inordinate or unexplained delays to the respondents. The petitioners stated that the respondents did not make use of the land acquired for a public purpose therefor the land has to be divested under Sec. 39A.

The learned counsel for the respondents submitted that the land was acquired for the building of a Public Library and funds were allocated for same (2R5 and 2R6). Petitioners were awarded compensation under Sec. 17 of the Land Acquisition Act (3R2 and 3R3). While this was in progress the petitioners have filed two writ applications in the Court of Appeal. The respondents’ counsel stated

that the land was used for developing the public library which was stopped by the petitioners by obtaining a stay order from the Court of Appeal.

The respondents stated the land was required to construct a new library for the use of large number of university students and students from Higher Education Institutes and other students who wished to make use of the library and that they needed space to sit and refer books. The respondents submitted that there was no other suitable land available in the Negombo Municipal Council area to build the said library. Citing the judgment in *De Silva Vs Athukorala 1993 1 SLR 183 at 291* the respondents counsel submitted that once the Minister makes a decision under Sec. 5 (1) of the said act that the land was required for a public purpose that decision cannot be agitated by way of a writ.

Citing the judgments in *Kingsley Fernando Vs Dayaratne and Others 1991 (2) SLR 129 and Mendis Vs Jayaratne 1997 2 SLR 220* the respondents submitted to demand a reversal of the acquisition process set out in Sec. 39A or 39(1) the previous owners will have to show the land was no longer required for a public purpose.

The learned counsel for the respondents citing the judgment in *Amarasinghe Vs Jayathilaka Director General of Customs and Others 2004 (2) SLR 169* submitted that where a person whose land has been acquired and considering the fact that there is no statutory right to have the land divested a writ of Mandamus cannot be used to compel the Minister to exercise his discretion in a particular way.

The counsel for the respondents submitted a small portion that is 30 feet by 40 feet has been given to erect a statue of Jesus Christ at the request of the Parish Priest but the land belongs to the Municipal Council which is clearly shown in **P59** marked and produced by the petitioners. The respondents submitted that the petitioners document **P59** show that the public purpose is still in existence.

The respondents stated that the inordinate delay mentioned by the petitioners was caused by the petitioners themselves by the institution of applications and obtaining stay orders in the Court of Appeal. Therefore the respondents submitted the delay that has occasioned cannot be considered as an abandonment of the project to build the public library.

On the submissions made by both parties and the documents submitted this court has to decide whether there was a public purpose for acquiring the said land, if so is it still in existence if not can the 3rd respondent divest the said land under Sec. 39A of the Land Acquisition Act and can this court issue a writ of Mandamus to compel the 3rd respondent to divest the land.

Sec. 39 A (1) and (2) reads thus;

(1). Notwithstanding that by virtue of an Order under section 38 (hereafter in this section referred to as a “vesting Order”) any land has vested absolutely in the State and actual possession of such land has been taken for or on behalf of the State under the provisions of paragraph (a) of section 40, the Minister may, subject to subsection (2), by subsequent Order published in the Gazette (hereafter in this section referred to as a “divesting Order”) divest the State of the land so vested by the aforesaid vesting Order.

(2). The Minister shall prior to making a divesting Order under subsection (1) satisfy himself that-

(a) no compensation has been paid under this Act to any person or persons interested in the land in

relation to which the said divesting Order is to be made:

(b) the said land has not been used for a public purpose after possession of such land has been taken by the State under the provisions of paragraph (a) of section 40;

(c) no improvements to the said land have been effected after the Order for possession under paragraph (a) of section 40 had been made; and

(d) the person or persons interested in the said land have consented in writing to take possession of such land immediately after the divesting Order is published in the Gazette.

The petitioners have not shown that the land acquired has not been used for a public purpose. As stated by the respondents the petitioners have prevented the respondents developing the land therefore they can not go on the basis that the land was not used for a public purpose. Petitioners have been allocated compensation and they have complained it is not sufficient. The documents **P1 to P69** marked

by the petitioners does not show the public purpose have ceased or the land is not used for a public purpose.

All 3 judgments cited by the petitioners and mentioned above are not disputed but they are not applicable to the instant case. The petitioners did not show that the land acquired was not used for a public purpose. In fact the delay in building the said public library was due to the petitioners filing one case after the other.

Both actions filed prior to the instant application in the Court of Appeal have been dismissed and the present application has been filed over seven years after the acquisition.

On perusal of the documents and the submissions made it can be seen that there is a valid public purpose and the acquisition was in the public interest. A library is to be built for the students of the area who are the future of this country. To develop a country the youth have to be educated, a library is a necessary part of that education. Therefore it can be said that there is an urgent public need for a library for the benefit of the students of that area.

For the aforesated reasons I decide that this is not a fit and proper case where a writ of Mandamus should be issued compelling the 3rd respondent to divest the land which is the subject matter of this application. Application of the petitioners is dismissed with costs fixed at Rs. 50,000/=.

JUDGE OF THE COURT OF APPEAL.