

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

**In the matter of an Application for writs of  
Certiorari and Mandamus under and in  
terms of Article 140 of the Constitution of  
the Democrat Socialist Republic of Sri  
Lanka.**

Rupasinghe Arachchige Shanthi Perera,  
Illankoon,  
No.1/12, Kahanthota Road, Malabe.

**Petitioner**

**CA/WRIT/91/2015**

Vs,

1. The Divisional Secretary,  
Kaduwela Divisional Secretariat,  
Malabe.
2. Ranaweera Archchige Ayranganee Perera,  
No.122, Robert Gunawardene Road,  
Thlangama, Battaramulla.
3. Kollurage Karunasena Perera,  
No. 168/38, Panangalawatta, Poredanda.
4. Kollurage Samanthi Perera,  
No. 122, Robert Gunawardene Road,  
Thlangama, Battaramulla.
5. Kollurage Nishantha Perera,  
No.122, Robert Gunawardene Road,  
Thlangama, Battaramulla.
6. Kolluge Prasantha Perera,  
No. 122, Robert Gunawardene Road,  
Thlangama, Battaramulla.
7. Kollurage Kusumawathi Perera,

No,351/B,  
Thalangama South, Battaramulla.

8. Kollurage Hiran Sanjaya Perera,  
No,351/A, Nugadeniya Road, Bandiyawatte,  
Thalangama South, Battaramulla.
9. Kollurage Kumudu Hiroshani Perera,  
No, 351/A, Nugadeniya Road, Bandiyawatte,  
Thalangama South, Battaramulla.
10. Alapatha Gamage Jayarathne Manike,  
No, 351/A, Nugadeniya Road, Bandiyawatte,  
Thalangama South, Battaramulla.
11. Walallagodage Kamalawathie Perera,  
Pore, Athurugiriya.
12. Kollurage Priyantha Perera,  
Pore, Athurugiriya.
13. Kollurage Sandya Kumari,  
Pore, Athurugiriya.
14. Vijitha Sunil Perera Liyanage,  
No. 305, Udumulla, Mulleriyawa New Town,  
Angoda.
15. Wijaya Srilal Perera Liyanage,  
308, Udumulla, Mulleriyawa New Town,  
Angoda.
16. Kankanige Wije Perera Nanayakkara,
17. Kankanige Jayalal Perera Nanayakkara,
18. Kankanige Rajini Perera Nanayakkara,
19. Kankanige Nadini Perera Nanayakkara.

## **Respondents**

**Before : Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel : Thishya Weragoda with Iresh Seneviratne for the Petitioner,  
Saumya Hettiarchchi for the 2<sup>nd</sup> -13<sup>th</sup> Respondents,  
Palitha Kumarasinghe PC with Asanka Ranwala for the 14<sup>th</sup>, 15<sup>th</sup> Respondents.**

**Inquiry on Extension of Stay Order: 27.03.2015**

**Written Submissions Tendered On: 31.03.2015**

**Order On : 15.05.2015**

## **Order**

**Vijith K. Malalgoda PC J**

Petitioner has filed this application seeking inter alia,

- b.** grant a mandate in the nature of Writ of Certiorari against the 1<sup>st</sup> Respondent quashing his decision to deposit the compensation in relation to the acquisition of land to the credit of District Court (Homagama) Case No. 4587/T as indicated in his letters dated 18<sup>th</sup> November 2013 and 10<sup>th</sup> February 2014.
- c.** grant a mandate in the nature of Writ of Mandamus compelling the 1<sup>st</sup> Respondent to either make a decision in respect of the claims made by the parties in terms of Section (1) (a) of the Land Acquisition Act or in the alternative to refer the dispute or claims for determination in terms of Section 10 (3) of the said Act as provided in Section 10 (1) (b) of the said Act.
- d.** issue an Interim Order restraining the 2<sup>nd</sup> Respondent, as the Administrator of the Intestate estate of the Lalanadasa Perera and his family members from taking any steps to distribute the Compensation deposit by the 1<sup>st</sup> Respondent to the credit of District Court (Homagama) Case No. 4587/T until the final determination of this matter.
- e.** issue an Interim Order directing the learned District Judge of the Homagama, not to take any steps towards authorizing and/or approving the distribution of the Compensation deposit by the 1<sup>st</sup> Respondent to the credit of District Court (Homagama) Case No. 4587/T until the final determination of this matter.

When this matter was supported before this court for notices and interim relief, court being satisfied from the submissions made by the Petitioner exparte, that an irreparable damage would cause to the Petitioner if no interim order was issued, decided, in addition to the notices issued, to grant interim relief as prayed in paragraphs (d) and (e) above for a limited period of 14 days.

2<sup>nd</sup> - 15<sup>th</sup> Respondents who were represented by counsel at the inquiry, raised objection for the extension of the said order.

One Vithanage Martin Perera alias Lalanadasa Perera had become the owner of a Land called Baiyyangewatte alias Bogahawatte alias Thekkawatte at Hokandata. The said Lankadasa Perera and his entire family including his wife and four children were murdered on 10<sup>th</sup> February 1999.

On 10<sup>th</sup> March 1999 Public Trustee Commenced Testamentary proceeding before the District Court of Homagama in respect of the estate of afore said six persons of the same family.

Petitioner pleaded that her husband, Illankoon Mudiyansele Maithreepala Illankoon alias Maithree Illankoon had acquired certain undivided shares of the said land, subjected to the said Testamentary Action bearing No. 4587/T between 5<sup>th</sup> December 2005 and 11<sup>th</sup> March 2008. Thereafter the said Maithree Illankoon had transferred his entire share to the Petitioner by Deed of Gift No. 12013 dated 17<sup>th</sup> August 2009.

The said land was subsequently acquired in terms of the Land Acquisition Act and according to the Petitioner, her husband who is the predecessor in title had made representations to the Ministry of Defense and Urban Development with regard to the said decision.

When the said land was acquired by order made under section 38(a) of the Land Acquisition Act dated 22<sup>nd</sup> March 2012, 1<sup>st</sup> Respondent notified the petitioner's husband and predecessor in title to attend an inquiry in terms of section 9 of the Land Acquisition Act, scheduled for 12<sup>th</sup> August 2013.

By letter dated 18<sup>th</sup> November 2013 the 1<sup>st</sup> Respondent notified the petitioner, that upon the said inquiry held under section 9 of the Land Acquisition Act, a decision has been arrived to deposit the money to the credit of Homagama District Court Case No.4587/T and the petitioner to make her claim at the said inquiry. Petitioner further submits that, subsequent to a determination under section 17 of the Land Acquisition Act made on 3<sup>rd</sup> January 2014, sum of Rupees 78,000,000/- was transferred to the credit of the said Testamentary Action.

Thereafter the petitioner made an application to intervene in the said Testamentary Action before the District Court of Homagama, but the District Judge Homagama on 30<sup>th</sup> October 2014 determined inter alia that there is no basis to entertain the application to intervene by the Petitioner.

The Petitioner's application before this court was challenged by the 2<sup>nd</sup> to 15<sup>th</sup> Respondents mainly on two grounds firstly on suppression and/or misrepresentation of Material Facts and Undue Delay and Laches.

According to the petitioner her husband had acquired several undivided shares of the said Land between 5<sup>th</sup> December 2005 and 11<sup>th</sup> March 2008 and thereafter on 17<sup>th</sup> August 2009 transferred the entire share to the petitioner by a Deed of Gift. Therefore it is the petitioner who could claim for the undivided share under section 9 of the Land Acquisition Act, but the petitioner has failed to submit before this court, any claim she had made before the 1<sup>st</sup> Respondent.

It is also important to consider whether the 1<sup>st</sup> Respondent as the acquisition officer held an Inquiry under section 9 of the Land Acquisition Act. In this regard petitioner has annexed a letter addressed to her husband by the 1<sup>st</sup> Respondent informing the Inquiry, marked A-7C, affidavit by her husband claiming that he is a Co owner in the land in question marked A-8 and letter dated 18/11/2013 addressed to the petitioner by the 1<sup>st</sup> Respondent marked A-9 and also submitted in paragraph 21-23 the sequence

of events took place with regard to the said claim inquiry. Neither the pleadings nor the documents attached indicate that there was a claim inquiry conducted by the 1<sup>st</sup> Respondent before any decision was taken. The most important document with regard to the conduct of the said inquiry is the Gazette notification dated 3<sup>rd</sup> July 2013 requesting all interested parties to be present for such inquiry, has not been produced by the petitioner, nor he has made any reference to such a Gazette notification in the pleadings.

Section 10(2) of the Land Acquisition Act reads as follows;

A claimant whose claim is wholly or partly disallowed, or a party to a dispute which is determined, by the decision of an acquiring officer under subsection (1) may, within 14 days of the service on him of notice of the decision, make application to that acquiring officer for the reference of the claim or dispute, as the case may be, for determination as here in after provided; and that acquiring officer shall make a reference accordingly.

When the 1<sup>st</sup> Respondent by letter dated 18.11.2013 officially communicated the petitioner of his decision, there is no evidence that the petitioner made an application for the 1<sup>st</sup> Respondent to act under the above provision of the Land Acquisition Act.

On 3<sup>rd</sup> June 2014, 7 months after the said decisions petitioner had gone before the District Court of Homagama to make an application under section 536 of the Civil Procedure Code to intervene and file objections in District Court Homagama 4587/Testamentary case, but on 30<sup>th</sup> October 2014 the above application was dismissed by the District Court of Homagama.

However there is no material before this court to demonstrate whether the Petitioner has appealed against the said decisions of the Learned District Judge or not.

Petitioner has come before this court only on 4<sup>th</sup> March 2015 seeking inter alia mandate in the nature of writ of Certiorari and Mandamus.

Paragraph 15 of the petition refers to several deeds under which the petitioner's husband acquired undivided shares of the land in question subject to the said testamentary action. However it was revealed at the inquiry before this court that some of the parties who said to have transferred their rights to the petitioner, subject to testamentary Action and not parties to the said Testamentary Action. This fact had not been brought to the notice of this court by the petitioner. By referring to the fact that several parties have transferred their shares to the petitioner, the petitioner had tried to impress this court that he has acquired a major share, but in fact it is not.

When deciding the question of extending the stay order, this court will have to measure all these issues very carefully. Specially for the reason that the respondents are alleging suppression and/or misrepresentation of material facts.

It is settled Law that when parties are found guilty for suppression and/or misrepresentation of material facts, that alone is sufficient application for a discretionary remedy to be rejected. Similarly courts are reluctant to extend interim relief already granted in such situations.

This was considered in the case of Hettiarachchi V. Alponso Appuhamy 77 NLR 131 as follows;

“ that when an application for a prerogative writ or an injunction is made, it is the duty of the Petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material fact; the petitioner must act with uberrima fides.”

As pointed out by me earlier, the petitioner was reluctant in submitting the fact whether an Inquiry was conducted under section 9 of the Land Acquisition Act by the 2<sup>nd</sup> Respondent. Petitioner had only submitted a letter purportedly sent to her by the 2<sup>nd</sup> Respondent. Petitioner has also impressed this court, that by the time acquisition took place he has acquired a major share of the land in questions but the above fact was incorrect according to the facts revealed before this court. The above suppression with regard to an inquiry made under section 9 and misrepresentation with regard to the shares acquired by the petitioner, in fact influenced this court to grant interim relief and therefore I am of the view that the petitioner is guilty of suppression and misrepresentation of material facts at the exparte inquiry.

It was further revealed that the petitioner had taken almost seven months to make an application for intervention before the District Court of Homagama and took 15 months to come before this court after she was officially informed of his decision by the 2<sup>nd</sup> Respondent. Petitioner has failed to explain this delay before this court. Therefore I hold that petitioner is guilty of undue delay and lashes for the above reason.

When considering all these issues, this court is of the view that the material before this court does not warrant the extension of the interim relief granted by this court.

Application for renewal of the stay order is refused.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala** I agree,

**JUDGE OF THE CUORT OF APPEAL**