

**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  
Mandamus under and in terms of Article 140 of  
the Constitution.**

M.M.Abdul Zukoor,

No. 04, Old Town,

Madampe.

**CA / WRIT / 59 / 2013**

**PETITIONER**

Vs,

1. Janaka Bandara Thennakoon,  
Hon. Minister of Lands,  
“Sampathpaya” Rajamalwatte Terrace,  
Battaramulla.
2. H.M.S.P. Herath,  
Divisional Secretary,  
Divisional Secretariat,  
Madampe.
3. Abdul Wahab Raheela Umma,  
No.110, Chilaw Road,  
Old Town, Madampe.

**RESPONDENTS**

**Before**

**: Vijith K. Malalgoda PC J (P/CA)**

**Counsel : Rasika Dissanayake for the Petitioner,  
M. Jayasinghe SC for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents,  
M.S.M. Imitias for the 3<sup>rd</sup> Respondent.**

**Argued On : 26.11.2014**

**Written Submission On : 04.03.2015**

**Order On : 21.05.2015**

## **Order**

**Vijith K. Malalgoda PC J**

M.M. Abdul Sakoor petitioner to the present application alledged that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to this application failed to release the compensation as per the determination made under section 17 of the Land Acquisition Ordinance and taking steps to hold a fresh inquiry despite the fact that there is already an order and the said conduct of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents are illegal, unlawful, arbitrary, capricious, ultra vires, violative of the principle of Natural Justice and his right would be seriously affected.

Therefore the petitioner has filed this application seeking inter alia;

- b. Issue a mandate in the nature of Writ of Certiorari to quash the decisions of the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents contained in the purported documents marked P-16 and P-17,
- c. Issue a mandate in the nature of a Writ of Mandamus to compel the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents to release the said compensation to the petitioner as per the determination made under section 17 of the Land Acquisition Ordinance marked as P-9,
- d. Issue an order staying further the proceedings and subsequent steps being taken pursuant to the purported decisions contained in the documents marked P-16 and P-17 until the hearing and final determination of this application,

The application was supported before this court on 20.03.2013 but no stay order had been granted at that stage preventing 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents from holding a fresh inquiry as stated in prayer (d) above.

At the argument before me, on behalf of the petitioner it was submitted that the petitioner is a *bona fide* purchaser of a Land called Thalagahawatte alias Koongahawatte situated at Marakkalagama of North Pitigal Korale in the District of Puttlam.

In the year 1995 the Minister of Lands published a section 2 Notice in terms of Land Acquisition Act with a view to acquiring land in the Puttlam District for the purpose of widening the Peliyagoda-Puttlam Road. Included within the land to be acquired is a two perch block of land which the petitioner claims to have lawful title to.

An inquiry to determine the ownership and compensation payable was held in year 2004, to which 3<sup>rd</sup> respondent did not attend. At the said inquiry, based on the material placed before him, the 2<sup>nd</sup> respondent arrived at a decision that it was the petitioner who enjoyed the title to the said property and that he was entitled to Rs 490 000/- as compensation.

It is important to note at this stage that, when Section 7 notice was published in 2003 the 3<sup>rd</sup> Respondents Name was published in the Gazette Notification as the claimant to the said land, which is the subject matter of this action depicted in Plan no. 3815 as Lot 74.

It was revealed during the argument before us that,

3<sup>rd</sup> Respondent Abdul Wahab Raheela Umma had become the owner of property bearing assessment No. 110 in the year 1982 by deed No. 244. Since then on number of occasions she had become a party to notarially executed documents with regard to the same Land. Finally a deed of transfer bearing no. 4618 has been executed in favor of one Hettiarachchige Karunaratne on 24.08.1996.

The said Hettiarachchige Karunaratne transferred the said Land to (1) Mohamad Sameen Fasslim Begam (2) Seiyadu Usuf Mohomadu Madani (3) Mohomad Sameen Pleesa Begam (4) Mahomad Ansar Seinul Farees (5) Mohomad Huward Mohomad Muneer and (6) Mahammuth Maharoo Abdul Zukoor on 01. 02. 2001 by deed No 251.

Mohommuth Maharoo Abdul Sukoor the Petitioner to the present application become the Sole owner of the said property when the other share holders gifted their undivided shares to the said Abdul Sukoor by Deed of gift bearing No. 2523 dated 02.04.2005.

An inquiry to determine the ownership and compensation payable was held before the predecessor of the 2<sup>nd</sup> Respondent, but admittedly the 3<sup>rd</sup> respondent did not attend the said inquiry, nor submitted any claim before any authority.

The position taken up by the 1<sup>st</sup> and the 2<sup>nd</sup> Respondent before this court was that, in terms of Land Acquisition Order 252(1) read with circular 6/2003, where a notice under section 2 or 4 of the Land Acquisition Act has been made no transfer or any other alteration of the property can be effected for a period of 12 months. According to the 1<sup>st</sup> and 2<sup>nd</sup> respondents, the section 2 notice with regard to

this Land was made on 20.04.1996 and the deed of sale No. 4618 was executed on 24.08.1996, which is a date within 12 months of section 2 notices.

On this point the Petitioner took up the positions that this court should not interpret section 4A of the Land Acquisition Act in such a manner as to defeat the intention of the legislature and court must give *purposive interpretation* to the section.

After the inquiry held by the predecessor to the 2<sup>nd</sup> Respondent, and arrived at a decision to pay the petitioner Rs. 490 000/- as compensation, a decision had been taken by the 2<sup>nd</sup> Respondent to deposit the money in District Court under section 10(3) of the Land Acquisition Act. Accordingly the money was deposited at District Court Chilaw in case number S/1703. The order of the Learned District Judge was annexed to the Petition marked P-15. According to the said decision the Learned District Judge had concluded that the deed by which the Petitioner is claiming his right against the 3<sup>rd</sup> Respondent was attested on 24.08.1996, which comes within 12 months of section 2 Notice and section 4A of the Land Acquisition Act comes into operation in this instance and therefore the decision arrived at the inquiry was erroneous. The District Court had further ordered the 2<sup>nd</sup> Respondent to hold a fresh inquiry under the provisions of the Land Acquisition Act and to decide the correct claimant for the payment of compensation. It is against this inquiry the petitioner has come before this court.

Two contrary views are placed before this court by the parties. Position taken by the 1<sup>st</sup> and 2<sup>nd</sup> respondent is to give a strict interpretation to section 4A of the Land Acquisition Act as amended by Act No. 28 of 1964. In contrary the Petitioner submits, that the court should not defeat the intention of the legislature and therefore the court must give purposive interpretation to the section.

Section 4A of the Land Acquisition Act reads as follows,

- 4A (1).** Where a notice has been issued or exhibited in respect of any Land under section 2 or 4, **no owner of that land shall**, during the period of 12 months after the date of the issue or exhibition of such notice,
- a) **sell or otherwise dispose of that Land;** or
  - b) do any act which, directly or indirectly, depreciates the value of that Land as at the date of such issue or exhibition

- (2).** Any sale or other disposal of land in contravention of the provisions of subsection (1) (a) of this section shall be null and void

- (3).** Any person who contravenes the provisions of subsection (1)(b) of this section shall be guilty of an offence punishable with a fine not exceeding one thousand rupees  
(emphasis added)

The main purpose of this amendment to the Land Acquisition Act was to prohibit a Land owner on whose Land a section 2 or 4 notice had been issued or exhibited, from selling or doing any act which depreciate such land during a period of 12 months.

Question arises at this stage as to why the legislature decided to limit the period for 12 months from the date of the issue or exhibition of notice. If the sale or other disposal takes place after 12 month then the transaction will not become null and void and the legislature is silent on this issue.

In the case of *Percy Atapattu V Wickramasinghe 1986 CALR I 289 at 299* Sharvananda CJ observed,

“To avoid an unworkable result a strained construction may be justified even where the statutory provision is not grammatically ambiguous. An act may require what appears be impossible due to unskillful drafting. If a strained construction is given, the true intention can be carried out.”

There can be situation where, immediately after section 2 or 4 notice is published or exhibited, and before any outsider become aware of the above fact, a land owner tries to disposed such property to a third party. The legislature is mindful of such situation and in order to protect a *bona fide* purchaser this provision had been introduced making the land owner liable for such sale or disposal. The section does not merely say any such disposal is null and void but it specifically say “no owner of that land shall, during the period of 12 months after the date of issue or exhibition of such notice,- a) sell or otherwise dispose of that land”

According to this section it is the responsibility of the land owner not to sell or dispose the land. The above discussion can put down in nutshell as follows;

- ❖ According section 4A land owner cannot sell or dispose of a property within 12 months of section 2 or 4 notice is published or exhibited.
- ❖ Main object and the intention of the legislature for introducing this provision is to protect a *bona fide* purchase.
- ❖ However the section is silent of the right of a *bona fide* purchaser with regard to his rights to claim for compensation.

In the case of *Salmo V. Dunombe (1886) 2 App. Case 627* the Privy Council said; “ where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman’s unskillfulness or ignorance of Law, except in the case of necessity or the absolute intractability of the language used”

With regard to this fact I would like to refer to Maxwell- Interpretation of statutes (12<sup>th</sup> Ed. Page 230) “Just as the court will occasionally fill omissions so it will sometimes- contrary to the general principle that effect must be given to every word in a statute- read a section and while doing so ignore certain words.”

When going though the facts of this case it is clear that it is only the petitioner who comes forward at the claim inquiry under section 9 of the Land Acquisition Act and the 2<sup>nd</sup> Respondents predecessor has made determination under section 17 of the Land Acquisition Act to pay

compensation to the petitioner. However, once it is realized that the deed by which the petitioner is claiming his right against the 3<sup>rd</sup> Respondent was attested within 12 months of section 2 notice, above decision was not carried out, by giving a strict interpretation to the relevant legal provision. i.e section 4A of the Land Acquisition Act. However as discussed above one of the main objective of this section is to protect the rights of a *bona fide* purchaser, but by operation of this section, can this court simply say that the deed by which petitioner is claiming his right was attested within 12 months of section 2 notice is published and therefore it is null and void, and therefore he is not entitled for compensation, when it is clear to us that the petitioner is a *bone fide* purchaser, In such a situation, it is the duty of the court to give effect to the main object and intention of the legislation rather than adhering to the section itself. Therefore I decide to reject the argument by the Respondents and decide to grant relief prayed by the petitioner in paragraph (b) and (c) of the prayer to the Petition.

**PRESIDENT OF THE COURT OF APPEAL**