

**IN THE COURT OF APPEAL OF THE DEMOCRATIC**

**SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for a mandate in the nature of a writ of Certiorari under and in terms of Article 140 of the Constitution.

**\*\*\*\*\***

1. H.A.J. Fonseka  
12/A/3, Othara Road,  
Waradala, Mellawagedara.
2. N.K. Chandra Mangalika  
12/A/3, Othara Road,  
Waradala, Mellawagedara.
3. Sahan Premesh Fonseka  
12/A/3, Othara Road,  
Waradala, Mellawagedara.

**PETITIONERS**

**C.A. (Writ) Application No. 408/2011**

**Vs**

1. Minister of Lands  
Ministry of Lands  
"Govijana Mandiraya"  
80/5, Rajamalwatte Road  
Battaramulla.
2. Divisional Secretary  
Divulapitiya.

3. Sarika Dhananjani  
No. 33, Mellawagedara  
Divulapitiya.
4. The Road Development  
Authority  
Sethsiripaya  
Battaramulla.

**RESPONDENTS**

**BEFORE**

: Deepali Wijesundera J.

**COUNSEL**

: Thushani Machado for the  
Petitioners.

Yuresha Fernando for the  
Respondents.

**ARGUED ON**

: 06<sup>th</sup> June, 2014

**DECIDED ON**

: 09<sup>th</sup> October, 2015

**Deepali Wijesundera J.**

The petitioners are seeking a writ of certiorari to quash an order made by the first respondent marked as P7. The petitioners are the owner of Lot 3 in plan no. 421 marked as P2. In year 2008 the petitioners land as well as the adjoining lands were surveyed for

widening of the Pannala-Mellawagedra Road by the fourth respondent. A letter dated 05/10/2010 has been sent to the first petitioner under *Sec. 38 (A) of the Land Acquisition Act* requesting them to handover vacant possession of the land to the state, which has been sent after the publication of the *Sec. 7* notice in the Gazette bearing *No. 1454/10* dated 18/07/2006 (**P5**). The petitioners claimed that they had no notice of the said publication. The petitioners' land is depicted as *Lot 1:146* and *1:147* in plan *No. KC 510033* mentioned in the Gazette notification. Petitioners also claimed they have not been served with a *Sec. 38 A* notice either.

The learned counsel for the petitioners stated that the respondents failed to adhere to the procedure set out in *Sec. 2 and 4 of the Land Acquisition Act*.

The petitioners argued, to acquire a land for development the state had to reveal the public purpose for which the land is to be acquired there is no public purpose disclosed in **2R13 (a)**. The petitioners further stated that they had no knowledge of the acquisition until they received the document marked **P4**.

The first and second respondents in their objections and oral submissions stated that the land is to be acquired for a public purpose which can not be obstructed and that the public purpose is disclosed by **2R3 (a) (1) and (3)**. The argument of the first and second respondents was that they have given Sec. 2 notice to the petitioners and also Sec. 38 (1) notice was also sent and the delay caused by the petitioners by not handing over possession of the land has caused irrepressible loss to the respondents.

On perusal of documents **2R13** and **2R13 A** it is evident that the section two notices were sent to the relevant Grama Niladari by the second respondent to be served on the parties. On perusal of **2R14** it is evident that the Grama Niladari has fixed the notices at the Grama Niladari's office and at the sub post office. These two places are not situated within the petitioner's land. Therefore does it amount to section two noticed been served on the petitioners Sec. 2 (1) states;

***2 (1). Where the Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in the area.***

The section states the notice to be exhibited in some conspicuous place in the area. The Grama Niladari Office and the sub post officer are public places but in this day where everything is done by electronic media one has a doubt, whether the parties visited these places any more. Therefore the petitioner's statement that they were unaware of a Sec. 2 notice can be accepted. **2R13** stated the land is to be acquired for a public purpose but does not reveal what the public purpose is in **Manel Fernando vs. D.M. Jayaratne Minister of Lands 2000 (1) SLR 112**. Mark Fernando J, has stated that the Minister had to disclose the public purpose.

Document marked **P4** which refers to *Sec. 38 (A)* and which the respondents stated is a *Sec. 38 (A)* notice to hand over possession of the land refer to a document earlier sent to the petitioners dated 27/09/2010 which the petitioners stated they did not receive. The respondents failed to show this court it was not so.

On perusal of documents marked and submitted to court and also the submissions made it can be seen that the respondents have not acted according to *Sec. 2 and 38 (a) of the Land Acquisition Ordinance*. *Sec. 2* notices have not been sent to the petitioners and in the notice filed by the respondents does not reveal a public purpose. The mere

statement that the land is required for a public purpose is not enough, the person who owns the land has a right to know for what public purpose his land is been taken over by the state.

The road expansion has already been concluded according to photograph submitted to court by the petitioners for which the respondents did not object therefore it can not be said that irrepressible loss is caused to the state.

For the afore stated reason this court decides to grant relief prayed for in prayer (b) of the petition. The petitioners' application for writ of certiorari allowed.

**JUDGE OF THE COURT OF APPEAL**