

**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 *Writ of Certiorari* under article 140 of the  
Constitution of the Democratic Socialist Republic of  
Sri Lanka**

Metilda Ariyapperuma alias Ariyapperuma  
Arachchige Dona Metilda,  
No. 324/2, Baseline Road,  
Seeduwa.

**PETITIONER**

**CA/WRIT/330/2013**

**Vs,**

1. Hon. Janaka Bandara Thennekoon,  
The Minister of Land and Land  
Development,  
Ministry of Land and Land Development,  
“Govijana Mandiraya,”  
80/5, Rajamalwatte Avenue,  
Battaramulla.
- 1A. Hon. M.K.D.S. Gunawardana,  
The Minister of Land and Land  
Development,  
Ministry of Land and Land  
Development,  
“Govijana Mandiraya,”  
80/5, Rajamalwatte Avenue,  
Battaramulla.
2. Secretary,  
Ministry of Local Government and  
Provincial Council,  
No.330, Union Place,  
Colombo 02.

3. Divisional Secretary,  
Divisional Secretariat,  
Pitabeddara.
4. Mrs. Irene Nanayakkara,  
Director (Land Acquisition),  
Ministry of Land and Land Development,  
"Govijana Mandiraya,"  
80/5, Rajamalwatte Avenue,  
Battaramulla.
5. Commissioner of Land,  
Provincial Land Ministry,  
Southern Provincial Council,  
Fort Galle.
6. Ranasinghe Arachchige Prasad,  
Pitabeddara.

**RESPONDENTS**

**And between**

1. Ranasinghe Arachchige Piyadasa alias  
Ranasinghe Arachchige Gunasoma Piyadasa,  
"Ranasinghe"  
Tennahena,  
Pitabeddara.
2. Ranasinghe Arachchige Ariyadasa,  
"Ranagiri,"  
Tennahena,  
Pitabeddara.

**PETITIONERS SOUGHT TO BE INTERVENE**

**Vs,**

Metilda Ariyapperuma alias Ariyapperuma  
Arachchige Dona Metilda,  
No. 324/2, Baseline Road,  
Seeduwa.

**PETITIONER- RESPONDENT**

**Vs,**

1. Hon. Janaka Bandara Thennekoon,  
The Minister of Land and Land  
Development,  
Ministry of Land and Land Development,  
“Govijana Mandiraya,”  
80/5, Rajamalwatte Avenue,  
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- 1A. Hon. M.K.D.S. Gunawardana,  
The Minister of Land and Land  
Development,  
Ministry of Land and Land  
Development,  
“Govijana Mandiraya,”  
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4. Mrs. Irene Nanayakkara,  
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5. Commissioner of Land,  
Provincial Land Ministry,  
Southern Provincial Council,  
Fort Galle.
  
6. Ranasinghe Arachchige Prasad,  
Pitabeddara.

**RESPONDENTS- RESPONDENTS**

**And now between**

1. Ranasinghe Arachchige Piyadasa alias  
Ranasinghe Arachchige Gunasoma Piyadasa,  
“Ranasinghe”  
Tennahena,  
Pitabeddara.
2. Ranasinghe Arachchige Ariyadasa,  
“Ranagiri,”  
Tennahena,  
Pitabeddara.

**PETTITIONER-PETITIONERS SOUGHT TO BE INTERVENE**

Metilda Ariyapperuma alias Ariyapperuma  
Arachchige Dona Metilda,  
No. 324/2, Baseline Road,  
Seeduwa.

**PETITIONER-RESPONDENT-RESPONDENT**

Vs,

1. Hon. Janaka Bandara Thennekoon,  
The Minister of Land and Land  
Development,  
Ministry of Land and Land Development,  
“Govijana Mandiraya,”  
80/5, Rajamalwatte Avenue,  
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- 1A. Hon. M.K.D.S. Gunawardana,  
The Minister of Land and Land  
Development,  
Ministry of Land and Land  
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“Govijana Mandiraya,”  
80/5, Rajamalwatte Avenue,  
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2. Secretary,  
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Ministry of Land and Land Development,  
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5. Commissioner of Land,  
Provincial Land Ministry,  
Southern Provincial Council,  
Fort Galle.
6. Ranasinghe Arachchige Prasad,  
Pitabeddera.

**RESPONDENT- RESPONDENT- RESPONDENTS**

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

**Counsel:** D.K. Dhanapala with A.A. Nelum Pradeepa for the Petitioner-Respondent,

Upul Kumarapperuma with Lahiru Galappaththige for the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner-Petitioners  
(Petitioner-Petitioners sought to be intervene),

Chaya Sri Nammuni SC for the 1<sup>st</sup> to 5<sup>th</sup> Respondents-Respondents,

Rohan Sahabandu PC with Diluka Perera for the 6<sup>th</sup> Respondent- Respondent.

Written Submissions on: 16.12.2015

**Order on: 11.03.20**

## **Order**

### **Vijith K. Malalgoda PC J**

Petitioner-Respondent to the present application has come before this court seeking inter alia, a *Writ of Certiorari* to quash a decision of the 1<sup>st</sup> to 5<sup>th</sup> Respondents to acquire a block of land to the extent of 33 perches belong to the Petitioner.

Petitioner whilst alleging that the said acquisition was not for a public purpose, submitted that it is for the purpose of constructing a short-cut road to the 6<sup>th</sup> Respondent.

This application has originally supported before this court on 18<sup>th</sup> December 2013 and the Respondents who came before this court, on 30.01.2014 had moved time until 02.04.2014 to file objection. In the meantime on 27.03.2014 the two Interventient-Petitioners have come before this court and filed papers seeking intervention.

Since the Petitioner-Respondent has objected to the said intervention, the inquiry into the intervention was fixed, but had gone down since then for several days. When the matter was fixed for the inquiry on 23.07.2015 the Interventient-Petitioners was absent and unrepresented and therefore the application by the Interventient- Petitioners for intervention was dismissed and the main matter was fixed for argument for 22.09.2015.

The present application before us is the re-listing application filed by the Interventient-Petitioner. Intervention in to the Writ Applications before the Court of Appeal are generally not entertained, in the absence of specific procedure laid down in the Court of Appeal Appellate Procedure Rules 1990 unless the intervenient parties can satisfy court that the said party have sufficient cause and interest in the matter in question and is a necessary party to the application before court. This was discussed by

the Judges of the Court of Appeal in several cases including *Illandari Devege Ranasinghe and Others V. Commissioner General Excise and Ven. Udawaththe Nanda Thero and Others CA /Writ Application 127/10 (Court of Appeal minutes 11.05.2011)* and *L.U.P. Jayawardena V. Minister of Health and Others CA Writ Application 978/2008 (Court of Appeal minutes 21.05.2011)*.

Under these circumstances, it is the duty of the Interventient-Petitioners to satisfy court of their position before this court and the court cannot go behind the intervenient parties and grant relief to them. It is their duty to be present on all days when the matter is fixed for inquiry.

After the said dismissal, the intervenient-Petitioners have now come before this court and filed papers', moving the matter to be relisted for inquiry into intervention.

In the absence of any specific provision in the Court of Appeal (Appellate Procedure Rules) 1990 for intervention, once again this court wish to re-iterate that this court is reluctant to make order for relisting, unless the party moving for relisting, establishes the bona-fides from their part with sufficient material within reasonable time.

The position taken up by the Interventient-Petitioners before this court was that the junior counsel who appeared before this court on 28/4 had noted down the date of inquiry as 27/7 instead 24/7 and therefore the counsel could not appear in the Court of Appeal 24/7. In support of this position the Interventient-Petitioners has filed along with their Petition Copies of the diaries of the two counsel.

However when going through the documents filed before this court, I observe that the Interventient-Petitioners has taken nearly 1 ½ months to come before this court. If the date is incorrectly recorded as 27/7, by 27/7 the parties should take steps to ascertain what has happened to the case and take appropriate steps without waiting for nearly 1 ½ months. This conduct of the Interventient-Petitioners are worst than the mistake already committed. The Interventient-Petitioners have failed to explain their delay before this court.

The Interventient-Petitioners have however submitted along with the petition and affidavit, an additional affidavit from the Junior Counsel who appeared on 28/4 and recorded the date of inquiry as 27/7, along with copies of her diary, her senior's diary and the cover page of the file maintained at the office of the Instructing Attorney indicating the date as 27/7.

This court further observes that the Interventient party which had come before this court in March 2014 was represented by counsel since then except on 24.07.2015. When considering all these matters, this court is not inclined to dismiss the application for relisting by the Interventient-Petitioners merely for the unexplained delay of 1 ½ months and therefore make order relisting the application for intervention by the Interventient –Petitioners.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala J**

I agree,

**JUDGE OF THE COURT OF APPEAL**