

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

**SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application under Article  
140 of the Constitution for Mandates in the  
nature of Writs of Certiorari.

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1. Abeysirinarayana Lokuruge Somathilake,  
Of Nai Veda Gedara, Angulmaduwa,  
Beliatta.
2. Narayanage Hemalatha  
Of Nai Veda Gedara, Angulmaduwa  
Beliatta.
3. Watawana Badalge Lalani
4. Watawana Badalge Shantha  
All of Siri Veda Nivasa, Lower Beligalla,  
Upper Beligalla.
5. Wattege Thisohamy  
Of Elagawatte, Angulmaduwa,  
Beliatta.
6. Lokuruge Sarath
7. Lokuruge Chandrika  
Both of Elagawatte, Angulmaduwa,  
Beliatta.
8. Ratnasinghe Arlishamy  
Of Mahawatte, Angulmaduwa,  
Beliatta.
9. Ginneliya Gam Athigei Sumanalatha
10. Ginneliya Gam Athigei Padmalatha

11. Ginneliya Gam Athigei Premalatha
12. Ginneliya Gam Athigei Sunil alias Sunil  
Genneliya.
13. Bambarenda Badalge Ariyawathie
14. Ginneliya Gam Athigei Ayesika Varuni  
Gunathilleke
15. Ginneliya Gam Athigei Rasika Jayashantha
16. Ginneliya Gam Athigei Shaamika Dilraj
17. Ginneliya Gam Athigei Niluka Dilraj
18. Ginneliya Gam Athigei Nilushika Varuni
19. Ginneliya Gam Athigei Pemawathie
20. Ginneliya Gam Athigei Gunaseeli
21. Ginneliya Gam Athigei Sitha
22. Ginneliya Gam Athigei Amarasena alias  
Ginneliya Gam Athigei Piyaratne  
All of Angulmaduwa, Beliatta.

**PETITIONERS**

**C.A. (writ) Application No.667/2009**

**Vs**

1. Hon. Jeewan Kumaranatunga  
Ministry of Lands AND Development  
Govijana Mandiraya, Rajamalwatte  
Road, Battaramulla.
- 1A Hon. Janaka Bandara Tennakoon  
Ministry of Lands AND Development  
"Govijana Mandiraya",  
Rajamalwatte Road, Battaramulla.
- 1B Hon. M.K.D.S. Gunawardhana  
Ministry of lands AND Development

- “Govijana Mandiraya”,  
Rajamalwatte Road, Battaramulla.
2. Beliatta Pradeshiya Sabha  
Office of the Pradeshiya Sabha, Beliatta.
  3. Cyril Munasinghe  
Chairman, Beliatta Pradeshiya Sabha  
Office of The Pradeshiya Sabha, Beliatta.
  5. Secretary  
Ministry of Agriculture Development  
And Agrarian Services,  
Colombo.
  6. Commissioner General of Agrarian  
Development, Department of Agrarian  
Development, No. 42, Sir Marcus  
Fernando Mawatha, P.O.Box 537,  
Colombo 07.
  7. Assistant Commissioner of Local  
Government, Hambantota
  8. Assistant Commissioner of Agrarian  
Development, Hambantota.
  9. Secretary  
Ministry of Local Government and  
Provincial Councils,  
of No. 330, Union Place, Colombo 2.
  10. Secretary  
Ministry of Lands and Land Development  
“Govijana Mandiraya”, Rajamalwatte Rd  
Battaramulla.
  11. Superintendant of Servey Office  
Hambantota.
  12. District Secretary of Hambantota District  
Hambantota.

**RESPONDENTS**

**BEFORE**

: Deepali Wijesundera J.

**COUNSEL**

: Dr. Sunil Coorey for the

Petitioners.

W. Dayaratne PC with

P. Jayawardene and D. Dayaratne

For the 2<sup>nd</sup> and 3A Respondents

Nayomi Kahawita SC for the 1<sup>st</sup>,

4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup> and

11<sup>th</sup> Respondents.

**ARGUED ON**

: 17<sup>th</sup> September, 2014

**DECIDED ON**

: 01<sup>st</sup> April, 2016

**Deepali Wijesundera J.**

The petitioners have filed this application by way of a writ of certiorari seeking relief to quash a vesting order published in Gazette Extraordinary No. 1609/10 dated 08/07/2009 marked **A** under *section 38 of the Land Acquisition Act*. The land in issue is situated within the Beliatta Divisional Secretary's Division and it has been acquired for the public purpose of constructing a playground for school children of Angul Maduwa Kanishta Vidyalaya.

The petitioner's argument was that there was no urgency to acquire a paddy land which was in cultivation to build a playground for a school which had only 400 to 500 students and that the school had classes only up to G.C.E. Ordinary Levels. The petitioners stated that the said land was cultivated only once a year since there was a scarcity of water but the land was continuously cultivated every year.

The petitioners in their submissions stated at length about a District Court case where the subject matter was the land in suit. Since this is a writ application to quash a vesting order the above argument is not applicable to the instant case. The petitioners have filed a number of letters written by various people including a Buddhist priest against the acquisition order.

The petitioners stated after representations were made against the proposed acquisition a meeting was held at the Hambantota District Agricultural Committee on 23/11/2008 and a request was made to the third respondent to reconsider the matter and to forward his recommendations. Thereafter there has been several letters of protest sent to the respondents.

The petitioners stated that so far no work has been done to construct the playground and that to build a playground the land has to be filled.

The petitioners stated first to ninth, eleventh, twelfth, twentieth and twenty first petitioners who are co-owners and in possession of the land were not noticed by the fourth respondent to hand over possession. They stated that the first petitioner received a letter from the ninth respondent dated 09/09/2009 stating that the protests against the acquisition had been inquired into by the Commissioner of Local Government and that he had recommended that the said land was suitable to be acquired. The petitioners stated that Gazette marked A is ultra vires, null and void and of no force or avail in law. The judgments in **Manel Fernando vs Jayawickrema 2000 1 SLR 126, D.F.A. Kapugeekiyana vs J.B. Tennakoon S.C. no. 161/2010** were cited and stated that a purpose that can become a reality only in the distant future is not a public purpose, and that a public purpose must be real, definite and present.

The petitioners stated that grave and irreparable loss and damage will be caused to the petitioners if relief is not granted to them.

The respondents submitted that the acquisition of the land was initiated on bona fide grounds at all material times, and that pursuant to the vesting order being published in the Gazette in terms of Sec. 5 of the Act the Minister had made a written declaration that the land in question is needed for a public purpose **(1R9)**. The respondents went on to discuss the effect of Sec. 5 citing the judgments in **Gunasekera vs Minister of Lands and Agriculture and others 65 NLR 119**, **Gunawardena vs District Revenue Officer Waligama Korale 73 NLR 333** and **Maria Indira Fernandopulle vs Minister of Lands and Agriculture 79 NLR 116**.

The respondents further stated that it is trite law that the vesting order made by the Minister on grounds of urgency can be challenged only if the petitioners had established that there was no urgency. The respondents stated a decision made under Sec. 38 can only be opened to judicial review only if a serious and apparent doubt exists with regard to its procedural impropriety and existence of malice, and stated that the petitioners have not alleged malice but alleged that there is no urgency to acquire land and build a playground.

The land in issue had been acquired for a public purpose which is to build a playground to a school. The petitioners stated that there are

only 400 to 500 students in the said school which only had class up to G.C.E. Ordinary Level examination. This I find is a very weak argument whether a school had class up to Ordinary Level examination or Advanced Level examination it has to have a playground for the children. A playground for a school is undoubtedly a public purpose. The land acquired had not been cultivated for years according to the reports called before the acquisition. Therefore factually it had been a suitable land to do the said construction.

The petitioners stated there was no urgency for the public purpose. A playground to a school which has to be developed for the children of the area is a matter of great urgency and importance and also it is a public purpose. Children are the future of a country and they have to be properly educated.

An acquisition order published in the Gazette can only be challenged if the public purpose is not disclosed or strong grounds of procedural impropriety coupled with Mala Fides existed or if the land so acquired had not been utilized for the purpose it was acquired. The petitioners have not established any of these grounds.



**Sec. 5 of the Land Acquisition Act reads thus;**

***(1)Where the Minister decides under subsection (5) of section 4 that a particular land or servitude should be acquired under this Act, he shall make a written declaration that such land or servitude is needed for a public purpose and will be acquired under this Act, and shall direct the acquiring officer of the district in which the land which is to be acquired or over which the servitude is to be acquired is situated to cause such declaration in the Sinhala, Tamil and English languages to be published in the Gazette and exhibited in some conspicuous places on or near that land.***

***(2)A declaration made under subsection (1) in respect of any land or servitude shall be conclusive evidence that such land or servitude is needed for a public purpose.***

***(3)The publication of a declaration under subsection (1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.***

Once the Sec. 5 (1) declaration is done by the Minister Sec. 5 (2) of the Act makes it conclusive and takes it out of the scope of judicial review. Thus the question of whether the land forming the subject matter of this instant application is required for a public purpose can not be questioned in this court.

For the afore stated reasons the application of the petitioners is dismissed with costs fixed at Rs. 50,000/=.

**JUDGE OF THE COURT OF APPEAL**