

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

01. Mohommad Saheed Hajjar Sitti

Raleena,

02. Mohommad Abdul Cader Sitti

Nurul Kulub,

03. Mohommad Abdul Cader

Mohommad Ismath Basir,

all of No.4, Rasheek Fareed  
Avenue,

Thotawatta, Panadura.

**PETITIONERS**

Provincial High Court of Western Province

Holden in Kalutara bearing case numbers

High Court Kalutara No: CERTI 30/07 and WP/HCCA/KAL/NO:

Certi/03/2007

**Court of Appeal PHC Appeal Case No: 178/2008**

**Vs.**

01. Minister of Lands,

Ministry of Lands,

Colombo.

02. Divisional Secretary,

Divisional Secretariat,

Beruwala.

03. A.Y.S.D. Gunarathne,

No: 12, Asoka Place,

Katubedda,

Moratuwa.

04.Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

Lokukankanamge Ramani  
Priyanthi Peiris,  
No. 20, Gunathilake Mawatha,  
Atambagoda, Panadura.

**ADDED RESPONDENT**

***AND NOW BETWEEN***

In the matter of an appeal in terms of Article 154(P)(6) of the Constitution read with the Court of Appeal (Procedure for Appeals from the High Courts established by Article 154(P) of the Constitution) Rules 1988 in respect of the order dated 02.12.2008 made by the Provincial High Court of the Western Province Holden in Kalutara in case numbers High Court Kalutara No:CERTI 30/07 and WP/HCCA/KAL/No: Certi/03/2007.

A.Y.S.D. Gunarathne,  
No. 12, Asoka Place,  
Katubedda, Maratuwa.

**3<sup>RD</sup> RESPONDENT – APPELLANT**

**Vs.**

01. Mohommad Saheed Hajjar Sitti  
Raleena,  
02. Mohommad Abdul Cader Sitti  
Nurul Kulub,  
03. Mohommad Abdul Cader  
Mohommad Ismath Basir,  
all of No.4, Rasheek Fareed  
Avenue,  
Thotawatta, Panadura.

**PETITIONER – RESPONDENTS**

04. Minister of Lands,  
Ministry of Lands,  
Colombo.  
05. Divisional Secretary,  
Divisional Secretariat,  
Beruwala.  
06. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENT – RESPONDENTS**

Lokukankanamge Ramani  
Priyanthi Peiris,  
No. 20, Gunathilake Mawatha,  
Atambagoda, Panadura.

**ADDED RESPONDENT -  
RESPONDENT**

**Before : W.M.M. Malani Gunaratne, J  
: P.R. Walgama, J**

**Counsel : Riad Ameen with by Indunil Bandara for 3<sup>rd</sup>  
Responder - Appellant.**

**: A. Hashim for the Added - Respondent.**

**: A.L.M. Hidayathulla with S. Wijerathne  
N. Jayasihgha for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> Petitioner -  
Respondent.**

**Argued on : 12.11.2015**

**Decided on : 13.06.2016**

CASE -NO- CA-(PHC)- 178/2008- ORDER- 13.06.2016

**P.R. Walgama, J**

The instant appeal lies sequel to the order made by the Learned High Court Judge dated 02.12.2008, in the case bearing No. CERTI- 30/07 in the High Court holden at Kalutara.

Nevertheless the instant order concerns the application made by the 3<sup>rd</sup> Respondent - Appellant as to the

jurisdiction of the Provincial High Court to deal with the matters relating to the State Lands.

Before embarking on the above threshold issue, it is salient to note the relevant facts which stemmed from application by the Petitioner- Respondents, as to the issuance of a writ of Certiorari and Mandamus against the 2<sup>nd</sup> Respondent accordingly.

The Petitioner - Respondents sought relief from the High Court of KALUTARA for a mandate, in the nature of a writ of Certiorari to quashed the order of the 2<sup>nd</sup> Respondent awarding compensation to the 3<sup>rd</sup> Respondent- Appellant and six others.

It is admitted by the Petitioner - Respondents that the disputed land is a State Land acquired by the State by virtue of the Extraordinary Gazette, No. 776/18 , dated 23.07.1993 which has been marked as P1.

Further it is alleged by the Petitioner- Respondents that by document marked P2 indicates the amount to be paid to the 3<sup>rd</sup> Respondent - Appellant, but had failed to award any compensation to the Petitioner - Respondents who are the owners of the lands deemed have acquired by the State.

Although the Petitioner- Respondents had written to the 2<sup>nd</sup> Respondent as to title to the land which was acquired and their entitlement to receive compensation,

nevertheless the 2<sup>nd</sup> Respondent has rejected the said request by his letter marked P2.

It is the categorical position of the Petitioner that the land described (without a specific extent) in the schedule to the petition belongs to them, and the 3<sup>rd</sup> Respondent - Appellant has no title to the suit land.

In the above setting the Petitioner - Respondents urged from the High Court for a writ of Certiorari to quashed the decision to award compensation to the 3<sup>rd</sup> Respondent- Appellant and 6 others, and for writ of Mandamus to compel the 2<sup>nd</sup> Respondent, to pay the entire compensation to the Petitioner- Respondents, which has been already decided to be paid to the 3<sup>rd</sup> Respondent - Appellant and 6 others.

To refute the above, the 3<sup>rd</sup> Respondent- Appellant had asserted the following;

That by the document marked P1, the 2<sup>nd</sup> Respondent has informed the 3<sup>rd</sup> Respondent - Appellant in terms of Section 38(b) that the subject will be acquired by the State. Further in pursuant to the above notification by gazette notification No. 1156/15 dated 31.10.2000 has given notice to all parties to have a right to the land in issue to make their claim. Accordingly the 3<sup>rd</sup> Respondent - Appellant had made her claim, and the 2<sup>nd</sup> Respondent acting under in terms of Section 17 of the Land Acquisition Act, had awarded compensation to the Appellant.

It contended by the 3<sup>rd</sup> Respondent - Appellant that the Petitioner- Respondents is not entitle to question the compensation award as they have not acted in terms of Section 7 and 9 of the said Act. In addition to the above, the Petitioner - Respondents had moved for the reliefs as stated above after a lapse of 14 years from the date of the publication of the acquisition of the land in issue. The 3<sup>rd</sup> Respondent - Appellant has specifically stated in the averment 17 the devolution of title and asserted that she is entitled to the compensation that was awarded to her.

The Learned High Court Judge has adverted to the fact the grievance placed by the Petitioner, that the 2<sup>nd</sup> Respondent's failure to give a hearing to the Petitioners before rejecting their application in limine. Further he was of the view that the Petitioners had made the application with an inordinate delay.

The Learned High Court Judge has also considered the fact that a decision made by the 2<sup>nd</sup> Respondent in terms of Section 17 cannot be challenged as it is a final determination recognised by the said statue.

Further it was the opinion of the Judge as per documents marked P1 to P7 that the Petitioners are entitled to some land but was confused as to the identity of the land in issue and was of the view that the 2<sup>nd</sup> Respondent should hold an inquiry in terms of Section 9 of the said Act, but it was observed by the

Learned High Court Judge, that at the instant of an order of Court the 2<sup>nd</sup> Respondent could reopen the claim of the Petitioner.

Besides the Learned High Court judge has dealt with the document marked V3-1 that he is prepared to inquire in to the application of the Petitioner. Hence in the said back drop the Learned High Court Judge was of the view that it is proper to issue a writ of Mandamus on the 2<sup>nd</sup> Respondent only to inquire in to the alleged rights of the petitioners who are claiming compensation, in leave of the acquisition of their land by the State. Therefore it is abundantly clear that the Learned High Court Judge has granted the said relief purely on equitable grounds.

Being aggrieved by the said order of the Learned High Court Judge the 3<sup>rd</sup> Respondent - Appellant appeal to this Court to have the said order set aside or vacate.

It is intensely relevant to note that the High Court of Province was vested with the jurisdiction as explicitly stated in Article 154(p) of the Constitution thus;

Article 154(p)(4)(b) deals with the matter in hand;

4. every such High Court shall have jurisdiction to issue, according to law,

a. orders in the nature of habeas corpus, in respect of persons illegally retained within the province  
AND



b. order in the nature of writs of Certiorari, prohibition, procedendo, mandamus, and quo warranto against any person exercising, within the province any power under-

(1) any law:

(2) any statutes made by the Provincial Council established for that Province,

In respect of any matter set in the Provincial Council List.

The said Provincial Council List is embodied in the Ninth Schedule and deal with the subject LAND thus;

LAND- land that is to say, rights in and over land, land tenure, transfer, and alienation of land, land use, land settlement and land improvement, to the extent set out in Appendix ii.

Appendix ii deals with the matters relating to land and land settlement;

“State land shall continue to vest in the Republic and may be disposed of in accordance with Article 33 (d) and written law governing the matter”

Subject as aforesaid, land shall be a Provincial Council Subject, subject to the following special provisions :-

1:1 State land required for the purposes of the Government in a province , in respect of a reserved or

concurrent subject may be utilized by the Government in accordance with the laws governing the matter. The Government shall consult the relevant Provincial Council with regard to the utilisation of such land in respect of such subject,

1:2 Government shall make available to every Provincial Council State Land within the province required by such Council for a Provincial Council subject. The Provincial Council shall administer, control and utilise such State Land, in accordance with the laws and statutes governing the matter.

1:3 Alienation or disposition of the State Land within a Province to any citizen or to any organisation shall be by President, on the advice of the relevant Provincial Council, in accordance with the laws governing the matter.

In the above context and the matters set out in the afore said Articles it is abundantly clear that the payment of compensation for lands acquired under the Land Acquisition Act is not a matter set out in the Provincial Council list.

The above exposition of the law in respect of the above matter was recognised in the cases of SOLIMUTTHU RASU .VS. SUPRINTENDENT OF STAFFORD ESTATE (Sc Appeal No. 21/13) and MADDUMA BANDA .VS. ASSISTENT COMMISSIONER AGRARIAN SERVICES AND ANOTHER(2003) 2 SLR 80

The Counsel for the 3<sup>RD</sup> Respondent – Appellant has adverted Court to another land mark judgment of Fernando .J vis a vis

Weregama vs. Eksath Lanka Kamkaru Samithiya and others (1994) 1 SLR 293 has opined thus;

“as to the intention of Parliament in adopting the Thirteenth Amendment, this court cannot attribute an intention except that which appears from the words from the words used used by Parliament. I find nothing suggesting a general intention of devolving power to the Provinces; insofar as the three Lists are concerned, only what was specifically mentioned was devolved, and “all subjects and functions not specified in List i or ii were reserved – thus contradicting any such general intention ..... There was nothing more than a re arrangement of the jurisdiction of the judiciary” If powers relating to Recovery, dispossession of State Lands, encroachment or alienation of State Lands are not in the Provincial Council List, matters relating to them cannot be gone into by a High Court of the Province.

A key passage from the afore mentioned judgment of Solimuttu Rasu .vs Superintendent of Stafered Estate is reproduced herein below for the sake of convenience and brevity ;

“According, I hold that the Court of Appeal erred in holding that the Provincial High Court had had jurisdiction issue a writ of Certiorari, in respect

of a quit notice issued under the State Lands (Recovery of Possession Act). The order made by the Court of Appeal dated 08.08.2012 is set aside and the order of the Learned High Court Judge dated 25.10.2000 is affirmed.”

When the facts and the law reviewed in the said backdrop I am of the view that the Provincial High Court stands denuded of jurisdiction to issue a Mandate in the nature of a writ of Certiorari and a Mandamus against any decision of a State officer where a State land is involved.

Hence I set aside the impugned order of the Learned High Court Judge and allow the appeal.

**JUDGE OF THE COURT OF APPEAL**

W.M.M. Malani Gunaratne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**