

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, Mandamus and Prohibition in
terms of Article 140 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka.*

C A (Writ) Application

No. 143 / 2013

Poththewela Kankanam Gamage
Weerasekera,
Aluthwatta,
Pathegama,
Kottegoda.

PETITIONER

-Vs-

1. D Ranaweera

Former Divisional Secretary,
Dikwella Divisional Secretariat,
Dikwella.

2. B S Ranjitha

Divisional Secretary,
Divisional Secretariat,
Dikwella.

3. District Secretary

District Secretariat,
Matara.

4. Hon. Janaka Bandara Tennakoon,

Ministry of Land and Land
Development,

"Mihikatha Medura",
Land Secretariat,
No: 1200/6,
Rajamalwatta Avenue,
Battaramulla.

5. Poththawela Kankanam Gamage

Bimal Harshana,
Aluthwatta,
Pathegama,
Kottegoda.

6. Hon. Attorney General

Attorney General's Department,
Colombo 12.

RESPONDENTS

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

P. Padman Surasena J

Counsel : Rohan Sahabandu, PC with Hasitha Amarasinghe for the
Petitioner.

Suranga Wimalasena, SSC for the 1st - 4th Respondents.

Chandima Muthukumarana for the 5th Respondent.

Argued on: 2016-07-11 and 2016-11-29.

Decided on : 2017 - 03 - 02.

JUDGMENT

P Padman Surasena J

The land including lot Nos. 16, 17 and 42 of plan No. MU. P. MARA 2322 dated 2008-05-28 produced marked **2 R 12** had been acquired by the State in terms of section 38(a) of the Land Acquisition Act by the Gazette Notification No. 1516/11 dated 2007-09-24 which is produced marked **2 R Z.**

A notice under section 7 of the Land Acquisition Act had been published in the Gazette Notification bearing No. 1559/13 dated 2008-07-22 which is produced marked **2 R 13**.

Lot No. 17, 16 and 42 in the plan referred to by the petitioner in his petition are the lots in dispute in this case. They are amongst the several lands that had been acquired by the government in terms of the provisions of the Land Acquisition Act (hereinafter sometimes referred to as the 'Act'). Summary of the complaints made to this court by the Petitioner, is as follows;

- I. that he submitted an affidavit produced marked **P 6** setting out his claim to the said land together with the deed bearing No. 64 to the Divisional Secretariat of Dickwella, after becoming aware that the said land is to be acquired by the state;
- II. that the Divisional Secretary without holding a proper inquiry, had decided to award compensation in respect of these lands to the 5th Respondent;
- III. that the Divisional Secretary has failed to refer this dispute to the District Court as required by section 10(3) of the Land Acquisition Act

in view of the rival claims to this land by both the Petitioner and the 5th Respondent.

- IV. that the 1st and 2nd Respondents in making the decision to grant compensation to the 5th Respondent without referring this dispute to the District Court in terms of section 10(3) of the Land Acquisition Act had therefore acted in excess of the authority rendering the said decisions *ultra vires*.

It is on the above premise that the Petitioner has prayed for,

1. a mandate in the nature of a writ of Certiorari to quash the decision contained in the letter dated 2012-08-07 produced marked **P 18** by the 2nd Respondent granting further compensation to the the 5th Respondent;
2. a mandate in the nature of a writ of Certiorari to quash all the decisions by the 1st and 2nd Respondents in relation to granting of compensation to the 5th Respondent;
3. a mandate in the nature of a writ of Certiorari to quash the decision **P 10** taken by the 1st Respondent in terms of section 17 of the Land Acquisition Act in relation to the grant of compensation to the 5th Respondent;

4. a mandate in the nature of a writ of Prohibition prohibiting the 1st - 4th Respondents paying the compensation to the 5th Respondent without complying with the provisions of the Land Acquisition Act;
5. a mandate in the nature of a writ of Mandamus directing the 2nd Respondent to pay the compensation to the Petitioner;
6. a mandate in the nature of a writ of Mandamus to compel the 2nd Respondent to recover the compensation which had been paid so far to the 5th Respondent or in the alternative a writ of Mandamus directing to recover the compensation which had been paid to the 5th Respondent from the salary of the 1st Respondent;
7. a mandate in the nature of a writ of Mandamus to compel the 2nd Respondent to have a proper inquiry in terms of section 9 of the Land Acquisition Act.

As the Petitioner has claimed three different plots of land namely lot Nos. 17, 16 and 42, it is convenient for the purposes of clarity, to consider payment of compensation in respect of each one of them separately.

Lot No. 17

In respect of Lot No. 17 in Plan No. MU. P. Mara 2322 the Petitioner and 2 others have submitted claims. Thereafter an inquiry in terms of section 9 of the Act has been held. All the claimants including the Petitioner had participated at this inquiry. These inquiry proceedings have been produced marked **2 R 23** , **2 R 24** , **2 R 25** and **2 R 26**. As there was a dispute with regard to the claims to this lot, the Divisional Secretary had decided to refer the said dispute to the District Court for a decision, in terms of section 10(1)(a) of the Land Acquisition Act. This is clearly reflected in the notice of his decision produced marked **2 R 27**. Thus, it is the position of the Divisional Secretary that the amount of compensation payable in respect of lot No. 17 would be deposited in the District Court to be paid to the person who would be entitled to it, once the District Court decides that issue.

The Petitioner has been informed of the prevailing position with regard to this lot.

Thus the Petitioner cannot complain against that decision.

Lot No. 16

It is only the 5th Respondent who had submitted his claim in respect of Lot No. 16 consequent to the said notice. The Divisional Secretary having held an inquiry on 2008-11-17, under section 9 of the Act had made a decision in terms of section 10(1) (a) of compensation to the 5th Respondent who was the sole participant at the inquiry. This decision of the acquiring officer has become final as there had been no application by any party for a reference for determination in terms of section 10(2). Thus the Divisional Secretary had proceeded to make an award on 2009-03-16, in favour of the 5th Respondent in terms of section 17 of the Act.

The Petitioner had forwarded an affidavit produced marked **P 6** with certain documents to the Divisional Secretary on 2009-06-02 claiming compensation for Lot No.16. However the decision under section 10 and the award under section 17 in respect of this lot had been made by that time. The Petitioner had been informed of this position accordingly.

The course of action available to the Petitioner if he still maintains that compensation has been paid to the wrong person, would be under section

57 of the Act, to recover such compensation from the person to whom it was paid.

Lot No. 42

It is only the 5th Respondent who had submitted his claim in respect of Lot No. 42 consequent to the notice published in the Gazette Notification bearing No. 1559/13 dated 2008-07-22 which is produced marked **2 R 13**.

The Divisional Secretary having held an inquiry on 2008-11-17, under section 9 of the Act had made a decision in terms of section 10(1) (a) of the Act that it is the 5th Respondent who is entitled to the compensation as he was the sole claimant at the inquiry. This decision of the acquiring officer has become final as there had been no application by any party for a reference for determination in terms of section 10(2). Thus the Divisional Secretary had proceeded to make an award, in favour of the 5th Respondent in terms of section 17 of the Act.

Position taken up by the Petitioner

It is the position of the Petitioner that he submitted an affidavit dated 2009-06-02 (marked **P 6**) setting out his right to the said land together with the deed bearing No. 64 to the Divisional Secretariat of Dickwella, after becoming aware that the said land is to be acquired by the state.

This means that it is his position that it was on or about that date¹ that he has become aware of the ongoing acquisition proceedings in respect of this land.

However it must be noted that the Petitioner had by that time made a claim in respect of Lot No. 17, and thus his name appears in the Gazette Notification bearing No. 1559/13 dated 2008-07-22 which is produced marked **2 R 13**, by the 2nd Respondent and also by the Petitioner as **P 3 B**.

It is to be observed that all these lots have been mentioned in the same Gazette and hence the Petitioner if he had been interested in submitting a claim in respect of any of the lots mentioned therein could not have missed the said notice. Further the fact that his name appears in the said Gazette notification as a person who had made a claim to another lot mentioned therein (lot No. 17) shows clearly that he had been well aware about these

¹ On 2009-06-02.

acquisition proceedings by that time. Thus the assertion by the petitioner that he became aware of the acquisition proceedings on or about 2009-06-02, to say the least, is not acceptable.

Laches

The Petitioner has filed a writ application in the Provincial High Court of Matara bearing No. SP / HCCA / MA / Writ / 11 / 2010 on a different ground pertaining to the same issues. A copy of the proceedings of this case has been produced in this Court by the 5th Respondent marked as **R 5** **a.** According to the journal entries therein, it could be seen that the Petitioner had filed that case on 2009-12-10. The High Court of Matara had dismissed this application on 2011-09-13.

Petitioner after 2 years and 8 months thereafter has filed the instant application on 2013-05-29. This is after the 2nd Respondent has informed the Petitioner by the letter dated 2008-08-07 produced marked **P 18** that the compensation in respect of Lot No. 16 would be paid to the 5th Respondent if the Petitioner would not take any action to pursue further legal action subsequent to the dismissal of the case by the Provincial High

Court of Matara. The 2nd Respondent had granted the Petitioner time to take such further legal action until 2012-08-17. The Petitioner has not adduced any reason for the undue inordinate delay occurred in filing this writ application in this court.

It has also been brought to the notice of this court that the 5th Respondent had also filed an action in the District Court of Matara bearing No. L / 11822 seeking an interim injunction against the 5th Respondent to prevent him from constructing a house in that land. Proceedings of this case has been produced by the 5th Respondent marked **R 5 d**. The said case appears to have been filed on 2010-02-10.

In the course of the averments in the pleadings of that case, the Petitioner had stated that it has been revealed later that his father had executed the deed No. 927 in favour of the 5th Respondent. However the District Court of Matara had refused to issue an interim injunction in that case.

The 5th Respondent has produced a copy of the entire record of the said case bearing No. L / 11822 marked **R 5(d)** for the perusal of this court.

On the above material it is the submission of the learned counsel for the 5th Respondent that the Petitioner has suppressed material facts when presenting this application before this court.

It can be observed from the perusal of the petition that the Petitioner has failed to disclose the fact that he had filed an action in the District Court of Matara bearing No. L / 11822 seeking an interim injunction against the 5th Respondent and that the District Court of Matara had refused to issue an interim injunction in that case.

However the Petitioner had stated in his petition the filing and subsequent dismissal by the High Court of Matara the case bearing No. SP / HCCA / MA / Writ / 11 / 2010

Conclusion

The position of the 1st, 2nd and 3rd Respondents that proper inquiries in terms of the Land Acquisition Act were held in respect of Lot No. 16, 17 and 42 and that the disputed claims in respect of Lot No. 17 has been referred to the District Court for a decision. It is their position that there was no necessity to refer the matter to the District Court in terms of

section 10(3) of the Land Acquisition Act as there were no rival claims with regard to Lot No. 16 and 42.

It has been proved to the satisfaction of this court from the above material that the Petitioner had failed to make any claims in respect lands in Lot No. 16 and 42 in terms of the provisions of the Land Acquisition Act. Therefore the decision taken by the 1st, 2nd and 3rd Respondents to award compensation in respect of those lands to the 5th Respondent is fully within their authority and hence cannot be categorized as *ultra vires*. The disputed claims in respect of Lot No. 17 has already been referred by the 1st, 2nd and 3rd Respondents to the District Court for a decision in terms of section 10(3) of the Land Acquisition Act. That is exactly what they are required to do by law.

What appears to this Court from the material produced by parties is that the Petitioner has been taking up different positions with regard to his right to the disputed lands at different times.

Further, what appears to this Court from the material set out above is that there is a delay on the part of the Petitioner to agitate this matter before

this Court. That delay would be an undue delay as he has failed to adduce any acceptable reason in that regard.

It would also be pertinent to state here that the Petitioner also has failed to disclose some of the litigations he had been engaged with regard to the claims he had made to these lands. A Petitioner in a Writ application has a duty to place all material facts pertaining to the case. Whether such fact the Petitioner had withheld is an important or relevant would be a matter to be decided by Courts at a later stage of the case probably at argument stage. Thus it is not open for him, at a later stage to say that he was not aware of the importance of certain facts which he had omitted to place before Court.²

The above facts vitiate the credibility of the averments of facts in the Petition. Therefore the positions taken up by the Petitioner before this court have become positions which this Court cannot accept.

For the foregoing reasons and conclusions it is the view of this Court that there is no merit in this application. Hence this court decided to refuse this application. The filing of this application by the petitioner cannot be justified as there is no reasonable basis for him to agitate the issues that

² Walker Sons & Co. Ltd. Vs. Wijayasena [1997 (1) SLR 293 at 301].

he had sought to agitate before this Court. Hence, we proceed to dismiss this application with costs.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL