

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

CA Application No. 178/2017 Writ

In the matter of an application under Article 140 of the Constitution of the Republic of Sri Lanka for a mandate in the nature of Writ of Certiorari and a writ of Prohibition.

Interagrocomplx Lanka J.V. (Pvt)
Limited

PETITIONER

-Vs-

1. Madawa Warnakulasooriya,
Divisional Secretary, Akurana.
2. National Water Supply and Drainage
Board,
Galle Road, Rathmalana.
3. Gayantha Karunathilake,
Hon. Minister of Lands,
Ministry of Lands,
Mihikatha Medura,
1200/0, Rajamalwatta Avenue,
Battaramulla.

RESPONDENTS

Counsel : N. Jayarathne for the Petitioner
M. Amarasinghe SC for the 1st, 2nd and 3rd Respondents

Before : L.T.B. Dehideniya J.(P/CA)
: Shiran Gooneratne J.

Argued on : 10.10.2017

Decided on : 19.10.2017

L.T.B.Dehideniya J. (P/C.A.)

The Petitioner filed this writ application seeking for a writ of certiorari to quash the notice issued under section 2 of the Land Acquisition Act. The learned SC appearing for the Respondents raised a preliminary objection that the notice under section 2 of the Land Acquisition Act is not amenable to writ jurisdiction.

The 1st Respondent issued the notice under section 2 indicating that the land in the area is required for the construction of Vilana Udagama Service Reservoir for Kandy North - Pathadumbara integrated water supply project of the National Water Supply & Drainage Board.

The learned SC argues that the notice under section 2 is for the purpose of identifying the land and to consider the suitability of the land for the proposed public purpose. It does not contain a decision and therefore it is not amenable to writ jurisdiction. The learned Counsel for the Petitioner submitted that even if the application for writ of certiorari cannot be maintained, the application for writ of prohibition could be maintained.

The learned SC submitted the case of Dayaratne, Vs Rajitha Senaratne, Minister of Lands And Others [2006] 1 Sri L R 7 at 19 where it has been held that the section 2 notice is not amenable to writ jurisdiction.

In the said case Marsoof J. considered several authorities and held that section 2 notice is not amenable to writ jurisdiction. It has been held at page 19 that;

*In the instant case, the order sought to be quashed by certiorari is the notice exhibited under Section 2 of the Land Acquisition Act marked P 15. It is clearly not a decision or order which has force proprio vigore. In the scheme of the Land Acquisition Act, a Section 2 notice only facilitates an authorized officer to enter into a land and determine whether such a land is suitable for the public purpose for which the land is required. Thus the Section 2 notice by itself does not affect the right of any person to his land except to the limited extent of permitting the authorized officer to enter upon the said land and consider its suitability for acquisition, which is a very preliminary stage of the entire process. Therefore, if the Minister considers that a particular land is suitable for a public purpose, he directs the acquiring officer in terms of Section 4(1) of the Act to publish a notice calling for written objections to the intended acquisition, and after considering such objections, if any, and the relevant Minister's observations on such objections, the Minister has to decide in terms of Section 4(5) of the Act whether such land should be acquired or not. It is thereafter that a written declaration that such land is needed for a public purpose is made by the Minister and published in the Gazette as required by Section 5 of the Act. It is for this reason that this Court in *Gunasekara v. The Principal, MR/Godagama Anagarkika Dharmapala Kanishta Vidyalaya and Others*(11) held that an application for a writ of certiorari to quash a Section 2 notice under the Land Acquisition Act was premature and thereby upheld the preliminary objections*

to that effect. As Shiranee Tilakawardena J. observed at page 7 and 8 of her judgment-

"Another matter that is relevant to this application is that at the time of filing of this application the acquisition proceedings were at an initial stage, and only notice under Section 2 of the Land Acquisition Act had been issued. A notice in terms of Section 2 of the Land Acquisition Act is issued when the Minister decides that the land in any area is needed for any public purpose. The Section 2(1) notice is issued with the objective of making a survey of a land and making boundaries thereon and to determine whether a land would be found within its parameters that would be suitable for the public purpose of the said Act."

Justice Tilakawardene went on to hold in this case that the application for writ of certiorari was premature in the circumstances of that case, and should be dismissed in limine. Similarly, in Lucian de Silva v. Minister of Lands.(12) and Wickremasinghe v. Minister of Lands (13), it was held that steps taken under Section 2 of the Land Acquisition Act are only investigative in character, and that it is premature to invoke the writ jurisdiction of our courts with a view of quashing a Section 2 notice.

In the present case also only the section 2 notice has been issued and therefore this application is premature. The learned Counsel's submission that he can proceed with the application for writ of prohibition is not acceptable. The section 2 notice is issued to ascertain the suitability of the land for the intended purpose and the party will have an opportunity to present his case before the authorities prior to making the acquisition order.

I uphold the preliminary objection and dismiss this application.

I order no costs.

President, Court of Appeal

Shiran Gooneratne J.

I agree.

Judge of the Court of Appeal