

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

**REPUBLIC OF SRI LANKA**

T.M.D. Samanmala Almeida  
No. 02, Subhuthipur,  
Battaramulla

**Plaintiff**

CA 224/1998 (F)

Vs.

D.C. Colombo Case No. 5972/Z/L

1. W. Serasinghe  
District Land Officer and Acquisition  
Officer  
Colombo Kachcheri,  
Colombo 12.
2. W.W.E..M.W. Ekanayake  
District Secretary  
District Secretariat,  
Colombo 12.
3. The Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Defendants**

**AND NOW BETWEEN**

T.M.D. Samanmala Almeida  
No. 02, Subhuthipur,  
Battaramulla

**Plaintiff – Appellant**

Vs.

1. W. Serasinghe  
District Land Officer and Acquisition  
Officer  
Colombo Kachcheri,  
Colombo 12.
2. W.W.E..M.W. Ekanayake  
District Secretary  
District Secretariat,  
Colombo 12.
3. The Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**Defendant – Respondents**

**BEFORE: M.M.A. GAFFOOR J**

**S. DEVIKA DE LIVERA TENNEKOON J**

**COUNSEL:**

**Rohan Sahabandu PC with Diloka Perera for  
the Plaintiff – Appellant**

**Indula Rathnayaka SSC for the Defendant –  
Respondents**

**ARGUED ON:** 30.03.2017

**WRITTEN SUBMISSIONS** – Plaintiff – Appellant – 31.08.2017  
Defendant – Respondents – 31.07.2017

**DECIDED ON:** 16.11.2017

**S. DEVIKA DE LIVERA TENNEKOON J**

The Plaintiff – Appellant (hereinafter referred to as the Plaintiff) instituted action in the District Court of Colombo and by amended Plaint dated 06.12.1989 sought *inter alia*;

- a) a declaration that the land described in the 2<sup>nd</sup> Schedule to the Plaint has been wrongfully included in Lot 16 depicted in Plan bearing No. 5442 dated 13.08.1981 made by J. Radampola Superintendent of Surveys on behalf of the Surveyor Department.
- b) For a declaration that the said portion of land had not been vested in the State,
- c) For a declaration that the land called ‘Dangahakumbura’ more fully described in the 2<sup>nd</sup> Schedule to the amended Plaint belongs to the Plaintiff,
- d) For a declaration that the Plaintiff is entitled to vacant possession to the said land after ejecting the Defendants and all those who hold under them,

- e) For a declaration that in the event of the Court holding that the said land had vested in the State that the Plaintiff is entitled to compensation for the said land.

The Defendant – Respondents ((hereinafter referred to as the Defendants) filed amended Answer dated 21.02.1990 and prayed for *inter alia* a dismissal of the action since the procedure stipulated in the Land Acquisition Act were followed in acquiring the property and therefore that the corpus vests with the State.

Trial commenced on 12.10.1993 and 3 admissions were recorded by the parties;

- a) That the land to be acquired is ‘Minuwankumbura’ in extent A9 R3 P35 as depicted in Plan bearing No. 5442 dated 13.08.1981,
- b) The Jurisdiction, and
- c) Compliance with Section 461 of the Civil Procedure Code.

Issue Nos. 1 – 9, 19 & 20 were raised by the Plaintiff and issue Nos. 10 – 18 were raised on behalf of the Defendants.

R. A. Saliya Wikramasinghe licenced surveyor and one V. Sahabandu Almeida gave evidence on behalf of the Plaintiff and documents marked P1 – P15 were tendered as evidence. On behalf of the Defendants an officer of the Pradeshiyasabawa one H. W. Ariyaratha gave evidence and tendered documents marked as V1 – V14 as evidence and closed the case.

The learned District Judge pronounced the impugned judgment dated 27.02.1998 in favour of the Defendants and dismissed the Plaintiff’s action. Being aggrieved

by the said judgment the Plaintiff preferred the instant Appeal by Petition dated 23.04.1998.

The case for the Plaintiff in brief is that by virtue of extraordinary gazette bearing No. 193/17 dated 21.05.1982 marked as P11 and V3 notice was given under Section 7 of the Land Acquisition Act to acquire 20 Lots of Land as depicted in Plan bearing No. 5442 dated 13.08.1981. Lot 16 referred to in the both extraordinary gazette bearing No. 193/17 dated 21.05.1982 and Plan bearing No. 5442 dated 13.08.1981 is in extent A9 R3 P35 and was named 'Minuwankumbura'. The case for the Plaintiff is the land morefully described in the 2<sup>nd</sup> schedule to the Plaint was wrongfully included as a part of the said Lot 16. The Plaintiff relies on Plan bearing No. 164 prepared by Saliya Wikramasinghe licenced surveyor which depicts the corpus as Lot 2. The said Plan No. 164 has been prepared by superimposing Plan No. 1158 prepared by licensed surveyor C. C. Wickramasinghe which depicts the corpus as Lot 1.

The Defendants do not accept the said Plan No. 164 as the said surveyor Saliya Wikramasinghe testified on behalf of the Plaintiff that the Plan was prepared only through a superimposition and that the he did not physically survey the land. The learned Counsel for the Defendants further contend that the said Plan No. 164 contains a reference to the corpus as 'Dangaha Kumbura' solely based on the information contained in Plan No. 1158 and on what was told to the Surveyor by the Appellant. The surveyor had further admitted that he had not make any other inquires as to the name of the land in question.

Further the Defendant contends that as per the schedule to Plan bearing No. 5442 dated 13.08.1981 marked as V2, 'Dangaha Kumbura' is not a part of Lot 16 as

claimed by the Plaintiff but is a part of Lot Nos. 01, 03 and 06 in Plan No. 5442. Lot 16 is described as 'Minuwankumbura' in the said schedule. The learned Counsel for the Defendants submits that as per Section 4 of the Survey Act No. 17 of 2002 "The decision of the Surveyor-General as to any question relating to land surveying or mapping shall be final and conclusive."

It is the position of the Defendants that the procedure contained in the Land Acquisition Act was followed as evidenced by documents marked as V11, V12, V03, V04, V05, V06 and V07, V08, V09 and V10. On a perusal of the said documents this Court is satisfied that the correct procedure was followed in the acquisition process. The Defendants further submit that a declaration made under Section 5 of the Land Acquisition Act cannot be questioned by a Court of Law and relies on the recent case of D. S. J. Peiris and another Vs. Kaluthara Bodhi Trust and others CA/Writ/845/2007.

The Plaintiff's father, V. Sahabandu Almeida, who gave evidence on her behalf, has stated that he only came to know of the acquisition in 1985 and that he was not aware of the survey nor was he aware of the publication in the newspapers regarding the acquisition and further that he was not aware of the Section 7 notice.

The learned Counsel for the Defendant submits that the Plaintiff ought to have known of the acquisition of the corpus, since the said Gazette notifications marked as V11, V12 and V3 also refer to a land called 'Dangaha Kumbura' or at least a part of it in reference to different Lots and not Lot 16, and therefore the Plaintiff could have taken steps according to law. The Defendant contends that there were numerous occasions on which the Plaintiff ought to have come to know of the acquisition as the land was surveyed on several instances, notices under Section 7,

proviso 'a' to Section 38 and a declaration under Section 5 were published in the Gazette Notifications and further that V13 is an order made to official advertisements in the Newspapers.

This Court agrees with this contention. The documents produced by the Defendants establish that the procedure as stipulated in the Land Acquisition Act were followed and due notice was given for all concerned parties to take steps according to law. The Plaintiff could have participated in an inquiry under Section 09 for compensation. This Court cannot hold with the position taken by the Plaintiff that he was unaware of the acquisition of lands by the State.

When one examines Plan bearing No. 5442 dated 13.08.1981 together with extraordinary gazette bearing No. 193/17 dated 21.05.1982 marked as P11 and V3 by which notice was given under Section 7 of the Land Acquisition Act it is clear that lands surrounding the corpus were all acquired by the state. This acquisition was made with due notice and the stipulated engagement with the relevant stakeholders. The Law Acquisition Act provides for mechanisms to award compensation after an inquiry is made into claims. If the Plaintiff was not vigilant and did not take steps when he was required to do so he cannot at this stage claim that he has been prejudiced by such acquisition. To allow such a claim would be to open the flood gates as there would be no end to the claims of this nature that are preferred after the statutory mechanism of acquisition has been exhausted. The said mechanism is designed to make the acquisition a public one and as such is not one which is done in secret. The magnitude of the acquisition and the location of properties further strengths the contention of the Defendants that the Plaintiff ought to have known of the acquisition. The latin maxim "Vigilantibus Et Non

Dormientibus Jura Subveniunt” which means ‘the law assists those that are vigilant with their rights, and not those that sleep thereupon’ deserves mention.

For the reasons morefully described above this Court sees no reason for this Appeal to be allowed and therefore this Appeal is dismissed without costs.

*Appeal Dismissed.*

Judge of the Court of Appeal

**M.M.A. GAFFOOR J**

I Agree.

Judge of the Court of Appeal