

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

In the matter of an Application for a Writ
of Certiorari in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

C.A(Writ) Application No. 271/2012

1. Karunanayake Liyanage Marian
Roshini Perera,
2. Mahipala Mudalige Winifeeda Paaris,

Both of No. 57A,
Anderson Road, Negombo.
3. Panaborage Nihal Laxman Fernando,
No. 14, Kimbulapitiya Road, Negombo.

(Appearing by his duly appointed
power of Attorney holder Jayasinghe
Hettiarachchige Sherine Vineetha
Jayasinghe of No. 14, Kimbulapitiya
Road, Negombo)

PETITIONERS

Vs.

1. Negombo Municipal Council,
Municipal Council Office,
Negombo.

2. Anthony Jayaweera,
Mayor,
Negombo Municipal Council,
Municipal Council Office, Negombo.

- 2(a) Sugath Kumara,
Commissioner,
Negombo Municipal Council
Municipal Council Office, Negombo.

3. Rev. Meegamuwe Samedha Tissa Thero,
Abhayasekharamaya,
No. 127, Temple Road, Negombo.

- 3(a) Rev. Dewamottawe Maliyadewa
Thero,
Abhayasekharamaya,
No. 127, Temple Road, Negombo.

4. Hon. Janaka Bandara Thennakoon,
Minister of Land and Land
Development,
No. 1200/6, Rajamalwatta Avenue,
Battaramulla.

- 4(a) Hon. M.K.A.D.S. Gunawardene,
Minister of Land and Land
Development,
No. 1200/6, Rajamalwatta Road,
Sri Jayawardenapura, Kotte.

- 4(b) Hon John Amarathunga,
Minister of Land and Land
Development,
No. 1200/6, Rajamalwatta Avenue,

Sri Jayawardenepura, Kotte.

4(c) Hon. Gayantha Karunathilaka,
Minister of Lands and Parliamentary
Reforms,
Ministry of Lands,
80/5, Govijana Mandheeraya,
Rajamalwatta Road, Battaramulla.

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

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: M.U.M.Ali Sabry, P.C, with Ruwantha Cooray for the Petitioners

Vidura Ranawaka for the 1st and 2A Respondents

Ms. Subashini Jayasath for the 3A Respondent

Ms. Anusha Fernando, Deputy Solicitor General for the 4C and
5th Respondents

Decided on: 10th October 2018

Arjuna Obeyesekere, J

When this application was taken up for argument on 3rd September 2018, the learned Counsel for all parties moved that this Court pronounce judgment on the written submissions that would be tendered on behalf of the parties, by 17th September 2018. This Court however observes that written submissions have not been tendered on behalf of the Petitioner and the 1st and 2A Respondents.

The Petitioners have filed this application seeking *inter alia* a Writ of Certiorari to quash the decision of the 1st Respondent Council taken at its meeting held on 7th June 2012. A copy of the said decision has been produced with the petition, marked as 'A29(ii)'. By the said decision, the 1st Respondent had permitted the erection of a statue of Lord Buddha on part of a land which belonged to the Petitioners prior to it being acquired by the Minister of Lands under the provisions of the Land Acquisition Act, as amended, for the 1st Respondent Council for the public purpose of constructing a public library.

The 1st and 3rd Petitioners had been the owners of the land referred to in the first Schedule to the petition while the 3rd Petitioner had been the owner of the land referred to in the second Schedule to the petition. The said lands had been acquired in September 2000 under the provisions of the Land Acquisition Act, as amended for the public purpose of building a larger public library in the municipal area of Negombo. Possession of the said lands had been taken over by the State in April 2003.

In March 2004, the 1st Respondent Council had approved the erection of a statue of Lord Jesus Christ on part of the said land. At this point, the Petitioner invoked the jurisdiction of this Court in CA (Writ) Application No. 421/2005 seeking the divestiture of the said lands in terms of Section 39A of the Land Acquisition Act. The basis of the said application was that utilising part of the land for a purpose other than for which it was acquired is evidence that the public purpose specified in the notice published under Section 2 of the Land Acquisition Act has been abandoned. However, pursuant to an undertaking given by the respondents in that application, that the erection of the statue shall not be proceeded with, the said application had been withdrawn.

In June 2005, an award had been made under Section 17 of the Land Acquisition Act awarding compensation to the Petitioners. The Petitioners had appealed against the said decision, seeking an enhancement of the compensation.

Prior to any finality being reached with regard to compensation, the Petitioners once again invoked the jurisdiction of this Court in CA (Writ) Application No. 246/2007 seeking a divestiture of the said lands on the basis that the 1st Respondent Council had abandoned the idea of constructing a public library on the said land. This Court had issued notice on the respondents in that application and while CA (Writ) Application No. 246/2007 was pending before this Court, the 1st Respondent Council, acting on a request made to it by the 3rd Respondent, decided at its meeting held on 7th June 2012 to permit the erection of a statue of Lord Buddha on part of the said land. Being dissatisfied with the said decision marked 'A29(ii)' on the basis that the said land is sought to be used for a purpose other than the public purpose for which it was

acquired and on the basis that an application seeking the divestiture of the said land is pending before this Court, the Petitioners once again invoked the Writ jurisdiction of this Court in this application, seeking the aforementioned Writ of Certiorari to quash the said decision of the 1st Respondent Council. Although this Court had issued notices on the Respondents, this Court had refused to issue the interim orders prayed for.

When this matter was taken up for argument on 3rd September 2018, the learned Counsel for the 1st and 2A Respondents informed this Court that by a judgment pronounced on 10th October 2014, this Court had dismissed CA (Writ) Application No. 246/2007¹ and that the Petitioners have not lodged an appeal against the said judgment. The learned Counsel for the Petitioners conceded that this was in fact the factual position. A copy of the said judgment was tendered to this Court on 8th October 2018 and this Court observes that CA (Writ) Application No. 246/2007 had been dismissed as Court was of the view that the land is required for a valid public purpose and the acquisition was in the public interest.

As set out earlier, the basis of this application is that the Petitioners have sought a divestiture of the land in CA (Writ) Application No. 246/2007 on the basis that the said lands have not been used for the public purpose for which it was acquired and therefore using the said land for any purpose pending the final determination of CA (Writ) Application No. 246/2007 is violative of the rights of the Petitioners. As the application for divestiture has been refused and an appeal has not been filed, the said lands stand vested in the 1st

¹ This Court observes that the learned Counsel for the Petitioner too had informed this Court of this position on 27th October 2014.

Respondent Council. In these circumstances, this Court is of the view that the Petitioners no longer have the *locus standi* to have and maintain this application and proceeding with this application would be futile. The application of the Petitioners for a Writ of Certiorari is therefore refused. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal