

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

In the matter of an application under articles 140
of the constitution for mandates in the nature of
writs of Mandamus.

Indrani Swarnalatha Marie Peiris
No.19, Gregory's Road,
Colombo 07.

Petitioner

C.A. Writ Application No. 548/2011

Vs.

1. U.W. Senaratne,
Divisional Secretary/Acquiring Officer
Divisional Secretariat
Kolonnawa.

1A. Sugath Sisira Kumara
Divisional Secretary/Acquiring Officer,
Divisional Secretariat.
Kolonnawa.

2. Honourable Attorney General
Attorney General's Department.
Colombo. 12.

Respondents

Before : E.A.G.R. Amarasekara, J.

Counsel : Mr. J.C. Weliamune P.C. with Senura Abewardhene AAL and Ms.
Thilini Vidanagamage AAL for the Petitioner.
F. Jameel ASG, P.C for the Respondent.

Decided On : 02.11.2018

E.A.G.R. Amarasekara, J.

The Petitioner, by his application dated 11.08.2011, has sought a writ of Mandamus to compel the 1st Respondent to pay the petitioner a sum of Rs.291,220,424/- as per the award marked 'P20' with the Petition, which was made in respect of the acquisition of a land belonged to the Petitioner's late husband. It must be noted that the acquisition per se has not been challenged by the Petitioner and thus, the scope of this action is limited to the non-payment of the compensation due in respect of 15 Acres out of 22 Acres acquired by the 1st Respondent Acquiring Officer.

Facts in brief.

1. In 1980, the Wellampitiya Estate of about 22 acres, which belonged to the Petitioner's late husband, was acquired under Section 38(a) of the Land Acquisition Act. Compensation for seven acres out of the said 22 acres were paid. This action relates to the compensation awarded in respect of the balance, which was 15 acres in extent.
2. Since there was no inquiry for the payment of compensation for the aforesaid 15 acres, in 1991 the Petitioner's late husband instituted C.A. Writ/1031/1991 in this Court seeking a writ of Mandamus against the acquiring officer to publish Section 7 notice under the Land Acquisition Act. Accordingly, an order was made in 1992 to publish the Section 7 Notice as prayed for in that application. This shows that even to prefer a claim with regard to the aforesaid 15 acres, the claimant had to wait for 12 years from

the acquisition of the relevant land and to file an application to get the necessary notice published as per the requirements of law.

3. Pursuant to the aforementioned Section 7 notice being published, the inquiry under section 9 of the Land Acquisition Act was commenced, but being dissatisfied with the manner in which the inquiry was conducted, the Petitioner's late husband instituted the Fundamental Rights Application No. S.C/FR/207/1994 in the Supreme Court. Even though the leave to proceed was granted and interim order was issued stating that the valuation should not be less than Rs. 155 ,000,00 per perch for the said land (vide P6), since there was no award with regard to the compensation to be given for the land acquired, said application was dismissed (vide P7) stating that granting of the reliefs sought would amount to an unwarranted interference with the statutory process under the Land Acquisition Act. Hence, the aforesaid Fundamental Rights Application was dismissed as it was a misconceived application. However, the aforesaid interim order marked P6 indicates that the Supreme Court considered Rs.155000.00 per perch as the minimum limit in deciding the market value suggested by the material before it and the Counsel too have agreed to issuing an interim order on that basis.
4. It appears that another writ application no. 1225/2000 was filed by the late husband of the Petitioner to get the Section 9 inquiry under the Land Acquisition Act resumed. As per the Judgment delivered in the said C.A. Application 1225/2000 marked as P12, an initial payment of Rs. 32,150.000/- seems to have been paid to the claimant as a result of contempt papers filed in C.A. application No. 1031/1991. The said judgment marked as P12 further indicates that the Respondents had produced a letter dated 28.10.1999 to

this court during the above application no. 1225/2000 to show that an award was made on 04.06. 1997. If there was any award made on 04.06.1997, the Respondents or their predecessors in office might have misled the Supreme Court in the aforesaid Fundamental Rights Application since it was dismissed on the basis that there was no award made. On the other hand, if there was no such award made on 04.06.1997, 1st Respondent or their predecessors in office had attempted to mislead this Court by producing the said letter to this court during C.A. Application on 1225/2000 to indicate that there was an award made on 04.06.1997. However, this Court in the said application No. 1225/2000 has decided that there was no such ^{award} made on 04.06.1997 and even if there was such an award it has no effect or validity in law (Vide P 12) for the following reasons;

- a) It has been made at a time when there was a stay order restraining the acquiring officer from making such award.
 - b) The acquiring officer had mechanically adopted the Chief Valuer's assessment without making any attempt to form an independent opinion about the compensation to be awarded.
5. The Judgment marked P12 states that the said action 1225/2000 had been filed by the claimant praying for a writ of Mandamus to direct the acquiring officer to resume the inquiry under section 9 of the Land Acquisition Act to decide the compensation payable to the claimant in respect of the land acquired as mentioned before and to make an award. P12 further indicates that the Petitioner in that action who was the original claimant and the husband of the Petitioner in this case died before the conclusion of that

proceedings and the Petitioner of this case was substituted for him. However, this Court by P12 had directed the acquiring officer,

- a. To resume the inquiry and,
 - b. To make an award in terms of section 17(1) of the Land Acquisition Act and that the award shall not be based on Urban Development Law and,
 - c. To give notice to the Petitioner as required by section 17(1) of the said Act when an award is made.
6. There is also a finding in the said judgment marked as P12 that the payment of Rs.32,150,000/= was not a payment in full and final settlement but only an initial payment pending the final determination of the Petitioner's claim.
7. Pursuant to the Judgment marked as P12, the compensation inquiry was resumed. The acquiring officer by the document marked as P15 made an award determining the compensation as Rs. 34,495,427.00 but the Petitioner challenged the said award by filing Writ Application No. C.A/Writ/364/2003 seeking to quash the said award and to resume the inquiry. This Court, by the Judgment dated 15.10.2003 marked as P17, quashed the said award marked P15 and directed the acquiring officer to proceed with the compensation inquiry de novo. It appears that this court was of the view that the acquiring officer in making the award marked P15 was in breach of the rules of natural justice and unable to give a fair hearing- vide P 17.
8. Therefore, another inquiry was held and an award dated 19.01.2010 marked as P20 was made by the 1st Respondent. As per the said award the total compensation was determined at Rs. 323,370,424.00 and after deducting the initial payment already made as mentioned before in this Judgment, the

compensation due to be paid to the Petitioner is Rs.291,220,424,00. This amount was not paid to the Petitioner and the non-payment of this amount is the subject matter of this application. However, as per the award made ^{a sum of} Rs.14,844,879.00 has to be paid from the aforesaid Rs.291,220,424.00 to the Inland Revenue Department.

9. This Court observes that the land was acquired in 1980. All the applications except the Fundamental Rights application, filed by the late husband of the Petitioner (Original Claimant) or the Petitioner were decided in favour of the Petitioner or the Original Claimant. Those decisions or Judgements were not challenged by the Respondents in the apex court of the country. P20, which is the award in issue of this application was not challenged by any functionary of the State in a Court of law till this application was filed in August 2011.

10. The Petitioner by P21 has informed the 1st Respondent that she would not prefer any appeal to the board of review.

As elaborated above, now there is an award (P20) made by the acquiring officer made under section 17 of the Land acquisition Act after an inquiry held under section 9 of the said act. It is clear that there is no appeal made against it to the Board of Review. Furthermore, there is no material placed before this court to show that there is any writ application pending against the said award to quash the said award. Under such circumstances there is a duty upon the 1st Respondent acquiring officer to tender the amount of compensation to the person entitled to it. If the person entitled to it consent to receive it, the 1st Respondent acquiring officer's duty is to pay that amount to the person entitled to the compensation awarded. (Vide section 29 of the Land Acquisition act). By P21 the petitioner as the person entitled to the compensation awarded has consented to receive the amount. There

is no dispute that the petitioner is not the person entitled to the compensation after the death of her husband. Thus, on the face of the facts placed before this court by the petitioner, she is entitled to the compensation awarded to her by the 1st Respondent and it is the duty of the 1st Respondent to pay that to the petitioner. In this backdrop, I have to consider the objections raised by the Respondents to the application of the Petitioner.

Analysis

One of the grounds relied upon by the respondents is that the Petitioner has failed to add necessary parties and therefore, this application cannot be maintained (Vide paragraph 2 of the statement of objections dated 28th September 2012). It must be noted that in the aforesaid statement of objections, nothing was mentioned as to who should be added and the reasons for such a need other than stating that the money had not been made available to him and his duty is limited to the making of an award. However, after the filing of counter objections by the Petitioner, the Respondents have filed a statement of further objections with two affidavits marked as A and B from the Chief Valuer and the Secretary to the Ministry of Lands annexed to it. In that statement of further objections, it is stated that the Ministry of Lands was of the view that the award is not valid in Law since the inquiry was flawed (vide paragraph 13 of the aforesaid further objection dated 20.12.2012). The Chief Valuer's affidavit was given in support of his valuation. It appears that the original valuation of the Chief Valuer was there even at the time of the judgement of CA 1225/2000 was delivered, where it was held that the acquiring officer mechanically had adopted the valuation of the Chief Valuer without making any attempt to form an independent opinion. This court further observes that the award rejected by the judgment in CA 364/2003 was

based on an enhanced value of the same valuation referred to in the aforesaid Chief Valuer's affidavit (Vide paragraph 6 of the affidavit of the Secretary to the Ministry of Lands marked as B). Though the said rejection and the order for a fresh inquiry in CA 364/2003 was due to the breach of the rules of natural justice, following observation made by His lordship Justice Udalgama in that judgment would have naturally contributed to the said conclusion.

(Quote)

"I am inclined to the view that when property rights of a subject are infringed by compulsory acquisition, compensation must be adequate, realistic and reasonable. Perusing the documentation available in particular the orders of the Supreme Court and the valuation reports as tendered by the petitioner, I am also inclined to the view that the 1st respondent's conduct runs contrary to even the Wendsbury Rules of fairness". (Unquote)

The aforementioned paragraph quoted from the said judgment indicates that His Lordship Justice Udalgama who delivered the said judgment was not satisfied with the award based on the enhanced value of the valuation of the Chief Valuer.

However, the Secretary to the Ministry of Lands in his affidavit marked as B states that the acquiring officer has not considered the opinion of the Chief Valuer (Vide paragraph 8 of his affidavit). The Secretary to the Ministry of Lands, while referring to the order 256 and 259 of the land manual, further states in his affidavit that when the divisional secretary is unable to obtain the consent of the Chief Valuer to uplift the valuation, he is bound to make the award in accordance with the Chief Valuer's valuation. This is the same mischief that His lordship justice Gamini Amaratunga attended and commented on the application no. 1225/2000 with regard to the same acquisition. There his lordship clearly pointed out that the duty

to make an award is given by law to the acquiring officer and he has to form his own opinion with the assistance of the Chief Valuer's report. When a duty is cast upon the acquiring officer by the legislature to form an opinion and make an award any regulation passed by any other authority compelling the acquiring officer to accept the Chief Valuer's valuation cannot be considered as valid. The Secretary to the Ministry of Lands has further stated in his affidavit that the Ministry of Lands will inform the relevant authorities to take disciplinary action with regard to the relevant divisional secretary who seems to be the 1st Respondent. At this juncture, it is questionable whether the appearance of the Learned Deputy Solicitor General for the 1st Respondent is ethically correct due to the following reasons;

- i) The award in issue in this application is an award made by the 1st Respondent and in the guise of a statement of further objections by him, he has been advised to tender affidavits that challenge the validity or correctness of his own award. By this he is denied of his right to defend his award and show reasons as to the correctness or legality of his award. The court is also hindered from getting relevant facts independently from the 1st Respondent as he has apparently been advised to present the stance of officers of the State who can take or instruct to take disciplinary action against him.
- ii) When a disciplinary inquiry commences, the 1st Respondent will have to admit that he presented facts or affidavits against his own award in a court of law which is directly against the interests of the 1st Respondent.

In the written submissions filed on behalf of the 1st Respondent it is stated that Honourable Attorney general has no role to play as this is a writ application and, however, Honourable Attorney General appears as the counsel for the 1st

Respondent. It is questionable whether a counsel can act against the best interests of his client. On the other hand, the Honourable Attorney General being the leader of the Bar and the highest legal officer of the State has a duty to the court, to the State and to the Subject to be wholly detached, wholly independent and act impartially with the sole object of establishing the truth {vide Land Reform Commission V Grand Central Limited (1981) 1SLR 250}. In that backdrop, if the Attorney General was not satisfied with the correctness and legality of the award made by the 1st Respondent, it would have been more appropriate if he represented the State which had the benefit of the relevant acquisition and which would be badly affected by so called over payment of compensation, without appearing for the 1st Respondent who might have conflicting interests with the stance taken through the statement of further objections most probably on the advice of the Attorney General's Department. Quite contrastingly, the letter marked as P28 with the counter objections indicates that the Secretary to the Ministry of Lands was advised by the Attorney General's department to take steps to pay since the acquiring officer is the one who is empowered to determine compensation according to the Land Acquisition Act. Yet, it appears that the 1st Respondent has been advised to present the stance of the Secretary of the Ministry of Lands than defending his own award. However, this court observes that even though he annexed the affidavit of the Secretary to the Ministry of Lands to his statement of further objections the 1st Respondent has never admitted in his affidavit that he did not consider the valuation prepared by the Chief Valuer or that his assessment of compensation is wrong or excessive. The stance taken by the Secretary to the Ministry of Lands stating that the acquiring officer is bound to accept the valuation of the Chief Valuer in accordance with the regulations in the

Land Manual cannot be accepted as it is against the intention of the legislature, which gives the power of decision making with regard to the award to the acquiring officer through the provisions of the Land Acquisition Act. This court also observes that stance is contrary to the previous judgments delivered in applications CA Writ No.1225/2000 and CA Writ No.364/2003.

However, after filing the Statement of Objections and Statement of further Objections in the aforesaid manner, during the argument and in the written submissions filed on behalf of the Respondents, the learned counsel for the Respondents have stated that this application is misconceived in law as the Secretary to the Ministry of Lands and the Chief Valuer have not been made parties to the application. As mentioned before, even in the Statement of Objections there is an objection stating that necessary parties have not been made parties, but without naming whom to be added and giving clear reasons for the need of such parties other than stating that the money was not made available and the 1st Respondent's duty is confined to the making of the award.

I am not inclined to accept this argument that the Secretary to the Ministry of Lands and the Chief Valuer are necessary parties to this application. It is the acquiring officer who acquired the land and held the inquiry as per the provisions of the Land Acquisition act. As mentioned before, it is his duty to tender the award and pay compensation to the person entitled to it when that person consents to receive it-(vide section 29 of the Land Acquisition Act). It is up to the acquiring officer to get the money released as the law nominates him as the officer who shall pay the compensation as per the award. If there is any difficulty in getting the necessary funds released from another department or officer of the State, the Petitioner may not have the knowledge with regard to the relevant officers or

department or the facts and reasons for such difficulty. The Petitioner cannot be expected to go on a voyage of discovery to find the internal mechanisms of releasing money within and between different organs of the State. Issues relating to the internal arrangements to release the money shall not be a matter of concern to the Petitioner to take steps to solve or ask relief from a court of law to solve them. If the Secretary to the Ministry of Land abstains from releasing funds to pay the compensation when there is a final award made by the 1st Respondent, he is in breach of his duty towards the acquiring officer and not to the Petitioner as such. There is no direct nexus between the Petitioner and the Secretary to the Ministry of Lands. In the same manner, there is no duty towards the Petitioner that has to be done by the Chief Valuer. At this juncture, I would like to quote from page 520, Administrative Law-11th edition by H.W.R. Wade & C.F. Forsyth.

(Quote)

“Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against the other” (unquote)

Hence, if there was any difficulty in getting the funds from the relevant authority, there was a remedy for the 1st Respondent. He could have filed an application praying for a writ of Mandamus. Thus, the 1st Respondent’s statement that money has not been made available to him for payment (Vide paragraph 22 of the Statement of Objections of the 1st respondent) is not a tenable reason for not paying the compensation. Furthermore the 1st Respondent has stated in his statement of objections that he was advised to state that his statutory duty is limited to the making of an award but as elaborated before it is his duty to tender

the award to the person entitled to the payment and when that person consents to receive it, to pay the compensation (Vide Section 29 of the Land Acquisition Act). Therefore, aforesaid advice is an incorrect advice only fashioned to support the position that necessary parties are not made parties to the application. As per the decisions in *Rawaya Publishers v Wijedasa Rajapaksha and other (2001) 3 SLR 213* and *Dominic Vs Ministry of Lands and Others (2010) 2 SLR 398*, in the context of a writ application, a necessary party is one without whom no order can be effectively made. In the case at hand, it is the duty of the acquiring officer to pay the compensation. If he faces any difficulties, it is his task to get them solved through administrative or legal remedies. The petitioner cannot be burdened with solving internal issues between different officers or organs of the State when there is no direct duty towards the petitioner cast upon them by the relevant Act. In the case of *B. Wijerathne, Commissioner of Motor Traffic V Venerable Dr. Paragoda (2011) 02 SLR 258*, it was held that a necessary party to an application for a writ of Mandamus is the officer or authority who has 'the power vested by law to perform the act or duty sought to be enforced by the writ of Mandamus. All persons who would be affected by the issue of Mandamus also shall be made Respondents to the application'. With regard to the present application, it is the acquiring officer who is vested with powers and duties to hold an inquiry and pay the compensation by law and no one else. The Secretary to the Ministry of Lands is not a person affected by the Writ of Mandamus to the knowledge of the Petitioner if the writ was issued as prayed for by the Petitioner. In the eyes of the Petitioner, if he knows that the money has to be released by the said Secretary, the said secretary has only an administrative function within the departments of the State to release the money to pay compensation. If anyone else to be affected, it is the State which has

to pay from its coffers and, in that respect, the Honourable Attorney General has been made a party to the application. On the other hand, acquiring officer who made the award is an officer of the State who made the award on behalf of the State as per the powers given by the Act.

No material is placed before this court to show that the Secretary to the Ministry of Lands has any lawful authority to assess and decide the correctness or legality of the award made by the 1st Respondent on his own and stop releasing the money needed for the payment of compensation. If the award made by the 1st Respondent is ultra vires or tainted with irregularities and affects the duties cast upon him or the funds of the State that he manages according to the materials the said secretary had, the said Secretary to the Ministry of Lands could have filed an application in this court to get it quashed, but without doing that he seems to have arbitrarily stopped the releasing of money needed to pay the compensation. Furthermore, it appears that he has presented his stance through an affidavit annexed to the 1st Respondent's statement of further objections in a manner prejudicial to the best interests of the 1st Respondent.

The 1st Respondent cannot be allowed to challenge his own decision and the Secretary to the Ministry of Lands or the Chief Valuer should not be allowed to challenge the award through the 1st Respondent when they themselves have evaded from filing an application to get the award quashed if there is any irregularity or illegality. This court further observe that there is no prayer to quash the award in the statement of objections or statement of further objections.

There is no allegation of fraud or collusion between the Petitioner and the 1st Respondent. Though it is alleged that the valuation is excessive, the Respondents

have not shown any acceptable ground to establish that the compensation awarded is excessive, but as per the award the actual compensation computed for the 15 acres is only Rs.323, 370,424.00 (vide P20). Thus, the value of a perch has been taken as Rs.134, 737.69 which is less than Rs.155, 000.00 which amount was considered as the minimum limit for the market value suggested by the material before it by the Supreme Court during the aforesaid Fundamental Rights application (vide P6). No material is placed by the Respondents to show that there is a serious irregularity in computing the value of the land acquired other than stating through the affidavit of the Secretary to the Ministry of Land^s that the 1st Respondent is bound to follow the Chief Valuer's valuation or he failed to consider Chief Valuer's valuation in making the award. This court observes that twice the awards based on Chief Valuer's valuation were challenged in this court and they were rejected due to irregularities and illegalities mentioned in the relevant judgments (Vide P12 and P17). The 1st Respondent as mentioned before is not bound to accept the Chief Valuer's valuation as the value of the land. He can come to his own findings with the assistance of the Chief Valuer's valuation. The 1st Respondent has not stated that he did not consider the Chief Valuer's valuation. As mentioned before, the Secretary to the Ministry of Lands or any other officer has not filed any application to quash the award relating to this application on alleged irregularities. In that backdrop, this court cannot come to a conclusion that the award relevant to this application made by the proper authority is tainted with irregularities or illegalities.

This court observes that the acquisition of the relevant land was done in 1980.No steps were taken by the acquiring officer to hold an inquiry to pay compensation

until the original claimant filed an application No.CA1031/1991 to get the section 7 notice published. Even though there were inquiries and awards, due to irregularities and illegalities in conducting them by the relevant officers, the original claimant or the Petitioner had to seek reliefs from the court. After the award relevant to this application was made, the petitioner had to come to this court to get it enforced since the Secretary to the Ministry of Lands or some other officer in that Ministry without seeking legal remedy, decided on his own, without any authority to do so, that the award is flawed and abstained from releasing money to pay the compensation. This conduct of the Secretary to the Ministry of Land has to be condemned, as there was a clear direction in CA No.364/2003, made after considering the undue delay of payment for 24 years, to conclude the inquiry within 2months.This court further observe that By P28 in 2012, the Attorney General's department has informed him the legal position and asked him to pay the compensation. Now it has taken almost 38 years from the acquisition. The original claimant, the husband of the Petitioner died without getting compensation for his property acquired by the State. As per the contents of letter 8.2.2012, marked P28, even the Petitioner was 80 years of age at the date of that letter. Non-payment of compensation for about 38 years would have caused immense hardship to the Petitioner and her family. The relevant functionaries of the State must be sensitive not to delay the payments, and at least, to avoid the harm caused being continued to the next generation of the Petitioner.

Conclusion

I do not see any merits in the objections filed by the Respondents. I am satisfied that all the necessary parties are before this court. The award in issue was made by the proper authority and there is no appeal lying against it and no application has

been filed to quash it. More than a reasonable time has passed from the date of award. The State was enriched by the acquisition done in 1980 but the original claimant, the husband of the Petitioner and the Petitioner were deprived of their property rights for about 38 years due to the failure of the Acquiring Officer to pay the compensation as per the duty cast upon him by the Land Acquisition Act.

Hence, I grant relief as prayed for by the prayer (b) of the Petition dated 11.08 2011 by issuing a writ of Mandamus directing the 1st Respondent to pay the Petitioner a sum of Rupees 291,220,424.00 as per the award marked P20 together with the interest as per the said award.

I think it is more than reasonable to grant costs as prayed for by the prayer (c) to the petition due to the unwarranted delay caused by arbitrary conduct of refusing to release money to pay compensation by an officer of the State.

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E.A.G.R. Amarasekara
Judge of the Court of Appeal.