

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

Dilhan Mario De Silva,
No. 483/18,
Kirimandala Mawatha,
Narahenpita,
Colombo 5.
Petitioner

CASE NO: CA/WRIT/7/2015

Vs.

Hon. Gayantha Karunathilaka,
Minister of Lands,
Ministry of Lands and Land
Development,
Mihikatha Medura,
No. 1200/6,
Rajamalwatta Avenue,
Battaramulla.
And 4 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Anandalal Nanayakkara for the Petitioner.
Indula Ratnayake, S.C., for the 1st and 5th
Respondents.
Senany Dayaratne for the 2nd-4th Respondents.

Decided on: 25.03.2019

Samayawardhena, J.

The petitioner filed this application seeking to quash P9 whereby he was informed by the Chief Engineer of the Land Branch of the Colombo Municipal Council that the possession of the specific part of his premises identified therein would be taken over under the proviso (a) to section 38 of the Land Acquisition Act, No. 9 of 1950, as amended.

It is common ground that this acquisition (along with other acquisitions of similar nature along the Kirimandala Mawatha) has been done for a public purpose—to widen the Kirimandala Mawatha.

Issuance of Section 2 Notice, Section 4 Notice, filing Objections by the petitioner against the acquisition, holding an Inquiry into those Objections etc. have all been done prior to the acquisition.

According to section 38, at any time after an Award is made under section 17 (which is basically payment of compensation for the land acquired), the Minister may by Order published in the Gazette direct the acquiring officer to take possession of the land on behalf of the State.

However proviso (a) to section 38 states that: *“Provided that the Minister may make an Order under the preceding provisions of this section (a) where it becomes necessary to take immediate possession of any land on the ground of any urgency, at any time after a notice under section 2 is exhibited for the first time in the area in which that land is situated or at any time after a notice under section 4 is exhibited for the first time on or near that land”*.

As I said earlier, not only Section 2 and 4 Notices, even the inquiry into the objections of the petitioner had been concluded when the Minister published the Order in the Gazette under the proviso (a) to section 38 of the Act.

The pivotal argument of the learned counsel for the petitioner is that there is no necessity to take immediate possession of the land on the ground of urgency under the said proviso.

It is well known (as conceded at the argument) that Kirimandala Mawatha is a highly congested road. Widening of Kirimandala Mawatha to ease the heavy traffic congestion is not a new idea—vide P11, R5. Far from managing vehicular traffic, there is no at least a pavement in most of the parts along this road for the pedestrians to walk.

The petitioner does not dispute these facts. However his contention is that Kirimandala Mawatha connects Elvitigala Mawatha and Nawala Road, and widening has been proposed to be done only up to the canal from the Elvitigala Mawatha, and there is no plan to widen beyond the canal up to the Nawala Road, and widening one part (from Elvitigala Mawatha to the canal) would only result in a bottle neck at the bridge over the canal and worsen the traffic situation.

The part of Kirimandala Mawatha from Elvitigala Mawatha to the canal comes under the Colombo Municipal Council area while the road beyond the canal up to Nawala Road comes under the Kotte Municipal Council area. We do not know what the plan of the Kotte Municipal Council is, as Kotte Municipal Council is not a party to this application.

In any event, it does not prevent the Colombo Municipal Council to take steps to widen the part of Kirimandala Mawatha which comes under them.

It is naïve to argue that as Kotte Municipal Council has not taken steps to widen the part of Kirimandala Mawatha which comes under them, the Colombo Municipal Council shall also resist taking steps to widen the part of the road which comes under them. The argument that this would worsen the traffic congestion creating a bottle neck at the bridge is hypothetical. If such a thing happens, that will compel the Kotte Municipal Council to take immediate steps to follow suit if they have so far not taken any steps in that regard.

On the other hand, as the respondents submit, between Elvitigala Mawatha and the bridge, traffic congestion is heavier as the Economic Centre, two schools—Sujatha Balika Vidyalaya and Wijayawardena Maha Vidyalaya, three leading hospitals—Asiri Surgical, Oasis and Ninewells, and a temple—Sadahampaya Sri Maha Bodi Viharaya are situated, and a large number of vehicles enter Kirimandala Mawatha from Elvitigala Mawatha and then return the same way after visiting those establishments, particularly the Economic Centre.

Then the learned counsel draws the attention of this Court to R5—a document tendered by the respondents—to say that there is no urgency to take immediate possession of the land. R5 document relating to acquisition under proviso (a) of section 38 has been signed by the Acting Municipal Commissioner as the Head of the Department of the Colombo Municipal Council on

30.06.2008 but approved by the Secretary of the line Ministry nearly after 5 years, i.e. on 27.05.2013. If there was such an urgency, the learned counsel argues that, it would not have been lying in the line Ministry for 5 years. According the part filled by the Head of the Department, the project of widening the road was to be implemented between 2008 and 2009. That also shows that this had been a matter of much concern for a long time. It is not clear why it was signed by the Secretary of the line Ministry after about 5 years. However it has been sent, according to R5, to the Secretary of the relevant Ministry, i.e. Ministry of Lands, on or about 27.05.2013. It appears that R5 has been sent with R6 dated 23.05.2013, which is the recommendation by the Minister of the line Ministry to the Minister of the Lands to acquire the land under the proviso (a) to section 38 of the Act. In R6, the Minister of the line Ministry refers to the documents sent along with a letter dated 15.12.2009 regarding this acquisition. That means, the Minister of the line Ministry has written to the Minister of Lands in 2009 requesting the latter to acquire the lands including the part of the petitioner's land urgently. The Order under the proviso (a) to section 38 has been published by the Minister of Lands in the Gazette dated 11.09.2014 marked P10. By the letter marked B dated 13.10.2014, the Secretary of the Ministry of Lands has informed the Municipal Commissioner of the Colombo Municipality to take urgent steps to take over possession of the lands in accordance with the said Gazette.

For the aforesaid reasons the argument that there is no necessity to take immediate possession of the land on the

ground of urgency does not commend itself to me. Hence the main argument of the petitioner fails.

The next argument of the learned counsel is that in Section 2 and 4 Notices, public purpose has not been mentioned and therefore acquisition is invalid. Assuming it has not been stated, it is abundantly clear by P7 and P8 that the petitioner had no doubt about the public purpose. He filed objections and attended the inquiry in relation to “*the acquisition of the lands to widen the Kirimandala Mawatha, Narahenpita*”—vide heading of P8. That argument is not sustainable at least after his attending the inquiry. He has acquiesced to it.

The final argument of the learned counsel for the petitioner relates to the alleged non-compliance with the provisions of the Act. The learned counsel makes two points. One is on the basis of R4. The learned counsel states that recommendation to acquire under proviso (a) to section 38 has been made not by the line Minister but by his Secretary. By R6 the Minister of the line Ministry has recommended urgent acquisition to the Minister of Lands. The other point is the attention of the Minister not being drawn to the petitioner’s objections prior to the Minister taking the decision. Such a specific position has been taken up only in the written submissions. However, the petitioner’s objections are two-fold. One is the personal loss when a part of his house is to be demolished due to acquisition. The other is creation of a bottle neck due to widening a part of the road. The second one has already been addressed. Regarding the first one, acquisition is necessary for the greater benefit of the community. Loss can be minimized by way of compensation. In any event,

consideration of objections is beside the point when Order under the proviso (a) to section 38 is made. As the proviso itself says it can be done *at any time after a notice under section 2 is exhibited for the first time in the area in which that land is situated.*

I dismiss the application of the petitioner with costs.

Judge of the Court of Appeal