

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

In the matter of an application for Mandates
in the nature of Writs of Certiorari and Writ
of Mandamus in terms of Article 140 of the
Constitution

Rosaline Pieris

No.102/4, Kithulwatte Road,

Borella,

Colombo 08.

Appearing by her Power of Attorney

Pattiyage Chandrakumara Pieris

No. 85, Jayapura Watte,

Battaramulla.

Petitioner

Pattiyage Chandrakumara Pieris

No. 85, Jayapura Watte,

Battaramulla.

Substituted-Petitioner

Case No: CA(Writ) 486/2011

Vs.

1. H.C Gunawardene
Acquiring Officer,
Government District Land Officer (Colombo
District),

Divisional Secretariat,
Colombo.

2. The Hon. Mahinda Rajapaksa
Minister of Defense and Urban
Development,
c/o Urban Development Authority,
6th and 7th Floors, "Sethsiripaya",
Battaramulla.

- 2A. Hon. Rauff Hakeem
Minister of Urban Development, Water
Supply and Drainage,
"Lakdiya Medura",
No. 35 Parliament Road, Pelawatta,
Battaramulla.

- 2B. Hon. Patali Champika Ranawaka
Ministry of Megapolis and Development,
10th Floor, C-Wing, "Sethsiripaya" Stage II,
Battaramulla.

3. Mr. Gotabaya Rajapaksa
Secretary of Ministry of Defense,
c/o Urban Development Authority,
6th and 7th Floors, "Sethsiripaya",
Battaramulla.

3A. Mr. Karunasena Hettiarachchi
Secretary, Ministry of Urban Development,
Water Supply and Drainage,
“Lakdiya Medura”,
No. 35 Parliament Road, Pelawatta,
Battaramulla.

3B. Mr. N Rupasingha
Ministry of Megapolis and Development,
10th Floor, C-Wing, “Sethsiripaya” Stage II,
Battaramulla.

4. Hon. Janaka Bandara Tennakoon,
Minister of Lands and Land Development,
“Govijana Mandiraya”, Rajamalwatte Road,
Battaramulla.

4A. Hon. M.K.A.D.S Gunawardana
Minister of Lands, Ministry of Lands,
“Govijana Mandiraya”, Rajamalwatte
Road,
Battaramulla.

4B. Hon. John Amarathunga,
Minister of Lands, Ministry of Lands,
“Govijana Mandiraya”, Rajamalwatte
Road,
Battaramulla.

5. Divisional Secretary, Divisional Secretariat,
Sri Jayawardenepura Kotte.

6. Urban Development Authority,
"Sethsiripaya",
Battaramulla.

Respondents

Before: Janak De Silva J.

Counsel:

Dr. Sunil Cooray with Sithara Jayasundera for the Substituted Petitioner

Anusha Samaranayake DSG for the Respondents

Written Submissions tendered on:

Substituted Petitioner on 05.03.2019

Respondents on 29.04.2019

Argued on: 31.01.2019

Decided on: 10.05.2019

Janak De Silva J.

The Petitioner states that her land more fully described in the schedule to the petition was acquired in terms of an order made under proviso (a) to section 38 of the Land Acquisition Act as amended (Act) by order marked X10. However, she claims that the said land was not utilised for the public purpose for which it was acquired and that she has not been paid any compensation.

The Petitioner claimed the following relief:

- (a) A writ of certiorari quashing the decision of the Respondents, or any one or more of them, to acquire the Petitioner's land, as more fully described in the schedule to the

petition in terms of Government Gazette Notification No. 89/2, dated 19th May 1980, marked as X10 and/or in terms of Government Gazette Notification No. 185/6 dated 23rd March 1982, marked as X11;

- (b) A writ of mandamus directing the Respondents, or any one or more of them to duly divest to the Petitioner the land more fully described in the schedule to the petition in terms of section 39A (1) of the Act forthwith and/or duly consider same in terms of the law,
Or in the alternative
- (c) A writ of mandamus directing the Respondents, or any one or more of them, to duly and forthwith compute, make available and pay to the Petitioner the requisite compensation in respect of the acquisition of the land owned by her, as more fully described in the schedule to the petition by the State as aforementioned and/or duly consider same in terms of the law.

The Respondents state that the said land is part of a larger portion of land in extent 273 Acres and 38 Perches which was acquired for the Sri Jayewardenepura Parliamentary and Administrative Complex and has been utilised for a public purpose namely the construction of the Parliamentary Complex, Roads, Lake, Canal, Urban Forest park, Green Areas in the vicinity and the Gramodaya Folk Art Centre and that the particular portion of land was filled and developed and at present an Urban Forest Park in extent 9 Acres has been inaugurated together with other lands acquired. It is further stated that the compensation inquiries have been held in terms of the Act and that the Petitioner did not present any claim for compensation.

Writ of Certiorari

In *Fernandopulle v. Minister of Land and Agriculture* [79(II) N.L.R. 115 at 119] the legal position applicable to the instant case was stated by the Supreme Court as follows:

“If one looks at the entire Act two main powers are given to the Minister. They are:

1. The power to decide whether the land is required for public purpose and to direct that it be acquired, and

2. Whether there is an urgency compelling the immediate possession being taken of the land and to direct that possession be taken.

As pointed out earlier, **the former decision is by enactment (section 5(2)) made conclusive and therefore removed from scrutiny by the Courts.** The latter has not been so treated and it is legitimate to hold that the legislature did not intend to remove the Court's power of scrutiny." (emphasis added)

However, the Supreme Court held that while an order by the Minister under the proviso to section 38 of the Land Acquisition Act can be made only in cases of urgency, **it is however a matter for a Petitioner who seeks the remedy by way of Certiorari, to satisfy the Court that there was in fact no urgency and his application cannot succeed should he fail to do so.** Hence the burden of proof is on the Petitioner to adduce evidence that there was no urgency and if he fails to do so, her application must be dismissed. This then is the ambit of the inquiry before this court.

The Petitioner has not placed any evidence to show that there was no urgency which permitted the making of an order under proviso (a) to section 38 of the Act. Hence the application for a writ of certiorari to quash X10 must fail. In any event, the application has been made after 31 years from the making of the said order and must fail on the ground of delay as well.

Writs of Mandamus

The first prayer seeks a writ of mandamus directing the Respondents, or any one or more of them to duly divest to the Petitioner the land more fully described in the schedule to the petition in terms of section 39A (1) of the Act forthwith and/or duly consider same in terms of the law. However, the Supreme Court in *Urban Development Authority v. Abeyratne and Others* [S.C. Appeal No. 85/2008 & 101/2008; S.C.M. 01.06.2009] held that the exercise of discretionary power vested with the Minister by section 39A of the Land Acquisition Act is not amenable to judicial review in an application for a writ of mandamus.

In any event, section 39A (2) of the Act sets out four pre-conditions that the Minister has to be satisfied prior to making a divesting Order and in the instant matter prima facie at least two conditions are not satisfied as there is evidence that the land has been used for a public purpose and improvements been affected.

Hence the first prayer for a writ of mandamus must fail.

The alternative relief is for a writ of mandamus directing the Respondents, or any one or more of them, to duly and forthwith compute, make available and pay to the Petitioner the requisite compensation in respect of the acquisition of the land owned by her, as more fully described in the schedule to the petition by the State as aforementioned and/or duly consider same in terms of the law.

The communication between the Petitioner and the public authorities clearly establishes that at least by 25.09.1992 the Petitioner was aware that the land claimed by her has been acquired by the State [3R1 and 3R2]. She was informed that compensation for the acquired land had been deposited with the Government Agent, Colombo to be paid to the claimants and for her to forward her claim to the Government Agent. **She did nothing after that for twenty years.**

On 28.08.2010 (5R1) the Petitioner again writes to the Divisional Secretary inquiring whether her land has been acquired. This to me appears to ~~me to~~ have been done on advice in a feeble attempt to justify any legal proceedings that were to be launched subsequently. The Divisional Secretary informed the Petitioner on 18.10.2010 (X17) that it has been acquired. **This application was filed on 20.07.2011 which is 29 years after the acquisition and 19 years after the public authorities confirmed that the land in question was acquired.**

In *Sarath Hulangamuwa v. Siriwardena, Principal, Visakha Vidyalaya, Colombo 5 and 5 others* [(1986) 1 Sri.L.R. 275] it was held that certiorari being a discretionary remedy will not be granted where there was delay in seeking the remedy.

In *Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another* [(1996) 2 Sri.L.R. 70] Jayasuriya J. held that " A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief." In that case relief was refused since there was a delay of over two and half years since making the order challenged.

In *Jayarathne v. Wickremaratne and Others* [(2003) 2 Sri.L.R. 276] it was held that even when the Petitioner is entitled to the relief on grounds of error of law, the Petitioner is guilty of laches which stands against the grant of relief by way of writ of certiorari. In this case, the Court specifically came to a finding that the decision impugned in that application was irrational, arbitrary and unreasonable. Yet the relief was refused since the application was made to Court 7 years after the impugned decision.

The instant case is a text book example of a situation where the discretionary relief should be refused on delay. The learned counsel for the Substituted Petitioner sought to overcome the difficulties faced by submitting at paragraph 5 of the written submissions that there was no section 7 notice under the Act made in relation to the land in dispute as it is included within lot 25 of Plan No. Co 5516. However, at paragraph 14 of the petition the Petitioner states that the land belonging to her was a smaller extent of the land described as lot No. 3 depicted in plan no. Plan No. Co 5516 which is clearly included in the section 7 notice (X11).

For the foregoing reasons, the application is dismissed with costs fixed at Rs. 50,000/=.

Judge of the Court of Appeal