

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

P.L. Sagara Pradeep,
417, High Level Road,
Pannipitiya.
And 10 Others
Petitioners

CASE NO: CA/279/2016/WRIT

Vs.

Buddhi Tharanga Karunasena,
Divisional Secretary,
Divisional Secretariat,
Maharagama.
And 3 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Parakrama Agalawatta with Sunil Watagala for
the Petitioner.

Nayomi Kahavita, S.C., for the Respondents.

Argued on: 07.06.2019

Decided on: 13.06.2019

Mahinda Samayawardhena, J.

The petitioners filed this application seeking to quash by way of writ of certiorari the decisions marked P3(a), P4(a), P5, P6, P7(a), P8(a), P9, P10, P10(b) and P10(d) of the Acquiring Officer (Divisional Secretary-Maharagama) made after an inquiry under section 9 of the Land Acquisition Act whereby it was decided not to pay compensation to the petitioners for certain portions of the land acquired, on the basis that those portions of land had previously been acquired.

Learned State Counsel appearing for the Acquiring Officer has no idea when the alleged previous acquisition has taken place, but submits that it can even be before the Land Acquisition Act became law and probably in 1920s. I doubt about the said assertion, as the Tenement List marked X1, under “*Remarks*”, refers to “*Taken over under section 38(A) of the Land Acquisition Act*”. That does not refer to the present acquisition, but the previous one.

Be that as it may, no Gazette has been produced by the State to prove such Vesting Order, but has *inter alia* produced the Tenement List marked X1, which is based on the Preliminary Plan Register maintained at the Surveyor General’s Office marked X2, together with an affidavit of the Surveyor General.

If the land has already been acquired, there is no reason to acquire it again.

In any event, the documents relied on by the State including the ones referred to above, at best, prove acquisition, but not payment of compensation for the acquired portions of land.

Acquisition and payment of compensation are not the same but two different things. For instance, by Gazette marked 1R1, portions of land have been acquired, but claim inquiry for the purpose of payment of compensation has been held several years after the said acquisition.

The petitioners do not dispute the decision for acquisition. They only dispute the decision not to pay compensation for the acquired portions. They have no idea about previous acquisition. That has, if at all, happened several generations ago.

I quash the decisions of the Acquiring Officer not to pay compensation to the petitioners on the basis that those portions had previously been acquired by the State. Let the Acquiring Officer decide the amount of compensation to be paid after a fresh inquiry.

Application allowed. No costs.

Judge of the Court of Appeal