

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

In the matter of an Application for a Mandate in the nature of a Writ of Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

H. L. De Mel & Company Limited  
H. L. De Mel Building, Chatham Street, Colombo 01.

**Petitioner**

**Case No. C. A. (Writ) Application 512/2011 Vs.**

1. Janaka Bandara Tennakoon  
Minister of Lands,  
Ministry of Lands, 'Sampathpaya',  
No. 82, Rajamalwatte Road, Battaramulla.

1A. M. K. D. S. Gunawardena  
Minister of Lands,  
Ministry of Lands, 'Sampathpaya',  
No. 82, Rajamalwatte Road, Battaramulla.

1B. John A. E. Amarathunga  
Minister of Lands,  
Ministry of Lands, 'Sampathpaya',  
No. 82, Rajamalwatte Road, Battaramulla.

1C. Gayantha Karunatileka  
Minister of Lands and Parliamentary Reforms

Presently at –  
'Mihikatha Medura', Land Seretariat,  
No. 1200/6, Rajamalwatte Avenue,  
Battaramulla.

Previously at –

‘Sampathpaya’, No. 82, Rajamalwatte Road,  
Battaramulla.

2. Wanninayaka Mudiyanseelage Jayawardena  
Acquiring Officer,  
Divisional Secretary,  
Divisional Secretariat, Kurunegala.
- 2A. Rathnayaka Mudiyanseelage Ranjith Rathnayaka  
Acquiring Officer,  
Divisional Secretary,  
Divisional Secretariat, Kurunegala.
- 2B. E. M. M. S. Ekanayake  
Acquiring Officer,  
Divisional Secretary,  
Divisional Secretariat, Kurunegala.
3. State Timber Corporation  
Rajamalwatte, Battaramulla.
4. The Attorney General  
Attorney General’s Department, Colombo 12.

**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

L.M.C.D. Bandara for the Petitioner

Chaya Sri Nammuni SSC with Pirintha Kumararatna SC for 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents

Manohara De Silva P.C. with Hirosha Munasinghe for the 3<sup>rd</sup> Respondent

**Written Submissions tendered on:**

Petitioner on 17.09.2018

1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents on 03.05.2019

3<sup>rd</sup> Respondent on 07.11.2018

**Argued on:** 14.05.2019

**Decided on:** 05.09.2019

**Janak De Silva J.**

The land belonging to the Petitioner more fully described in the schedule to the petition was acquired by the State under the Land Acquisition Act (Act) in 1999 (P1). At the time of acquisition the 3<sup>rd</sup> Respondent corporation was in possession of the said land.

An award under section 17 of the Act was made in 2002 granting the Petitioner a sum of Rs. Twelve Million as compensation. The Petitioner by letter dated 09.05.2002 indicated his willingness to accept the said compensation (P4). The Petitioner thereafter sent several reminders requesting the compensation to be paid which was not done.

The Petitioner by letter dated 21.11.2010 (P5) demanded that the 2<sup>nd</sup> Respondent perform his statutory duty by paying the compensation. As it was not done the Petitioner filed this application where he seeks a writ of mandamus on the Respondents compelling them to pay the Petitioner, the award of compensation determined on P2 dated June, 2002 under section 17 of the Act.

The Respondents admit all of the above facts. The 2<sup>nd</sup> Respondent states that the land was acquired on behalf of the 3<sup>rd</sup> Respondent and that compensation was not paid to the Petitioner as the 3<sup>rd</sup> Respondent has failed to deposit the said amount though several letters were sent requesting it to do so [2R11(a) to 2R11(c)]. The 3<sup>rd</sup> Respondent states that the valuation informed to it before the acquisition was Rs. 4,00,000/= and that there is an error in the award of compensation.

Clearly the dispute as to the payment of compensation is between the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, one an agent of the State and the other a public corporation for whom the land was acquired. I am of the view that such an internal issue cannot deprive the Petitioner what it has been awarded according to law. It is the duty of the State to ensure that resources are available to comply with awards made under section 17 of the Act. The failure of the State to do so cannot deprive the Petitioner of what is due according to law. *Commodum es injuria sua nemo habere debet* (No one should have an advantage from his own wrong).

If the position of the 3<sup>rd</sup> Respondent is that the award is contrary to law it should have sought to assail it before a proper forum since as Lord Radcliffe held in *Smith v. East Elloe Rural District Council* [(1956) A.C. 736, 769-770]:

“An order, ... is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

A writ of mandamus would lie when a statutory duty is cast upon a public authority with a correlative right to demand its discharge [*Urban Development Authority v. Abeyratne and Others* [S.C. Appeal No. 85/2018 & 101/2018, S.C.M. 01.06.2009].

Section 29 of the Act reads:

“Where an award is made under Section 17, the Acquiring Officer of the District in which the land to which that award relates is situated shall tender to each person who is entitled to compensation according to that award the amount of compensation allowed to him by that award...”.

In terms of section 65 of the Act read with the Transfer of Powers (Divisional Secretaries') Act, No- 58 of 1992, Acquiring Officer is the relevant Divisional Secretary who in this case is 2B Respondent by name.

In that context, Court is mindful that at one time the view was that a writ of mandamus will not issue against the Crown or on a servant acting on behalf of the Crown [*Munasingha v. Devarajan* (57 N.L.R. 286), *City Motor Transit Co. Ltd. v. Wijesinghe* (63 N.L.R. 156)].

However, the law has developed and as Wade & Forsyth, *Administrative Law*, 9<sup>th</sup> ed., page 628 states:

“On the other hand, where Parliament has imposed a duty on particular persons acting in some particular capacity, mandamus will issue notwithstanding that those persons are servants of the Crown and acting on the Crown's behalf. This is because the legal duty is cast upon them personally, and no orders given to them by the Crown will be any defence. If therefore the Act requires 'the Minister' to do something, mandamus will lie to compel the minister to act.”

Therefore, the statutory duty placed on the Divisional Secretary by section 29 of the Act to pay the compensation to the Petitioner is enforceable by a writ of mandamus.

Court accordingly issues a writ of mandamus on the 2B Respondent compelling him to pay the Petitioner, the award of compensation determined on P2 dated June,2002 under section 17 of the Act.

In view of the long delay that has deprived the Petitioner what is due in terms of the law, Court makes further direction directing the 2B Respondent to pay legal interest calculated on the said award from 09.05.2002, the date on which the Petitioner indicated willingness to accept the compensation.

The Application is allowed with costs fixed at Rs. 1,00,000/= payable by the State to the Petitioner.

Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.

Judge of the Court of Appeal