

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

1. Kusala Hasanthi Perera,
  2. Wijayani Dhanayake,
- Both of  
Alhena Watte, Unella,  
Paalatuva.  
Petitioners

**CASE NO: CA/WRIT/224/2017**

Vs.

1. Gayantha Karunatileke,  
Minister of Lands and  
Parliamentary Reforms,  
“Mihikatha Medura”,  
Land Secretariat,  
Rajamalwatta Road,  
Battaramulla.
2. Dr. I.H.K. Mahanama,  
Secretary, Ministry of Lands  
and Parliamentary Reforms,  
“Mihikatha Medura”,  
Land Secretariat,  
Rajamalwatta Road,  
Battaramulla.
3. P.K.C.N. Mahindagngna,  
Divisional Secretary-  
Thihagoda,  
Secretariat, Matara.

4. R. M. Gamini,  
Project Director,  
Southern Expressway  
Extension Project,  
Road Development Authority,  
1<sup>st</sup> Floor, Sethsiripaya,  
Battaramulla.
5. D. C. Dissanayake,  
Secretary,  
Ministry of Highways and  
Higher Education,  
Maganeguma Mahamedura,  
No. 216, Denzil Kobbekaduwa  
Mawatha, Koswatta,  
Battaramulla.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Chrishmal Warnasuriya with Anslam  
Kaluarachchi, Priyantha Herath and  
Arjuna Selvaraj for the Petitioners.

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

Argued on: 25.02.2020

Decided on: 03.03.2020

Mahinda Samayawardhena, J.

The Petitioners filed this application seeking to quash by way of a writ of certiorari the Notice issued under section 2 and the Vesting Order issued under section 38 of the Land

Acquisition Act. They also seek to prohibit the Respondents from taking further steps on the aforesaid Vesting Order by way of a writ of prohibition.

This Court has refused the interim relief sought by the Petitioners prohibiting the Respondents from taking any steps pursuant to the said Vesting Order during the pendency of this application.

The Respondents filed objections followed by counter objections by the Petitioners to the substantive matter. Written submissions were also filed by both parties. The matter was fixed for argument thereafter. The case was not taken up for argument due to various reasons. At one point the parties had agreed to abide by a decision based on the written submissions and Judgement was reserved.

Be that as it may, when this matter came up before this Court on 25.02.2020, learned Counsel for the Petitioners moved to amend the petition in order to challenge the decisions of the Land Acquisition Resettlement Committee (LARC) and Super Land Acquisition Resettlement Committee (Super LARC). This was objected to by learned State Counsel appearing for the Respondents.

The main argument of learned State Counsel is that the Petitioners filed this application to challenge the Vesting Order, and the decisions of the LARC and the Super LARC are in relation to the award of compensation, and therefore the Petitioners can only challenge the decisions of the LARC and Super LARC if they accept that the Vesting Order is lawful.

In reply, learned Counsel for the Petitioners states that the decisions of the LARC and Super LARC, as reflected in R7 (filed with the statement of objections of the Respondents) and P23 (filed with the motion of the Attorney-at-Law for the Petitioners dated 02.03.2020) respectively, came into being only after the filing of this application and therefore the Petitioners could not challenge those two decisions in the original petition.

If this Court is to accept the argument of learned Counsel for the Petitioners, the said application of the Petitioners in my view is bound to fail.

The acquisition process ends with an award of compensation to the persons whose lands have been acquired. Notwithstanding the acquisition process and compensation process are interconnected and cannot be considered in watertight compartments, they are two different processes for which different principles apply. In my view, an award of compensation is a different cause of action, which has accrued, according to learned Counsel for the Petitioners himself, after the filing of this application.

The Petitioners cannot be allowed to amend the petition in order to accommodate new causes of action which arose after the filing of the application. This will change the character of the application. A party cannot be allowed to amend the pleadings so as to convert an action of one character to an action of another and inconsistent character. (*Vide Lebbe v. Sandanam* (1963) 64 NLR 461, *Thirumalay v. Kulandavelu* (1964) 66 NLR 285, *Senanayake v. Anthonisz* (1965) 69 NLR 225, *Thenuwara v. Simo Nona* [2005] 2 Sri LR 309.)

In my view the proposed amendment would manifestly convert the action of the Petitioner from one character to an action of another and inconsistent character.

In *Jayaratne v. Jayaratne* [2002] 3 Sri LR 331, it was held that “*The cause of action based on adultery has arisen after the defendant has filed his answer. It is a different and independent cause of action. Rights of parties are determined as at the date of plaint.*”

In *Hatton National Bank v. Silva* [1999] 3 Sri LR 113, it was held that “*The plaintiff cannot amend the plaint to include a new cause of action which arose after the institution of the action.*”

For the aforesaid reasons the application of the Petitioners to amend the original petition is dismissed. No costs.

Judge of the Court of Appeal