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

In the matter of an Application for mandate in the nature of a Writ of Prohibition, Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 441/2020

W. Palitha De Zoysa Gunasekara,
Katudampe,
Ratgama.

PETITIONER

Vs.

1. Hon. Minister of Lands,
Ministry of Lands.

2. The Secretary,
Ministry of Lands.

1st and 2nd Respondents at
"Mihikatha Medura",
Land Secretariat, No. 1200/6,
Rajamalwatta Road,
Battaramulla.

3. The Secretary,
State Ministry of Postal Services and
Professional Development of Journalists.

4. Postmaster General,
Department of Post.

3rd and 4th Respondents at
Postal Headquarters,
No. 310, D.R. Wijewardena Mawatha,
Colombo 10.

5. Divisional Secretary,
   Divisional Secretariat, Hikkaduwa.

6. I. J. Chamod Shalinda.
7. W. Manjula Nissanka kumara.
8. T.M. Gaya Kalpani.
9. Maheesha Manohari Edirisinghe.
10. Sumith Priyantha.
11. R. Rani Chandralatha.

All of Katudampe, Rathgama.

RESPONDENTS

Before: **Arjuna Obeyesekere, J / President of the Court of Appeal**
Mayadunne Corea, J

Counsel: R. Chula Bandara for the Petitioner

Dr. Charuka Ekanayake, State Counsel for the Respondents

Supported on: 08th February 2021

Decided on: 27th April 2021

Arjuna Obeyesekere, J., P/CA

In this application, the Petitioner is challenging two letters sent to him by the 5th Respondent,[1] the Divisional Secretary, Hikkaduwa requesting him to hand over the possession of a land situated in Hikkaduwa belonging to the Petitioner which had been acquired by the State in 2007 under and in terms of the Land Acquisition Act, as amended (the Act).

In order to assist this Court to determine if formal notice of this application should be issued on the Respondents, this Court directed:

[1] Letters marked 'P10' and 'P12'.

a) The learned State Counsel to file a complete set of the pleadings in CA (Writ) Application No. 582/2007, which is an application filed by the Petitioner in 2007 challenging the publication of the notice under proviso (a) to Section 38 of the Act;

b) The learned State Counsel to tender by an affidavit the position of the Respondents with regard to a letter marked '**P6**' as the said letter formed the basis of the second argument presented in this application on behalf of the Petitioner;

c) The learned Counsel for the Petitioner to file the response of the Petitioner to the aforementioned affidavit.

All three directives have been complied with by the parties.

The learned State Counsel raised two objections with regard to the maintainability of this application. The first is that the Petitioner does not have the *locus standi* to have and maintain this application. The second is that the letters sought to be quashed do not contain a *decision*, and that the 5th Respondent was merely implementing the provisions of the Act in respect of a land the title of which had vested in the State as far back as 2007. I shall consider these two objections after having considered the arguments of the learned Counsel for the Petitioner.

The facts of this application very briefly are as follows.

The Petitioner states that his aunt, Mrs. Hemawathie De Zoysa Gunasekara was the owner of a land in extent of 2R 28.3P situated in Boossa. He states that his aunt gifted the said property to him by Deed No. 2702 dated 28th July 1998 marked '**P1**', reserving her life interest in the said land. Although not disclosed in this application, the Petitioner had divulged the following facts in the petition filed in CA (Writ) Application No. 582/2007 (the first application):

a) In January 2000, his aunt had informed him that she has received a letter together with a notice dated 15th December 1999 under Section 4 of the Act informing her that approximately 50 perches out of the land that had been

gifted by her to the Petitioner had been identified for acquisition for a public purpose;

b) His aunt had also informed him that she has already made representations to the Secretary, Ministry of Posts and Telecommunication objecting to the acquisition of *her* land;

c) The Petitioner had thereafter made inquiries from the Divisional Secretariat, Hikkaduwa and found that the notice under Section 2 of the Act had been published on 22nd April 1998, for the establishment of the Boossa Post Office;

d) An inquiry was held in terms of Section 4(3) of the Act to inquire into the said objections, with the participation of the Petitioner and his aunt;

e) The Petitioner was afforded the opportunity of reiterating his objections to the proposed acquisition at the said inquiry;

f) The adjoining land had been developed as a Economic Trade Centre, and that he had proposed that the post office could be located in that building;

g) In response to a question raised by the Inquiry Officer, '*he had said that if there was no alternative other than to take over his land he agrees to give away 20-25 perches to the State for the construction of (a) sub post office.*'

The above narration in the petition filed in the first application discloses two important matters. The first is that the alienation of the land by gift to the Petitioner has been made **three months** after the publication of the notice under Section 2 of the Act. I shall discuss at the end of this judgment this issue together with the first objection of the learned State Counsel with regard to the *locus standi* of the Petitioner. The second is that by the Petitioner and his aunt being afforded an opportunity of placing their objections to the proposed acquisition of their property, the State had complied with the provisions of Section 4. These facts, although material to this application, had been suppressed by the Petitioner.

The Petitioner states that as no steps were taken with regard to the acquisition, he had commenced the construction of a building on the land sought to be acquired in

2004. The construction had been completed in 2006/7. It is clear from the several photographs that have been produced by both parties that the said building is facing the main road. Access to the rear portion of the land, which has not been acquired, is from the side of the building.

The Petitioner states that in May 2007, he was served with a notice issued in terms of proviso (a) to Section 38 of the Act marked '**P3**', published in Extraordinary Gazette No. 1496/11 dated 9th May 2007. The Petitioner admits that by a letter dated 11th June 2007 issued by the 6th Respondent, he was directed to hand over the said property to the State on 21st June 2007. It is not in dispute that a declaration in terms of Section 5(1) of the Act has been made by the Minister of Lands on 22nd June 2007.

It must be observed that the State was initially seeking to acquire approximately 50P out of the entire land which was in extent of approximately 109P - vide the notice under Section 4. The extent of land sought to be acquired, which is facing the main road, had later been reduced to 40P, as depicted in the Advanced Tracing marked '**P9**'. The reduction of extent is reflected in the notice issued under proviso (a) to Section 38.

The Petitioner states that having '*requested for further time to hand over the property to the (Divisional Secretary) as he was sick and advised to bed rest by his doctor*', he filed the first application on 26th June 2007 challenging the said notice issued under proviso (a) to Section 38, on the basis that there is no urgency.

It is admitted that the first application was taken up for argument on 2nd July 2010. The Petitioner states that in view of the submission of the learned State Counsel that '*a notice in terms of Section 5 has already been published',* his Counsel *'refrained from making submissions as it was settled law that the action cannot be maintained once a notice under Section 5 had been issued'.* The Petitioner goes onto state that *on this basis* this Court had dismissed the said application. While I will advert to this issue later, I must state that the factual position remains the same, in that there exists a Section 5 notice that has been published in the Gazette in April 2018, thus attracting the finality referred to by the Petitioner.

The Petitioner states that by a letter dated 15th March 2011 marked '**P6**', the Secretary, Ministry of Postal Services had informed the Secretary, Ministry of Lands that the Postmaster General has decided that the land on which the building is situated, which was part of the land sought to be acquired, is not required and that it would suffice if the land behind the said building is available for the purpose of constructing the post office. I shall advert to '**P6**' later.

The Petitioner states that the State did not take any steps after 2011 with regard to the acquisition, and that he was under the impression that the State has abandoned the acquisition proceedings, until he received the letter dated 17th November 2020 marked '**P10**', sent by the Divisional Secretary, Hikkaduwa requesting the Petitioner to be present on 27th November 2020 to hand over possession of the said land. As the Petitioner did not comply, the Divisional Secretary, Hikkaduwa by letter dated 30th November 2020 marked '**P12**', had once again informed the Petitioner to be present on 8th December 2020 to hand over possession of the land.

Aggrieved by the above requests to hand over possession of the said land, the Petitioner filed this application on 7th December 2020, seeking *inter alia* the following relief:

(a) A Writ of Certiorari to quash the request of the Divisional Secretary, Hikkaduwa contained in the letters marked '**P10**' and '**P12**' requiring the Petitioner to hand over possession of the land vested in the State;

(b) A Writ of Prohibition preventing the Divisional Secretary, Hikkaduwa from taking over the said land without following due process of the law;

(c) A Writ of Mandamus directing the Minister of Lands to revoke the declaration made in terms of Section 5, or in the alternative a Writ of Mandamus directing the 1st Respondent to act in terms of Section 39A of the Act.

It must be noted that the Petitioner is not seeking to quash the notice issued under proviso (a) to Section 38 of the Act, by which the title to the said land was vested in the State.

Prior to considering the arguments of the learned Counsel for the Petitioner, it would be useful to briefly consider the procedure laid down in the Act with regard to acquisition of private land.

The acquisition process set out in the Act commences with Section 2(1), which reads as follows:

> *"Where the Minister decides that land in any area is **needed** for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area."*

Thus, in order to initiate the first step in the acquisition process, the State must be satisfied that there is a **necessity** to acquire land for a public purpose. A notice under Section 2(1) would generally refer to land in any area out of which a particular land is to be chosen pursuant to investigations as to its suitability.

In terms of Section 2(3), any officer authorised by the Acquiring Officer may carry out on any land in the area referred to in Section 2(1), the activity set out in Section 2(3), and all other acts necessary, in order to investigate the suitability of that land for the public purpose mentioned in the notice, including the carrying out of surveys, checking the subsoil, demarcating boundaries, etc. Section 2(3) therefore sets out the second step of the acquisition process, which is to investigate the **suitability** of the land referred to in the Section 2(1) notice.

In terms of Section 4(1), once the Minister considers that a particular land is suitable for a public purpose, he shall direct the Acquiring Officer to cause a notice in accordance with Section 4(3) to be given to the owner or owners of that land and to be exhibited in some conspicuous place on or near that land. The notice under Section 4(3) shall state *inter alia* that the State intends to acquire that land for a public purpose, and that written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the notice.

The Supreme Court, in **Manel Fernando and Another v. D.M. Jayaratne, Minister of Agriculture and Lands and Others**[2], held that, "*the object of section 4(3) is to enable the owner to submit his objections: which would legitimately include an objection that his land is not suitable for the public purpose which the State has in mind, or that there are other and more suitable lands.*"

It is clear that necessity and suitability are but two sides of the same coin, and that the objections of the landowner to the Acquiring Officer can extend to challenging the necessity of an acquisition.

In terms of Section 4(4), where a notice relating to the intended acquisition is exhibited, and objections are made to the Secretary by any persons interested in such land and within the time allowed, the appropriate Secretary shall consider such objections, either by himself, or through an Officer appointed by the Secretary. Section 4(4) specifies further that, '*when such objections are considered every objector shall be given an opportunity of being heard in support thereof.*' It is only after the consideration of the objections that the Secretary shall make his recommendations to the Minister, who is then required to make his recommendations to the Minister in charge of the subject of lands. In terms of Section 4(5) of the Act, the Minister of Lands must be satisfied that there is a necessity of a land for a public purpose and suitability of a particular land for that particular purpose, in order to arrive at a decision in terms of Section 4(5) that the land referred to in the Section 4(1) notice must be acquired.

It is clear from the petition in the first application that an inquiry was in fact held and that the Petitioner was afforded an opportunity of placing his objections to the acquisition. The provisions of Section 4 have therefore been complied with and the Petitioner has no complaint with the procedure followed.

The decision in terms of Section 4(5) is followed by Section 5 of the Act, which reads as follows:

> *"(1) Where the Minister decides under subsection (5) of section 4 that a particular land ... should be acquired under this Act, he shall make a*

[2] [2000] 1 Sri LR 112.

written declaration that such land ... is needed for a public purpose and will be acquired under this Act, and shall direct the acquiring officer of the district in which the land which is to be acquired ... is situated, to cause such declaration in the Sinhala, Tamil and English languages to be published in the Gazette and exhibited in some conspicuous places on or near that land.

(2) ***A declaration made under subsection (1) in respect of any land ... shall be conclusive evidence that such land ... is needed for a public purpose****.*

(3) The publication of a declaration under subsection (1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made."

Thus, once the Minister decides under Section 4(5) that a particular land should be acquired under the Act, he shall make a written declaration as provided in Section 5(1) that such land is needed for a public purpose and will be acquired under the Act. While in terms of Section 5(2), a declaration made under Section 5(1) shall be conclusive evidence that such land is needed for a public purpose, in terms of Section 5(3), the publication of a declaration under Section 5(1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.

In **D.H. Gunasekera and Others v Minister of Lands and Agriculture and another**,[3] it was held as follows:

"*Counsel for the Petitioners concedes that a declaration under Section 5(1) of the Act has been published by the Minister in the Gazette. The consequence of the publication of that declaration is that sub-section (2) of Section 5 operates to render the declaration conclusive evidence that the land was needed for a public purpose. The question whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and even if that question may have been wrongly decided, sub-section (2) of section 5 renders the position one which cannot be questioned in the Courts."*

[3] 65 NLR 119 at 120.

A similar position was taken up in **Hewawasam Gamage v. The Minister of Agriculture**[4] where it was held as follows:

> "*I am of opinion that on the construction I place of section 2(1) and proviso (a) to section 38, the Court cannot question the decision or the order of the Minister and substitute its judgment in place of that of the Minister and hold that the decision of the Minister was wrong, namely, that the land was needed for a public purpose. The decision whether the land should or should not be acquired is one of policy to be determined by the Minister concerned and therefore cannot be questioned by the Court of Law*."[5]

The next step in the acquisition process is to initiate the payment of compensation to the land owner, in accordance with the provisions contained in Sections 7, 9 and 10, culminating in an award under Section 17(1). It is only after an award is made under Section 17 that the Minister may, by an Order published in the Gazette in terms of Section 38 (a), direct the Acquiring Officer to take possession of the land, for and on behalf of the State, thus bringing the process of acquisition to a close.

The legislature has recognised that there may be circumstances which demand that possession be taken over on behalf of the State earlier than what the aforementioned procedure provides for, and has given effect to such requirement by including a proviso to Section 38, which reads as follows:

> *"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, and*
>
> *(b) ....".*

[4] 76 NLR 25 at page 32..

[5] See Gnanawathie Edirisinghe v. Minister of Lands and Land Development CA (Writ) 500/2008; CA Minutes of 21st February 2011.

In **<u>Marie Indira Fernandopulle and Another v E. L. Senanayake, Minister of Lands and Agriculture</u>**,[6] the Supreme Court, referring to the above scheme of the Act, stated as follows:

> "*The provisions of section 38 states that the Minister may by order published in the Gazette "at any time after the award is made under section 17" direct the acquiring officer to take possession of the land or servitude acquired, as the case may be.* ***Such an order is a vesting order and vests title in the State absolutely and free from all encumbrances from the date of the order****. It must be noted that the Minister ordinarily has no power to vest the land in the State until an award is made in terms of section 17 of the Act. Even though the market value is calculated as at the date of the notice under section 7 the award can only be made after 21 days of the date of the notice. If there is a reference to Court under the provisions of section 10 of the Act such award will be made at such later date (section 17).* ***Whatever the length of time*** *the Act makes it clear that in the first place possession only be taken after the award is made and after the quantum of compensation offered is made known to the claimants. Any vesting order made before such award would be an act in excess of powers. The intention of the legislature is clear, i.e., that the officers of the State cannot take possession until and unless an offer of payment of compensation is made and the acquisition proceedings are concluded. It is only then that the Act recognises the State's right to possession of the land.*
>
> *The proviso to section 38 is a departure from this general rule. It empowers the Minister, on behalf of the State, to take immediate possession "where it becomes necessary to take immediate possession of any land on the ground of any urgency."* [emphasis added]

Thus, taking over possession of a land that is to be acquired can happen at different stages of the acquisition process. Unless it is urgent, the earliest point of time at which possession can be taken is after the publication of an award under Section 17. However, on the ground of urgency, the Minister can make an order under proviso

[6] 79 (II) NLR 115 at page 117.

(a) to Section 38 to take immediate possession of the land any time after the publication of a notice under Section 2.

In the light of the above legal provisions, the factual position of this application can be summarised as follows:

a) The notices under Sections 2 and 4 have been published;

b) The inquiry under Section 4 has been held with the participation of the Petitioner;

c) The declaration under Section 5(1) has been made, with the result that there is conclusiveness with regard to necessity and suitability of the land for the construction of a post office;

d) By virtue of the publication of the notice under proviso (a) to Section 38, the title to the land is vested in the State.

I shall now consider the two arguments presented before this Court by the learned Counsel for the Petitioner.

The first is that the learned State Counsel who appeared in the first application had submitted to Court that the notice under Section 5 has been published, when in fact no such notice had been published. He submitted that due to this submission, the learned Counsel who appeared for the Petitioner in the first application *refrained from making submissions as it was settled law that the action cannot be maintained once a notice under Section 5 had been issued* and that it is on this basis that this Court made order dismissing the Petitioner's first application.[7]

This submission is not factually correct, for two reasons. The first is that in paragraph 9 of the Statement of Objections filed in the first application, it has been stated that consequent to the notice in terms of proviso (a) to Section 38, a *notice in terms of Section 5 of the Land Acquisition Act (as amended) was published on 22nd June 2007 with regard to an extent of 0.101 hectares.* A certified copy of the notice under

[7] Vide paragraphs 15 and 16 of the petition.

Section 5 had thereafter been annexed as '1R6'. What has been annexed as '1R6' is the signed declaration made by the then Minister of Lands and Land Development, supported by an affidavit of the said Minister of Lands who had signed '1R6'. While the Section 5(1) notice had not been published in the Gazette, the *Section 5 notice* referred to by the State was available for the Petitioner to see. Therefore, it was open to the Petitioner to take any objection with regard to the legality or validity of the said notice, which the Petitioner did not do.

The judgment of this Court marked '**P5**' correctly records that, '*The learned State Counsel submitted (that) Section 5 notice was also published on 22.06.2007. As Section 5 notice is now published it is settled law that the public purpose cannot be challenged in these proceedings.*' This position is factually correct, in that there existed a Section 5 notice and therefore this Court has not been misled by the learned State Counsel, as alleged by the Petitioner.

If it was the position of the Petitioner that for the Section 5 notice to be valid, it must be published in the Gazette, there was nothing that prevented the Petitioner from taking up that position. The Petitioner cannot now cry foul. In any event, the legal position in Section 5(2) that a declaration made under Section 5(1) in respect of any land shall be conclusive evidence that such land is needed for a public purpose applies to the declaration made under Section 5(1). While the publication of a declaration in the Gazette is conclusive evidence that the declaration has been made, the validity of the said declaration is not dependent on the *publication* of the said declaration in the Gazette.

The second reason why the first submission of the learned Counsel for the Petitioner is not correct is in view of the following paragraph of the judgment '**P5**':

> *"Further the petitioners have not established that there is no urgency in acquiring this land as the public purpose is for a post office and the respondents have taken steps to establish this post office but they could not proceed further due to the filing of this application and as the petitioner has not established any grounds to issue a writ of certiorari to quash section 38 (a) order, Court dismiss this application without costs."*

It is therefore evident that the said application had been dismissed not only because of the submission that a Section 5 notice had been *published* but also for the reason that the Petitioner had failed to establish that there is no urgency in acquiring this land. The Petitioner has not filed an appeal against the said judgment and is therefore estopped from challenging the necessity, suitability and urgency of the acquisition, in this application.

The second argument of the learned Counsel for the Petitioner is based on the letter '**P6**', which reads as follows:

> "මෙම අත්කර ගැනීම සම්බන්ධයෙන් ඉඩමේ මුල් අයිතිකරුවන්, අභියාචනාධිකරණයට ඉදිරිපත් කර තිබූ අංක 582/07 දරණ අභියාචනය ප්‍රතික්ෂේප වී ඇත. (අභියාචනාධිකරණ තීන්දුවේ පිටපතක් අමුණා ඇත.) නඩු කටයුතු අවසන් වී ඇති බැවින්, අත්කරගෙන ඇති ඉඩමේ යෝජිත තැපැල් කාර්යාල ගොඩනැගිල්ල **මෙම වසර තුළ ඉදි කළ යුතු බව සඳහන් කරමින්**, තැපැල්පති පවරා ගෙන ඇති ඉඩම් කොටසේ භුක්තිය භාර දෙන මෙන් ඉල්ලා ඇත.
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> තැපැල්පති මා වෙත එවා ඇති 2011.01.31 හා 2011.03.07 දිනැති ලිපිවල පිටපත් මෙයට අමුණා එවමි. ඒ අනුව, ඉඩම් අත්කර ගැනීමේ පනත යටතේ අත්කරගෙන ඇති ඉඩමේ කොටසක මුල් හිමිකරු විසින් කඩ කාමර පහක් සහිත දෙමහල් ගොඩනැගිල්ලක් ඉදිකර බදුදී ඇති බැවින්, එම ගොඩනැගිල්ලට හානි නොවනසේ නිසි ප්‍රවේශ මාර්ග සහිතව ප්‍රධාන මාර්ගයට ආසන්නයෙන් පර්චස් 40 ක ඉඩම් කොටසක් තැපැල් කාර්යාලය සඳහා ලබා ගැනීම සුදුසු යැයි තැපැල්පති නිර්දේශ කර ඇත.
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> තැපැල්පතිගේ නිර්දේශ පරිදි, දැනට අත්කරගෙන ඇති ඉඩමේ ඉදිකර ඇතැයි සඳහන් ගොඩනැගිල්ල අයත් නොවනසේ ප්‍රධාන මාර්ගයට ආසන්නයෙන් පර්චස් 40ක හිස් ඉඩම් කොටසක් නැවත මිනුම් කටයුතු කර, නිරවුල්ව තැපැල් දෙපාර්තමේන්තුවට ලබාදෙන මෙන් හා ඒ අනුව, අත්කරගෙන ඇති ඉඩමේ ඉතිරි ඉඩම් කොටස්, ඉඩම් අත්කර ගැනීමේ පනතේ විධිවිධාන පරිදි, අවසතු කිරීම සුදුසු බවද නිර්දේශ කරමි.
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> අනවශ්‍ය ඉඩම් කොටස් අවසතු කිරීමට, ගරු අමාත්‍යතුමාගේ නිර්දේශය ලබා ගැනීමට හැකිවන පරිදි, තැපැල් කාර්යාලය සඳහා අවශ්‍යවන පර්චස් 40 ක කොටස නැවත මැන වෙන්කර, පිඹුරු පත් කරදෙන මෙන් කාරුණිකව ඉල්ලමි."

I must observe at the outset that this letter has not been addressed to the Petitioner, and is only an internal correspondence. In any event, it is clear that the Minister of Lands did not act on '**P6**'.

As I have already held, the necessity and suitability of the Petitioner's land for the establishment of a post office has been decided at an inquiry held with the participation of the Petitioner in terms of Section 4 as far back as 2004. The written declaration made by the Minister under Section 5(1) in 2007 is conclusive proof that the said land is needed for the post office. The argument of the Petitioner that '**P6**' having been issued four years after the said written declaration of the Minister demonstrates that the land is no longer required for the aforementioned public purpose is rebutted by the fact that the Minister of Lands has made a further written declaration in 2018 under Section 5(1), marked '**P8**'. This declaration has been published in the Gazette. What prevails now is this declaration, thereby bringing finality as provided by Section 5(2) of the Act.

In order to ascertain if the said land is no longer required, this Court directed the learned State Counsel to tender by an affidavit the present position of the Respondents with regard to '**P6**', and afforded the Petitioner an opportunity to respond thereto.

In his affidavit, the Secretary, Ministry of Mass Media has stated as follows:

a) The requirement of the State being 40P, if any land is excluded as set out in '**P6**', the area of the land remaining bordering the main road would not be sufficient to meet the requirement of the State;

b) Releasing the land on which the building is situated would result in only the land behind the said building being available, which land is not suitable for the said public purpose;

c) The letter '**P6**' has been issued without considering the ground realities relevant to the said premises;

d) The Boossa Post Office for which the land has been acquired, is presently housed in a building which cannot accommodate the basic needs of the staff and the members of the Public that frequent the said post office.

In his reply, the Petitioner has sought to argue that the land behind the building is suitable for a post office. However, this Court cannot go into the question of

necessity and suitability at this stage, and due deference must be shown to the conclusive nature of a written declaration made in terms of Section 5(1). In doing so, I am mindful of the fact that the necessity and suitability of the said land has been determined in terms of an inquiry held in accordance with the provisions of Section 4, and that the order in terms of proviso (a) to Section 38 was made only thereafter.[8] I therefore cannot agree with the second argument of the learned Counsel for the Petitioner.

I shall now discuss the two objections raised by the learned State Counsel with regard to the maintainability of this application.

The first is that the Petitioner does not have the *locus standi* to have and maintain this application. This argument is based on the factual premise that by the time the Deed of Gift in favour of the Petitioner was executed on 28th July 1998, there was in place the Section 2 notice published on 22nd April 1998. In terms of Section 4A(1)(a) of the Act:

> *"Where a notice has been issued or exhibited in respect of any land under section 2 or section 4, no owner of that land shall, during the period of twelve months after the date of the issue or exhibition of such notice, sell or otherwise dispose of that land."*

The consequence of such disposal is set out in Section 4A(2), which provides that:

> *"Any sale or other disposal of land in contravention of the provisions of subsection (1) (a) of this section shall be null and void"*

As the Petitioner has acquired the property within the time period specified in Section 4A(1), I agree with the submission of the learned State Counsel that the Petitioner does not have the *locus standi* to have and maintain this application.

The second objection raised by the learned State Counsel is that the letters sought to be quashed – '**<u>P10</u>**' and '**<u>P12</u>**' - do not contain a *decision*, and that the 5th Respondent was merely implementing the provisions of the Act in respect of a land the title of

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[8] See N.M. Gunatilake and Others vs Gayantha Karunathilake, Minister of Lands and Others [CA (Writ) Application No. 387/2017; CA Minutes of 21st September 2020].

which had vested in the State as far back as 2007. While it is trite law that a Writ of Certiorari is available to quash a *decision* affecting the rights of an individual, it must be noted that even the Petitioner refers to '**P10**' and '**P12**' as *requests.* In any event, in terms of Section 40(a), once an order is published in terms of Section 38, the officer who is authorised by that Order – in this case, the Divisional Secretary, Hikkaduwa[9] - may take possession of that land for and on behalf of the State. Thus, the Divisional Secretary is only acting in terms of Section 40, having complied with Section 42(1) which requires him to give notice to the occupier of his intention to take possession. It is therefore clear that the Divisional Secretary is merely complying with the law and has not arrived at a decision affecting the rights of the Petitioner in doing so. I am therefore in agreement with the submission of the learned State Counsel that a Writ of Certiorari and a Writ of Prohibition will not lie to quash '**P10**' and '**P12**'.

In the above circumstances, I do not see any legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal

[9] Vide paragraph 1 of the Schedule to the Section 38 proviso (a) notice, marked 'P3'.