

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

*In the matter of an application under
Article 140 of the Constitution for an
order in the nature of a writ of
Certiorari and Mandamus.*

CA /WRIT 0397/19

Udawattage Don Douglas Meril
No. 7/1, Kottawa,
Pannipitiya.

Petitioner

Vs.

1. Divisional Secretary
Divisional Secretaria,
Sri Vajiragnana Mawatha,
Maharagama
2. Urban Development Authrotiy
6th and 7th Floors,
"Sethsiripaya"
Battaramulla
3. Chairman,
Urban Development Authority ,
6th and 7th Floors,
"Sethsiripaya"
Battaramulla
4. Secretary,
Ministry of Megapolis and Western
Development ,
17th floor,
"Suhurupaya",
Subhuthipura Road,
Battaramulla

5. Project Director,
Township Development Component of
Greater Colombo Urban Transport –
Development (3K) Project,
Ministry of Megapolis and Western
Development,
GB1 "Sethsiripaya – Stage II"
Battaramulla
6. The Chief Valuer,
The Valuation Department,
"Valuation House"
No. 748,
Maradana Road,
Colombo. 10
7. The Chairman,
Land Acquisition Board of Review,
Ministry of Lands and Parliamentary-
Reform,
No. 204/1/1, Kaduwela Road,
Battaramulla.
8. The Hon. Minister,
Ministry of Lands and Parliamentary
Reform,
"Mihikatha Medura",
Land Secretariat,
No. 1200/6,
Rajamalwatta Avenue,
Battaramulla.
9. The Hon. Attorney General,
The Attorney General's Department,
Colombo 12

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Kamal Dissanayake with Atheek Inan and Sureni Amarathunga for
Petitioner

Manohara Jayasinghe SSC for Respondents

Supported on: 29.03.2021

Decided on: 03.05.2021

Sobhitha Rajakaruna, J.

We have heard the Learned Counsel for the Petitioner and the Learned Senior State Counsel for the Respondents. The Petitioner, who admits that the subject land has been acquired by the State seeks, inter alia, for a mandate in the nature of a writ of certiorari quashing the decision of the 1st Respondent, marked as P26.

The Divisional Secretary of Maharagama, by letter dated 27.05.2019 (P26) has indicated to the Petitioner that (i) an appeal has been preferred to the Board of Review as the Petitioner has not satisfied with the original award of compensation; (ii) there is a necessity for the Petitioner to handover the vacant possession of the subject land on or before 09.06.2019 as the period of the contract entered into with the relevant contractor would be expired soon; (iii) if no possession is being handed over legal action would be taken against the Petitioner to evict him; (iv) handing over the vacant possession will not prejudice the Petitioner's rights to obtain the compensation and any enhanced amount of compensation after the decision of the Board of Review; (v) the Petitioner is further entitled to get an interest upon the award of compensation.

The Petitioner states in paragraph 4 of the Petition that the subject land has already been acquired in view of the orders published in the Gazette notifications marked as P6 and P7, issued under Section 38 (a) of the Land Acquisition Act. It is important to note that the Petitioner does not challenge any of those orders by which the subject land has been acquired. Therefore, this court takes the view that the Petitioner is not entitled to seek for a mandate in the nature of a writ of certiorari quashing the letter marked P26, as the contents of the said letter P26 are consequential to the aforesaid acquisition of the subject land.

The Petitioner further seeks for a mandate in the nature of writ of mandamus directing the 1st, 2nd and 3rd Respondents to resettle the Petitioner, his family and business as per the resettlement plan, marked P8 and also for a writ of mandamus directing the 2nd and 3rd Respondents to pay the Petitioner an "ex gratia" payment in view of P9 (i) and P9 (ii).

It is observed that, P8 is a certain set of orders made under the Land Acquisition Act. The Order No.248 (page 319 of 'State Land Manual') deals with initial investigations at the time of making proposals to acquire a land. The Gazette notifications marked P6 and P7 have been issued under Section 38A of the Land Acquisition Act. In terms of the said Section 38A, where any land is being acquired for the purposes of a local authority the immediate possession of such land on the ground of urgency, within the meaning of the proviso to Section 38, shall be deemed to have become necessary, and accordingly, the Minister may make an order of possession under Section 38 of the said Act. The same set of orders referred to by the Petitioner, specifically order No. 263, provides for obtaining immediate possession under Section 38A, upon urgency. The Gazette notifications P6 and P7 have been issued in the year 2013 and 2014 respectively, however, the Petitioner has failed to handover the vacant possession to the authorities. In the circumstances, this court takes the view that no statutory duty will be cast on the acquiring officer under the said Order 248, to mandatorily provide resettlement facilities to the Petitioner.

The Petitioner has annexed P9 (i) and P9 (ii) in support of his claim for ex gratia payments. It is observed that P9 is only a proposal and there is no specific provision in the Land Acquisition Act, to pay any ex gratia payment. However, under Section 17(1) of the said Act, the acquiring officer shall make an award determining upon the items mentioned therein. The Petitioner has failed to establish that there is a statutory duty for the authorities to pay the Petitioner an ex gratia payment in view of the acquisition of the subject property. Also, the Petitioner has failed to establish that there had been a proper promise made by the authorities to pay an ex-gratia payment. [See **Atukorala Arachchige Hema Mangalika and others v. Road Development Authority (CA/Writ/1488/2006 decided on 09/07/2012)**]

The subject land has been acquired for an urgent public purpose, particularly in view of the expansion of the Kottawa-Hokandara road. The Petitioner has been clearly informed

the urgency of handing over the vacant possession of the subject land, and he has been requested to handover the vacant possession subject to the final decision of the Board of Review with regard to the award of compensation (P23 and P26).

This court is mindful of the legal maxim *Salus populi suprema lex* (welfare of the people is the supreme law). See ***Lady Dinbai Dinshaw Petit & others vs. The Dominion of India AIR (38) 1951 Bombay 72.***

The subject acquisition is based on the grounds of 'urgency' as the relevant Gazette notifications have been issued under Section 38A of the said Land Acquisition Act. However, as complained by the Petitioner, the Court observes a long delay in arriving at decisions at various stages in regard to the award of compensation. Currently, the Petitioner's appeal before the Board of Review is pending and it is much more appropriate if the State takes steps to expedite the appeal process and make a decision accordingly.

This court in ***S. Ravindra Karunanayake v. Attorney General & others (CA Writ 63/2020- decided on 07/07/2020)*** has held as follows: "*whether there is an arguable ground for judicial review includes whether there is some properly arguable vitiating flaw such as unlawfulness, unfairness, or unreasonableness. The vitiating ground must be arguably material to the impugned decision. That decision must be arguably amenable to judicial review – see R v Chief Rabbi ex p. Wachmann (1992) 1 WLR 1036, at 1037H*".

In the circumstances, we take the view that the Petitioner, as prayed for in the prayer of the Petition, has not made out a prima facie case. Accordingly, we decide to refuse issuance of notice of this application on the Respondents. Therefore, the application is dismissed.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree.

Judge of the Court of Appeal