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

In the matter of an application for mandates in the nature of writ of *certiorari* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CASE NO: CA/WRIT/330/13

Metilda Ariyapperuma *alias*
Ariyapperuma Arachchige Dona Metilda,
No. 324/2, Baseline Road,
Seeduwa.

PETITIONER

VS.

1. Hon. Janaka Bandara Tennakon,
Minister of Land and Land Development,
Ministry of Land and Land Development.
'Govijana Mandiraya'
80/5, Rajamalwatte Avenue,
Battaramulla.

1A. M.K.D.S. Gunawardena,
Minister of Land and Land Development,
Ministry of Land and Land Development.
'Govijana Mandiraya'
80/5, Rajamalwatte Avenue,
Battaramulla.

1B. Hon. John Amarathunga,
Minister of Land and Land Development,

Ministry of Land and Land
Development.
'Govijana Mandiraya'
80/5, Rajamalwatte Avenue,
Battaramulla.

2. Secretary,
Ministry of Local Government and
Provincial Councils,
N. 330, Union Place.
Colombo 02.

,

3. Divisional Secretary,
Divisional Secretariate,
Pitabeddara.

4. Mrs. Irena Nanayakkara,
Director (Land Acquisition),
Ministry of Land and Land
Development,
'Govijana Mandiraya'
80/5, Rajamalwatte Avenue,
Battaramulla.

5. Commissioner of Land,
Provincial Land Ministry,
Southern Provincial Council,
Fort, Galle.

6. Ranasinghe Arachchige Prasad,
Pitabeddara,

7. Ranasinghe Archchige Piyadasa
alias Ranasinghe Arachchige
Gunasoma Piyadasa,
'Ranasinghe'
Tennahaena,
Pitabeddara.

8. Ranasinghe Arachchige Ariyadasa.
'Ranagiri',
Tennehaena,
Pitabeddara.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. and**
K. K. A. V. SWARNADHIPATHI, J.

Counsel: Pulasthi Hewamanne with Harini Jayawardhena instructed by Sanjeewa Kaluarachchi for the Petitioner.

Ravindra Pathiranage, DSG for the 1st to 5th Respondents.

Rohan Sahabandu, PC for the 6th Respondent.

Upul Kumarapperum for the 7th and 8th Respondents.

Written Submissions on: 30.09.2019 (by the Petitioner).

28.06.2019 (by the 1st to 5th and the 7th to 8th Respondents).

Decided on: 14.07.2021.

MOHAMMED LAFFAR, J.

The Petitioner in this application has invoked the supervisory writ jurisdiction of this Court under Article 140 of the Constitution seeking a *writ of certiorari* to quash the declaration marked P10 made by the 1st Respondent under section 5 of the Land Acquisition Act, No. 09 of 1950 (hereinafter referred to as the "Act").

When this matter was taken up for argument on 24.02.2021, all learned Counsel moved that the judgment be delivered on the written submissions that have already been tendered on behalf of the respective parties.

According to the amended petition dated 03.12.2013, the Petitioner is the owner of the land called Kettiganaelawahena *alias* Seeduwa Watte *alias* Malpudanahena situated at Pitabeddara in Matara District in extent of 13 Acres 1 Rood and 5 Perches by virtue of Deed of Transfer No. 482 dated 26.06.1997 attested by A. Keerthiratne, Notary Public (vide P1).

The Petitioner states that the 3rd Respondent acting under section 2 of the Act had issued a notice dated 17.01.2012 authorising the Superintendent of Surveyor of Matara to enter the Petitioner's land to carry out a survey and demarcate 33.25 Perches from the land to be acquired for a Public Purpose. The notice and the Survey Plan have been marked as P2 and P3, respectively.

Thereafter, the 4th Respondent by a Gazette Notification dated 11.07.2012 published another notice under Section 4 of the Act stating that a portion of the Petitioner's land depicted in the said Plan P3 is to be acquired for a Public Purpose and inform the public to tender objections, if any, to the 3rd Respondent on or before 06.08.2102. This notice has been marked as P4 by the Petitioner.

In response to the said notice P4, the Petitioner tendered her objections to the 2nd Respondent by a letter dated 04.07.2012 (marked as P5). Accordingly, the Petitioner had been requested to attend for an inquiry by the 2nd Respondent on 20.11.2012 at Pitabeddara Divisional Secretariate Office.

At the said inquiry, although the Petitioner's claim and objections were recorded, she was not satisfied the way that the said inquiry was conducted by the inquiry officer i.e., Assistant Commissioner of Local Government. Therefore, the Petitioner brought this fact to the notice of the Commissioner of the Local Government by a letter dated 24.11.2012 (vide P7). Upon receiving the said complaint, the Assistant Secretary to the Ministry of Local Government and Provincial Councils by his letter dated 06.12.2012 requested the Assistant Commissioner of Local Government to consider the facts stated in the Petitioner's complaint dated 24.01.2012 (vide P8).

Subsequently, on 27.07.2013, the 1st Respondent by an Extra Ordinary Gazette Notification No. 1816/28 dated 27.06.2013 published a declaration (P10) under section 5 of the Act stating that the Petitioner's

land which is described in the said schedule to the Notification will be acquired for *a public purpose.*

The Petitioner further states that as per the documents P2 and P4 it has been proposed that the said land acquisition is for *a public purpose*. However, as per the document P3 it was clearly indicated that the proposed land acquisition is for *a road construction*. In the Gazette Notification P10 again it has been mentioned that the land acquisition is for *a public purpose*.

In view of the above the Petitioner further alleges that the purpose for the acquisition is ostensibly for a road development, and it appeared that in fact, the true reason for acquisition is to provide the 6th Respondent with easy access to his land through the Petitioner's land.

The Petitioner, appending a document marked P11B – the Final Village Plan No. 6 submits that although there is an access road to reach the 6th Respondent's house through the Public Road, it is illegal, arbitrary, irregular, unfair, unreasonable, and contrary to the intention of the legislature to acquire 32.5 Perches from the Petitioner's land to provide an alternative or shortcut roadway only to the 6th Respondent in the guise of public purpose.

While admitting the fact that the said acquisition for a road construction, the 7th and 8th Respondents state that the said roadway described by the Petitioner, has not been used only by the 6th Respondent, but also by them and their kins, several other families residing in the same area and other many outsiders who come as devotees to the 'Suniyam Dewalaya' situated in the land of the 8th Respondent which is being worshipped for more than 40 years[1].

The 1st to 5th Respondents had filed their initial statement of objections on 22.05.2014. In the objections, they admitted the ownership of the

[1] Vide para. 10-13 of the written submissions filed by the 7th and 8th Respondents dated 28.06.2019.

Petitioner to the subject land[2] and concurring to the position taken up by the 6th to 8th Respondents submit that the Pitabeddra Preshiya Sabha, upon a resolution being passed, had requested that an access road be constructed to gain access to the adjoining lands of members of the public in the area. Therefore, they state that the acquisition process was, accordingly, initiated as that request had involved a public purpose.

However, the learned State Counsel for the 1st to 5th Respondents filing their additional statement of objections dated 19.11.2018, submits that the Petitioner has no proper title to the said land as prior approval of the Divisional Secretary has not been obtained for the transfer of the said property. Therefore, the 1st to 5th Respondents took up the position that the Petitioner has no right to maintain this writ application.

This Court observes that even though the learned State Counsel for the 1st to 5th Respondents argues that the Petitioner has acquired her tittle to the said land in an improper way as she failed to obtain a prior approval of the relevant Divisional Secretariat, the Petitioner, in her Petition, has sufficiently divulged the circumstances under which she became the owner of the said land i.e., she produced the title deed P1 which is sufficient to her title to the land.

Having considered the vital factual matters and arguments that were submitted by the respective parties, now I wish to deal with the issues of law that have been raised in the written submissions filed on behalf of the Petitioner.

The Land Acquisition Act clearly describes the steps that need to be followed when acquiring a land. In terms of section 2(1), the Minister decides and identifies the area and land that is needed for public purpose. Thereafter, as per section 4(1), the Minister directs the Acquiring Officer to serve a notice on the owner and another notice to be exhibited in a conspicuous place on or near the land, thereby giving

[2] Vide para. 3 of the statement of objections dated 21.05.2014.

the owner, or any person who has an interest on the property, an opportunity to object to the acquisition.

In the event an objection is made, as per section 4(4) of the Act, the Minister will carry out a proper inquiry and come to a final conclusion. The Minister's decision will be published in the Government Gazette and will also be exhibited on or near the land confirming and establishing the finality of his decision. This publication shall be construed as definite evidence of the land being required for a *'public purpose*', as per section 5(2) of the Act, which remarkably states: *"A declaration made under subsection (1) in respect of any land or servitude shall be conclusive evidence that such land or servitude is needed for public purpose",* whilst section 7(2)(c) allows any person having an interest in the land to make a claim for compensation.

The Petitioner in this application especially alleges that, the notice issued by the Respondents merely states that the acquisition of the land is for "public purpose". The law pertaining to the issuance of notices is found in section 2(1) and (2) of the Land Acquisition Act which reads as follows:

1) *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 notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area.*

2) *the notice referred to in subsection (1) shall be in the Sinhala, Tamil and English languages and shall state that the land in that area specified in the notice is required for a public purpose and that all or any of the acts authorized by subsection (3) may be done on any land in that area in order to investigate the suitability of that land for that public purpose.*

In this matrix, Justice Mark Fernando's broadened illumination of section 2(2) of the Act in the case of ***Manel Fernando and Another vs. D.M Jayarathne, Minister of Agriculture and Lands***[3], is noteworthy:

> *"The minister cannot order the issue of a Section 2 notice unless he has a public purpose in mind. Is there any valid reason why he should withhold this from the owners who may be affected?*
>
> *Section 2(2) requires the notice to state that one or more acts may be done in order to investigate the suitability of that land for that public purpose: obviously that public purpose cannot be an undisclosed one. This implies that the purpose must be disclosed. From a practical point of view, if an officer acting under Section 2(3)(f) does not know the public purpose, he cannot fulfil his duty of ascertaining whether any particular land is suitable for that purpose."*

It is not in dispute that lands are acquired under the provisions of the Land Acquisition Act for the benefit of the public. However, in the process of carrying out greater good for the public of the country, one must not unjustifiably neglect the lawful owner of the land. It would be overly harsh to forget the ties a landowner has to his property. Therefore, it is necessary for the Minister and/or any relevant authority, to have a *clear and distinct public purpose* for which the acquisition is commissioned.

In the event a Minister or any Government officials are not aware of the true public purpose of acquiring the land then the act of acquiring the property should be viewed through a scrutiny by the Courts. As correctly observed by Shiranee Thilakawardena, J. in ***Kapugeekiyana vs. Hon. Janaka Bandara Tennakone, Minister of Land and 6 Others***[4]*,* acquiring properties under deception and pretense or for a potential and non-existent future public purpose will be unlawful. Importance and

[3] [2000] 1 Sri LR 112.
[4] [2013] 1 Sri LR 192

necessity in accordance with the provisions of this Act should be given to the existence of the knowledge of the genuine public purpose the land would be put to use and to disclose such purpose to the landowner at the time of acquiring the property.

In *Kapugeekiyana*'s case, the Supreme Court had observed that a document issued by the Divisional Secretary of Kaduwela dated 18.09.1998 which clearly stated that the land is required for the public purpose of "urban development". Therefore, the Court found that the said purpose as a *proportionately sufficient explanation* for the acquiring of the land under the provisions of the Act. However, in the case in hand, although in the Surveyor Plan P3 it was indicated by the Superintend of Survey, Matara that the proposed land acquisition is for a *road construction* ("ප්‍රවේශ මාර්ගය සඳහා ඉඩම් අත්කර ගැනීම"), in my view, this indication is not amount to a *proportionately sufficient explanation* given by an appropriate authority as observed by the Supreme Court in *Kapugeekiyana*'s case.

Further, 1st to 5th Respondents, in their written submission, citing a judgment namely, ***D.H. Gunasekara vs. Minister of Land and Agriculture***[5], argued that *the compulsory acquisition of a land by a declaration of the Minister under section 5 of the Act that a land is acquired for a public purpose cannot be questioned in law. The publication in the Gazette that the land in dispute is acquired for the public purpose is conclusive evidence that the land was needed for a public purpose in terms of section 5(2) of the Act*[6]. I am mindful of the fact that this position has been discussed in numerous decisions of this Court and the Supreme Court[7]. According to section 5(2) of the Act, a declaration made under section 5(1) shall be conclusive evidence that such land is needed for a public purpose and in terms of section 5(3), the publication of a

[5] [1963] 65 NLR 119.
[6] Vide Written Submissions dated 28.06.2021 filed the 1st to 5th Respondents, p. 7.
[7] See, *Gunasekera vs. Minister of Lands* 65 NLR 119, *Gunasinghe vs. Hon. Gamini Dissanayake, and Others* [1994] Sri LR 132.

declaration under section 5(1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.

However, I am unable to agree with the above contention of the 1st-5th Respondents that the Minister's decision to acquire a land can never be challenged in a Court of Law. A Minister does not have the unfettered right to acquire land without specifying a public purpose. Nor does a Minister has a right to acquire a land and utilize it for purposes other than a specified clear public purpose[8].

Therefore, it is apparent that the failure to specify the public purpose in the section 2 Notice - P2 in respect of the land is fatal to the acquisition proceedings. Accordingly, the entire steps that are followed by issuing the Notice – P2, also fatal to the acquisition proceedings.

For the forgoing reasons, I make order allowing this application as per sub paragraph (b) of the prayer to the Petition. Accordingly, writ of certiorari is issued as per the prayer (b) to the Petition without costs.

Application allowed.

Judge of the Court of Appeal.

K. K. A. V. SWARNADHIPATHI, J.

I agree.

Judge of the Court of Appeal.

[8] Vide *Mahinda Katugaha vs. Minister of Lands and Land Development and Other*s [2008] 1 Sri LR 285.