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 certiorari, mandamus and prohibition under article 140 of the constitution of the democratic socialist republic of Sri Lanka

U. T. M. T. Resort (Private) Limited
Tamgalla Road, Natheegama West,
Dickwella.

CA (Writ)Application No: 444/2015

PETITIONER

Vs.

1. National Housing Development Authority (NHDA),
   Sri Chittampalam A. Gardiner Mawatha,
   Colombo 02.

2. L. S. Palansooriya,
   (Competent Authority), Chairman,
   National Housing development Authority (NHDA)
   Sri Chittampalam A. Gardiner Mawatha,
   Colombo 02.

3. Divisional Secretary,
   Divisional Secretariat,
   Dickwella.

And 04 others.

RESPONDENTS

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

Counsel: Razik Zarook, (PC) with Rohan Deshapriya and Chanakya Liyanage
For the Petitioner

Sandamal Rajapakshe, instructed by Somararathne Associates
For the 7th Respondent

Anusha Fernando, (DSG)
For the State

Argued on: 12.02.2021

Decided on: 10.11.2021

KKAV SWARNADHIPATHI. J,

JUDGEMENT

The Petitioner filed this application in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka, seeking a mandate in the nature of Writ of certiorari Mandamus and Prohibition.

The Petitioner, a legal personality, had bought land in Dikwella from one Wimalasena by deed No. 27 dated 24.05.2011 attested by Notary Public WGS.Mendis Abeysekara. According to the said deed of transfer, the Petitioner had purchased lots 2 and 3 depicted in plan 7270 dated 12th February 2011 made by D. Cyril Wikramage, licensed Surveyor. According to P4, annexed to the Petition lots 2 and 3 are portions of a more extensive land of Six Acres, Two roods, Twenty Decimal Eight Two Perches (A 6, R 2, P 20.82).

Lot 2 of the plan is for A4 R3 P28.62, and lot 3 is A0, R0 P 11.38. The purpose of the Petitioner is to build a tourist hotel. For this purpose, the Petitioner had obtained all necessary documents and permits. He had also constructed a 30 roomed hotel spending a large sum of money.

In 2012, the Petitioner had come to know that as far back as 2002, acquisition proceedings had taken place to a part of the land sold to Petitioner. Additionally, when inquiries were made, the Petitioner had got to know that by order published in Gazette Extraordinary No. 1512/5 dated 30.08.2007 in terms of provision (a) to section 38 of the Land Acquisition Act, the Then Minister of Land Development had directed an officer to obtain possession of approximately 0.5520 hectares of land identified as lot 1 in Surveyor General's preliminary plan bearing No. 1533 dated 27.01.2011.

However, the Petitioner argued that the former owner H.R. Wimalasiri had been in conversation with the authorities to divest a part of the land. Further, by letter dated 07.09.2004, divisional secretary Dickwella had informed Wimalasiri that the Chief Valuer had valued the land at LKR 15,000 per perch. When perusing the Chief Valuer's letter dated 27.08.2004, it is clear the valuation

is for lot 1 of the preliminary plan No 1533 and the valuation is LKR 2,100,000/-. There is no breakup of the value on perch in this letter. The valuation is for the entire lot 1.

Even though subsequent discussions and a new plan had drawn to depict lot 1 in two lots as lot 2 and 3, all that exercise of Wimalasena for an order of divesting had failed, and the said Wimalasena had accepted the valued sum LKR 2,100,000 as compensation. Therefore, the Petitioner's argument that by document P22 (A), the 3rd Respondent had confirmed that total compensation was calculated at LKR 15,000 per perch is not correct. That letter clearly states that what is meant in the present situation is what H. R. Wimalasiri had requested; however, the Valuation Department had valued lot one as a single land. Therefore, his calculation at the rate of LKR 15,000 per perch holds no water. In this context, Petitioner's claim that the state had not acquired 78.24 perches is incorrect.

Petitioner argues that 78.24 perches of land have not been utilized for the purpose it had been acquired. Section 39A(2) of the land Acquisition Act No. 28 of 1964, as amended, the 4th Respondent is required in law to divest the land to the original owner, if the land has not been utilized for the public purpose for which it was intended to be utilized.

The Petitioner further brings to the Court's notice that the potion of land had not been utilized for more than eight years. Therefore, it should be divested on Wimalasiri. This potion cannot be put into use according to the stipulations of the Coastal Zone Management Plan of 1997. According to the above regulations regarding the Coastal Zone Management, only 18.3 perches out of 78.24 can be utilized for any public purpose that is one of the reasons the land should be divested.

In the judgment, I have discussed that compensation had been paid to the entire land and not for 140 perches. The stand of the Chief Valuer was unambiguous. Therefore, the argument that only a small portion can be utilized cannot be considered because the entire land is one unit.

When pursuing the argument put forward by both parties, it is evident that the first Respondent on the request of Wimalasiri had informed the 3rd Respondent by letter dated 6th April 2005 that since only a portion of land had been utilized for the purpose, the land was acquired the balance to be redrawn in a plan to carry out divesting procedure. Again, by letter dated 30th November 2005, 1st Respondent had informed the 3rd Respondent that instructions from the Secretary to the Ministry

of Lands steps regarding divesting had been called back, and a part of the compensation was paid, and Wimalasiri had accepted same.

The Ministry of Land indicated that the law does not permit a divest once an award was made under section 17 of the Land Acquisition Act. However, when pursuing document P 22 (A), Wimalasiri had withdrawn his request for divesting and further requested that he be paid the compensation he was entitled to.

The documents marked as 3R1(a), 3R1(b) and 3R1(c) proves that compensation had been paid to Wimalasiri.

By 3R1(a), LKR 500,000/- was paid on 2005.12.06

By 3R2 (b), LKR 800,000/- was paid on 2006.03.10

By 3R1 (c), LKR800,000/- was paid on 2006.04.10.

Therefore, by 10th April 2006, Wimalasiri had been paid the total compensation of Rs. 2,100,000/- for the land described as lot 1 of the preliminary plan No. 1537 and the state had become the absolute owner.

Therefore, Wimalasiri had no land to sell by the year 2011. Wimalasiri, when signing the deed, had known that he had already accepted the total compensation and the land was not his to sell.

The Petitioners argue that he did not know the acquisition as the land registry ledgers did not disclose any entries regarding such transactions. Facts regarding entries of the Land registry or land being acquired cannot be discussed in the present case as the cause of action is different. By 10th April 2006, all amounts of money were paid, and by 2007, the acquisition processes were completed. There is no argument that lot 1 of preliminary plan 1533 is state land.

In *Farook Vs Gunawardene, Government Agent Amparai*[1] , it is submitted that the Petitioner is not required to have been given a hearing before issuing the quit notice. In the present case, the Petitioner is not the legitimate owner of the land to which a quit notice is issued.

[1] *1980 (2) SLR 243*

For the reasons discussed above, the Petitioner's Petition dated 10th November 2015 is dismissed with cost.

Judge of the Court of Appeal

M. T. MOHAMMED LAFFAR, J.

I agree.

Judge of the Court of Appeal