

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 a mandate in the nature of Writ of Mandamus.

**Court of Appeal Case No:
CA/WRIT/307/2015**

W. T. T. Wittachchi
No. 122, J. E. Gunasekara Mawatha,
Colombo 10.

Petitioner

Vs.

01. Land Reform Commission
No. C 82, Hector Kobbekaduwa Mawatha,
Colombo 07.

02. T. A. S. Tambugale
Former Chairman,
Land Reform Commission,
No. C 82, Hector Kobbekaduwa Mawatha,
Colombo 07.

02A. Sampath Subasinghe Arachchi
Former Chairman,
No. 475, Kaduwela Road,
Battaramulla.

02B. Sirimewan Dias
Chairman,
No.475, Kaduwela Road,
Battaramulla.

03. K. Dharmapriya
Director (Land Ceiling),
Land Reform Commission
No. C 82, Hector Kobbekaduwa Mawatha,
Colombo 07.

Respondents

Before: C.P Kirtisinghe, J
Mayadunne Corea, J

Counsel: Manohara De Silva P.C. and Harithriya Kumarage for the Petitioner
Dr. Sunil Coorey with Sudarshani Cooray for the Respondents

Argued on: 12th July, 2021

Written Submissions: Tendered by the 1st, 2nd and 3rd Respondents on 22nd July, 2021
Tendered by the Petitioner on 26th October, 2021

Decided on: 08th February 2022

Mayadunne Corea J

The facts of the case briefly are as follows, the Petitioner states that the Petitioner is entitled to receive a total of 50 acres of land from the Galagawa Group as per the Statutory Determination. The Petitioner states that in or about 1982, possession of 39 Acres 1 Rood and 17 Perches of the lands specified in the Statutory Determination was handed over to the Petitioner. However, possession of 11 Acres 2 Roods and 4 Perches and 19 Perches respectively out of the aforesaid Statutory Determination cannot be handed over due to unauthorized occupants. The Petitioner states that a total of 11 Acres 2 Roods and 23 Perches are due to be released to the Petitioner as alternative land per the Statutory Determination. It was further submitted that out of the above mentioned, possession of only 4 acres 3 roods and 33.15 Perches of Silverdale Estate was handed over to the Petitioner. A further 6 acres 2 roods and 29.85 perches ought to be released to the Petitioner as alternate land which the Petitioner has identified from Hantana Estate, Kandy. The learned Counsel for the Petitioner submits that the 1st Respondent has acted arbitrarily when he informed the Petitioner that in order to execute the deed in respect of 4 Acres 3 Roods and 33.15 Perches of the Silverdale Estate the Petitioner is required to pay a sum of Rs 674,688/67 being the difference in value of the said land and the land in Galagawa Group which the Petitioner was allowed to retain as per the Statutory Determination. The Petitioner also prays for the release and execution of deeds of 6 Acres 2 Roods and 23 Perches from Hantana Estate, Kandy as part of the balanced portion of land due to the Petitioner under the aforesaid Statutory Determination.

The Petitioner filed this writ application seeking the following reliefs in the nature of Writs of mandamus directing the Respondents to:

- 1) Execute deed in respect of the 4 acres 3 Roods and 33 Perches of the Silverdale Estate including the rubber factory situated in Dodangoda, Kalutara to the Petitioner as part of the land due to the Petitioner under the aforesaid Statutory Determination and/or as an exchange; and

- 2) Release 6 Acres 2 Roods and 23 perches from Hantana Estate, Kandy and/or any other land as a part of the balance portion of land due to the Petitioner under the aforesaid Statutory Determination and execute the deeds in respect of the same.

Petitioner's complaint

The Petitioner's uncle one Gate Mudliyar Richard Jayawickrema Wijeytunga owned a large extent of land upon whose death the property devolved on his wife Mrs. L.M.H Wijeythunga. Mrs Wijeytunga died in 1970 prior to the enactment of the Land Reform Law (LRC). When the LRC Law came into effect the heirs of Mrs. Wijeytunga had inherited the estate and the Petitioner inherited 1/5th of the estate. In the 1970s a large number of lands belonging to his uncle the aforesaid late Gate Mudliyar Richard Jayawickrema Wijeytunga were acquired by the State for village expansion and various other purposes.

In a summary the Petitioner's complaint to this Court is that he has made a statutory declaration and thereafter the Respondents have made a Statutory Determination but he has not been given the 50 acres of land he is entitled to hence the application for a Writ of mandamus.

In analyzing the facts of this case, we find that the Petitioner had made a statutory declaration P2A and P2B. In the said declaration the Petitioner has declared 19A 1R 26P paddy land and 887A 1R 31P of other land from the Galagawa Group. In answering the question "by whom owned" it is answered as "Heirs of the late Gate Mudliyar R.J.Wijetunga."

16A 1R 04P of paddy land and 408A 0R 9P of other land from the Silverdale Group. In answering the question "by whom owned" it is answered as "Heirs of the late Gate Mudliyar R.J.Wijetunga. Answering column 7 of both declarations, the Petitioner has declared that he has become the owner by a last will and the date of attestation is given as 16.12 1969. In column 8 where it is asked "If co-owned, state share held by the declarant, members of his family and /or father or mother" it is replied as "land subject to testamentary Case no 15374/T DC Colombo.53/525 shares. In column 9 where it asked "basis of ownership (gift, transfer, inheritance, etc)" it is replied as "Gift by last will "The declaration is signed dated 15.3.1979.

Interestingly the Respondents too submitted the statutory declaration submitted by the Petitioner marked as R1A, R 1b and R1C. In the said declaration R1A he has declared Galagawa group paddy land 19A 1R 26P and other land 906A 3R17P. Answering the question "by whom owned" it is stated "Heirs of the late Gate Mudliyar R.J.Wijetunga and the late Mrs L.M.J.Wijetunga. Under column 7 the number of deeds by which ownership came is not clear. Answering column 9 "basis of ownership it is answered as "ownership in dispute" in column 25 answering the question "is ownership of the land in dispute, if so, be particulars and Court case number if any" it is answered as "ownership in dispute in case numbers 15374/T and 25715/T DC Colombo" the declaration is signed dated 25/05/1973".

R1B name of the land is declared Silverdale Group consisting 16A 1R 04P of paddy land and 424A 1R and not clear amount of P of other land. Column 7 where it is questioned as it is date of becoming the owner and the no of deed is kept blank. Column 8 the declaration as to whether it is

co-owned is also kept blank. Column 9 which declares the basis of ownership is also kept blank. The date of declaration is also not clear and it also not signed.

In R1C a list of lands is annexed under the column of "name of the land" and answering the fourth Column "Extent", has declared as "Total wielding Paddy land" and under other land has declared 326A 2R 23 P. In answering column 7 where the number of deed of ownership is sought it is answered as "all title deeds pertaining to this land are with S L Munasinghe" clause 8 answering the question whether it is co-owned it is stated as "ownership in disputes" clause 9 is not answered and the question as together there are any ownership disputes it is answered as "ownership is dispute in case numbers 15374/T and 25715/T DC Colombo" the declarant has signed on 25/05/1973.

Accordingly, there are two sets of declarations submitted one in 1973 and the other in 1979. Clarifying this the Petitioner submitted that the Declarations in 1973 (R1A, R1B, R1C) were made in the capacity of a qua shareholder of the estate of the Gate Mudliyar and the declarations in 1976 (P2A, P2B) were made after the letters of administration (P1) were issued to the Petitioner. However, when the Petitioner submitted P2A and P2B for the entire Estate whether he submitted the same in his capacity as the administrator of the estate or a shareholder is not clear. Neither the Petitioner nor the Respondent has clarified this discrepancy.

In whatever the capacity the Petitioner has made the statutory declaration the Respondents have made a Statutory Determination which is admitted by both parties and the said Statutory Determination is marked as P3. (Gazette extraordinary no 218/8 dated 10/11. /1982) As per the said gazette it is determined that an extent of 50 Acres form the Galagawa group is allowed to be retained with the Petitioner. (Statutory Determination no 3940) Schedule of the Determination reads as follows;

"Schedule

An allotment of land marked Lot. Nos. 66, 67 & 68 of the lands called Ihalaminikawe deniya & Galagawa Group nsituated in the Village Dematapassa of the D. R. O's Division of Weligama Korale North in the District of Matara, Southern province, containing in extent Acres 50, Roods 0, Perches 00, in the Final Village Plan No. 59 made by the Surveyor-General, together with the buildings and plantation thereon."

With the Statutory Determination, we observe that the Respondents have admitted the legal entitlement of the Petitioner under the LRC law. The said allotment of fifty acres is depicted in FVP no 59 as lot nos.66, 67, and 68. (P3A)

The Petitioners grievance commences from this point as it was contended that even though it was gazetted, the Petitioner alleges, that he was handed over only 39A 1R 17P. The balance portion of the land in extent 11A 2R and 4 P had not been handed over to him on the basis of that there were unauthorized occupants occupying the same.

The Petitioner at the argument stage submitted that possession of 50 Acres was not handed over due to workers line rooms being situated and due to unauthorized occupants occupying the balance portion. It was the contention of the Petitioner that under section 3(3)(b) of the LRC Law the

Statutory Determination should exclude the same. This argument was vehemently denied by the Respondents and contended that if that was so the burden of proving that the labour lines or staff quarters occupied the 11A 2R 4P in its entirety was with the Petitioner and that there was no material before Court to prove this allegation. Further the Respondents submitted that the possession of the land was always with the Petitioner, thus if there were any unauthorized occupants, they had entered the land when it was in the possession of the Petitioner.

The Petitioner contends that this was informed to him by documents P4A and P4B. The Court considered these two documents as the Respondents denied sending these documents to the Petitioner. It appears that both these documents are internal communications, however, in both the Petitioner's name and address is hand written as copied to. Given the two contradictory positions we are inclined to believe the Respondents version that these are internal documents. If there was an intention to send copies to the Petitioner it would have been typed at the end of the letter rather than scribbling the Petitioner's name.

The Petitioner thereafter had requested for an alternate land to be given to him in lieu of the balance 11A 2R and 23P. The said request was not submitted to this Court. It appears that there had been correspondence between the Director land ceiling of the 1st Respondent and the periphery Land reform offices to this effect. (P5A, P5B)

As no land had been found, the Petitioner had then identified and requested for plot of 5A from the Silverdale Rubber Estate and a plot in the extent of 6A 2R and 23P from Paradise estate in Kuruwita as an alternate land.

At this stage it is pertinent to note that the Petitioner in seeking 5A from the Silverdale Estate had submitted that a portion of the Silverdale estate in the extent of 5A 0R 33.3P had been acquired by the state (P5C) in the early 1970s and no compensation had been paid for the same.

As per the material submitted to this Court Section 5 notice under the Land Acquisition Act is dated 12.10. 1973. Section 7 notice is dated 21.11. 1975. No material was submitted pertaining to whether there were any claimants or as to the claim inquiry. However, as the acquisition had been later abandoned (P17C and P17D) the Petitioner had requested that the Respondents should divest or release the said land under the provisions of the Land Acquisition Act to the Petitioner as a part fulfilment of the determination. There had been correspondence between various State entities and with the Petitioner as revealed in P7A P7B, P8, P9, P10, P11, P12 A, P12B, P13, P14, P15-P16, P18-22 on this matter.

It was argued that there was an old rubber factory within the said 5A and the Petitioner was interested in reviving it and operating the same. The abandoned rubber factory and the land had been under the Ministry of State Resources and Enterprise Development and in the possession of Sri Lanka Rubber Manufacturing and Export Corporation Ltd. The possession of the said 5A had been handed over to the LRC on 21.09.11 (P22). Subsequently the possession of the said 5A had been handed over to the Petitioner by an undated letter on 21.10.2011(P23B).

It was contended by the Petitioner that he had been informed to pay a sum of Rs 674688.67 to execute the deed for this portion being the difference in value between the land determined to him,

namely the portion from the Galagawa group land and this land from the Silverdale Estate. The Petitioner was not happy with this decision as his two siblings had been allotted undivided shares from the Silverdale Estate as alternate land to the Galgawa estate that was given to them per the Statutory Determination. This position was denied by the Respondents.

While this tussle was going on the public trustee had objected to the execution of any deeds for alienation from the estate of Gate Mudliyar Wijetunga in favor of the Petitioner stating that the estate of the Gate Mudliyar is subjected to a testamentary case. Subsequently several letters had exchanged in this regard namely P25-P29. Upon receiving a letter from an Attorney-at-Law of the Petitioner (P29) on 16.07 2013, the Public Trustee had informed the second Respondent that he has no objection for the beneficiaries of the statutory determinations to obtain land/ alternate land if all the required legal conditions are met (P30) the said letter states as follows;

1. උක්ත අංක දරණ නඩුවෙහි මුල් අද්මිනිස්ත්‍රාසිකරු වශයෙන් කටයුතු කල විමල් පී. ටී. විට්ටව්වි මහතා හට 1982/11/10 දිනැති අංක 218/8 දරණ අති විශේෂ ගැසට් පත්‍රය ප්‍රකාරව ව්‍යවස්ථාපිත නිශ්චය අනුව දකුණු පළාතේ මාතර දිස්ත්‍රික්කයේ වැලිගම් කෝරළේ පිහිටි ඉහළ මිනිකාවේදෙණිය සහ ගලගාව වතුයාය නැමැති ඉඩම් වල අක්කර 50 රූඩ් 00 පවර්ස් 00 ක දේපල ප්‍රමාණයක් 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ පනතේ 19 වන වගන්තිය ප්‍රකාරව සිදුකර ඇති ව්‍යවස්ථාපිත නිශ්චය අනුව හිමිව ඇත.

2. උක්ත අංක දරණ නඩුවෙහි 48 වන වින්තිකාර ඩී. එන්. ඩී. විට්ටව්වි මහතා හට 1982/11/10 දිනැති අංක 218/8 දරණ අති විශේෂ ගැසට් පත්‍රය ප්‍රකාරව ව්‍යවස්ථාපිත නිශ්චය අනුව

අ). දකුණු පළාතේ මාතර දිස්ත්‍රික්කයේ වැලිගම්කෝරළේ පිහිටි ගලගාව වතුයාය නැමැති ඉඩමෙන් නොබෙදූ අක්කර 30 රූඩ් 02 පවර්ස් 36 ක ප්‍රමාණය ද

ආ). බස්නාහිර පළාතේ කළුතර දිස්ත්‍රික්කයේ කළුතර තොටමුණේ පිහිටි සිල්වඩේල් එස්ටේට් නිමැති ඉඩමෙන් නොබෙදූ අක්කර 19 රූඩ් 01 පවර්ස් 20.4 ක ප්‍රමාණය ද

ලෙස 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ පනතේ 19 වන වගන්තිය ප්‍රකාරව සිදුකර ඇති ව්‍යවස්ථාපිත නිශ්චය අනුව හිමිව ඇත.

එබැවින් ඉහත ව්‍යවස්ථාපිත නිශ්චයන්ට අනුව අවශ්‍ය සියළුම නීතිමය ප්‍රතිපාදන සපුරා ඇත්නම් ඔවුන්ට නීත්‍යානුකූල හිමිකම් ඇති අදාල ඉඩම්/විකල්ප ඉඩම් නම් සඳහන් පුද්ගලයින්ට ලබාදීම සම්බන්ධව මාගේ විරෝධතාවයක් නොමැති බව කාරුණිකව දන්වමි.

Subsequent to this letter the Petitioner was given possession of 4A 3R 33.15P from the Silverdale estate which consists of the Rubber factory. The Petitioner after obtaining the possession of 4A 3R 33.15p from the Silverdale estate thereafter had requested for the balance portion of 6A 2R 29.85p out of the 11A 2R 23 P to be given to him from the Hantana estate as alternate land. There had been several communications pertaining to this request(P31-34)

At this stage the 1st Respondent by his letter dated 3.11.2014 (P35) had informed the Petitioner that the request for alternate land had been objected to by the other heirs of the late Mudliyar

Wijetunga's estate. This letter has been sent as the heirs of the estate had sought an interim order in the testamentary case to prevent any alienation of the lands belonging to the late Mudliyer Wijetunga. At the argument stage the learned Presidents Counsel for the Petitioner submitted that even though this application for an interim order had been made the said application had never been supported and in support of this contention the Courts attention was drawn to documents P35-37 the journal entries of the case bearing no 15374/T up to 11.5.15. Accordingly, the learned Counsel contented that there is no bar for this Court to grant the relief prayed for.

The Petitioners whole argument is based on the premise that the failure and or the refusal by the Respondents to release the balance 11A 2R 23P is arbitrary, capricious and unreasonable thus his entitlement for a writ of mandamus.

The learned Counsel for the Respondents took several objections for the relief being granted. In a summary the said objections are as follows;

- i. The Petitioner has failed to make all necessary parties to this application who have rights to subject matter of this application, and where the rights of the subject matter is pending in a Testamentary Action before the District Court of Colombo
- ii. The Petitioner's application for Mandamus should fail as the Petitioner has failed to show any refusal of the alleged public duty by the Respondent
- iii. The Petitioner has suppressed material facts from Your Lordships Court and is guilty of abusing *uberrima fide*.
- iv. The application of the Petitioner is contrary to the provision of section 44 of the Land Acquisition Act as amended.
- v. The application of the Petitioner is contrary to the provision of Land Reform Law No. 1 of 1972 as amended.
- vi. The application of the Petitioner is contrary to the provisions of Chapter XXXVII of Civil Procedure Code.

Further the Respondents argued that they have legally transferred the Petitioners entitlement as per the Statutory Determination by gazetting the entire land of 50A and therefore are not legally bound to accede to the request of the partitioner.

The Respondents contended to cast a doubt on the entitlement of the Petitioner to have a divided extent of 50A by submitting that the Petitioner has misled the Respondents to believe that he was the owner of the land when in fact he was only a co- owner thus the Respondents have erroneously gazetted the Statutory Determination in the favor of the Petitioner. The Respondent failed to explain to this Court whether the Statutory Determination was made pertaining to the declaration contained in R1a, R1b.R1C or per the declaration contained in P2A and P2B. The above-mentioned contention cannot be accepted as perusing the declarations in P2A and in P2B under column 8 the Petitioner has clearly stated that the land is subjected to a testamentary case. The question "date of becoming the owner" is not answered. The declarations marked as R1A-R1C too in column 9 says the ownership is in dispute. Accordingly, if there was insufficient material submitted, as a responsible state institution it was the duty of the 1st Respondent to ascertain the correct position before making a Statutory Determination. The said determination is gazetted and

still stands. The learned counsel for Respondents in her submissions nor with the documents tendered to this Court has seriously challenged, the Petitioners entitlement for the Statutory Determination. Thus, in our view having published the statutory determination the Respondents now cannot challenge the entitlement of the Petitioner.

It was contended that the 1st Respondent cannot be held responsible for the unauthorized occupants. No material was submitted to Court either by the Petitioner or the Respondent to demonstrate that a situation contemplated under section 15(g) or (h) of the land Reform Law has arisen. However, if there had been compliance with section 15(g) then as per section 16&17 of the said Law the responsibility pertaining to ejection of unauthorized occupants falls on the 1st Respondent and its officers. When questioned pertaining to the contents of documents P4A, P4B, P5A, P5B the learned Counsel for the Respondent submitted that the Respondents had gone out of their way to assist the Petitioners request. In fact, the Respondents have taken the responsibility and attempted to find an alternative land for the land which the alleged unauthorized occupants are, but at the argument stage the learned Counsel for the Respondents denied the extent of the land the alleged unauthorized occupants are.

The Respondents strongly contended that the possession of the land was never taken by the Respondent, as by operation of law the Petitioner becomes a statutory lessee and was in occupation. Therefor it was contended that the Petitioner should take appropriate action to eject the unauthorized occupiers with the publication of the Determination. If we are to assume this position is correct then the unauthorized occupiers would have entered the land when it was in the possession of the Petitioner. In the absence of any material to prove otherwise this Court is inclined to accept the Respondents version as this Court in a Writ application cannot embark on finding facts when it is in dispute.

The Petitioners request to divest the Silverdale Estate

The parties are not at dispute pertaining to the part acquisition of the Silverdale estate. It is also admitted that no compensation has been paid on the acquisition. The parties do not dispute that the acquisition proceedings are now abandoned (P17C, P18D) and the possession of the 5A is now with the Petitioner. Then what prevents the Respondents from executing the deeds in favor of the Petitioner? The Respondents contention is that the other heirs of the gate Mudliyar has objected to the alienation of any lands from the estate of the Gate Mudliyar pending the testamentary case.

This Court will now analyze the Petitioners application for a Writ of mandamus compelling the Respondents to execute the said deeds. It is trite law that a Writ of mandamus to succeed the Petitioner should establish that there is a duty owed to the Petitioner and that the Petitioner has a right to seek the relief. A party seeking a writ of mandamus must make out a legal right and corresponding legal obligation that has been refused.

It is observed that the portion of land in contention has been acquired in the year 1970 (paragraph 6 of the petition) which is before the LRC law coming in to operation. Accordingly, it has been acquired before the Petitioner submitted his Statutory Declaration. The Petitioner has not submitted any material to show that the extent of land pertaining to which the execution of a deed is sought was in his declaration and that it had not been acquired before he submitted the Statutory

Declaration. In the absence of any documentary material the only conclusion that this Court can come to is that the said portion of land was owned by the State at the time of the LRC Law coming in to operation. In coming to this conclusion This Court has considered the document P7B. The first paragraph of the letter states as;

“ඉහත සඳහන් රබර් කමරාන්ත ශාලාව රජය විසින් 1973 දී අත්පත් කරගෙන වැවිලි කමරාන්ත අමාත්‍යාංශයේ රබර් නිෂ්පාදන සංස්ථාව විසින් පාලනය කොට දැනට වසර හතකට වැඩි කාලයක් ත්‍රියා විරහිතව ඇත්තේය. මෙම කම්හල සහ ඉඩමට අද වන තුරු කිසිම වන්දි මුදලක් ගෙවා නොමැත”

This is a letter sent by the Petitioner himself and as per the first paragraph it is admitted that the land in question namely the part of the Silverdale estate containing the Rubber Factory is **acquired** by the state.

As per section 50(1) of the Land Acquisition Act the acquisition proceedings can be abandoned. The learned Counsel for the Petitioner contended that once an acquisition is abandoned the land can be divested. However, it is trite Law that when the acquisition proceedings are abandoned under the conditions stipulated in the Act the land can be divested as per the provisions of the land Acquisition Act.

It is the contention of the Respondent that the land has to be divested to the owner which in the present case is the estate of the late Gate Mudaliyar (paragraph 26 of the Objection)

As quite correctly contended by the Respondents as per the circumstances of this case whether the land has to be given to the Petitioner or to the estate of the Gate Mudliyar or whether it becomes vested in the LRC is a disputed fact. It is trite law that when facts are in dispute the rights of the parties have to be established through evidence in an appropriate forum.

In the case of *Thajudeen Vs Sri Lanka Tea Board & another (1981) @ SLR 471* it was held *“where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct. Writ will not issue.”*

Rubber factory situated at Silver Dale Estate.

However, as per P22 Sri Lanka Rubber Manufacturing and Export Cooperation Ltd which was under the Ministry of State Resource and Enterprise Development, by its letter dated 21.09.2011 has handed the possession of the 5A of the Silverdale estate that contained the Rubber factory to the Land Reform Commission and the LRC has given the possession to the Petitioner. At this stage it is not clear as on what basis the LRC has handed the possession of the Rubber factory to the Petitioner. It is also observed that the 1st Respondent had gone out of its way to facilitate the request of the Petitioner and obtained the possession of the land the Petitioner has requested, and subsequently has given possession of the said portion of land to the Petitioner.

Faced with the objections from the heirs of the estate of the Gate Mudliyar the 1st Respondent has suddenly realized the legal predicament it has fallen and at the argument stage submitted that they would transfer the land consisting the Rubber Factory based on the outcome of the testamentary

case. This Court also observes that there is no material placed before this Court to demonstrate that the title to the land where the Rubber factory is also been transferred to the LRC. What is before this Court is material only to show that the possession has been handed over to the LRC. Thus, the LRC will not be in a position to give title to a land that it does not have title (paragraph 21 of the Objections).

Alternate land from Hantana Estate.

The 1st Respondent also submitted that the title to Hantana estate too was not with them. This Court observes that the Petitioner too has failed to demonstrate that the Hantana Estate is vested with the 1st Respondent. The Petitioner in the petition (paragraph 56) has conceded that the Hantana estate comes under the purview of the Ministry of State Resource and Enterprise Development. Answering this paragraph the Respondents in their objections has submitted that the Hantana estate is not available to the 1st Respondent to alienate, and submitted for alienation to take place it has to be first divested in the 1st Respondent Commission by the Ministry of State Resource and Enterprise Development (paragraph 45 of the objections) here again the Petitioner has failed to demonstrate that the 1st Respondent having title has refused to alienate the land in fulfillment of the Statutory Determination as an alternate land. Thus, the Respondents contention that it cannot give something that it doesn't have title succeeds.

It is not disputed between the parties that in pursuant to the statutory declaration under the LRC law a Statutory Determination has been made in favor of the Petitioner. The Counsel for the Respondents submitted that by Gazette notification no 3940 in extraordinary Gazette bearing No. 218/8 dated 10.11.1982 which is marked as P3 the LRC has published the Statutory Determination and has allowed the Petitioner to retain 50A of land from Ihlalamiikawadeniya & Galagawa Group.

Once a Statutory Declaration is made under section 18 and on the receipt of the same by the Commission section 19 of the LRC Law comes in to affect and it is incumbent on the Commission to make a determination.

Section 19(1)b clearly stipulates the finality of the determination.

The wording used is as follows;

19. "Provisions applicable on the receipt by the Commission of a statutory declaration

- 1. The following provisions shall apply on the receipt by the Commission of statutory declaration made under section 18*
 - (b) The Commission shall publish the statutory determination in the Gazette and shall also send a copy thereof to such lessee by registered letter through the post. Such determination shall be final and conclusive, and shall not be called in question in any Court, whether by writ or otherwise*
- 2 Before a statutory determination is made in respect of any agricultural land*
 - (a) The Commission may create any class of servitude on or over such land*

(b) The Commission shall have the right to survey such land and

(c) The statutory lessee shall be entitled to be paid such sum as the Commission may consider reasonable for fencing such land."

It is thus clear by the wording of section 19(2) that the powers of the Commission over the land is retained with the Commission only until the determination is made.

The effect of a Statutory Determination is reflected in section 20 of the LRC Law. The said section states as follows;

20. "Effect of a statutory determination published under section 19

Every statutory determination published in the Gazette under section 19 shall come into operation on the date of such publication and the Commission shall have no right, title or interest in the agricultural land specified in the statutory determination from the date of such publication."

In view of section 19(2) and section 20 this Court comes to the conclusion that the law is quite clear as to the fact that whatever the rights the LRC has over the land depicted in the Statutory Determination, comes to and end with the Determination.

As per the wording of Section 20 once the determination is published whatever rights, title and interest the LRC has over the land depicted in the determination ceases. Thus, with the publication the title to the said land passes from the LRC. Hence the Respondents legal obligation towards the Petitioner under the LRC law has been fulfilled. It is also pertinent to note that there is no provision in the LRC law to seek alternative land. As submitted by the Counsel, in the circumstances this Court agrees that once the Statutory Determination is published the Respondents have no legal obligation to oblige to the various request of the Petitioner pertaining to alternate land.

The Petitioners application for a writ of mandamus

It is trite law that a party who seeks a Writ of mandamus should demonstrate that he has a legal right to obtain a writ of Mandamus and there exists a public duty by the Respondents that has been refused.

In *Perera vs National Housing Development Authority (2001)3 SLR50* the Courts held

"On the question of legal right, it is to be noted that the foundation of mandamus is the existence of a right. (Napier Ex parte). Mandamus is not intended to create a right, but to restore a party who has been denied his right to the enjoyment of such right. A "Mandamus" will lie to any person or authority who is under a duty (Imposed by statute or under common Law) to do a particular act, if that person or authority refrains from doing the act or refrains for wrong

motives from exercising a power which is his duty to exercise. The Court will issue a Mandamus to do what he should do. (R metropolitan Police Commissioner"

This position has been followed in **Janak Housing (pvt) Ltd AND Another Vs Urban Development Authority (2008)2SLR302.**

A.M.Podihamine Vs T.P.A.Hemakumara and others CA (Writ) Application No 69/2013 decided on 31.1.2019 where Obeyesekere J held "*the foundation of Mandamus is the existence of a legal right to a statutory duty. Where the applicant has sufficient legal Interest and the officials have a public duty but have failed to perform such duty. However, a writ of Mandamus is not intended to create a right but rather to restore a party who has been denied enjoyment of the said right.*"

In this instance this Court has come to the conclusion that the Petitioners alleged right to have the Statutory Determination has been fulfilled with publication of the same in the Gazette and with that the statutory duty cast on the LRC has been fulfilled.

This Court will now consider the Petitioners allegation that 11A 2R 4P has not been handed over. The Court agrees with the Respondents Counsels answer to this allegation that once the determination for the 50A has been gazetted the obligation of the LRC comes to an end, further we observe that as per the scheme of the LRC Law the "owner" within the meaning of section 5 of the said Law becomes the statutory lessee. The Respondents Counsel further submitted that the LRC has not taken possession of the land which is allowed to be retained by the Petitioner pursuant to the Statutory Declaration. Therefore, handing over of possession does not arise. Once the determination is made and published the onus is on the Petitioner to obtain clear possession of the demarcated lot or lots, if there are any unauthorize occupants within the said land.

The attention of this Court was drawn by the second written submission filed by the Petitioner to Documents P31 and P35. There it was argued that as per the said documents the LRC has taken a decision to handover alternative land and therefore the Petitioner has a legitimate expectation to get the alternative land. On perusal of the document P31 this Court observes that the LRC has informed the Petitioner that in order to have an alternative land the Petitioner is requested to obtain the consent of the Ministry of State Resources and Enterprise Development and to submit the same to the LRC. The Respondent answering this contention submitted that the Petitioner has misled and misguided the LRC to issue this letter. In the light of this response let us explore whether the documents create a legitimate expectation to the Petitioner.

Requirements for Legitimate expectation to exist is discussed in **Administrative Law by HMR Wade and Forsyth (11th edition—452p)** states as follows. "*It is not enough that an expectation should exist. It must in addition be a legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since and expectation reasonably entertained by a person may not be found to be legitimate because of some countervailing consideration of policy or law. A crucial requirement is that the assurance must itself be clear, unequivocal and unambiguous. Many claimants fail at this hurdle after close analysis of the assurance. The test is how on a fair reading of the promise it would have been reasonably understood by those to whom it was made.*"

For the Petitioners contention on legitimate expectation to succeed there should be an assurance which is clear, unequivocal and unambiguous. In the instant case before us do we have such an assurance?

As discussed earlier in this judgment the LRC law has no provision to seek alternate land. When considering the document P31, it is a reply to a letter sent by the Petitioner the said letter is not before Court. In any event the last paragraph of P31 states as follows,

“එබැවින් ඔබගේ ඉහත ඉල්ලීමේ සඳහන් පරිදි රාජ්‍ය සම්පත් හා ව්‍යවසාය සංවර්ධන අමාත්‍යාංශයෙන් අපේක්ෂිත බිම් ප්‍රමාණය නිදහස් කිරීම සඳහා වන එකඟතාවය ලබාගෙන ඉදිරිපත් කරන ලෙස වැඩිදුරටත් කාරුණිකව දන්වමි.”

By P31 though the LRC has stated that that the LRC has decided to give an alternate land to the extent of 6A 2R 29.85P the said decision is not unconditional.

For the Petitioners request to be adhered to (the exact request is not before Court) the Petitioner has to obtain and furnish the consent of the Ministry. Thus, in our view the decision of the LRC is conditional. The learned Counsel for the Petitioner as well as the Respondents has failed to demonstrate to this Court what the outcome would be in the event of the Petitioner being unable to satisfy this condition. The subsequent documents relied by the Petitioner namely P32, P33, and P34, too does not fortify the argument that the Petitioner has obtained the consent that is stipulated. Thus, we do not see an assurance that is clear, unequivocal and unambiguous.

The ensuing letter the Petitioner relied which is marked P35 clearly demonstrate that the Petitioner has failed to obtain the consent as it does not acknowledge the receipt of the consent. Further the document P35 says that there are objections by the other heirs of the estate of the Gate Mudliyar and to settle this dispute a meeting had been called to which the Petitioner had fail to attend. Accordingly, the author of P35 has stated that the LRC will have to await the decision of the Court and then on legal advice will have to take any further steps. Considering all these factors this Court is not inclined to accept that there is a legitimate expectation created by the documents P31 and P35 as contended by the Learned Counsel for the Petitioner.

It is also observed that in view of P3 and section 20 of the LRC Law if the Petitioners request for a Writ of mandamus is to succeed, then whether the Petitioner would end up with the land in the determination and also of the land that has been sought by way of the Writ was not sufficiently addressed by the parties. We observe this especially in view of the submission of the Respondent and as stated in paragraph 39 of the Statement of Objections and the corresponding averments in the affidavit.

This Court will now venture to the Petitioners alternate application to obtain a writ to compel the LRC to execute deeds in respect of 4A 3R 33P of the Silverdale estate as an exchange. Section 22 of the LRC law states “**Purposes for which agricultural land vested in the Commission may be used**”. The plain reading of the section clearly demonstrates that the Commission is given a discretion as to the usage of the land vested as stipulated therein. It is trite law that when there is a discretion given to the authority the Courts will be reluctant to grant a writ of mandamus. The Respondents answering this request repeatedly submitted to this Court that they have not refused

this application of the Petitioner. As stated above in this Judgement this Court has repeatedly followed that in the absence of a refusal a Writ of Mandamus will not lie.

This Court has considered the Respondents submission on non-refusal, however this Court is also of the view that the Petitioner cannot be kept for an indefinite time period to obtain a reply to his application for an exchange which is provided for under section 22 of the LRC law. Accordingly, this Court orders the Respondents to act as stipulated in the LRC Law and make a decision according to Law on the Petitioners request for an exchange for the portion of the land which is depicted in prayer (b) (i) of the petition namely in respect of 4A, 3R and 33P of the Silverdale estate including the Rubber factory situated in Dodangoda Kaluthara and inform the said decision to the Petitioner within three months of this Judgement.

Accordingly for the reasons set out in this Judgement and subject to the above, we are not inclined to grant the reliefs prayed for in the petition. Therefore, the application for a writ of Mandamus is refused. Parties to bear their own cost.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal