

**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 Writ of *Certiorari*  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

C.A. (Writ) Application No: 481/2019

Chintaka Kanchana Nikapitiya  
No. 5/ A/ 45, Jayawadanagama,  
Battaramulla.

**PETITIONER**

**VS.**

1. Divisional Secretary Galewela  
Office of the Divisional Secretariat,  
Galewela.
2. Project Director,  
Trincomalee Coal Power Electricity  
Generation Project Office, (Habarana-  
Veyangoda High power transmission line),  
No; 83/4 Dharmapala Mawatha,  
Colombo 07.
3. Project Engineer,  
Trincomalee Coal Power Electricity  
Generation project Office, (Habarana-  
Veyangoda High power transmission line),  
No;83/4, Dharmapala Mawatha,  
Colombo 07.

4. Chairman Public Utilities Commission,  
6<sup>th</sup> Floor, St. Michaels Road,  
Colombo 03.
5. Hon. Minister of Power, Energy and  
Business Development, No; 72, Ananda  
Coomaraswamy Mawatha Colombo 07.
6. Hon. Attorney General,  
Attorney Generals Department,  
Colombo 12.

### **RESPONDENTS**

Before: **M. T. Mohammed Laffar, J. and  
S. U. B. Karalliyadde, J.**

Counsel: Dr. Sunil Cooray with B. Gamage for the Petitioner.

Chaya Sri Nammuni, S.S.C. for the Respondent.

Supported on: 03.03.2022.

Decided on: 19.05.2022.

**Mohammed Laffar, J.**

The Petitioner in his amended Petition dated 28-11-2019, seeking *inter-alia*, a mandate in the nature of a Writ of Certiorari to quash the letters dated 02-10-2019 (P12) and 04-11-2019 (P12a) by which the 1<sup>st</sup> Respondent has authorized the 2<sup>nd</sup> Respondent to construct an electricity tower on the land purportedly owned by the Petitioner.

On 03-03-2022, the learned Counsel for the Petitioner, having supported the amended Petition, sought notices on the Respondents and interim reliefs as prayed for in paragraphs (c) and (d) of the prayers to the amended Petition, which reads;

(c) Issue a stay order to stay the operation of the letter dated 02-10-2019 and amended by letter dated 04-11-2019, of the 1<sup>st</sup> Respondent.

(b) Issue a stay order to stay the operation and/or stay the construction work conducted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and/or their agents at the construction site in the said lot 244 in Plan No. S46838 dated 25-09-1971 made by the Surveyor-General, (Petitioner's land) of the land called Mahayaya alias Keppetiyaya also commonly known as Hulangamuwa Estate, within the Divisional Secretary Division of Galewela, until the final determination of this application.

We heard the learned Counsel for the Petitioner in support of this application. We heard the learned Senior State Counsel for the Respondents as well.

#### **The contention of the Petitioner in summary.**

The Petitioner states that by virtue of the deed of gift bearing No. 221 dated 13-06-2013 attested by Asith Weesgodapola, Notary Public marked P1, he became the owner of the lots 48 and 244 in Plan marked P2.

The Petitioner further states that, despite his objections by letters dated 02-10-2019 and 04-11-2019 (P12 and P12a), the 1<sup>st</sup> Respondent had erroneously authorized the 2<sup>nd</sup> Respondent to construct an electricity tower in the said land owned by the Petitioner. The Petitioner contends that the said decision of the 1<sup>st</sup> Respondent is arbitrary, unreasonable and *ultra-vires* on the footing that the latter disregarded the provisions of the Sri-Lanka Electricity (amendment) No. 31 of 2013.

#### **The contention of the Respondents.**

The Respondents having filed the objections moved for a dismissal of the Petition on the basis, *inter-alia* that;

1. In spite of the fact that the Petitioner was served with notices in terms of the relevant provisions of the law, the Petitioner neither had raised objections nor participated in the inquiry.
2. The Petitioner was not certain as to the boundaries of his land, and therefore, it is uncertain as to whether the construction in dispute is in the land claimed by the Petitioner.

3. The Petitioner has no basis to support the application and has not demonstrated any *ultra-vires* on the part of the Respondents warranting the issuance of the Writ of Certiorari.

### **Observation and determination.**

The construction of a 220Kv transmission line from Habarana to Veyangoda is a National Project. It has been borne out from the documents marked R1 and R1a that the Petitioner had been served with a notice dated 07-12-2011 in terms of the provisions of the Sri-Lanka Electricity Act No. 20 of 2009 pertaining to the construction of an electricity tower on the land claimed by the Petitioner with regard to the said national Project. The Petitioner had not raised any objections within the stipulated time period. Hence, on 12-12-2017 the 2<sup>nd</sup> Respondent had commenced the work.

On 15-08-2019, the Petitioner, by way of an email had informed the 3<sup>rd</sup> Respondent that the excavation work being done in his land is without his permission, and therefore, the same should be terminated (R6). In view of the obstruction of the Petitioner to the Project, the Ceylon Electricity Board sought the necessary intervention of the 1<sup>st</sup> Respondent by letters dated 15-08-2019 and 23-08-2019 (R7 and R8). Accordingly, by letter dated 18-09-2019 the 1<sup>st</sup> Respondent had summoned the Petitioner for an inquiry pertaining to the dispute, whereas the latter failed to respond to the said letter. Thereupon, the 1<sup>st</sup> Respondent by letter dated 02-10-2019 authorized the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents for the completion of the Project (R11a/P12). When the Petitioner had submitted to the 1<sup>st</sup> Respondent documents to establish his ownership to the land on which the construction is being carried on, the matter was once again fixed for an inquiry/field inspection, which was also cancelled as the Petitioner refused to attend the same (R12 and R13).

Having scrutinized the documents tendered, it is abundantly clear that the 1<sup>st</sup> Respondent had given adequate opportunities to the Petitioner to establish his claim, and the Petitioner failed to make use of said opportunities. The impugned letter marked R11a/P12 is within the purview of the provisions of the Sri-Lanka Electricity Act No. 20 of 2009. As such, the position taken up by the Petitioner as to the *ultra-vires* and violation of natural justice on the part of the Respondents is devoid of merits.

Moreover, it is to be noted that there is no evidence before Court to establish the purported claim of the Petitioner that the disputed electricity tower is being constructed on his land. This fact has been admitted by the Petitioner in paragraph 07 of his affidavit, which reads;

*“..... since my land is a fairly large jungle land it was difficult to clearly determine the boundaries in the excavated area, although I was certain that the proposed power line had encroached my land.....”*

In such circumstances, I am of the view that there is no basis to issue notice on the Respondents. Thus, the notices are refused and the Petition is dismissed, without costs.

*Notice refused. Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**