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

CASE NO: CA/WRIT/457/2019

Pinnaduwage Baby Mallika Chandraseana
No.56, Mahawaththa Road,
Ambuldeniya, Nugegoda.

PETITIONER

VS.

C.W Abeysuriya,
Acquiring Officer,
Greater Colombo Flood Control Project,
Kaduwela Divisional Secretariat Division,
Sri Lanka Land Development Corporation,
No. 03, Sri Jayawardenapura Mawatha,
Welikada,
Rajagiriya.

RESPONDENT

Before: **M. T. MOHAMMED LAFFAR, J.**

S. U. B. Karalliyadde, J.

Counsel: Uditha Egalahewa, P.C. with D. Karunarathne for the Petitioner.

Suranga Wimalasena, S.S.C. for the Respondent.

Written Submissions on:

26.04.2022 (by the Petitioner).
15.10.2019 (by the Respondent).

Decided on: 16.06.2022

Mohammed Laffar, J.

In terms of the provisions of the Land Acquisition Act, No. 9 of 1950 (as amended), the Petitioner's land was acquired by the State. Under section 17 of the said Act, it was decided that the Petitioner is to be awarded a sum of Rs. 1,479,554.88 as compensation (P10). The Petitioner contends that the said amount of compensation is inadequate. According to the valuation report marked P11, which was obtained by the Petitioner through a private Valuer marked P11, the market value of the property acquired stands at Rs. 15,419,000/-. In this respect, the Petitioner is seeking *inter-alia* a Writ of Certiorari to quash the decision of the Respondent marked P10 and a Writ of Mandamus directing the Respondent to pay compensation to the Petitioner in accordance with the actual market value of the land acquired as at 05-05-2014, in terms of the provisions of the Land Acquisition Act, No. 9 of 1950 (as amended).

The Respondent moves for a dismissal of the Petitioner's application on the basis *inter-alia,* that;

1. The Petitioner failed to exhaust the alternative remedies provided in the Act, and therefore, she is not entitled to seek Prerogative remedies in this Court.
2. The Government Valuer who prepared the valuation report marked P10 has not been made a party to this application, and therefore, the application is liable to be dismissed *in-limine*.
3. The relief as prayed for in paragraph (c) of the prayers to the Petition is vague.

Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him.

In **Linus Silva Vs. The University Council of the Vidyodaya University**[1] it was observed that *"the remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy."*

The Court of Appeal in **Tennakoon Vs. Director-General of Customs**[2] held that *"the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances the petitioner is not entitled to invoke writ jurisdiction."*

In terms of section 22 of the Land Acquisition Act, the Petitioner is entitled to prefer an appeal to the Board against the amount of compensation awarded by the acquiring officer, which reads thus;

> *"A person to whom compensation is allowed by an award under section 17 and who has notified his claim for compensation to the acquiring officer within the time allowed therefore by this Act, may appeal to the board against that award on the ground that the amount of the compensation allowed to him is insufficient."*

[1] 64 NLR 104
[2] 2004 (1) SLR 53

Section 28 of the Act provides an opportunity to the Petitioner to lodge an appeal in the Court of Appeal against the decision of the Board on a question of law, which reads thus;

> *"Where a party to an appeal to the Board is dissatisfied with Board's decision on that appeal, he may, by a written petition in which the other party is mentioned as the Respondent, appeal to the Court of Appeal against that decision on a question of law."*

It is pertinent to be noted that sections 23A and 24 of the said Act, permit the Petitioner to adduce oral and documentary evidence before the Board in terms of the provisions of the Civil Procedure Code and Evidence Ordinance.

In these respects, it appears to this Court that the Land Acquisition Act provides adequate alternative remedies to the Petitioner when he is not satisfied with the decision of the acquiring officer in respect of the amount of compensation. As such, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court.

It is to be noted that, the alternative remedy is, always, not a bar to invoke the Writ jurisdiction of this Court. If the Court is of the view that, the alternative remedy is inadequate, where there has been a violation of the principle of Natural Justice, where the impugned order is without jurisdiction and there are errors on the face of the record, the Petitioner is permitted to invoke the Writ jurisdiction before exhausting the alternative remedies provided in law.

In the case of **Somasunderam Vanniasingham Vs. Forbes and others**[3] the Supreme Court observed that;

> *"A party to an arbitration award under the Industrial Disputes Act is not required to exhaust other available remedies before he could challenge illegalities and errors on the face of the record by an application for a writ of certiorari. This is so even though he had the right to repudiate the award under section 20 (1) of the Industrial Disputes Act. A settlement order should not itself be hastily regarded as a satisfactory alternative remedy to the Court's*

[3] 1993 (2) SLR 362.

discretionary powers of review. There is no rule requiring the exhaustion of administrative remedies."

Per Bandaranayake J.

"As I have said there is no rule requiring alternative administrative remedies to be first exhausted without which access to review is denied. A Court is expected to satisfy itself that any administrative relief provided for by statute is a satisfactory substitute to review before withholding relief by way of review."

In this regard, I refer to the observation made by the Supreme Court of India in **Whirlpool Corporation v Registrar of Trademarks, Mumbai, (1998) 8 SCC 1,** that

"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

In the case of **Harbanslal Sahnia v Indian Oil Corpn. Ltd, (2003) 2 SCC 107,** the Supreme Court of India held that;

"In an appropriate case, in spite of the availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is a failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

It is pertinent to note that, despite the Petitioner having averred in paragraph 19 of the Petition that she has not exhausted the alternative

remedy provided in law, she has failed to state any reasons for not availing of those provisions of law.

The attention of this Court is drawn to the fact that several other persons, who also have proved title for the portions in respect of the same lots of lands, which are lots 4, 6 and 13, and whose names are also in the same section 17 awards have appealed to the Land Acquisition Board of Review in terms of the Act.

Having considered the facts and the circumstances of this application, it is the view of this Court that the Petitioner is not permitted in law to invoke the Writ jurisdiction of this Court before exhausting the alternative remedies provided in sections 22 and 28 of the Land Acquisition Act.

The learned Senior State Counsel appearing for the Respondent argued that the Petitioner cannot challenge the valuation given by the Chief Valuer as the latter has not been made a party to this application. It is settled law that the necessary parties include the parties making the Order, those benefitting from the Order and those aggrieved by the Order. In the case of **Rawaya Publishers Vs. Wijedasa Rajapaksha**[4] it was held that *"in the content of writ applications a necessary party is one without whom no order can be effectively made."*

In the present application, the decision marked P10 has been made by the Respondent, Acquiring Officer, not by the Valuer. The decision is based on the valuation report of the Chief Valuer. Hence, the Chief Valuer is not a necessary party to proceed with this application.

In paragraph (c) of the prayers to the Petition, the Petitioner is seeking a Writ of Mandamus as follows;

> *"A Writ of Mandamus directing the Respondent to pay compensation to the Petitioner in accordance with the actual market value of the lands acquired as at 05-05-2014, in terms of the provisions of the Land Acquisition Act No. 9 of 1950 (as amended)."*

It is trite law that a writ of Mandamus can be prayed for specific relief, without ambiguity. The Petitioner in her application is not seeking a Mandamus for the precise amount of compensation. Although the

[4] 2001 (3SLR) 213.

Petitioner has obtained a private valuation report marked P11, the relief prayed for is not based on that.

For the foregoing reasons, it is the view of this Court that the application of the Petitioner is liable to be dismissed. Accordingly, I dismiss the application without costs.

Application dismissed.

Judge of the Court of Appeal

S. U. B. Karalliyadde, J.

I agree.

Judge of the Court of Appeal