

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

C.A. Writ/0093/2019

1. Cadillac Garments (Pvt) Ltd,
No. 9-A, Mount Avenue,
Mount Lavinia.

PETITIONER

VS.

1. Ranjith Yapa,
Acquiring Officer and
Divisional Secretary,
Divisional Secretariat,
Matara.
2. Mr. D. D. K, Wickramarachchi,
Acquiring Officer and
Divisional Secretary,
Divisional Secretariat,
Matara.

RESPONDENTS

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

Counsel: Ikram Mohamed, P.C. with M. S. A. Wadood, H. Mallawarachchi and Thavishi Wanaguru, instructed by Mallawarachchi Associates for the Petitioner.

V. De Abrew, A. S. G., with R. Perera D. S. G. for the Respondents.

Written Submissions: 28.09.2022 (Petitioner)
29.09.2022 (Respondents)

Argued on: 29.08.2022

Decided on: 31.10.2022

Mohammed Laffar, J

The Petitioner in this application is seeking an Order in the nature of a Writ of Certiorari quashing the decision made by the 1st Respondent dated 28.09.2016, under section 17 of the Land Acquisition Act, No. 9 of 1950 (as amended) in respect of the land described in the schedule to the Petition, and an Order in the nature of a Writ of Mandamus directing the 2nd Respondent to act in terms of section 10 (2) and 10 (3) of the Land Acquisition Act, and refer the claim made by the Petitioner to its right, title or interest in the land described in the said schedule for a determination by the District Court of Matara.

Factual Matrix.

The Petitioner is a duly incorporated Company having its registered office at No.9A, Mount Avenue, Mount-Lavinia. According to the Petition, the Petitioner is the owner of the land which is more fully described in the schedule to the Petition. In terms of section 38A of the said Act, by virtue of the Government Gazette bearing No. 14746-1967 dated 28-04-1967 (**P2**) the subject matter was acquired by the State. The purpose of the acquisition of this land was for a District Fertilizer Store for the Ceylon Fertilizer Corporation. The land had been surveyed and depicted in plan No. Mara/139 marked as **P3**, the extent of which was 2 Acres-2 Roods and 37.2 perches. The acquisition was duly registered in Folio No. A270/28 marked as **P5**. By Order published in the Government Gazette No. 735-1992 dated 02-10-1992 marked as **P6**, the Ceylon Fertilizer Company Limited was incorporated under section 2 of the Conversion of Public Corporations or Government Owned Business Undertaking into Public

Companies Act No. 23 of 1987 as the successor to the Ceylon Fertilizer Corporation which took over the functions of the said Corporation, (Memorandum of Association of the Ceylon Fertilizer Company Limited is marked as **P6A**). By the Cabinet Memorandum dated 26-10-1992 marked as **P9**, the approval was granted by the Cabinet to sell the subject matter to the Petitioner for a sum of Rs. 2,750,000/= for the establishment of a Garment Factory under the program of the establishment of 200 Garment Factories. By telegram dated 11-12-1992 marked as **P10**, the Chairman, Ceylon Fertilizer Company Limited informed the Petitioner that Cabinet approval has been granted to sell the said land to the Petitioner for the said amount and requested the Petitioner to make the payment immediately. By letter dated 12-08-1993 marked as **P11**, the Ceylon Fertilizer Company Limited has requested the Land Commissioner to expedite action for the finalization of the transfer of this land to the Petitioner as the latter had paid the full consideration of Rs. 2,750,000/=. The Land Commissioner, by letter dated 17-09-1993 (**P12**) had informed the Ceylon Fertilizer Company Limited that since this property had been acquired under the Land Acquisition Act and vested in the Ceylon Fertilizer Company Limited, he has been informed by the Secretary to the Ministry of Lands, that the transfer can be effected by the Ceylon Fertilizer Company Limited in favour of the Petitioner.

By letter dated 29-09-1993 marked as **P13**, the Matara Divisional Secretary had sought approval from the Secretary, Land Ministry to vest the land so acquired under section 38 (a) of the Land Acquisition Act in the Ceylon Fertilizer Company Limited for the purpose of regularizing the transfer of the property in favour of the Petitioner. The Matara Divisional Secretary, under section 44 (1) of the Land Acquisition Act, issued a vesting Order marked as **P15**, vesting the land in dispute in the Ceylon Fertilizer Corporation subject to the condition that it cannot be alienated without the approval of the Ministry or the Cabinet of Ministers. Accordingly, the Ceylon Fertilizer Corporation, succeeded by the Ceylon Fertilizer Company Limited became the absolute owner of the subject matter. The Ceylon Fertilizer Company Limited, by letter dated 8-11-1993 marked as **P17**, informed the Petitioner that Cabinet approval has been obtained to dispose of the land in dispute to the Petitioner. Thereupon, with the aforesaid Cabinet approval, the Ceylon Fertilizer Company Limited, by virtue of the deed of Transfer bearing No. 38 dated 19-10-1993 attested by Tilak Gunawardana, Notary Public, marked **P18**, had conveyed

its rights, title and interest of the subject matter to the Petitioner. The certificate of vesting made under section 44 of the said Act (**P15**) and the said deed of Transfer (**P18**) in respect of the subject matter, in the extent of A2-R2-P37.2 have duly been registered in the same folio (**P5 (a) & (b)**).

Thereupon, on 29-08-2011, the Divisional Secretary-Matara published a notice under section 2 of the Land Acquisition Act to acquire the said land for the construction of the Police Headquarters (**P32**). Subsequently, an Order under section 38 of the said Act was published in the Government Gazette bearing No. 1746/15-2012 dated 23-02-2012 marked as **P37**, and accordingly, at the request of the Divisional Secretary of Matara dated 04-04-2012 (**P38**), on 27-04-2012, the Petitioner, had handed over the possession of the subject matter to the Divisional Secretary (Vide- **39-A and 39-B**). Notice under section 7 of the Land Acquisition Act was published on 04-05-2012 marked as **P40** and the Divisional Secretary by notice published under section 7 marked as **P41** called for claims for compensation pertaining to the said land to be made to the 1st Respondent and to appear before him. A notice under section 7 of the said Act had been given to the Petitioner as the owner of the said land (**P43**).

After inquiry, the Divisional Secretary of Matara informed the Petitioner that the Petitioner had not established its ownership of the property and that unless a request is made in writing within 14 days to refer the matter to the District Court, his decision becomes final (**P46-i to P46-x**). The Petitioner, by letter dated 21-03-2016 (**P48**) requested the Divisional Secretary to refer his claim made for compensation as the owner, to the District Court of Matara. It is averred in paragraph 44 of the Petition that the Divisional Secretary, as the Acquiring Officer did not refer the claim of the Petitioner to the District Court of Matara which amounts to a breach of his statutory obligations under section 10 (2) and 10 (3) of the Land Acquisition Act.

In these circumstances, the Petitioner instituted the Writ Application bearing No. CA/Writ/182/216 dated 02-06-2016 marked as **P50**, seeking a Writ of Mandamus directing the Respondent to act in terms of sections 10 (2) and 10 (3) of the said Act, referring the matter to the District Court for its determination. The Respondents filed objections, and thereafter, the matter was fixed for argument. On 08-03-2018 the matter was settled as follows;

“The learned State Counsel submits that the Respondent is in the process of taking steps to refer the claim forwarded by the Petitioner to the District Court in terms of section 10 (2) of the Land Acquisition Act.

The learned State Counsel undertakes to give necessary instructions to the Respondent to refer the claim forwarded by the Petitioner to the District Court in terms of section 10 (2) of the Land Acquisition Act for a determination and deposit the amount due as compensation in the District Court in terms of the Act.

The learned President’s Counsel for the Petitioner informs Court that in view of the Respondent’s undertaking to refer the Petitioner’s claim to the District Court in terms of section 10 (2) of the Land Acquisition Act, he would not pursue this application any further.

Court directs the Respondent to abide by this undertaking and take steps without delay to refer the claim of the Petitioner to the District Court for determination.

In view of this, the learned President’s Counsel for the Petitioner moved to withdraw this application. The learned President’s Counsel for the Petitioner however states that in case of non-compliance of this Order by the Respondent, he will take steps to file a motion and inform this Court. Subject to the above, Court allows the application for withdrawal. Application is dismissed without costs subject to the above reservation by the Petitioner. Registrar is directed to issue a certified copy of the proceedings subject to the usual charges to the Petitioner.”

Subsequently, a motion dated 04-04-2018 marked as **P54 (A) and (B)** had been filed on behalf of the Respondents claiming that this case had been inadvertently settled alleging that it is the Counsel for the Petitioner who had suggested a settlement. However, the said motion was not supported and the said terms of settlement were not set aside. Admittedly, the Respondent failed to comply with the foregoing terms of settlement. Thereafter, the motion dated 01-08-2018 marked as **P55** was filed on behalf of the Respondent stating that *inter-alia*, as a determination has been made under section 17 of the Land Acquisition Act in respect of the entirety of the land, reference of this matter for a determination to be made under section 10 (2) of the Land Acquisition Act does not arise. The

purported determinations made on 28-09-2016 by the Divisional Secretary under section 17 of the Land Acquisition Act are marked as **P56 (i) P56 (xii)**.

In these circumstances, the Petitioner, in the instant Application, is seeking to quash the determinations made under section 17 of the said Act, on the basis that the same is illegal, null and void, of no force or avail in law and totally without jurisdiction. The Petitioner is seeking a Writ of Mandamus directing the Respondents to act in terms of section 10 (2) and (3) of the said Act and refer the claim made by the Petitioner to its right, title or interest in respect of the land in dispute for a determination by the District Court of Matara.

The Respondent moves for a dismissal of the Application on the basis *inter-alia*, that the deed of transfer marked as **P18** by which the Petitioner became the absolute owner of the subject matter is bad in law.

Observation:

After inquiry, the Divisional Secretary was of the view that the Petitioner has not established its title to the subject matter, and therefore, the former by letter marked **P46-i to P46-x** informed the Petitioner to inform him in writing within 14 days if the Petitioner wants the claim to be referred to the District Court of Matara. Accordingly, the Petitioner, by letter marked **P48** informed the Divisional Secretary to refer its claim to the District Court. In these circumstances, the Divisional Secretary is duty-bound to refer the claim of the Petitioner to the District Court of Matara in terms of sections 10 (2) and 10 (3) of the Land Acquisition Act, which reads thus;

*10 (2) A claimant whose claim is wholly or partly disallowed, or a party to a dispute which is determined, by the decision of an acquiring officer under subsection (1) may, within fourteen days of the service on him of notice of the decision, make application to that acquiring officer for the reference of the claim or dispute, as the case may be, for determination as hereinafter provided; **and that acquiring officer shall make a reference accordingly.***

10 (3) Every reference under the preceding provisions of this section shall be made to the District Court or the Primary Court having jurisdiction over the place where the land which is to be acquired or over which a servitude is to be acquired is situated, according as the total amount of the claims for compensation for the acquisition of the

land or servitude exceeds or does not exceed one thousand five hundred rupees.

In this Application, it appears to this Court that the Divisional Secretary has not referred the claim of the Petitioner to the District Court in terms of the foregoing provisions of Law, which is palpably erroneous and amounts to a breach of statutory obligation cast upon the Divisional Secretary.

It is pertinent to be noted that, the Divisional Secretary, not only failed to comply with section 10 (2) of the Land Acquisition Act but also made a determination under section 17 of the said Act. The Divisional Secretary had no jurisdiction whatsoever to proceed to make a determination under section 17 of the Act, where he is obliged to refer the claim to the District Court in terms of sections 10 (2) and (3) of the Act. In this scenario, it is the considered view of this Court that the determination made under section 17 of the Act is contrary to the provisions of the Land Acquisition Act, unlawful, *ultra-vires* and without jurisdiction.

I shall now deal with the paramount grounds upon which the learned Additional Solicitor General is seeking to dismiss the Petitioner's application, in a nutshell, which is set out as follows;

- The Ceylon Fertilizer Company Limited has no legal right to transfer the land in dispute (State Land) to the Petitioner by deed marked P18, whereas the State Lands are to be alienated in terms of the provisions of the State Lands Ordinance No. 8 of 1947 (Vide paragraph 10 of the objection). Therefore, the deed marked P18 is illegal and no force in law. In these circumstances, the Petitioner has no title to the subject matter.

In this context, it is the prime duty of this Court to investigate the title of the Petitioner with regard to the land in suit. Undisputedly, the chain of title of the Petitioner in respect of the subject matter is as follows;

1. By virtue of the Government Gazette bearing No. 14746-1967 dated 28-04-1967 marked as **P2**, the subject matter, in the extent of 2 Acres-2 Roods and 37.2 perches, was acquired by the State in 1967 for the construction of a District Fertilizer Store for the Ceylon Fertilizer Corporation. The acquisition was duly registered in Folio No. A270/28 marked as **P5**.

2. By Order published in the Government Gazette No. 735-1992 dated 02-10-1992 marked as **P6**, the Ceylon Fertilizer Company Limited was incorporated under section 2 of the Conversion of Public Corporations or Government Owned Business Undertaking into Public Companies Act, No. 23 of 1987 as the successor to the Ceylon Fertilizer Corporation which took over the functions of the said corporation.

3. By letter dated 24-09-1992 marked as **P7**, the Ceylon Fertilizer Company Limited requested the Petitioner to pay a sum of Rs. 2,750,000/-, which was the price offered by the highest bidder, to sell the subject matter to the Petitioner, which reads thus;

“The above store was to be sold after the invitation of public offers under the peoplisation scheme of the Ceylon Fertilizer Corporation. At the invitation of offers for this purpose, the highest bid received by the Corporation was Rs. 2,750,000/-. Subsequently, a decision has been taken by the Ministry of Finance to make this land and the buildings available to you for the establishment of a garment factory. We understand that, since then, you are in occupation of the said premises and arrangements are being made by you towards the establishment of the proposed project. We kindly request you to make arrangements at the earliest, to pay to the Corporation, a sum of Rs. 2,750,000/- which was the price offered by the highest bidder.”

4. The Ceylon Fertilizer Company Limited by letter dated 22-10-1992 marked as **P8** requested the Petitioner to deposit the said sum of Rs. 2,750,000/- on or before 20-10-1992, in order to take steps to vest the property in the name of the Petitioner.

5. The Cabinet of Ministers had approved to sell the said land to the Petitioner by the Cabinet decision of 02-12-1992, which is marked as **P9**, and the Cabinet memorandum which contains the recommendation of sale and to handover the store and the premises at Nupe for the establishment of a garment factory to M/s Cadillac Garments Ltd (Petitioner), is marked as **P9A**.

6. By telegram dated 11-12-1992, marked as **P10**, the Petitioner was informed by the Ceylon Fertilizer Company Limited that the Cabinet approval has been granted for the sale of the said

property to the Petitioner, and requested the Petitioner to make the payment of the said amount immediately.

7. By letter dated 12-08-1993 marked as **P11**, the Ceylon Fertilizer Company Limited requested the Land Commissioner to expedite the transfer of the property to the Petitioner as the latter had already paid the entire amount of consideration of Rs. 2,750,000/-.
8. By letter marked **P12**, the Land Commissioner informed the Ceylon Fertilizer Company Limited, that as per the instructions received from the Secretary, Ministry of Lands, the Ceylon Fertilizer Company Limited can transfer the property to the Petitioner.
9. The Divisional Secretary, Matara by letter dated 29-09-1993 marked as **P13**, sought permission from the Ministry of Lands to issue a vesting Order in respect of the said land to the Ceylon Fertilizer Company Limited.
10. In response to the letter marked **P13**, the Ministry of Lands granted permission to the Divisional Secretary-Matara to vest the property to the Ceylon Fertilizer Company Limited (Vide letter marked **P14**).
11. The Matara Divisional Secretary, under section 44 (1) of the Land Acquisition Act, issued a vesting Order marked as **P15**, vesting the land in dispute in the Ceylon Fertilizer Company Limited subject to the condition that it cannot be alienated without the approval of the Ministry or the Cabinet of Ministers. The vesting order was duly registered in the Folio No. A 270/28 in the Land Registry of Matara marked as **P15A**.
12. The Ceylon Fertilizer Company Limited by its Board Resolution dated 08-11-1993 marked as **P17**, resolved that the title and ownership of the store and the related premises at Nupe be transferred to the Petitioner as per the Cabinet Decision.

13. Accordingly, the Ceylon Fertilizer Company Limited, by virtue of the deed of Transfer bearing No. 38 dated 19-10-1993 attested by Tilak Gunawardena, Notary Public, marked **P18**, had conveyed its rights, title and interest of the subject matter to the Petitioner.

Having scrutinized the foregoing undisputed documents, it is abundantly clear that the Petitioner is the lawful and absolute owner of the subject matter.

Besides, the Petitioner's title to the subject matter has been affirmed by the State as follows;

1. By letter dated 24-01-1994 marked as **P21**, the Deputy Director to the Minister of Industries, Science and Technology had requested the Secretary of Agricultural Development and Research to take steps to hand over the possession of the buildings to the Petitioner as the Petitioner had purchased the premises.
2. By letter dated 22-11-2004 marked as **P23**, the Land Commissioner had informed the Secretary, Ministry of Agriculture and Lands that the property in dispute was vested in the Ceylon Fertilizer Corporation and had been sold to the Petitioner, and confirmed that the Land Ministry had informed that the Minister's approval was not necessary for the said transfer.
3. By letter marked **P24**, the Senior Superintendent at the District Surveyor Office of Matara informed the Divisional Secretary, Matara that, steps cannot be taken to survey the subject matter as the same had been sold to the Petitioner.
4. Subsequently, the Petitioner had Mortgaged the said premises to the Hatton National Bank and the Bank of Ceylon (Vide- **P19A and P19B**).
5. The title of the Petitioner in respect of the land in dispute had been declared by the District Court of Matara in case No. Spl/637 (Vide- **P25**).
6. The Petitioner filed a Fundamental Rights application before the Supreme Court and an application before the Human Rights Commission as the Municipal Council of Matara refused to grant a Certificate of Conformity to the buildings put up by the Petitioner in the said premises. Upon the undertaking given by the Municipal

Council of Matara to grant a Certificate of Conformity to the said buildings, the Petitioner withdrew the said applications. Human rights application is marked as **P26**, the Supreme Court proceedings are marked as **P27**, the Certificate of Conformity is marked as **P28** and the subdivision plan is marked as **P28A**.

7. The Presidential Secretary by letter dated 23-08-2011 marked as **P29** had requested the Secretary of the Ministry of Lands and Land Development to submit a report about the said land, to which the Director of Land Acquisition of the Ministry of Lands and Land Development by letter dated 05-07-2011 marked as **P30** had confirmed that the land in dispute is no longer a state land.
8. The Municipal Council of Matara by letter dated 29-07-2011 marked as **P31** informed the Petitioner that the Certificate of Conformity cannot be issued as per the building application No. 146/2010 made by the Petitioner, as it had been decided at the District Development Committee meeting that the land is to be acquired by the Government.
9. Thereafter, an Order under section 38 of the Land Acquisition Act was published in Government Gazette No. 1746/15-2012 dated 23-02-2012 marked as P37 and the Divisional Secretary by letter marked P38, requested the Petitioner to hand over the possession of the said land owned by the Petitioner in terms of the Order made under section 38 of the Land Acquisition Act. Accordingly, the Petitioner handed over the possession of the land to the Divisional Secretary (**P19A and P19B**).

The sequence of the foregoing events abundantly proved without any ambiguity that the land in dispute was owned by the Petitioner, and subsequently, the same was acquired by the State in terms of the provisions of the Land Acquisition Act. In these respects, it is the considered view of this Court that the contention of the learned Additional Solicitor General stating that the subject matter is State Land and therefore the State is not bound to pay compensation to the Petitioner is erroneous, devoid of merits and misconceived in law and facts.

As the land in dispute is State Land as claimed by the Additional Solicitor General, the same cannot be acquired by the State under the provisions of the Land Acquisition Act. The Divisional Secretary who has acquired the land owned by the Petitioner in terms of the Land Acquisition Act is not entitled to approbate and reprobate and estopped from taking up the

position that the land in suit is State Land when he is legally bound to pay compensation to the Petitioner. It appears to this Court that the Divisional Secretary is acting in bad faith (*mala-fide*) in order to prevent the Petitioner from obtaining its lawful entitlement of compensation.

Justice Ashutosh Mookerjee in **Dwijendra Narain Roy Vs. Joges Chandra De, 39 CLJ 40 at 52 (AIR 1924 Cal 600)**, held that

“it is an elementary rule that a party litigant cannot be permitted to assume inconsistent positions in Court, to play fast and loose, to blow hot and cold, to approbate and reprobate to the detriment of his opponent. This wholesome doctrine applies not only to successive stages of the same suit, but also to another suit than the one in which the position was taken up, provided the second suit grows out of the judgment in the first.”

At this juncture, it is significant to note that the Respondents in this application had not taken up the position that the land in dispute was the state land in the previous Writ application bearing No. CA/Writ/182/216 filed by the Petitioner against the Respondents.

In **Padmini Vs. Jayaseeli (2004-3SLR-p13)**, Balapatabendi, J.held that

“it is clear that the defendant-appellant had claimed to possess the said property as a co-owner against the plaintiff-respondent but not one under the plaintiff-respondent. Therefore, I am inclined to agree that the doctrine of “approbate and reprobate” forbids, the assertion of the defendant-appellant, when the defendant-appellant failed to establish that she was a co-owner how could she now insist - on termination of the leave and license - which never existed according to her.”

In these circumstances, it is the view of this Court that, the Respondents who had acquired the land of the Petitioner in terms of the provisions of the Land Acquisition Act, cannot be permitted to take up the position before the Court that the land in dispute is State Land. The Respondents cannot be permitted to assume inconsistency positions and to blow hot and cold which is a detriment to the Petitioner.

Moreover, this Court is mindful of the fact that the title deed of the Petitioner marked as P18 was executed 19 years ago in 1993 and the same was registered in the appropriate folio of the Land Registry. However, the Respondent has not taken any legal steps to invalidate the said deed. Until the title deed marked P18 is invalidated by the Court of Law, the

Respondent cannot be heard to say that the said deed is invalid and the land in dispute is State Land.

Having scrutinized the facts and circumstances of this case, it is the considered view of this Court that the Petitioner in this Application has a legitimate expectation for the compensation to be paid in terms of the provisions of the Land Acquisition Act.

What is legitimate expectation? This concept is focused upon the idea of fairness and the enforcement of promises or representations. This principle creates the idea that it is unlawful for a public authority to fail to abide by a promise or representation that it has made without good reason, provided that the promise is lawful and that whoever made the promise was entitled to bind the authority.

In **Junaideen Mohamed Iqbal vs. The Divisional Secretary, Kundasale**¹ the Court of Appeal simply described the principle of legitimate expectation as follows:

“...When a public authority represents that it will or will not do something within its authority and later attempts to rescind the said representation, a person who has reasonably relied on it should be entitled to enforce it by law. This concept is based on the principles of natural justice and fairness, and seeks to prevent the abuse of power by public authorities...”

Wade discusses the principle of legitimate expectations² as follows:

“...A further and more satisfactory reason for the protection of legitimate expectations lie in the trust that has been reposed by the citizen in what he has been told or led to believe by the official. Good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected officials will not be believed and government becomes a choice between chaos and coercion.”

“...It is not enough that an expectation should exist: it must in addition be legitimate. But how is it to be determined whether a particular expectation is worthy of protection? This is a difficult area since an 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

¹ CA/Writ/328/215- CA-Minute of 19-02-2020

² H.W.R. Wade and Forsyth-Administrative Law, 11th Edition-page 451.

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....” (Page 452).

The meaning and scope of the doctrine of legitimate expectation was considered at length in **Union of India vs. Hindustan Development Corporation**³, where it was stated that,

“Time is a three-fold present: the present as we experience it, the past as a present memory and future as a present expectation. For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, desire or a hope nor can it amount to a claim or demand on the ground of a right. However, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again, it is distinguishable from a genuine expectation. Such expectation should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense.”

When applying the above-stated principles to the instant Application, the question that begs an answer is whether a promise or an assurance was given by the Respondents to the Petitioner to pay the compensation in respect of the land acquired by the State. Admittedly, the Petitioner became the owner of the land in dispute by virtue of the deed of transfer marked P18. The deed marked P18 has not been declared null and void by the Court of law. The said land was acquired by the State in terms of the provisions of the Land Acquisition Act. In these circumstances, the Petitioner has a legitimate expectation for the compensation. If the Respondent is of the view that the Petitioner has not established its rights to the subject matter, it is the duty of the Respondent (Divisional Secretary) to refer the dispute to the District Court for determination. In this case, the Divisional Secretary neither had paid the compensation to the Petitioner nor referred the matter to the District Court which is

³ 1994 AIR 988 (3) SCC 499.

palpably erroneous and blatant disregard of sections 10 (2) and (3) of the Land Acquisition Act.

The Respondents state that the Cabinet of Ministers has decided to abandon the acquisition proceedings (2R1), and therefore, the reliefs prayed for become futile.

Indeed, the acquisition proceedings are over. The purpose of the acquisition was to construct the Police Head Quarters that have already been constructed on the land in suit. The only question that remains is to who the compensation is to be paid. The Cabinet decision marked 2R1 will not render the reliefs prayed for in the Petition nugatory. It appears to this Court that the State either should refer the Application made by the Petitioner for compensation to the District Court for its determination or divest the land in dispute in the name of the Petitioner.

In these circumstances, a Writ of Certiorari quashing the decision made by the 1st Respondent on 28-09-2016, under section 17 of the Land Acquisition Act [P56 (i) to P56 (xii)] issued in respect of the land in suit and a Writ of Mandamus directing the 2nd Respondent to act in terms of section 10 (2) and (3) of the Land Acquisition Act and refer the claim made by the Petitioner to its right, title or interest in the land described in the schedule to the Petition for a determination by the District Court of Matara are issued. The Petitioner is entitled to recover a sum of Rs. 50,000/- from the 1st and 2nd Respondents as costs of this Application.

Application allowed with costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL