

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

In the matter of an application for orders in the nature of Writs of Certiorari and in the nature of Writs of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Maddumage Chandralal Fernando
No.65,
Melwatta,
Kaludawala,
Panadura.

Petitioner

CA/WRIT/187/2022

Vs.

1. The King George The Fifth Silver Jubilee Commemoration Society
No.37,
Fonseka Road,
Panadura.
2. Mrs. Irangani Weerasinghe
The Divisional Secretary,
Divisional Secretariat,
Panadura.
3. S. M. Chandrasena
Hon.Minister of Lands,
"MihikathaMedura",
Land Secretariat,
1200/6,
Rajamalwatta Road,
Battaramulla.

4. A. H. M. Aberathne
Commissioner General of Agrarian
Development,
Department of Agrarian
Development,
No.42,
Sir Marcus Fernando Mawatha,
P.O. Box 537,
Colombo 07.
5. Hemantha Fernando
Chairman,
Pradeshiya Sabha,
Panadura.
6. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Lakshan Dias with Maneesha Kumarasinghe for the Petitioner.

Zuri Zain, DSG with Shiloma David, SC for the 2nd to 4th and 6th
Respondents.

Murshid Maharooof with Shoaib Ahammed for the 5th Respondent.

Supported on : 09.08.2022

Decided on : 12.10.2022

Sobhitha Rajakaruna J.

The Petitioner claims that he is the tenant cultivator of the land which is in extent of 3 Acres: 6 Perches called 'Eluwila Wela' ('The Land'), demarcated as Lot 4 in Plan No.47 dated 30.04.1964, marked 'P2'.

The disputed land, according to the Petition, was originally owned by Dawson Salgado, who gifted the land by Deed of Gift No.14562 attested on 07.10.1972, marked 'P3', to the 1st Respondent for the purpose of fulfilling the food requirement of the elders' home run by the 1st Respondent. The land was however in the possession of Mr. Robaranis and upon his death, in the possession of the Petitioner's grandfather, upon whose death the Petitioner's father obtained possession of the land as the tenant cultivator. Subsequently, the Petitioner has taken possession of the land as tenant cultivator and has continued to supply rice to the elders' home as his predecessors did.

The learned Counsel for the Petitioner alleges that due to a personal grudge between the 5th Respondent who is the Chairman of the Panadura Pradeshiya Sabha and the Petitioner, the 5th Respondent has made many attempts to disturb the Petitioner from cultivating the land, consequently disturbing the only income and livelihood of the Petitioner.

The Petitioner has filed some time ago an application bearing case No. 18/2013 in the Court of Appeal relating to another attempt of the 5th Respondent to acquire the disputed land in relation to the Gazette No.1759/37 of 2012. However, the case was withdrawn due to the land being handed back to the Petitioner upon reaching a settlement.

Thereafter, on 27.01.2021 notice was displayed in accordance with Section 2 of the Land Acquisition Act ('The Act') indicating that the disputed land is proposed to be acquired by the Government. The Minister of Lands published the order under Section 38(a) of the Act in Gazette Notification No.2273/34 dated 29.03.2022, marked 'P16', in respect of the land.

The Petitioner now seeks an interim order restraining the 2nd Respondent from taking possession of the land and a writ of Certiorari quashing the decision of the 3rd Respondent in Gazette Notification, marked 'P16', to acquire the abovementioned land.

At the Panadura Pradeshiya Sabha meeting held in June 2022, the 5th Respondent proposed the Petitioner's land to be developed as a playground. The 5th Respondent then displayed the notice dated 16.06.2022 marked 'P22', stating that the land has been acquired by the Government in accordance with the said Gazette Notification No.2273/34 and has been handed over to the Panadura Pradeshiya Sabha for its development as a playground.

At this threshold stage of this application, the duty of this court is to consider whether there is a fit and proper case to issue formal notice on the Respondents and whether the interim relief prayed for in prayer (b) of the Petition of the Petitioner should be granted.

The learned Counsel for the Respondents raise preliminary objections and assert that the Petitioner is guilty of laches. The contention of the Respondents is that the Petitioner was made aware of the land being proposed for acquisition by the State on 27.01.2021 when the aforesaid notice was displayed. However, the learned Counsel for the Petitioner argues that the aforementioned notice was not displayed in a place and/or manner which drew attention to it.

The Gazette Notification, marked 'P16', has been published on 29.03.2022 whereas the Section 2 notice under the Land Acquisition Act (annexed to the motion dated 05.09.2022) has been issued on 27.01.2021. Further, the Divisional Secretary of Panadura informed the Petitioner by the letter dated 24.04.2022, marked 'P17' that the land is to be developed as a playground and that possession of the land will be taken over on 11.05.2022. The learned Counsel for the Petitioner alleges that the Petitioner was not aware of the proposed acquisition until the 5th Respondent displayed notice dated 16.06.2022 marked 'P22', stating that the Petitioner's land has been acquired by the State. The Affidavits of villagers living on lands neighboring the subject land, marked 'PA1' to 'PA10', also divulge that they had not seen a notice of the proposed acquisition.

In light of the above sequence of events, I am not inclined to accept the objections of the Respondents that the Petitioner is guilty of laches.

The learned Counsel for the Respondents by way of another preliminary objection submit that the Petitioner has no *locus standi* to maintain this application regarding the acquisition of the land.

In ***Premadasa vs. Wijewardena and others (1991) 1 Sri LR 333 at 343***, Tambiah CJ has observed that;

“The law as to locus standi to apply for certiorari may be stated as follows: The writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public, he must have sufficient interest to make the application.”

One of the salient features developed in public law during the recent past is in regard to ‘standing’. The emergence of public interest litigation is underpinned by the relaxation of the rules relating to standing by Courts. However, the instant application cannot be considered as a case filed in the interest of public as the Petitioner has shown a direct interest to the subject land. In that event, I need to advert to the basic principles on *locus standi* especially in respect of the circumstances of this case.

The application of *locus standi* to Writ applications has been discussed in ***Principles of Administrative Law (Ninth Edition) 2022 by M. P. Jain and S. N. Jain (at p.2287)*** and the following passage is apt here;

“In the context of locus standi to apply for a writ (other than habeas corpus or quo warranto) applicants may ordinarily be placed in three categories: (i) persons aggrieved; (ii) stranger; (iii) busy body or meddlesome interloper.

The starting proposition in the area of law of standing is: A "person aggrieved" is entitled to seek a remedy by way of a writ. To invoke the writ jurisdiction, the petitioner has to be an 'aggrieved person'.”

“Generally speaking, a person has no locus standi to file a writ petition if he is not personally affected by the impugned order, or there is an imminent danger of his rights being affected. The relief under article 226 is based on the existence of a right in favour of the writ petitioner¹.”

¹Vinoy Kumar vs. State of Uttar Pradesh, AIR 2001 SC 1739 : 2001 (4) SCC 734 : JT 2001 (4) SC 506. See also S.S. & Company vs. Orissa Mining Corporation Limited, (2008) 5 SCC 722, 789-90 (para 47).

When considering the reliefs sought by the Petitioner and the contents of the Petition, it appears that the Petitioner does not fall under the category of a 'stranger' or a 'busy body'. Thus, what is pertinent in this application is to assay whether the Petitioner has been aggrieved by any decision of the public authority. Although the review Courts in their earlier decisions have taken the view that an application for Writ should be made by an 'aggrieved party', later on with judicial activism such earlier ideologies have been drastically changed.

P.N. Bhagawati J in *S. P. Gupta and others vs President of India and others AIR 1982 Supreme Court 149 at 184* has held as follows;

“The traditional rule in regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born”.

“The Court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. The only way in which this can be done is by entertaining writ petitions and even letters from public spirited individuals seeking judicial redress for the benefit of persons who have suffered a legal wrong or a legal injury or whose constitutional or legal right has been violated but who by reason of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief”.

“But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the Court should not allow itself to be activated at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the Court or even in the form of a regular writ petition filed in Court”.

In such a backdrop where the approach to *locus standi* has been expanded, it is important to consider whether the Petitioner has suffered a legal wrong or a legal injury; any legal right of the Petitioner has been violated.

The Petitioner has cultivated paddy on more than 1 Acre & 2 Roods. The remainder of the land was utilized for vegetable cultivation and animal husbandry. The Petitioner states that his animal farm bearing registration No. 1330102 consists of 25 cows and 12 buffaloes, and produces 20 liters of milk a day.

The Petitioner has averred malice against the 5th Respondent who is claimed to be the instigator in acquiring the land. As per the Affidavit affirmed by the Petitioner and the documents annexed thereto, it appears prima facie that there has been a long-standing dispute between the Petitioner and the 5th Respondent. The Petitioner complains that the 5th Respondent had once piled Tsunami debris making the land uncultivable. The Petitioner avers that the 5th Respondent killed 38 cattle which belonged to the Petitioner by using acid and also that the Petitioner had to file a case against the 5th Respondent in the Magistrate's Court upon a physical harassment.

Hence, the Petitioner contends that the acquisition of the subject land was done maliciously in bad faith with the involvement of the 5th Respondent whose action and decisions are ultra vires and thereby the Petitioner's rights have been affected. The 1st Respondent being the original owner of the land, has not shown any interest in preventing it being acquired by the State.

Having considered the above circumstances, I reject the preliminary objections of the Respondent that the Petitioner has no right to maintain the instant application when he has no title whatsoever to the land and the 1st Respondent who was the legal owner itself did not resist the acquisition.

In contrast to the preliminary objections raised by the Respondents, this Court should be satisfied that the Petitioner has submitted a prima facie case which warrants this Court to issue formal notice of this application on the Respondents.

In view of the arguments raised by the Petitioner, it appears that a question arises whether the acquisition of the subject land is obviously necessary in view of fulfilling the public purpose upon which the land has been acquired. Moreover, based on the contention of the Petitioner, a necessity arises to examine whether the 2nd to 5th Respondents have exercised their duties by giving effect to the requirement of entertaining objections of the aggrieved parties, as embodied in Section 4(3) of the Land Acquisition Act.

The plea of mala fides also, in my view, should be taken into consideration when examining the actual necessity for the intended public purpose. In *Seneviratne and others vs. Urban Council of Kegalla and others (2001) 3 Sri. L.R. 105 (at p.110)*, J. A. N. De Silva J. P/CA (as he then was) has observed that the question of malice and the absence of a public purpose are linked.

In the circumstances, I am of the view that this Court should fully consider the facts and circumstances of this application on Affidavits at a final hearing after issuing formal notices on the Respondents. For the reasons set out above and based on the tests applicable in issuing interim reliefs, I am of the view that this application would be rendered nugatory unless the dispossession of the Petitioner is temporarily stayed. Therefore, the 2nd to 5th Respondents are directed not to take steps in order to take the possession of the subject land in pursuance to the letter dated 26.04.2022, marked 'P17', until the date of the argument of this case.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal