

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

In the matter of an Application for a Writ of *Certiorari* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0021/2014

1. Kaalanchiyalage Lily Nona, of
54, Winston Wickremasinghe Mawatha,
Kegalle.
2. HalloluRalalage Edwin Ranasinghe,
43, Dutugamunu Mawatha,
Kandy.
3. Senevirathnelage Yamuna Kanthi
Siriwardena
02/186, Kalugalle Mawatha,
Kegalle.
4. Agampodige Gunewardena
No. G 13, Bulugahadeniya,
Hettimulla.
- 5a. Manjula Priyantha Kumara
A 35, Beregala Road, Kegalle.
- 5b. Wasantha Udaya Kumara
A 35, Beregala Road, Kegalle.
- 5c. Aruna Pradeep Kumara,
A 35, Beregala Road, Kegalle.
- 6a. Nilanga Antoinette Claudius
Kurukulasooriya,
86/287, Bandaranayake Mawatha, Kegalle.
- 6b. Priyanga Dilano Angelo Kurukulasooriya.
86/287, Bandaranayake Mawatha, Kegalle.

6c. Cornelius ChamindaKurukulasooriya,
86/287, Bandaranayake Mawatha, Kegalle.

7. Wahumpurayalage Manel Chandralatha,
1/188, Kalugalle Mawatha, Kegalle.

Petitioners

1. Janaka Bandara Tennekoon,
Minister of Lands,
Ministry of Lands, "Mihikatha Medura",
1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

1a. Hon. John Amaratunga,
Minister of Lands,
Ministry of Lands, "Mihikatha Medura",
1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

1b. Hon. Gayantha Karunathileke,
Minister of Lands & Parliamentary Affairs,
Ministry of Lands, "Mihikatha Medura",
1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

1c. S.M. Chandrasena,
Minister of Lands & Parliamentary Affairs,
Ministry of Lands, "Mihikatha Medura",
1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

1d. Harin Fernando,
Minister of Lands & Parliamentary Affairs,
Ministry of Lands, "Mihikatha Medura",
1200/6, Rajamalwatte Road,
Sri Jayawardenapura Kotte.

2. H.T.R. Nalika Piyasena,
Divisional Secretary/ Land Acquiring Officer
of Divisional Secretariat,
Kegalle.

- 2a. N. A. D. T. Bandara,
Divisional Secretary/ Land Acquiring Officer
of Divisional Secretariat,
Kegalle.
- 3a. W.M Abeywickrema Warnasuriya,
The District Secretary,
Office of the District Secretary,
Kegalle.
- 3b. L.J.M.G.C. Bandara,
The District Secretary,
Office of the District Secretary,
Kegalle.
4. Dr. Jagath Balasooriya,
183, Bandaranayake Mawatha,
Kegalle.
5. Ranjith Siyambalapitiya,
Wendala, Kahatagastenna,
Ruwanwella.
- 6b. Rajamanthri Gedera Shaminda Niroshan,
Secretary of Kegalle Urban Council,
Office of the Urban Council,
Kegalle.
7. Tharaka Balasooriya.
183, Bandaranayake Mawatha,
Kegalle.
8. Mahipala Herath,
Chief Minister of Sabaragamuwa Province,
Ministry of Chief Minister of Sabaragamuwa
Province,
Rathnapura New Town,
Rathnapura.
9. Hon. Patali Champika Ranawaka,
Minister of Urban Development,
Land Reclamation & Development,
National Planning Ministry of
Urban Development, National Planning
Sethsiripaya,

Battaramulla.

9b. Hon. Rauff Hakeem,
Minister of Urban Planning & Water Supply
and Drainage
Sethsiripaya,
Battaramulla.

9c. Gamini Lokuge,
Minister of Urban Development & Water
Supply,
No. 35, 'Lakdiya Medura',
New Parliament Road,
Pelawatte,
Battaramulla.

9d. Prasanna Ranatunga,
Ministry of Urban Development & Housing,
8th, 17th & 18th Floors,
'SUHURUPAYA', Subhathipura Road,
Battaramulla.

10. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: Dr. Sunil Cooray with Ms. Sudarshani Cooray for the
Petitioners.
Ms. Sabrina Ahmed, S.C. for the 2A, 3C, and 10th
Respondents:

Written Submissions on: 21.11.2022 by the Petitioners
04.10.2022 by the Respondents

Decided on: 03.02.2023

MOHAMMED LAFFAR, J.

When this matter was taken up for argument on 29-09-2022, the learned State Counsel appearing for the 1st, 2nd, 3rd and 10th Respondents raised a preliminary legal objection as to the maintainability of this Application, stating that the Court of Appeal has no jurisdiction to hear and determine the matter, and whereas, in terms of the provisions of the Urban Development Projects (Special Provisions) Act No. 2 of 1980, the jurisdiction is vested with the Supreme Court. This Order is pertaining to the said preliminary objection.

Undisputedly, the Lots No. 1, 2, 3, 4 and 5 in Plan No. 2289 dated 29-07-2013 made by P.M. Sunil, Licensed Surveyor in the extent of 7A-0R-18.95P, the land called Radagolahedladieniya Kumbura, Radagolahela and Galahitiyawa Kumbura in the Village of Golahela, Ward No. 9, in Urban Council limit of Kegalle within the Divisional Secretariat Division of Kegalle, in the District of Kegalle, Sabragamuwa Province is the land in dispute.

On 13-09-2013, under Section 2 of the Land Acquisition Act, No. 9 of 1950 (as amended), the 2nd Respondent issued Notices on the Petitioners which are marked as P11. It is averred in the Petition that the P11 is bad in law as the Respondents had already identified a separate land for acquisition.

Thereafter, under Section 38 (a) of the said Act, the 2nd Respondent issued Notices on the Petitioners, directing them to hand over possession of the subject matter to the 2nd Respondent. The said Notices have been marked as P13 and the Government Gazette bearing No. 1843/20 dated 31-12-2013 published under Section 38 (a) is produced as P14. The Respondents are challenging P13 and P14 as well.

It is pertinent to be noted that His Excellency the President of the Democratic Socialist Republic of Sri Lanka, under Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980, made an Order by the Gazette bearing No. 1834/24 dated 30-10-2013 marked as Y, declaring that the land in dispute is urgently required for the purpose of Development of Kegalle Urban Park, which reads thus;

“By virtue of the powers vested in me under Section 2 of the Urban Development Projects (Special Provisions) Act No. 2 of 1980, I, Mahinda Rajapakse, President of the Democratic Socialist Republic of Sri Lanka and the Minister in charge of the subject Urban Development, being of opinion that the land specified in the schedule hereto is urgently required for the purpose of Development of Kegalle Urban Park under the Kegalle Town Development Project do by this Order, declare that the said land is required for such purpose.”

It is significant to note that, in terms of Section 4 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980, the Writ jurisdiction vested in the Court of Appeal under Article 140 of the Constitution shall be exercised only by the Supreme Court in respect of any lands towards an Order under Section 2 of the said Act has been made by the President. Section 4 is re-produced as follows;

“(1) The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall, in relation to any particular land or any land in any area in respect of which an Order under or purporting to be under Section 2 of this Act has been made, be exercised by the Supreme Court and not by the Court of Appeal.

(2) Every application invoking the Jurisdiction referred to in subSection (1) shall be made within one month of the date of commission of the act in respect of which or in relation to which such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.”

In this regard, I refer to the observation made by the Court of Appeal in the case of **Abeyratne Vs. Jayaratne, Minister of Lands**¹, reads thus;

“The jurisdiction conferred on the Court of Appeal by Article 140 is exercised by the Supreme Court and not by the Court of Appeal, in relation to any particular land or any land in any area in respect of which an order under or purporting to be under s. 2 of the U.D.A. Special Provisions Act has been made by H.E. The President.”

The learned Counsel for the Petitioners submits that the Petitioners were only aware of the Gazette marked as Y during the argument of this Writ Application. It is to be noted that the Government Gazzete Y is a public

¹ 2002-2SLR-p355

document of which all must take cognizance and the Court must take judicial Notice of the same, and therefore, the foregoing contention of the learned Counsel for the Petitioners is devoid of merits. Moreover, I decline to accept the submission of the learned Counsel for the Petitioners that the said Gazette notification is invalid for the reason that the same has not been challenged or declared null and void by the Court.

For the above reasons, I hold that this Court has no jurisdiction to hear and determine this matter in terms of the provisions of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980. It is the view of this Court that Section 2 of the U.D.A. Act, holds similar meaning to Section 2 of the Urban Development Projects (Special Provisions) Act, No. 2 of 1980. Thus, the preliminary legal objection raised by the learned State Counsel is upheld, and accordingly, the Application is dismissed. I make no Order as to the costs of this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL