

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

In the matter of an Application for an Order/Mandate in the nature of a Writs of Certiorari under in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Horana Plantations PLC,  
400, Deans Road,  
P.O.Box 2042,  
Colombo 10.

**PETITIONER**

**CA No. CA/Writ/02/2019**

v.

1. Disna Jayasinhe,  
Divisional Secretary,  
Divisional Secretariat Office,  
Madurawala.
- 1A. B.A. Sithara Udayangani,  
Divisional Secretary,  
Divisional Secretariat Office,  
Madurawala.
2. Ranjith Madduma Bandara,  
Hon. Minister of Public Administration and  
Management,  
Independence Square,  
Colombo 07.

- 2A. Janaka Bandara Thennakoon,  
Hon. Minister of Public Service, Provincial,  
Councils and Local Government,  
Ministry of Public Services, Provincial  
Councils and Local Government,  
Independence Square,  
Colombo 07.
- 2B. Dinesh Gunawardena,  
Hon. Minister of Public Administration,  
Home Affairs, Provincial Councils and  
Local Government,  
Ministry of Public Administration, Home  
Affairs,  
Provincial Councils and Local Government,  
Independence Square,  
Colombo 07.
3. Gayantha Karunathilake,  
Hon. Minister of Lands and Parliamentary  
Reforms,  
“Mihikatha Madura”, Land Secretariat,  
No. 1200/6,  
Rajamalwatte Road,  
Sri Jayawardenapura Kotte.
- 3A. S.M. Chandrasena,  
Hon. Minister of Lands,  
‘Mihikatha Medura’, Land Secretariat,  
No. 1200/6,  
Rajamalwatte Road,  
Battaramulla.
- 3B. Harin Fernando,  
Hon. Minister of Tourism and Lands,  
‘Mihikatha Medura’, Land Secretariat,  
No. 1200/6, Rajamalwatta Road,  
Battaramulla.
4. Naveen Dissanayake

Hon. Minister of Plantation Industries,  
B 240, Sri Jayawardenepur Kotte.

4A. Ramesh Pathirana

Hon. Minister of Plantation Industries and  
Export Agriculture, (Presently known as  
“Hon. Minister of Plantation Industries)  
Ministry of Plantation Industries and Export  
Agriculture, (Presently known as “Ministry  
of Plantation Industries)  
11<sup>th</sup> Floor,  
Sethsiripaya, 2<sup>nd</sup> Stage,  
Battaramulla.

5. Sri Lanka State Plantations Corporation,  
No.11, Duke Street,  
Colombo 01.

And now

No. 21, Meeraniya Street,  
Colombo 12.

6. Land Reform Commission (LRC),  
C 82, Hector Kobbekaduwa Mawatha,  
Gregory’s Road,  
Colombo 07.

And now

No.475, Kaduwela Road,  
Battaramulla.

- 6A. Hon. Attorney General,  
Attorney General’s Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE** : M. Sampath K. B. Wijeratne J. &  
Wickum A. Kaluarachchi J.

**COUNSEL** : Harsha Soza, P.C. with Anuruddha  
Dharmarathne for the Petitioner.

Suranga Wimalasena, DSG with Medhaka  
Fernando, SC for 1<sup>st</sup> – 4<sup>th</sup> and 7<sup>th</sup>  
Respondents.

Gihan Liyanage for the 6<sup>th</sup> Respondent.

**ARGUED ON** : 10.07.2023

**DECIDED ON** : 31.08.2023

**M. Sampath K. B. Wijeratne J.**

**Introduction**

The Petitioner instituted these proceedings against the 1<sup>st</sup> to 7<sup>th</sup> Respondents seeking *inter-alia*, a writ of *certiorari* quashing the order published in the Gazette (Extraordinary) No. 2086/20 dated 30<sup>th</sup> August 2018 issued by the 3<sup>rd</sup> Respondent under Proviso (a) of Section 38 of the Land Acquisition Act (hereinafter referred to as ‘the Act’) marked ‘P 20’.

The 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents filed a joint statement of objections seeking to dismiss the Petitioner’s application. The 6<sup>th</sup> Respondent also filed a statement of objections seeking to dismiss the Petition. The Petitioner filed a counter affidavit in reply to the objections filed by the 1<sup>st</sup> to 4<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Respondents.

After the pleadings were closed, the matter was fixed for argument. The learned Counsel for the Petitioner, the learned Deputy Solicitor General for the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents, and the learned Counsel for the 6<sup>th</sup> Respondent made their submissions.

The Petitioner, Horana Plantations PLC, is a public limited company incorporated under and in terms of the Companies Act No. 7 of 2007. The four portions of land sought to be acquired by the State are located in the Nagahakandawatte Division of the Neuchatel estate. Neuchatel estate was previously owned by the 6<sup>th</sup> Respondent Land Reform Commission (hereinafter referred to as the 'LRC') and by virtue of an order published in the Government Extraordinary Gazette No. 815/10 dated 21<sup>st</sup> April 1994 ('P4') was vested in the 5<sup>th</sup> Respondent Sri Lanka State Plantation Corporation (hereinafter referred to as the 'SLSPC'). Thereby the SLSPC became the owner of the Neuchatel estate.

According to the Petitioner, before the Petitioner was re-registered as a Public Limited Company (PLC) under and in terms of Companies Act No. 7 of 2007, the Petitioner was a Public Company under the name of Horana Plantations Limited, incorporated under and in terms of the provisions of the Conversion of Public Corporations or Government Owned Business Undertakings into the Public Companies Act No. 23 of 1987. The Petitioner stated that the order made under Section 2 of the Act No. 23 of 1987 has been duly published in the Government Extraordinary Gazette No. 720/2 dated 22<sup>nd</sup> June 1992 ('P 3'). The Petitioner contended that by virtue of the aforementioned Order published in the Gazette, the Petitioner has been *inter-alia* vested with all rights, powers, privileges, and interest in respect of the properties owned by the 5<sup>th</sup> Respondent SLSPC from the date of the Gazette notification 'P 3'. Subsequently, the Petitioner has entered into the lease agreement No. 295 dated 2<sup>nd</sup> March 1995 ('P 5') with the SLSPC by which the Neuchatel estate has been leased to the Petitioner by the SLSPC for 99 years commencing from June 1992. In addition, the SLSPC has given the Power of Attorney No. 296 dated 2<sup>nd</sup> March 1995 ('P 6'). Thereafter, the lease 'P 5' has been amended by Amendment of Lease No. 1527 dated 16<sup>th</sup> August 1995 ('P 5(a)').

### **Factual background**

On or about 18<sup>th</sup> July 2016, the Petitioner received a notice under Section 2 of the Act ('P 9a' and 'P 9b') that a portion of 2.2705 Hectares from and out of Neuchatel estate as per advanced tracing No. KA/MDP/2016/416 ('P 8') is intended to be acquired for village expansion. Thereafter, on or about 6<sup>th</sup> October 2016, the Petitioner received the notice under Section 4 of the Act ('P11'). The Petitioner has convened its written objections to the Secretary to the Ministry of Lands ('P 12'). Thereafter, an inquiry under Section 4 of the

Act was held on or about 6<sup>th</sup> December 2016 ('P 14') and the Petitioner submitted its case before the Board of Inquiry. According to the Petitioner, despite the Petitioner's objections, a declaration under Section 5 of the Act was published in the Government Gazette Extraordinary No. 2027/8 dated 11<sup>th</sup> July 2017 which proclaimed that the subject matter of this application is needed for a public purpose and will be acquired under the Act ('P 15'). The Petitioner tendered to the Court a copy of an advanced tracing along with the tenement list that is said to depict the land sought to be acquired ('P 17' and 'P 18'). The 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents contended that the declaration under Section 5 of the Act ('P 15') submitted by the Petitioner is not in respect of the subject land. In fact, 'P 15' is in respect of Lot No. 1 of the advanced tracing No. KA/MDR/2014/564 ('P 17') and the subject matter of this application is Lots No. 1, 2, 3, 4, and a portion of Lot 5 of advanced tracing No. KA/MDR/2016/416 ('P 8') which was subsequently amended as Lots A, B, C, and E of advanced tracing No. KA/MAD/2018/10 ('P 1(a)'). Although the names of both lands are identical, 'P 15' is with respect to a land in Kananwila village and the subject land is in Werawatta village. The boundaries and extent are also materially different. The two lands are distinct even with the naked eye. Accordingly, it is evident that the declaration under Section 5 of the Act contained in Gazette notification 'P 15' and the advanced tracing 'P 17' and 'p 18' are not relevant to the subject matter of the instant application.

Thereafter, on or about 20<sup>th</sup> September 2018, the Petitioner received a letter ('P 19') from the 1<sup>st</sup> Respondent stating that due to floods inundating the area, Lot 'F' of advanced tracing No. KA/MAD/2018/2010 dated 24<sup>th</sup> April 2018 has been abandoned from acquisition under Section 50 of the Act. The 1<sup>st</sup> to 4<sup>th</sup>, and 7<sup>th</sup> Respondents admitted that a portion of the land has to be abandoned from acquisition due to floods inundating it. Accordingly, advanced tracing No. KA/MAD/2018/10 was prepared to demarcate the said portion. Lot 'F' of advanced tracing No. KA/MAD/2018/10 is the abandoned portion and subsequently, said Lot 'F' was released from acquisition.

Thereafter, on or about 19<sup>th</sup> November 2018, an Order under Section 38 A of the Act was published by the 3<sup>rd</sup> Respondent in the Government Extraordinary Gazette No. 2086/20 dated 30<sup>th</sup> August 2018 ('P 20') to acquire Lots A, B, C, and E of advanced tracing No. KA/MAD/2018/10 dated 24<sup>th</sup> April 2018 from and out of Nagahakandawatte Division of the Neuchatel estate. Consequently,

the Petitioner has received the letter dated 15<sup>th</sup> November 2018 ('P 21'/'R 1') from the 1<sup>st</sup> Respondent requiring the Petitioner to hand over possession of the aforementioned lands and the Petitioner has requested one-month time to negotiate with the 1<sup>st</sup> Respondent ('P 22'). However, no provisions are made under Section 38 or 38 A of the Act to entertain any objections or to inquire into such objections received after the publication of the Gazette notification under Section 38. Any objections with regard to an acquisition could be entertained only as provided in Section 4 of the Act. Nevertheless, the 1<sup>st</sup> Respondent has considered the matters raised by the Petitioner and communicated her observations to the Petitioner by letter dated 14<sup>th</sup> December 2018 marked as 'R 4'.

Thereafter, the Respondents have taken steps to take over possession of the land through the Magistrate's Court<sup>1</sup>, under Section 42 (2) of the Act which provides to take possession of any land where any authorised officer is unable to take possession or apprehends that he will be unable to take possession of that land because of any obstruction or resistance which has been or is likely to be offered.

The Petitioner stated that the area acquired by the State has been earmarked for development as a rubber plantation. The Petitioner's position that the area in issue is subject to inundation contradicts this statement. In reply, the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents stated that the Petitioner company has not established any plantation or engaged in any development activity on the subject land as of the date of the Gazette notification 'P 20'. Furthermore, the representative of the Petitioner himself admitted in his statement made during the inquiry under Section 4 of the Act that the land sought to be acquired is a bare and unutilized land that is not inhabited either ('R 1'). The foregoing facts indicate that the land in issue was abandoned land.

The Petitioner also pleaded that the predecessor of 1<sup>st</sup> to 3<sup>rd</sup> Respondents had earlier acquired portions of valuable lands from their property. In proof of the above facts, the Petitioner submitted documents marked 'P 24(a)' to 'P 24(j)' and 'P 22'. It was further submitted that most of those lands have not been utilized and are presently lying idle.

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<sup>1</sup> 'R 4', 'R 4(a)', 'R 4(b)', 'R 5', 'R 6' and 'R 7' tendered along with the affidavit of the 1<sup>st</sup> Respondent dated 12<sup>th</sup> September 2019.

Accordingly, the Petitioner submitted that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents could efficiently utilize the alternative lands for the proposed project.

In light of the aforementioned facts, the Petitioner submitted that the steps taken by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents to acquire the four Lots of Nagahakandawatte Division of Neuchatel estate are *inter-alia*, illegal, unreasonable, and *ultra-vires* for the reasons;

- i. There is no grave urgency to acquire the aforesaid lands.
- ii. The 1<sup>st</sup> to 3<sup>rd</sup> Respondents abruptly switched to Section 38A, without following the standard procedure under the Land Acquisition Act.
- iii. The land acquired is not suitable for the construction of houses or other buildings.
- iv. There are several other idle lands in the Horana Divisional Secretariat area suitable for the purpose and therefore, acquiring lands from Nagahakandawatte Division of Neuchatel estate is tainted with *mala fidei* and malice.
- v. There are abandoned or redundant areas of the lands previously acquired by the State that the Respondents could easily use for their project.

The 6<sup>th</sup> Respondent, in its statement of objections, submitted that the Petitioner has suppressed material facts and also has failed to establish a legal right. Although the 6<sup>th</sup> Respondent alleged that the Petitioner suppressed material facts, the claim was not substantiated.

According to the 6<sup>th</sup> Respondent, the 6<sup>th</sup> Respondent is the absolute owner of the entirety of the Neuchatel estate which includes the subject matter of the instant application, as evidenced by the statutory declaration published in the Gazette notification No. 2017/27 dated 3<sup>rd</sup> May 2017 ('P 7' / '6 R2'). The learned Counsel for the 6<sup>th</sup> Respondent emphasized the same position in his argument. According to the Petitioner, the Order for revesting as per 'P 7' is only in respect of the land called and known as Horahena Division of Neuchatel estate, part of the land vested in the SLSPC by the order published in the Extraordinary Gazette marked ('P 4'). Upon careful examination of 'P7' / '6 R2', I am satisfied that out of the entirety of the Neuchatel estate described in the first schedule, only the portions specified in the second



schedule are re-vested in the 6<sup>th</sup> Respondent. Therefore, the above submission of the 6<sup>th</sup> Respondent is devoid of merit.

It was also submitted that the Petition is contrary to Section 3 (2) of the Land Reform Law, as amended. However, the subject land was initially owned by the 6<sup>th</sup> Respondent LRC and was vested in SLSPC by virtue of the Order under Section 27 A of the Land Reform Law, published in the Gazette notification 'P 4'. Therefore, Section 3 (2) of the LRC Act has no relevance to the instant application.

Further, the 6<sup>th</sup> Respondent submitted that facts in this matter are in dispute and therefore, the Petitioner is not entitled to invoke the writ jurisdiction of this Court. However, based on the analysis in this judgment, I am of the view that the material facts are not in dispute.

The 6<sup>th</sup> Respondent also stated that;

- i. The Petitioner is guilty of laches.
- ii. The schedule to the Gazette notification 'P 3' upon which Horana Plantations PLC took over the functions of SLSPC includes only movable properties of the Neuchatel estate.
- iii. The lease indenture marked 'P 5' has been executed contrary to Section 42 (H) (1) (b) of Land Reform Law No. 1 of 1972, as amended.
- iv. The 5<sup>th</sup> Respondent has no legitimate authority to execute the power of Attorney ('P 6') in terms of Section 5 (f) of the Sri Lanka State Plantation Corporation Act No. 4 of 1958, as amended.

The 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondent submitted in their statement of objections that the Petitioner is guilty of suppression and misrepresentation of material facts and has failed to act with *uberrimae fides*. Further;

- i. The relief sought in the Petition is futile
- ii. The Petitioner has waived its right to challenge the document 'P 20' and therefore, is guilty of acquiescence.

Further answering the allegations of the Petitioner, the 1<sup>st</sup> to 4<sup>th</sup>, and 7<sup>th</sup> Respondents stated in their statement of objections that 7.9 Hectares of land acquired from Nagahakandawatte Division of Neuchatel estate in the year 2007 had been subdivided into 180 plots and distributed by the 1<sup>st</sup> Respondent.

Further, the 12 Acres of land acquired from the same division in the year 2017 had also been subdivided into 112 plots and distributed among villages under a village expansion project. In the extent of land acquired on the Gazette notification marked 'P 24H', on the 3<sup>rd</sup> May 2017, a foundation stone for the industrial and technical super zone had been laid. Accordingly, it was submitted that all the lands acquired by the State from the different divisions of the Neuchatel estate had been utilized effectively and effectually.

### **Analysis**

Admittedly, the subject matter of the instant application is Lots No. 1, 2, 3, 4, and a portion of Lot 5 of advanced tracing No. KA/MDR/2016/416 ('P 8'). Subsequently, the aforementioned advanced tracing was amended by advanced tracing No. KA/MAD/2018/10 excluding part of Lot No. 5 which was subject to inundation. Consequently, the subject matter of this application consists of Lots A, B, C, and E of advanced tracing No. KA/MAD/2018/10.

The 1<sup>st</sup> Respondent issued a notice in terms of Section 2 of the Act in respect of the subject matter on the 18<sup>th</sup> July 2016 ('P 9a' and 'P 9b'). According to 'P9a' and 'P 9b', the subject land is Lot No. 1 to 5 of advanced tracing No.KA/MDR/2016/416.

Thereafter, the 1<sup>st</sup> Respondent issued a notice in terms of Section 4 of the Act on the 3<sup>rd</sup> October 2016 ('P 11') and was communicated to the Petitioner company ('P 10'). The subject land mentioned in the notice issued under Section 4 is also the same land referred to in the aforementioned notice issued under Section 2 of the Act.

The Petitioner submitted its objections to the Secretary of the Ministry of Lands. Consequently, the 1<sup>st</sup> Respondent was directed to inquire into the objections<sup>2</sup>.

An inquiry was conducted by the 1st Respondent under Section 4 of the Act with regard to Lots 1, 2, 3, 4, and 5 of advanced tracing No.KA/MDR/2016/416 ('P 8') on the 9<sup>th</sup> December 2016 ('R 1'). The representative of the Petitioner recorded objections against the acquisition in his statement made at the inquiry ('R 1'). The Petitioner contended that in spite of the objections raised by the Petitioner, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents proceeded with the acquisition of the land without offering a hearing to the

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<sup>2</sup> Vide 'P 12' and 'P 14'.

Petitioner and alleged that the conduct of the 1<sup>st</sup> to 3<sup>rd</sup> Respondents amounts to a violation of principles of natural justice and legitimate expectation. However, in the statement made by the representative of the Petitioner ('R 1'), all that is requested is to examine further whether the acquisition of the land has had a negative effect on the Petitioner. Accordingly, the representative of the Petitioner has not expressly asked for a further hearing as stated in paragraph 34 (i) of the Petition and also as it was submitted by the learned President's Counsel for the Petitioner at the argument. Furthermore, as it is required under Section 4 of the Act, the 1<sup>st</sup> Respondent has allowed the Petitioner to tender objections, offered an opportunity to be heard in support thereof, and considered the objections made by the Petitioner. Furthermore, as I have already stated above in this judgement<sup>3</sup> not only before, even after the publication of Notice under Section 38 A of the Act, the 1<sup>st</sup> Respondent has reconsidered the matters raised by the Petitioner and communicated her observations to the Petitioner by letter marked as 'R 4'. Therefore, in any way, one cannot argue that the Respondents have acted in violation of the principles of natural justice.

Thereafter, as required by Section 4 (4) of the Act, on behalf of the Secretary to the Ministry of Lands, the Additional Secretary (Administration) made his recommendations regarding the objections to the Additional Secretary (Lands), through the Director (Land Acquisition), in his letter dated 14<sup>th</sup> December 2016, (attachment to 'R 1').

Subsequently, the Deputy Director of District Land Use Planning reported to the Secretary to the Ministry of Lands in his letter of March 2017 ('R 2') that a portion of the land sought to be acquired by the State in terms of advanced tracing No. KA/MDR/2016/416 was prone to inundation by flooding and therefore, not suitable for settlement of persons. Consequently, a portion of the land sought to be acquired was abandoned in terms of Section 50 of the Act. As such advanced tracing No. KA/MAD/2018/10 ('P 1(a)') was prepared on 24<sup>th</sup> April 2018 and the abandoned portion of land was shown as Lot 'F' of the same. Accordingly, the portions to be acquired are Lot A, B, C, and E of advanced tracing No. KA/MAD/2018/10.

The 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents submitted that there was an urgent necessity to acquire the land since those allotments of land were to be distributed to

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<sup>3</sup> At p. 7.

low-income families who had been adversely affected by floods and landslides in the area. In proof of the above fact, the 1<sup>st</sup> to 4<sup>th</sup>, and 7<sup>th</sup> Respondents submitted the letter of the 1<sup>st</sup> Respondent dated 15<sup>th</sup> May 2018 marked as 'R 5'. In the said letter, the 1<sup>st</sup> Respondent states that the allotments of land were to be distributed to the persons affected by floods and landslides. Accordingly, this Court is satisfied that there was an urgency in acquiring the land to accommodate the persons affected by floods and landslides. Section 38 A of the Act empowers the Minister to make an Order to take over immediate possession of the land on the ground of urgency. According to the proviso to Section 38, such an Order could be made only at any time after a Notice under Section 2 or a Notice under Section 4 is exhibited. In the instant application, as I have already stated above, both the Section 2 Notice and the Section 4 Notice had been exhibited. Accordingly, the Minister acting under Section 38 A of the Act has published Notice 'P 20' in the Gazette notification No. 2086/20 dated 30th August 2018.

Consequently, the 1<sup>st</sup> Respondent proceeded to take over possession of the land acquired, through the Magistrate's Court<sup>4</sup>.

Another ground alleged by the Petitioner in support of its application is that the 1<sup>st</sup> to 3<sup>rd</sup> Respondents abruptly switched to Section 38 A, without following the standard procedure under Land Acquisition Act. However, admittedly, the 1<sup>st</sup> to 3<sup>rd</sup> Respondents have followed the procedure set out in Sections 2 and 4 of the Act. Proviso (a) of Section 38 provides that at any time after a notice under Section 2 is exhibited or any time after a notice under Section 4 is exhibited, where it becomes necessary to take immediate possession of any land on the ground of urgency, the Minister may make an order of possession under Section 38 A of the Act. Therefore, in a case where there is an urgency, the Minister need not follow the standard procedure and is statutorily empowered to make an Order under Section 38 A of the Act. As I have stated above in this judgment, the Respondents have satisfied this Court that there was an urgency of resettling the persons affected by floods and landslides.

The Petitioner has made a point that the land acquired is not suitable for the construction of houses or other buildings. However, other than the bear statement of the Respondents, no other evidence was produced by Petitioner

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<sup>4</sup> *Supra* note 1.

to substantiate this position. It is true that according to the facts submitted to this Court by the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents themselves, a portion of the land originally sought to be acquired for residential purposes was subject to inundation. However, after the publication of Section 2 and Section 4 Notices and preparation of advanced tracing No. KA/MDR/2016/416, the subsequent advanced tracing No. KA/MAD/2018/10 was made excluding the area subject to inundation. Hence, it is clear that there has been a portion that is subject to inundation and it has been identified and excluded. Therefore, the Petitioner's argument mentioned above is without merit.

Another submission made by the Petitioner is that there are several other idle lands on the Horana Divisional Secretariat area suitable for the purpose and therefore, acquiring lands from Nagahakandawatte Division of Neuchatel estate is tainted with *mala fidei* and malice. However, the Petitioner has failed to substantiate the above position by naming any such land that could have been acquired by the State for the required purpose. Therefore, the Petitioner's submission above is not supported by sufficient material.

The Petitioner also submitted that there are abandoned or redundant areas of lands previously acquired by the State from the Nagahakandawatte Division of Neuchatel estate that the Respondents could use for the required purpose. The Petitioner submitted to the Court a list of portions of lands that were previously acquired by the Respondents ('P 23').

Further, the Petitioner has written to the first Respondent in the letter marked 'P 22' that in the year 1983 an extent of 37 A and in the year 1999, an extent of 64 A was acquired from Nagahakandawatte Division of Neuchatel estate. In reply, the 1<sup>st</sup> Respondent informed the Petitioner by letter marked 'R 4' dated 14<sup>th</sup> December 2018 that there was no documentary proof available to substantiate the Petitioner's above position and asked for proof.

As I have already analyzed above in this judgment<sup>5</sup>, the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents established to the satisfaction of the Court that the areas already acquired had been utilized for those purposes that the lands were acquired.

I will also take a look at the incidental arguments presented by the Respondents next.

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<sup>5</sup> At page 10.

The learned Deputy Solicitor General for the 1<sup>st</sup> to 4<sup>th</sup> and 7<sup>th</sup> Respondents advanced an argument that the Petitioner has no *locus standi* to maintain this application. Admittedly, the Petitioner is a leaseholder for a period of fifty-three years from the date of the lease ‘P 5’.

The Oxford Dictionary of Law defines the English meaning of the Latin term *locus standi* – ‘a place to stand’

The Black’s Law Dictionary defines it as – ‘the right to bring an action or to be heard in a given forum’.

In the case of *Sonali Fernando v. A. G.*<sup>6</sup> His Lordship A. W. A Salam J, stated that ‘... *In law, locus standi is generally understood to be right to bring an action, to be heard in Court, or to address the Court on a matter before it...*’

In the case of *Premadasa v. Wijeyewardena and others*<sup>7</sup> stated 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...*’

In the case of *A.R. Perera and others v. Central Freight Bureau of Sri Lanka and another*<sup>8</sup> stated that ‘*The Court would not listen, of course to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done.*’

In light of the foregoing, since the Petitioner’s lease holding rights are affected by the acquisition, I am of the view that the Petitioner has *locus standi* to have maintained this application.

Another argument advanced by the Respondents is that the Petitioner is guilty of laches. The Extraordinary Gazette notification ‘P 20’ was published on the 30<sup>th</sup> August 2018 and the Petitioner instituted these proceedings on the 4<sup>th</sup> January 2019, within four months and five days. Therefore, I am of the view that there is a considerable unexplained delay in instituting these proceedings seeking to quash the Gazette notification ‘P 20’.

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<sup>6</sup> CA (PHC) APN 144/07

<sup>7</sup> [1991] 1 Sri L. R. 333 at 343.

<sup>8</sup> [2006] 1 Sri L. R. 83, the dictum of lord Denning in *R. v. Paddington Valuation Office* (1996) 1 QB 380 at 401.

The 6<sup>th</sup> Respondent also submitted that the SLSPC does not have any legitimate authority to execute the Power of Attorney marked 'P 6' in terms of Section 5 (f) of the Sri Lanka Estate Plantation Corporation Act No. 4 of 1958 which provides that the objects of the corporation shall be to manage administer and supervise business undertakings vested in, transferred or alienated to the Corporation by the Government or any other person or acquired by the corporation<sup>9</sup>. However, subsequent to the enactment of SLSPC Act No. 4 of 1958, as amended, the applicable law had been changed by the enactment of Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987 and therefore, in my view, the execution of the Power of Attorney marked 'P 6' is legitimate and is executed as agreed upon Clause 3 (f) of the indenture of lease marked 'P 5'.

The penultimate argument of the 6<sup>th</sup> Respondent is that in terms of Gazette notification 'P 3', only the movable properties of the Neuchatel estate were vested with the SLSPC, which was previously owned by the LRC. However, in view of Section 3 of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1988, by operation of law movable as well as immovable properties are vested with the SLSPC, irrespective of the Gazette notification 'P 3'.

The final argument of the 6<sup>th</sup> Respondent is that the indenture of lease marked 'P 5' has been executed contrary to Section 42 H (1)(v)<sup>10</sup> of the Land Reform Law No.1 of 1972, as amended which provides that any estate land vested in the Commission may be used for the purpose of alienation by way of sale in individual allotments to persons for the construction of residential houses. As I have already stated above in this judgment, by virtue of the Government Gazette marked 'P 3', Nagahakandawatte Division of Neuchatel estate was vested with the SLSPC. Thereafter, in terms of Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1988, once a company is established to carry on a corporation or business undertaking vested in the Government and upon the publication of an Order under subsection 2 in the Gazette, all properties movable or immovable shall vest absolutely in the Corporation established by that incorporation Order. Consequently, the Government Gazette notification

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<sup>9</sup> Paragraph 14 of the 6<sup>th</sup> Respondent's objections.

<sup>10</sup> Paragraph 12 of the objection of the 6<sup>th</sup> Respondent.

'P 3' was published. Thereafter, the Petitioner entered into the lease agreement 'P 5' with the SLSPC in respect of Neuchatel estate. Therefore, in my view, irrespective of Section 42 H (1) (v) of the Land Reform Law No. 1 of 1972, as amended, by operation of law the lease 'P 5' becomes valid in law.

Based on the analysis above, it is my considered view that the Petitioner's application lacks merit.

### **Conclusion**

In light of the above discussion, I am clearly of the view that the Petitioner has failed to make a case that necessitates the intervention of this Court by establishing procedural impropriety illegality or that the decision is tainted with *mala fidei* and/or malice as it was alleged. In the result, the impugned Order published in the Gazette (Extraordinary) No. 2086/20 dated 30<sup>th</sup> August 2018 issued by the 3<sup>rd</sup> Respondent under Proviso (a) of Section 38 of the Act marked 'P 20' stands valid in law.

Consequently, I would hold that the application of the Petitioner must fail and accordingly the application is dismissed subject to a cost fixed at Rs. 30,000/-

**JUDGE OF THE COURT OF APPEAL**

**Wickum A. Kaluarachchi J.**

I Agree.

**JUDGE OF THE COURT OF APPEAL**