

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, Prohibition and Mandamus under and in terms of Article 140 of the Constitution.

Repcon Container Depot (Private) Limited
Unit 73, 6th Floor,
Lucky Plaza Complex
St. Anthony's Mawatha,
Colombo 03.

**Court of Appeal (Writ)
Application No: 172/2018**

PETITIONER

Vs.

1. N. K. L Nettikumara
Project Director,
Outer Circular Highway Project Phase III,
Ministry of Higher Education and
Highways,
No. 161/1 Rajamalwatta road,
Battaramulla.

Also a member of the Land Acquisition and Re-settlement Special Committee (Super LARC)

2. D. C. Dissanayake
Secretary,
Ministry of Highways and Road
Development,
No. 161/1 Rajamalwatta road,
Battaramulla.
3. N. R. Sooriyarachchi
Chairman
Road Development Authority
“Maganeguma Mahamedura”
No. 216, Denzil Kobbekaduwa Mawatha,
Koswatte, Battaramulla.
4. Road Development Authority
“Maganeguma Mahamedura”
No. 216, Denzil Kobbekaduwa Mawatha
Koswatte, Battaramulla.
5. Hon. Kabir Hashim
Ministry of Highways and Road
Development,
No. 161/1 Rajamalwatta road,
Battaramulla.
6. P. D. T. C. Rajika
Acquiring Officer,

Divisional Secretary,
Wattala Division Secretariat,
Galudipita Road,
Wattala.

7. B. Ranaweera

Chairman
Land Acquisition and Re-settlement Special
Committee (Super LARC),
Additional Secretary,
Ministry of Highways and Road
Development,
No. 161/1 Rajamalwatta road,
Battaramulla.

8. Medha Bemulla

Member
Land Acquisition and Re-settlement Special
Committee (Super LARC),
Director
Ministry of Lands and Parliamentary
Reforms,
“Mihikatha Medura”
Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,
Battaramulla.

9. A.S.W.K. Nanayakkara

Member
Land Acquisition and Re-settlement Special
Committee (Super LARC)

Additional Chief Valuer
Valuation House
P. de S. Kularatne Mawatha
Colombo.

10. K. T. C. Grero

Land Acquisition and Re-settlement Special
Committee (Super LARC),
Senior Superintendent of Surveys,
Survey Department of Sri Lanka,
P.O Box 506,
No. 150 Kirula Road, Narahenpita,
Colombo 5.

11. D. P. Wimalasena

Member
Land Acquisition and Re-settlement Special
Committee (Super LARC),
Agent from the Ministry of Finance and
Mass Media,
The Secretariat, Lotus Road,
Colombo 1.

12. D.M. Dayarathna

Member,
Land Acquisition and Re-settlement Special
Committee (Super LARC),
Director- Lands
Road Development Authority
“Maganeguma Mahamedura”
No. 216, Denzil Kobbekaduwa Mawatha,

Koswatte, Battaramulla.

13. Chanaka P. Welgama

Land Acquisition and Re-settlement Special
Committee (Super LARC),

Assistant Secretary

Ministry of Higher Education and
Highways,

No. 161/1 Rajamalwatta road,
Battaramulla.

14. Gayantha Karunatileka

Minister of Lands and Parliamentary
Reforms,

Ministry of Lands and Parliamentary
Reforms,

“Mihikatha Medura”

Land Secretariat

No. 1200/6, Rajamalwatta Avenue
Battaramulla

RESPONDENTS

Before: C.P Kirtisinghe, J
Mayadunne Corea, J

Counsel: Sanjeewa Jayawardena P.C with Rukshan Senadheera for the Petitioner
Manohara Jayasinghe DSG for the Respondents

Argued on: 10/08/2022, 05/09/2022, 06/12/2022, 23/01/2023

Written Submissions: For the Petitioner on 20/09/2023
For the 1st, 3rd, 4th, and 12th Respondents on 22/09/2023
For the 2nd, 5th to 11th, 13th and 14th Respondents on 21/09/2023

Decided on: 24.10.2023

Mayadunne Corea J

The facts of the case are briefly as follows. The Petitioner Company is a registered company engaged in the business of operating an inland container depot which includes container yard operations, transport and repair services. The Petitioner Company states that the extent of land forming the subject matter of this application which is depicted as Lot 4 in the plan bearing No. 3894 dated 13/03/2011 consisting of 2 Roods and 7.2 Perches, is owned by the Petitioner Company.

The Petitioner Company states that the above-described land, was subject to an acquisition under section 38 proviso (a) of the Land Acquisition Act and was published by way of Gazette Notification bearing No. 1892/21 dated 09/12/2014. The purpose of this acquisition was to facilitate the Outer Circular Highway Project – Phase III which is an expressway connecting the

Kadawatha-Matara Expressway and Colombo-Katunayake Expressway. The Petitioner Company further states that the acquisition entitled the Petitioner to claim compensation from the Land Acquisition and Re-settlement Committee (LARC) including an opportunity to appeal to the Land Acquisition and Re-settlement Special Committee (Super LARC), if aggrieved by the decision.

Following an inquiry by the LARC, it arrived at a sum of Rs 26,355,199 as compensation payable to the Petitioner Company in terms of section 17 of the Land Acquisition Act and the LARC scheme. The Petitioner Company however, expressed dissatisfaction with the said sum of compensation and forwarded an appeal to Super LARC by letter dated 20/07/2016. Upon inquiry by the Super LARC on 10/01/2017, a sum of Rs 17,648,177 was awarded to the Petitioner Company. However, the Petitioner Company states that the Super LARC has withheld the said compensation awarded for the purported impact caused to the property which narrowed the access to the property. The decision to withhold the compensation was made by a subsequent inquiry which the Petitioner Company states was conducted without notifying the them thus depriving the Petitioner of any form of hearing. Thus, this writ application.

The Petitioner's complaint to Court

The Petitioner Company states that the Company nor its representative have been given a fair hearing or an opportunity to tender the necessary documents before the impugned decision was arrived at by the 1st and/or 7th to 13th Respondents on 12/12/2017 to withhold the compensation previously decided by Super LARC on 10/10/2017. The Petitioner Company states that the conduct of the above Respondents is ultra vires, unlawful, wrongful, arbitrary, unfair and in breach of the principles of natural justice.

The Petitioner has prayed mainly the following reliefs among other things,

- a. Issue a Mandate in the nature of a writ of Certiorari quashing the purported decision dated 12/12/2017 of the 1st Respondent and the 7th to 13th Respondents constituting the Super LARC to suspend and/or withhold the sum of Rs. 17,648,177 that had been duly awarded to the Petitioner as compensation as the Super LARC inquiry for the injurious affectation to the remaining portion of the Petitioner's land.

- b. Issue a mandate in the nature of a Writ of Mandamus directing the 1st and/or the 2nd and/or 3rd and/or 4th and/or 6th Respondents and/or any one or more of the Respondents as constituting the Super LARC and/or or their successors or assigns to pay forthwith to the Petitioner the total amount of the remaining portion of compensation due to the Petitioner that, is, Rs 22,483,376 and interest thereon which also includes Rs 17,648,177 awarded to the Petitioner at the Super LARC inquiry dates 10/10/2017 as compensation for the injurious affectation to the remaining portion of the land and interest thereon.

- c. Issue a mandate in the nature of Writ of Mandamus directing the 1st and/or the 2nd and/or 3rd and/or 4th and/or 6th and/or any one or more of the Respondents as constituting the Super LARC or their successors or assigns to pay a reasonable sum as late payment fee for the remaining portion of compensation due to the Petitioner, i.e Rs 22,483,376.

Respondent's objections

The Respondents raised several objections inter alia the following:

- The Petitioners have not complied with the Court of Appeal Rules
- The application is misconceived
- The application has been made out of time
- The Petitioners are guilty of laches
- The Petitioners have misrepresented facts and failed to disclose material facts to the Court
- The application is frivolous, vexatious, and futile
- The Petitioners have failed to establish a case to warrant the grant of discretionary relief by the Court.
- The Court lacks the jurisdiction and expertise to evaluate and grant compensation.

It is pertinent to note that although the above grounds of objections were urged by the Respondents in their objections at the argument stage, only the lack of jurisdiction and expertise to evaluate and grant compensation objection was pursued. This was also on the basis that the Super LARC consists of skilled officers and experts and also on the basis that they have considered the technicalities to arrive at the compensation.

This Court will consider the said objections in due course.

Petitioner's case

The parties are not at variance on the following facts,

- Part of the Petitioner's land was acquired under the Outer Circular Highway Project.
- Upon the submission of necessary documents, the Petitioner Company was called for an inquiry before the LARC to pay compensation for acquisition of land.
- Being aggrieved by the award of the LARC, the Petitioner had appealed to the Super LARC.
- The Petitioner was awarded a hearing before the Super LARC and after considering the facts presented, the Super LARC had increased the compensation and awarded a sum of Rs. 17,648,177.
- The Super LARC had subsequently convened again to discuss the above-mentioned award without the presence of the petitioner and, the amount awarded to the Petitioner had been withheld.

The Petitioner contends that he was required to make a claim before the Super LARC and he has duly made the said claim. The appeal to the Super LARC is marked P18. In the said appeal, the Petitioner has based his claim under 10 headings. The Petitioner has been called before the Super LARC and it was contended by the Petitioner that there was a decision to award a sum of Rs 18,398,177 as compensation under the Super LARC scheme out of which 3,711,823 (amount of compensation for the injurious affectation for the remaining portion of the land granted under section 17 of the Land Acquisition Act) deducted from Rs. 21,360,000 was awarded for the injurious affectation for the remaining portion of the land i.e Rs 17,648,177 and in addition reimburse the cost of the restoration of the transformer and the loss of business, once the amount of such loss is submitted.

The Petitioner further submitted that they had been present before the Super LARC and had been heard and the Super LARC decision has been conveyed to them. The said decision was marked as P20. After considering all the facts, the Petitioner too had consented to this decision and placed his signature on P20. The said decision has been arrived at on 10.01.2017. Subsequently, the

Petitioner had been informed by letter dated 25.08.2017 to be present for another inquiry pertaining to the same plot of land which was the subject matter of the earlier decision. The said letter which invited the Petitioner to be present before the Super LARC was marked as P21. It appears that the Super LARC had decided again to hold another inquiry 8 months after it arrived at the original decision. However, the said inquiry that was to be held on 31.05.2017 has been postponed and the Petitioner has been informed by a telephone call of the said postponement. These facts were not disputed by the Respondents.

Thereafter, the Petitioner has received a letter dated 10.01.2018 marked as P22, whereby it was informed that the Super LARC had met on 12.12.2017 and decided to suspend the payment of Rs 17,648,177 which was the decision of the Super LARC on 10.01.2017. The Petitioner through their Attorneys- at-law has conveyed their displeasure and objected to the said letter by P24. In the said reply, the Petitioner has specifically submitted that the Respondents have failed to inform or notice the Petitioner before arriving at the decision marked P22 and argued that the said decision had been arrived without giving a fair hearing thus, making the said decision illegal, unlawful, arbitrary and without any basis.

The Super LARC decision dated 10.01.2017

This would be an appropriate time to consider the decision of the Super LARC that was agreed by the Petitioner. The said decision marked as P20, contains a note at the bottom which clearly states the purposes for which the compensation is awarded. The said note reads as follows,

අත්කරගත් ඉඩමෙහි ඉතිරිවන ඉඩම් කොටස වන පරි. 63.84 ක ප්‍රමාණය සහ ඉතිරිවන ගොඩනැගිලි සඳහා නක්සේරු දෙපාර්තමේන්තුවෙන් ගණනය කරන ලද හානිකර බලපෑම වන රු.21,360,000/- ක මුදලින් 17 වන වගන්තිය යටතේ ලබා දෙන ලද හානිකර බලපෑම වන රු.3,711,823/- ක මුදල අඩු කර ගෙවීමෙන්, ජල වැංකියලෙස වන දින රු.18,398,177/- ක මුදලක් ලබා දීමට තීරණය කරන ලදී. 2016.10.18 වන දින තීරණය කරන ලද ප්‍රතිස්ථාපනය කර ගැනීම සඳහා යන වියදම ප්‍රතිපූර්ණය කර

ගෙවීමෙන්, ව්‍යාපාර භානිය ඉදිරිපත් කල පසු එය ගෙවීමටත් කමිටුව අද දින තීරණය කරන ලදී.

සුපර් ලාර් ක් තීරණයට එකඟ වෙමි.

It is apparent as per the note that the Committee had arrived at this decision mainly for the injurious affectation of the land.

It is also pertinent to note that though the Gazette Notification No. 1837/47 dated 22.11.2013 and 1864/54 dated 2014.05.30 gives a right of appearance to the Petitioner to appear before the LARC, it is silent on the same pertaining to the Super LARC inquiry.

The main grievance of the Petitioner is that the second meeting of the Super LARC which arrived at the impugned decision was done without notifying the Petitioner. In response, the Respondents contended that there was no reason for the Petitioner to be present for the said meeting.

Though the above-mentioned Gazette does not specifically mention a right to appear before the Super LARC, it is not disputed that the Super LARC had invited the Petitioner to be present before it and arrived at the decision marked as P20. It is also pertinent to note that after 8 months, the Respondents had decided to once again to convene a Super LARC meeting to consider the payment of compensation which they have already decided to award to the Petitioner by P20. By sending P21 to the Petitioner, the Respondents have clearly recognized the right of the Petitioner to be present for the second said inquiry before them. However, it is not disputed that the second inquiry did not take place on the date mentioned as it had been postponed.

The second decision of the Super LARC P22 and P28

Subsequently, the Respondent without informing the Petitioner had held a meeting as reflected in P22 on 12.12.2017 and decided to suspend part of the award that they had made by P20.

Considering the sequence of events and the act of the Respondents, this Court is not inclined to subscribe to the Respondent's contention that there was no need for the Petitioner to be present before the Super LARC at the second meeting which arrived at the impugned decision. Super

LARC itself in the first instance had invited him and with his participation had considered all the material and arrived at a decision to pay the sum that is reflected in P21. This has been conveyed to the Petitioner who after considering it, had agreed to the awarded sum. Subsequently, when the Super LARC had decided to reconsider the award, they had once again informed the Petitioner to come for an inquiry which was postponed. However subsequently, they had held a meeting and arrived at the impugned decision without informing the Petitioner. In our view, the second decision contained in P28 and communicated to the petitioner by P22 clearly violates the rules of natural justice and the principle of *audi alteram parte*.

We also find that the Respondents are estopped from denying the presence of the Petitioner for the second inquiry as they themselves had notified the Petitioner to be present for the first inquiry and also notified the Petitioner to be present for the second inquiry. However, there is no material to demonstrate that the Respondents have informed the Petitioner to be present for the postponed second inquiry that was held on 12.12.2017. This position was never contested by the Respondents. In our view, this ground alone is sufficient for this Court to come to the conclusion that the procedure adopted in arriving at the second decision which is impugned and reflected in P22 is faulty and has to be quashed. In this regard, we have considered the judgments on fair hearing and rules of natural justice and *audi alteram parte*.

In the case of **Sundakaran vs Bharathi (1989) 1 SLR 46** Amarasignhe J held that, *“If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the essential principles of justice. The decision must be declared no decision.”*

In the treatise of **Professor H.W.R Wade and C.F Forysth ‘Administrative law’ 11th edition at page 405**, it was observed as follows, *“It is fundamental to fair procedure that both sides should be heard, audi alteram partem hear the other side’. This is the more far-reaching of the principles of natural justice, since it is can embrace almost every question off fair procedure, or due process, and its implications can be worked out in great detail.”*

The following landmark cases established principles of awarding a fair hearing. **Anisminic Vs. Foreign Compensation (1969) 1 ALL ER 208** held that a decision made without giving an opportunity to be heard has thus been assimilated to a decision without or in excess of jurisdiction and in the case of **Ridge v Baldwin (1964) A.C 40** it was held that “*a decision made without giving the opportunity to be heard is void ab initio*”.

In **G.P.A De Silva and others Vs. Sadique and Others (1978-79-80) 1 SLR 166** it was held that, “*A writ of certiorari will lie to quash an order or decision which is of binding effect and it either imposes an obligation or involves civil consequences to a person or alters his legal position to his disadvantage, or where such order or decision is a step in a statutory process which would have such effect. The order or decision might be of a body which had legal authority to determine questions affecting rights.....before any lawfully constituted body arrives at a finding in respect of any person, it is necessary that such body should give a fair hearing to the person concerned. The principle audi alteram partem is one that is widely applicable.*”

The second decision gives the reason as to why the Super LARC decided to have a second inquiry. In P28, it is stated the reason for having a second inquiry was the result of an audit report. The audit report questioned the rationale of awarding the sum reflected in P20. It further states that the Respondent had come to the said decision to award the sum arrived at in P20 on the premise that the Petitioner had no access road to come to his balance plot of land. The learned Counsel for the Respondent argued that the decision to enhance the injurious effect as reflected in P20 was mainly on the basis of the Petitioner’s submission that he has a problem with the access road to carry on with his business in the remaining plot of land. However, subsequently, it had been brought to the notice of the Super LARC that there had been a new serviced road constructed whereby the Petitioner could have access to his plot of land and therefore the need to increase the compensation for injurious effects under the deprivation of free access road is erroneous.

This submission is reflected in the impugned decision P22.

නමුත්, පසුව අනා වරණය වූයේ ඉතිරි වන පර්.63.8437 සඳහා ප්‍රවේශය අධිවේගී මාර්ගයේ ජේවා මාර්ගය ඔස්සේ සිදු කල හැකි බවයි. එබැවින් ඉතිරි වන දේපළ සඳහා තවදුරටත්

භානිකර බලපෑම් දීමනාවක් ලබා දීම අවශ්‍ය නොවන බව 2017 දෙසැම්බර් මස 12 වන දින පැවති විශේෂ ලාර්ක් කමිටුව මගින් ඒකමතිකව තීරණය කරන ලදී.

ඒ අනුව, 2017 ජනවාරි මස 10 දින විශේෂ ලාර්ක් කමිටුව මගින් ලබා දීමට තීරණය කළ රු. 17,648,177/-ක මුදල ලබා දීම අත්හිටුවීමට 2017 දෙසැම්බර් මස 12 වන දින රැස් වූ විශේෂ ලාර්ක් කමිටුව තීරණය කරන ලදී.

This is also reflected in the bottom note in the second Super LARC meeting the decision which is marked as P28. This contention was vehemently denied by the Petitioner who submitted that in their appeal before the Super LARC, they never requested for an enhanced value based on the lack of accessibility or the absence of an access road. At this stage, it is pertinent for this Court to consider the appeal that had been made to the Super LARC (P18). In P18 under the heading **Land to be Acquired**, the Petitioner has highlighted factors that should be considered by the Super LARC in enhancing the compensation, under 1.1. It states; *the land is abetting the main road and is in a highly developed industrial area with further potential for growth in the future.*”

By this, the Petitioners have clearly indicated the location of the land abetting the main road should also be considered in computing the value. Further, under the heading **Cost of finding Alternate Land**, the Petitioners have submitted the following two grounds to be considered by the Super LARC, they are as follows,

- 20 and 40-container road access is not available.
- Inadequate road access required for maneuvering of prime mover transporting container.

Considering this ground that has been urged by the Petitioner himself, this Court is inclined to accept the submission of the Respondents that the Petitioner has made a case to the Super LARC to revise the compensation awarded and in the said case they have urged the road accessibility also as a ground for enhancement of compensation. However, it is also pertinent to note that the Super LARC consists of authorities who are the main stakeholders and experts in calculating compensation and it should have been within their knowledge as to whether the accessibility issue urged by the Petitioner is in fact correct as per the ground layout.

It is also observed by the Court that the decisions to enhance the compensation stated in P20 does not contain any material to show that in fact for such enhancement, they have considered the

narrowing or inadequate accessibility to the Petitioner's land as a ground under the injurious affectation. However, the learned Counsel for the Respondent strenuously argued that it was so and it was substantiated with reference to the Petitioner's appeal to the Super LARC. He further contended that the late discovery of the availability of another access road was the main ground for reducing the value of compensation.

The Petitioner had sought to impugn the decision in P22 not only on the grounds that it violated the rules of natural justice and the lack of fair hearing, but also urged that the Petitioner had a legitimate expectation to get a fair hearing before the award was suspended. They also submitted that in view of the fact that the Respondents have decided to come to the second hearing on the basis of an audit report, it amounts to dictation and abdication of powers of the Super LARC. However, as this Court has held with the Petitioner on his original ground and decided to quash the decision on the basis of violation of the rules of natural justice and lack of fair hearing, this Court does not intend to go into the other grounds canvassed.

This brings us to the next relief the Petitioner has sought by way of Writ of Mandamus where they are seeking a Writ of Mandamus to compel the 1st, 7th, and 13th Respondents constituting the Super LARC to award the sum of Rs 17,648,177 as an increased sum of compensation for the injurious affectation for the remaining portion of the land belonging to the Petitioner. Also, a Writ of Mandamus directing the 1st – 5th Respondents constituting the Super LARC to pay a reasonable sum as a late payment fee for the remaining portion of compensation due to the Petitioner.

It is pertinent to note that the Petitioner nor the Respondents has adequately addressed this Court with sufficient material to demonstrate the exact amount paid so far and if the amount stated in Prayer H is in fact the correct amount. The Court is only in possession of material submitted to substantiate that Super LARC had decided to suspend the payment of 17,648,177 by P22. In the absence of clarity on the accurate sum, this Court is not inclined to grant the said relief under Prayers G and H. However, this Court would like to place on record that if the payments calculated according to the law have not been paid up to now, the Super LARC should pay it in accordance with the provisions of the law.

The Petitioners also sought a Writ of Mandamus compelling the Super LARC to pay the award consisting of Rs 17,648,177 reflected in P20. Vehemently objecting to the said application, the Respondents submit that the said computation for injurious affectation had been arrived at by officers and experts skilled in the technical field and also has urged that the said determination was based on factual material which is highly technical in nature. As this Court had observed earlier, after considering the appeal that has been preferred by the Petitioner to the Super LARC to enhance the compensation, this Court cannot fully subscribe to the Petitioner's claim that they never agitated for enhancement of the compensation based on road accessibility.

In our view, the appeal makes accessibility also a ground to enhance the compensation. We have also considered the fact that while the Petitioner claims that the Super LARC decision reflected in P20 was purely based on the injurious affectation of land to which the Respondents response was, that in computing the injurious affectation they had considered the narrowing of and/or the road accessibility to the Petitioner's remaining plot of land. Hence, the learned DSG argued that in view of the conflicting positions, the computation of the compensation involves complexity, factual controversies, and technical matters which should be handled by experts skilled in the technical field. In view of the circumstances and the facts presented to this Court and the observations this Court has made, this Court is in agreement with the learned DSG's submission.

It is also pertinent to note that the Respondents halfway through their arguments proposed to award a hearing to the Petitioner and to revisit the determination impugned in this case. However, the Petitioner was not inclined to accept the said offer. Hence considering all the factors, this Court is not inclined to grant the writ of Mandamus sought by the Petitioner in prayer F.

As this Court has already decided, the decision contained in the letter dated 10.01.2018 marked as P22 and the corresponding committee's decision reflected in P28 dated 12.12.2017 cannot be sustained, due to the grounds that the Petitioner has not been given a fair hearing and for the reasons stated above in this judgment, the Writ of Prohibition urged in prayer D will not arise.

The Petitioner's prayer E was not agitated before the Court fittingly and has not been substantiated with sufficient material to the satisfaction of this Court. In our view, neither party addressed this Court on this ground. Accordingly, we are not inclined to grant the relief sought in Prayer E.

After considering the arguments and the material placed before this Court, we proceed to issue a Writ of Certiorari to quash the letter dated 10.01.2018 reflected in P22 and quash the decision dated 12.12.2017 marked P28. However, this judgment would not be a bar for the Respondents to have a fresh inquiry after giving notice to the Petitioner and following the due process in accordance with the law to evaluate the compensation if they so desire. It is also pertinent to note that this Court has not been adequately addressed pertaining to the exact amounts that have been paid and whether there is any other sum that has to be paid.

Hence, we find that the Petitioner has partially succeeded in this Writ application. Accordingly, parties to bear their own cost. Writ application is partially allowed.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree.

Judge of the Court of Appeal