

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF

SRI LANKA

In the Matter of an application for a Mandate in the nature of Writs of Mandamus in terms of Article 140 of the Constitution of the Republic of Sri Lanka.

**Court of Appeal
Writ Application No:
396/2018**

Ranathunga Arachchige Karunaratne
Ranatunga
No 07, Napana,
Gunnepana.

Petitioner

-Vs-

1. Commissioner General of Lands
Land Commissioner General's
Department
"Mihikatha Madura",
Land Secretariat,
No 1200/6,
Rajamalwatta Road,
Battaramulla.
2. Director-Land Acquisition
Ministry of Land and Land
Development
"Mihikatha Madura",
Land Secretariat,
No 1200/6,
Rajamalwatta Road,
Battaramulla.
3. Divisional Secretary-Pathadumbara
District Secretariat Office,
Pathadumbara.

4. District Secretary-Kandy
District Secretariat Office,
Kandy.

5. Hon Attorney-General
Attorney-General Department,
Colombo 12.

Respondents

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

Counsel: Charitha Jayawickrema instructed by Nilusha Silva for the Petitioner.
Rajika Aluwihare, SC for the Respondents.

Supported on: 14.12.2022

Decided On: 30.01.2023

C. P. Kirtisinghe – J.

The Petitioner is seeking for a mandate in the nature of a Writ of Mandamus compelling the 1st and the 2nd Respondents to release the unallotted portion of the land described in the schedule to the petition to the Petitioner.

The Petitioner's father had been the owner of the land which is described in the schedule to the petition which was acquired by the government in or around in 1960, for a public purpose. As specified in the document marked E the aforesaid land had been acquired for the K/Napana SM School. Petitioner states that after the acquisition, the land was not used for the aforementioned public purpose. The Petitioner states that he made communications and requests to the relevant authorities to release the land to the Petitioner as it had not been used for the purported public purpose for which it was acquired. The Petitioner states that he is the only heir of the original owner. The Director of Education in the Central Province had informed the secretary to the Ministry of Education that the aforesaid land is not necessary for the development of the Napana Vidyalaya.

Thereafter the Minister of Education by the letter dated 03.07.2009 marked I had recommended to the Minister of Lands and Land Development that it is appropriate to release the unoccupied portion of the land to the original owners under section 194 (2) (င) of the State Lands Ordinance. Thereafter the assistant secretary of the Ministry of Lands and Land development had informed the Petitioner by the letter marked J that the steps have been taken to hand over the unoccupied portion of the land to the Petitioner and it is in progress. The Petitioner states that due to the ignorance of the Respondents and high-handed attitude and the abuse of power by the Respondents no positive action had been taken to release the land. The Petitioner states that the aforesaid conduct of the Respondents is illegal and *ultra vires*. The Petitioner states that the 1st Respondent is obliged in law to act under and in terms of section 194(2) of the Land Acquisition Act and the 1st and 2nd Respondents are obliged in law to release the property back to the original owner or to his heirs. According to the Petitioner the Respondents have acted *ultra vires* and the legitimate expectation of the Petitioner has breached as a result of that conduct.

In her affidavit tendered by the 3rd Respondent for the limited purpose of objecting to the issuance of notices as prayed for by the Petitioner, the 3rd Respondent had stated that the compensation due for the subject matter of this case acquired by the State in 1959 was paid to the then owner in 1960. A portion of the acquired land was leased out to the Kundasale Multi-Purpose Cooperative Society for several years and there is a grinding mill standing thereon. The 3rd Respondent has admitted the fact that the Petitioner had made several requests to get back the land. The 3rd Respondent states that since compensation had been paid to the Petitioner's father, the Petitioner has no legal entitlement to demand a return of the entire land acquired by the State. The Petitioner was informed by the letter marked R5 that the balance portion of the acquired land could be sold to the Petitioner at a value to be determined by the Valuation Department but the Petitioner by the letter marked R6 had declined this offer informing that he is willing to buy the land at the same valuation as it was in 1959 when it was acquired.

The learned State Counsel objected to the issuance of notices in this case on several grounds. Firstly, he submitted that the Petitioner is guilty of laches. He further submitted that since the compensation had been paid to the Petitioner's father after the acquisition, the Petitioner has no legal right to ask for a retransfer of the land. He further submitted that the Petitioner is not entitled to purchase the land at the same value when it was acquired in 1959.

With regard to the question of laches the learned Counsel for the Petitioner has cited the judgement of **Ramasamy Vs Ceylon State Mortgage Bank 78 NLR 510**. He has also cited the judgement of **Biso Manika Vs Cyril de Alwis and others 1982 (1) SLR 368**. In Ramasamy's case Wanasundara - J. has observed as follows;

“The principles of laches have not been applied automatically or arbitrarily or in a technical manner by courts of equity themselves”. “The principles of laches must, in my view, be applied carefully and discriminatingly and not automatically and as a mere mechanical device”.

In Bisomanika's case Sharvananda - J. had observed as follows;

“What is reasonable time and what will constitute delay will depend upon facts of each particular case”.

By the letter marked 'J', the secretary to the Ministry of land and Land Development had informed the Petitioner on 22.09.2009 that steps are being taken to retransfer the land to the Petitioner. The Petitioner has filed this application on 13.12.2018 after a period of more than 10 years. If the relevant authorities failed to take appropriate steps to hand over the land back to the Petitioner as informed by the letter marked 'J' in 2009 the Petitioner should have invoked the jurisdiction of this court within a reasonable time without waiting for more than 10 years. Therefore, the Petitioner is guilty of laches and this application should be dismissed on that ground alone.

By the letter marked R5 the Divisional Secretary of Pahatha Dumbara had informed the Petitioner that the remaining unoccupied portion of the land could be transferred to the Petitioner after recovering the current value of the land according to the government valuation. In other words, the government was willing to sell the unoccupied portion of the land to the Petitioner at the current value. But the Petitioner by his letter marked R6 had informed that he is willing to purchase the land at the value which was in 1959. The Petitioner has failed to disclose these material facts or he has suppressed those material facts for the benefit of his case. Therefore, the Petitioner is not entitled to invoke the writ jurisdiction of this Court.

The fact that this land was acquired for a public purpose was not in dispute. The fact that the compensation in lieu of the acquisition was paid to the Petitioner's father is also not in dispute. Once the acquisition process is completed and the compensation is paid to the previous owner the title to the land is vested in the State and the previous owner ceases to be the owner. Therefore, the State has

the right to decide the selling price of the land and has a right to offer the land to the Petitioner at the current market value, an offer which the Petitioner had refused to accept. The Petitioner has no right to purchase the land at the value that existed at the time of the acquisition in 1959. Therefore the Petitioner does not have a legal right to ask for a retransfer of the property at the value at 1959 and the Petitioner cannot complain that a legal right has been violated as a result of the acts of the relevant authorities.

For the aforementioned reasons we are of the view that this is not a fit case to issue notices. Therefore, we refuse to issue notices on the Respondents.

Judge of Court of Appeal

Mayadunne Corea – J.

I Agree

Judge of Court of Appeal