

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

In the matter of an Application for a Writs of
Certiorari and Mandamus, under Article 140
of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

1. Kalpage Jayaratne,
No. 4, Glen Field,
Magasthota,
Nuwara Eliya.

PETITIONER

CA No. CA/Writ/52/2019

v.

1. S. P. K. Bhodimaanna,
(Former Divisional Secretary of Nuwara
Eliya),
Municipal Commissioner,
Municipal Council of Nuwara Eliya,
Office of the Municipal Council,
Nuwara Eliya.
2. W. M. Ananda,
Divisional Secretary of Nuwara Eliya,
Divisional Secretariat,
Nuwara Eliya.
- 2A. A. A. V. Sampath,
Divisional Secretary of Nuwara Eliya,
Acquiring Officer,
Divisional Secretariat,
Nuwara Eliya.

3. Kelsey Property Developers (Pvt) Ltd,
No. 2, Deal Place,
Colombo 03.

*Formerly the 3rd Respondent and now
amalgamated with the 3A Respondent.*

- 3A. Kelsey Homes (Pvt) Ltd,
No. 2, Deal Place,
Colombo 03.

4. Nextventrues Limited,
No. 2, Deal Place,
Colombo 03.

5. Dunamis Capital PLC,
No. 2, Deal Place,
Colombo 03.

6. Blyton (Pvt) Ltd,
No. 2, Deal Place,
Colombo 03.

*Formerly the 6th Respondent and now
amalgamated with the 4th Respondent.*

7. Hon. Gayantha Karunathilake,
Minister of Lands, Stage II,
“Sethsiripaya”, Battaramulla.
8. Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”, Battaramulla.
9. Dr. Jagath Munasinghe,
Chairman,
Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”, Battaramulla.

RESPONDENTS

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

COUNSEL : Chandana Wijesooriya with Wathsala Dulanjani for the Petitioner.

Dr. K. Kanag-Isvaran, P.C. with N. R. Sivendran and Ms. Renuka Udamulla for the 3rd, 4th and 5th Respondents.

R. Aluwihare, S. C., for the 1st, 2nd, 7th – 9th Respondents.

WRITTEN SUBMISSIONS : 10.05.2023 (by 3A, 4th, 5th and 6th Respondents)

12.05.2023 (by the Petitioner)

DECIDED ON : 16.06.2023

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner instituted these proceedings on the 12th February 2019 seeking *inter-alia*; a writ of *certiorari* quashing the decision of the 1st and/or 2nd Respondent envisage in the attachment marked ‘P 19b’ and a writ of *mandamus* compelling the 1st and/or 2nd Respondent to Act under Section 10(2) of the Land Acquisition Act, as amended, and refer the claim of the Petitioner for compensation.

Petitioner’s claim is primarily based on the following facts.

The petitioner received a letter dated 06th February 2018 from the 1st Respondent informing that there would be an inquiry on 14th February 2018 into the claim for compensation in respect of the land called *Oakley Cottage* in Nuwara Eliya, in terms of Section 9 of the Land Acquisition Act, as amended, (‘P 17’).

The Petitioner took part in the said inquiry, made representations to the 1st Respondent regarding his rights of the subject matter, and claimed compensation accordingly.

Section 10 (1) requires that notice of the decision be given to all claimants and/or to each of the parties to the dispute.

Relevant statutory provisions and analysis

Section 10 (1) reads as follows,

10. (1) At the conclusion of an inquiry held under section 9, the acquiring officer holding the inquiry shall either-

*(a) make a decision on every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired and on every such dispute as may have arisen between any claimants as to any such right, title or interest, and **give notice of his decision to the claimant or to each of the parties to the dispute, or***

(b) (...)

(2) to (5) (...)

According to the Petitioner, as he was not informed of any decision in respect of compensation for the acquisition of his land even at the expiry of three months of the inquiry, the Petitioner, by letter dated 15th May 2018 has made a request under the Right to Information Act regarding the outcome of the inquiry. In reply, the Petitioner has received a letter from the Assistant Divisional Secretary that the Petitioner cannot be given the information requested in his letter 'P 18a'. According to the Petitioner, having exchanged several letters with the 1st and 2nd Respondents, ('P 18b', 'P 18d' and 'P 18e') has complained to the Right to Information Commission through his Attorney at Law. Thereafter, the Right to Information Commission has informed the relevant officer of the Divisional Secretariat either to provide the information requested by Petitioner or to reject his application under Section 5 of the Right

to Information Act, giving specific reasons ('P 18f' and 'P 18g'). Consequently, the 2nd Respondent, along with his letter dated 19th December 2018, sent the Petitioner a copy of his decision to act under Section 10 (1) of the Land Acquisition Act ('P 19a' and 'P 19b'). However, has not sent a copy of the Section 10 (1) notice sent to the Petitioner or to any other claimant. In the said letter, the 2nd Respondent stated that the title to the subject matter is vested with 3rd to 5th Respondents and the Petitioner's deed marked 'P 10' is not acceptable to the 2nd Respondent. However, did not reveal that Section 10(1) notices were sent to those claimants.

Consequently, the Petitioner instituted these proceedings and sought the aforementioned reliefs from this Court. The Petitioner filed the 1st amended Petition on the 7th July 2019, consequent to the amalgamation of the 3rd Respondent with 3A Respondent and the 6th Respondent with the 4th Respondent. Accordingly, the caption and the relevant paragraphs of the Petition were also amended. Other than those no substantial amendments were made to the original Petition.

Thereafter, the Petitioner filed a second amended Petition on the 29th January 2023, including additional reliefs to the prayer of the Petition. Those are,

- B. A writ of *certiorari* to quash documents marked 'P 19b' and/or 'P22a'.
- C. A writ of *certiorari* to quash document marked 'P 22b'.
- D. A writ of *mandamus* to compel the 1st and/or 2nd/ 2a Respondents to give notice under Section 10 (1) or to refer the claim to the relevant District Court under Section 10 (2) of the Land Acquisition Act.

The 3A, 4th, 5th and 6th Respondents objected to the amended Petition, but, the 1st, 2nd and 7th to 9th Respondents informed Court that they were not objecting to the amendment¹.

As I have already stated above in this order, in pursuant to the application made by the Petitioner in terms of the Right to Information Act, the information proved by the 1st Respondent was his observations 'P 19b' wherein it is stated that the decision is made to take steps under Section 10 (1) of the Land Acquisition Act. The Petitioner submits that he became aware that

¹ Journal Entry dated 12th May 2023.

notices under Section 10 (1) were issued only when the 2nd Respondent filed his limited objections on 2nd October 2019. Thereafter, the Petitioner made another application under the Right to Information Act through his Attorney at Law on the 3rd February 2022 ('P 22a'). The reply received from the 2nd Respondent is marked as 'P 23b', in which the 2nd Respondent informed the Petitioner that a decision had been made under Section 10 (1) (a). In addition, it was informed that they are not in a position to indicate whether the decision was communicated to the Petitioner or not, as the relevant file is not in their possession and was sent to the Valuation Department. Consequently, the Petitioner through his Attorney at Law made an application to the information officer of the Valuation Department ('P 24a'). In response to the Petitioner's request, the Deputy Chief Valuer (Information officer) informed the Petitioner's Attorney at Law that a decision under Section 10 (1) had been made on the 19th March 2018 and the said decision had not been communicated to the Petitioner ('P 24b').

The 3A, 4th, 5th and 6th Respondent's objection to the second amended Petition.

The Respondents objected to the second amended Petition on the following grounds.

One of the grounds is that the amendment changes the scope of the original action. Even in the original Petition, the relief sought by the Petitioner is to quash the decision of the 1st and/or 2nd Respondents envisaged in 'P 19b'. 'P19b', the document that contains the decision of the 2nd Respondent to act under Section 10 (1) of the Act.

As I have already stated above, Section 10 (1) notice was not given to the Petitioner. But, Section 10 (1) notice had been issued to the other claimants ('P 22a'). The Petitioner also had been a claimant at the inquiry, and therefore, the Petitioner is also entitled to the notice in terms of Section 10 (1). After the Petitioner became aware of the fact that Section 10 (1) notice had been issued to the other claimants and was not issued to the Petitioner, the Petitioner sought to amend the Petition adding a claim to quash 'P 22a' on the ground that the 2nd Respondent has violated Section 10 (1) of the Act.

The merits of the Petitioner's application for writs have to be decided at the end of the proceedings. Yet, in my view, adding the above claim does not change the scope of this application.

Another submission made by the Respondent was that the Petitioner was aware of 'P 22a' and 'P 22b' when filing this application but did not seek any relief on those documents. 'P 22a' and 'P 22b' are documents that are not related to the Petitioner. As I have already stated above, those two documents relate to the other claimants. The Petitioner's application is based on the procedural irregularity committed by the 2nd Respondent by not serving Section 10 (1) notice on the Petitioner. On that basis, Petitioner seeks quashing of 'P 22a' and 'P 22b'. As I have already stated above in this order, after intense attempts by the Petitioner, the Petitioner was able to obtain disclosure that the section 10(1) notice had not been served on the Petitioner. Therefore, I am not inclined to accept the position of the Respondents that the Petitioner could have sought relief on 'P 22a' and 'P 22b' at the time of the institution of these proceedings.

Another submission made by the Respondent is that in an action, the rights of the parties are determined as of the date of the action. The Respondents have cited a number of authorities decided in respect of civil actions in support of their contention. Be that as it may, the date of Section 10 (1) notice sent to the other claimants is 19th March 2018 ('P 22a'). The date of the decision made under Section 17 is 31st October 2018 ('P 22b'). These proceedings were instituted on the 12th February 2019. The Petitioner seeks to quash the two documents 'P 22a' and 'P 22b' which existed prior to the institution of these proceedings. However, as evidenced by the above analysis in this order, the fact that notices were issued under Section 10 (1) came to light long after the institution of this proceeding.

Another submission of the Respondent is that even in the counter affidavits dated 3rd April 2023, the Petitioner did not give any reasons or explanations as to why the Petitioner could not produce the documents 'P 22a' and 'P 22b'. The Petitioner sought the amendment including reliefs in respect of the above two documents on the 29th January 2023, well before filing the counter affidavit. Therefore, the question of giving reasons or explanations for the nonproduction of the two documents in the counter affidavit will not arise.

In the above analysis, I am of the view that the Petitioner has satisfied this court that he was unaware of the issuance of Section 10 (1) notice. This is not an instance where the Petitioner denies having received Section 10 (1) notice. The document 'P 24b' clearly establishes that the notice was not given to the

Petitioner. Admittedly, Section 10 requires notice to be served on any party to the dispute or to any claimant.

Further, parties have not filed their objections yet and only the limited objections were filed. Therefore, no prejudice could be caused to the Respondents by allowing the amended Petition.

In light of the above analysis, I allow the second amended Petition filed by the Petitioner on the 19th January 2023.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL