

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

In the matter of an application for a writ of  
Mandamus under Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

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Dileeni Roshan Perera,  
of No. 88, Kirula Road,  
Colombo 05.  
and presently  
No. 14, Rue Jean Le Galleu  
94200 Ivry Sur Seine  
France.

**PETITIONER**

**C.A. (Writ) Application No.682/2009**

**Vs**

1. Hon. Jeewan Kumaratunga  
Minister of Lands  
Ministry of Lands  
'Govijana Mandiraya'  
No. 80/05, Rajamalwatte Rd,  
Battaramulla.

1A. Hon. Janaka Bandara  
Tennekoon,  
Minister of Land and Land  
Development  
'Govijana Mandiraya'  
No. 80/05, Rajamalwatte Rd,  
Battaramulla.

2. The Acquiring Officer/Divisional  
Secretary  
Maharagama Divisional  
Secretariat  
Maharagama.

#### **RESPONDENTS**

#### **BEFORE**

: Deepali Wijesundera J.

#### **COUNSEL**

: A.R. Surendran PC for the  
Petitioner.

Janak De Silva D.S.G. for the  
Respondents.

#### **ARGUED ON**

: 03<sup>rd</sup> October, 2014.

#### **DECIDED ON**

: 16<sup>th</sup> December, 2014.

**Deepali Wijesundera J.**

The petitioner's land described in the schedule to the petition situated in Hokandara was acquired for a public purpose under the *Land Acquisition Act in 2003*. Alleging that the land was not utilized for any public purpose the petitioner had made an application under Sec. 39A of the *Land Acquisition Act* to the Minister seeking a divesting order. Upon the refusal of the said application the petitioner has made the present application to this court seeking a writ of Mandamus against the 1<sup>st</sup> respondent directing the 1<sup>st</sup> respondent to divest the said land to the petitioner.

The Learned Counsel for the petitioner stated that the petitioner's land was acquired to resettle the owners of the land acquired for the Colombo Outer Circular Road Project but up to date the said land has not been utilized for the stated purpose. The petitioner by letter dated 07/09/2009 has requested the 1<sup>st</sup> respondent to divest the said land in terms of Sec. 39 A of the *Land Acquisition Act*. The petitioner stated under the provisions of Sec. 39(A) the Minister prior to divesting had to fulfill four conditions citing the judgments in ***Minister of Lands Irrigation and Mahaweli Development and Another 1993 1 SLR 283 and Rashid Vs Rajitha Senaviratne Minister of Lands and Another 2004 (1) SLR 312*** said it was held that the entitlement to a divesting

order springs primarily from the fact that after vesting the land had not been used for the public purpose for which it had been acquired.

The learned counsel for the petitioner submitted that all four conditions in Sec. 39 A has been fulfilled by the petitioner. Namely the petitioner was not paid any compensation, the land had not been utilized for the public purpose, no improvements have been done to the land and the petitioner has consented in writing to take possession of the land immediately after the divesting order is published in the Gazette. The petitioner's counsel cited a long list of judgments regarding these four conditions and stated that under these circumstances this court has powers to issue a writ of Mandamus against the 1<sup>st</sup> respondent compelling him to issue a divesting order.

The learned Deputy Solicitor General for the respondent's submitted that the relief sought by the petitioner under Sec. 39 A should be refused as the conditions set out in 39 A have not been fulfilled and even if the petitioner has fulfilled the conditions there still remains a discretion given to the Minister to divest or not and as such no writ of Mandamus lies. He stated that the said land is needed for another public purpose and is been used for a public purpose.

Citing the judgments in ***De Alwis Vs De Silva* 71 NLR 108**, ***Weligama Multi-Purpose Cooperative Society Ltd Vs Chandradasa Daluwatte* 1984 1 SLR 195**, ***Samaraweera Vs Minister of Public Administration* 2003 3 SLR 64** stated that to issue a writ of Mandamus there has to be a public duty. Therefore for the petitioner to succeed for a writ of Mandamus against the 1<sup>st</sup> respondent it must be established the petitioner has a right to demand and the 1<sup>st</sup> respondent to divest the land in question has a corresponding public duty to do so under Sec. 39 A of the said Act and that the established position in law is that there is no such right nor is there a corresponding duty on the 1<sup>st</sup> respondent.

The petitioner cited the judgment in ***Urban Development Authority Vs Abeyratne and others* S.C. No. 85/2008 decided on 01/06/09** where it was held that exercise of discretionary power vested with the Minister by Sec. 39 A is not amenable to judicial review in an application for a writ of Mandamus.

The respondent stated that by **2R16** and **2R17** it is evident that sums of Rs. 9,600,000/= and Rs. 1,862,452.61 have been deposited in the District Court of Homagama as compensation for the acquisition and that merely due to the money not been taken by the petitioner, she can not be heard to say that the requirement has been fulfilled. The counsel

for the respondent stated that the said land has been used for a public purpose which is evident by 2R19 to 2R21 and cited the judgment in ***De Silva Vs Athukorale 1993 2 SLR 283***

The Deputy Solicitor General for the respondents stated that the land forming the subject matter of this application is required for a public purpose can not be questioned by this court as the Sec. 5 (1) declaration has been made by the Minister which is produced as 2R7. He further stated that Sec. 5 (2) of the said Act makes it conclusive and takes it out of the scope of judicial review. He cited the judgment in ***Urban Development Authority Vs Abeyratne and another S.C. No. 85/2008<101/2008 decided on 01/06/09*** in this regard.

Respondents further submitted that approval for the change of purpose was 14/10/2004 and the Sec. 5 (1) declaration was made six months after the approval of the change of public purpose.

The petitioner's application under Sec. 39 (A) which has been refused by the 1<sup>st</sup> respondent was done due to the petitioner not complying with four requirements. Compensation for the said land has been deposited in court although the petitioner stated otherwise. The

said land has been made use of for another public purpose after steps were taken under Sec. 5 (1) of the Act.

**Sec. 5 of the Land Acquisition Act reads thus;**

***(1)Where the Minister decides under subsection (5) of section 4 that a particular land or servitude should be acquired under this Act, he shall make a written declaration that such land or servitude is needed for a public purpose and will be acquired under this Act, and shall direct the acquiring officer of the district in which the land which is to be acquired or over which the servitude is to be acquired is situated to cause such declaration in the Sinhala, Tamil and English languages to be published in the Gazette and exhibited in some conspicuous places on or near that land.***

***(2)A declaration made under subsection (1) in respect of any land or servitude shall be conclusive evidence that such land or servitude is needed for a public purpose.***

***(3)The publication of a declaration under subsection (1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.***

Once the Sec. 5 (1) declaration is done by the Minister Sec. 5 (2) of the Act makes it conclusive and takes it out of the scope of judicial review. Thus the question of whether the land forming the subject matter of this instant application is required for a public purpose can not be questioned in this court.

For the afore stated reasons the application of the petitioner is dismissed with costs fixed at Rs. 25,000

**JUDGE OF THE COURT OF APPEAL.**