

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

**OF SRI LANKA**

In the matter of an application for Writs of  
Certiorari and Mandamus.

1. Sunil R. de Silva
2. P.D.D. Karunanayake  
Both of "Sindusara"  
Ratupasgodella, Hambantota.

**Petitioners.**

CA 565/08

Vs.

1. Sri Lanka Ports Authority  
19, Church Street  
Colombo-01.
2. R.M.P.B. Wickrama  
Vice Chairman  
Sri Lanka Ports Authority  
19, Church Street  
Colombo-01.

3. Ganesha Amarasinghe  
Divisional Secretary  
Hambantota.

4. Jeevan Kumaratunge  
Minister of Land and Land Development  
Ministry of Land and Land Development  
Govijana Mandiraya  
Battaramulla.

**Respondents.**

**BEFORE:** Hon. Sathya Hettige P.C. J, President of the Court of Appeal  
Hon. Anil Goonaratne J, Judge of the Court of Appeal.

**COUNSEL:** D.M.G.Dissanayake for petitioner  
Fiaz Mustapha P.C. with Faizer Mustapha and  
Shantha Jayawardane for 1<sup>st</sup> and 2<sup>nd</sup> respondents  
Janak de Silva SSC for 3<sup>rd</sup> and 4<sup>th</sup> respondents

**ARGUED ON:** 23/007/2010

Written Submissions of the petitioner filed on 03/08/2010

Written Submissions 06/09/2010

Decided on 16/03/2011

## **SATHYA HETTIGE P.C J, (P/ CA)**

The petitioners in this application are seeking inter alia, a Writ of Certiorari quashing the Order made under section 38 (a) proviso of the Land Acquisition Act annexed and marked P 8 and a Writ of Mandamus directing the 4<sup>th</sup> respondent to comply with section 5 and section 17 of the Land Acquisition Act.

The petitioners are the lawful co- owners of the property more fully described in the schedule to the petition.

The Secretary Ministry of Ports and Civil Aviation made a request by the letter dated 27/04/2007 marked 4R 1 to the Statement of Objections of the 4<sup>th</sup> respondent requesting that the land in question be acquired under the provisions of the Land Acquisition Act as amended on the ground of urgency for the public purpose of construction of Hambantota Port.

The 3<sup>rd</sup> respondent issued a Notice under section 2 of the Land Acquisition Act notifying that the land in question is required for the public purpose of construction of Hambantota International harbor. (X3).

Thereafter the Minister of Lands and Land Development made an Order under section 38 (a) proviso to take over possession of the land described in the schedule referred to in the said Order. The said Order under section 38(a) was published in the Government Gazette No. 1542/1 dated 24/03/2008 which is annexed marked P 8.

The petitioner in this application complains that the said Order made under section 38(a) Gazette Notification marked P 8 does not refer to the

land in question as referred to in the schedule and therefore has no relevance whatsoever to the purported steps supposed to have been taken by the 3<sup>rd</sup> respondent. Petitioners also state that no Gazette notification has been published by the 4<sup>th</sup> respondent under section 5 of the Land Acquisition Act declaring that the petitioners land required for a public purpose and also that no award of compensation made by the 3<sup>rd</sup> respondent under section 17 of the Land Acquisition Act. Petitioners' grievance seems to be that no lawful acquisition of the land belonging to the petitioners have been duly made. It was further submitted by the counsel for the petitioner that the acquisition referred to in Government Gazette no 1542/1 dated 24/03/2008 ( P8) is a nullity as it is based on the Gazette no. 1489/22 marked P 6 in as much as P 6 has been published without exhausting the remedies prescribed by the special law.

Counsel further submitted that P 6 is a determination of the Minister under section 25(1) of the Sri Lanka Ports Authority Act approving the acquisition.

However, Mr. Dissanayake submitted that the order made by the Minister under section 38 (a) Land Acquisition Act published in the Gazette dated 24.03/2008 is a nullity because the said Order has been published prior to the steps being taken and completed under the Ports Authority Act. It was argued that no reasons have been given as to why the 3<sup>rd</sup> and 4<sup>th</sup> respondents opted to follow the procedure of the general law under the Land Acquisition Act in preference to the remedies available in the special law of the Ports Authority Act.

Petitioners in this application further complain that the Gazette notification marked P8 and the notice marked P9 served on the 1<sup>st</sup> petitioner are contrary to law and the decisions are made in excess of the jurisdiction.

The 3<sup>rd</sup> respondent in the statement of objections has stated that the 4<sup>th</sup> respondent was of opinion that the construction of the Hambantota International Harbour was of great, national and public importance and

acquiring of the land for this project was for a public purpose and as such the 4<sup>th</sup> respondent formed the opinion that the immediate possession of the land in question required to be taken on the grounds of urgency under section 38(a) of the Land Acquisition Act.

The 3<sup>rd</sup> respondent further states that an application accordingly was made under section 42 of the Land Acquisition Act to the Magistrate's Court of Hambantota in M.C. Hambantota case No. 89252 seeking a direction to the fiscal to deliver possession of the said land on behalf of this State.

Mr Janak de Silva SSC on behalf of the 4th respondent submitted that a written declaration under section 5 (1) of the Land Acquisition Act was made stating that the land referred to therein was needed for a public purpose and the said declaration is conclusive evidence that the said land is needed for a public purpose. A copy of the said written declaration is marked 3R4 to the statement of objections of the 3<sup>rd</sup> respondent.

It is also stated the steps under the provisions of the Land Acquisition Act were taken by him by the 3<sup>rd</sup> respondent holding an inquiry under section 9 of the Land Acquisition Act as amended in to the claim by the 1st petitioner and the 2<sup>nd</sup> petitioner **did not make a claim or appear** at the said inquiry. At the hearing of this application learned Senior state Counsel informed court that the petitioners have been offered a sum Rs.10,750,000 , apart from the alternative land (20 perch with water and electricity supply in Siribopura New town, for residence and 80 perch land for cultivation) was offered to them.

The contention of the petitioners seems to be that the respondent has failed to comply with the provisions of section 25 of the Sri Lanka Ports Authority Act which requires the Ports Authority to take steps by agreement to purchase the land.

The 3<sup>rd</sup> respondent has specifically stated in the written submissions that the respondents have taken steps under section 25 of the said Act drawing attention of court to the documents marked "Y" , 1R4, , 1R9 annexed to the Statement of objections of the respondent. However, it is stated in the paragraph 9 (i) ,(ii) , (iii) and (iv) of the written submissions of the respondent that the Ports Authority was unable to purchase the property by agreement under section 25 of the Act was compelled to acquire the property for the public purpose of construction of the Hambantota International harbor. The petitioners have failed to establish any mala fides on the part of the respondents.

In the circumstances , having considered the written submissions of all parties and the material placed before this court, I am of the view that the relief sought by the petitioner cannot be granted as the respondents have acted within the parameters of the provisions of law contained in the Land Acquisition Act as amended and the Sri Lanka Ports Authority Act and the petitioner's application should be dismissed.

Accordingly, the application of the petitioner is dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL.

Anil Goonaratne J ,

I agree.

JUDGE OF THE COURT OF APPEAL.