

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

**In the matter of an application in
the nature of Writs of *Certiorari* and
Prohibition under article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.**

1. K.G. Ravindra
282/B Wevagedara Divulapitiya.
2. K.G. Tamara Terimali
4/36, Udyana Watte
Udugampola, Gampaha.
3. K.G. Dinesh Yohan Perera
113, Harith Gamdora,
Bohingamuwa,
Kuliyapitiya.
4. Mallawarachichige Gayani Hemali
4/36, Udyana Watte
Udugampola,
Gampaha.

Petitioners

CA WRIT 154/2016

Vs,

1. The Public Trustee
The Public Trustee Department
No. 2, Bullers Road,
Colombo 07.
2. N.M.J. Fernando
Divisional Secretary and Land Acquiring
Officer.
Divisional Secretariat,
Kuliyapitiya (west).
3. John A.E. Amaratunge
Minister of Lands
'Mihikatha Medura' Land Secretariat
No. 1200/6, Rajamalwatte Road,
Jayawardenepura Kotte.

Respondents

**Before : L.T.B. Dehideniya J (P/CA) &
S. Thurairaja PC. J**

**Counsel : Senany Dayaratne with Dushantha Mendis and
Thilina Wariyapperuma for the Petitioners
Vikum de Abrew SDSG for the Respondents**

Order on : 31st August 2017

Order

S.Thuraiaraja PC J

The Petitioners originally filed the petition dated 12th May 2016 and prayed for the following:

- a) *Issue notice on the Respondents in the first instance;*
- b) *Call for the entire record pertaining to the purported acquisition of the properties depicted, under section 2 notices marked P7 and P9 above prepared by the Surveyor General, from the 1st to 3rd Respondents;*
- c) *Grant and issue a mandate in the nature of a Writ of Certiorari, quashing order published in the gazette notification dated 11th March 2016 issued by the 3rd Respondent marked P8, to take immediate possession of the trust property more fully described/identified therein;*
- d) *Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 2nd to 3rd Respondents and/or anyone or more of them and/or their servants and/or their agents from entering into the land more fully identified in Schedule 1 hereto, which forms the subject-matter of this application, dispossessing the 1st Respondent therefrom, and/or interfering with the use and enjoyment of the said land by all beneficiaries to the said trust;*
- e) *Grant and issue a mandate in the nature of Writ of Prohibition, restraining the 2nd to 3rd Respondents and/or anyone or more of them and/or their servants and/or their agents from dispossessing the 1st Respondent from the trust more fully described in the second, third or fourth schedules hereto;*
- f) *Grant and issue a Writ of Certiorari, quashing all consequential orders issued by the 2nd and 3rd Respondents and/or anyone or more of them and/or their servants and agents, in pursuance of the section 2 notices dated 18/12/2015 and 15/03/2016 marked P7 and P9, in respect of the land more fully described in second and fourth schedules hereto;*
- g) *Grant and issue a Writ of Certiorari, calling for and quashing one or several agreements/ contracts entered into between the 1st and/or 2nd and/or 3rd Respondents and/or anyone or more of them and/or their servants and agents in pursuance of the acquiring of the land more fully described in second to fourth schedules hereto;*
- h) *Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1st and/or 2nd and/or 3rd Respondents and/or anyone or more of them and/or their servants and agents, in making consequential orders / entering into agreements in pursuance of the acquiring of the land more fully described in second to fourth schedules hereto;*
- i) *Issue an interim order, suspending and/or staying the operation of the said order issued by the 3rd Respondent, dated 11/03/2016 marked as P8, until the final hearing and determination of this application.*
- j) *Issue an interim order, restraining the 2nd to 3rd Respondents and/or anyone or more of them and/or their servants and/or their agents from*

entering into and/or obtaining possession of the land identified in the said order marked P8 dated 11/03/2016, and/or land identified in notices marked P7 and P9 so far as it relates to the land more fully described in second to fourth schedules hereto, until the final hearing and determination of this application;

- k) *Issue an interim order, restraining the 2nd to 3rd Respondents and/or anyone or more of them and/or their servants and/or their agents from dispossessing the 1st Respondent and/or its servants and/or agents from its land, and/or continuing to dispossess and/or obstructing the 1st Respondent's possession, in any manner whatsoever, of the land more fully described in the second to the fourth schedules hereto, until the final hearing and determination of this application;*

Further, they supported the matter before this court on the 17th May 2016 and the court issued a notice to the Respondents. The notice was served and the Respondents were represented by the Attorney General, learned DSG raised objections on several grounds. The Petitioners filed an amended petition dated 14th October 2016 on the 14th December 2016.

There they prayed as follows:

- A. *Issue notice on the Respondents in the first instance;*
- B. *Call for the entire records which include plans, maps, and tracings, attendant upon the purported acquisition of the properties pertaining to the Section 2 notices and Section 38 orders marked P7, P8, P9 and P10 above prepared by the Surveyor General and/or his servants and agents, from the 1st to 3rd Respondents;*
- C. *Call for the entire records which include the determination of the boundaries, claims made, compensation paid(if any), pertaining to the purported acquisition of the properties pertaining to the Section 2 notices and Section 38 orders marked P7, P8, P9 and P10 above prepared by the 2nd Respondent;*
- D. *Grant and issue a Writ of Certiorari quashing the decisions and/or determination to affect the land acquisition pertaining to the Section 2 notices marked as P7 and P9;*

WITHOUT PREJUDICE TO THE FOREGOING PRAYERS

- E. *Grant and issue a mandate in the nature of a Writ of Certiorari, quashing orders published in the Gazette notifications dated 11th March 2016 and 31st May 2016 issued by the 3rd Respondent marked P8 and P10 to take immediate possession of the trust more fully described/identified therein;*
- F. *Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 2nd to 3rd Respondent and/or anyone or more of them and/or their servants and/or their agents from entering the land more fully identified in Schedule 1 hereto, which forms the subject-matter of this application, dispossessing the 1st Respondent therefrom, and/or*

interfering with the use and enjoyment of the said land by all beneficiaries to the said trust;

- G. Grant and issue a mandate in the nature of Writ of Prohibition, restraining the 2nd to 3rd Respondents and/or anyone or more of them and/or their servants and/or their agents from dispossessing the 1st Respondent from the trust more fully described in the second, third, fourth and/or fifth schedules hereto;*
- H. Grant and issue a Writ of Certiorari, quashing all consequential orders issued by the 2nd and 3rd Respondents and/or anyone or more of them and/or their servants and agents, in pursuance of the Section 2 notices dated 18/12/2015 and 15/03/2016 marked P7 and P9, in respect of the land more fully described in second and fourth schedules hereto;*
- I. Grant and issue a Writ of Certiorari, calling for and quashing one or several agreements/ contracts entered into between the 1st and/or 2nd and/or 3rd Respondents and/or anyone or more of them and/or their servants and agents in pursuance of the acquiring of the land more fully described in second to fourth schedules hereto;*
- J. Grant and issue a mandate in the nature of a Writ of Prohibition restraining the 1st and/or 2nd and/or 3rd Respondents and/or anyone or more of them and/or their servants and agents, in making consequential orders / entering into agreements in pursuance of the acquiring of the land more fully described in second to fourth schedules hereto;*

WITHOUT PREJUDICE TO THE FOREGOING PRAYERS, AND IN THE ALTERNATIVE TO PRAYER 'D'

- D(1). Grant and issue a Writ of Prohibition preventing the 2nd and/or 3rd Respondents and/or their servants, agents and successors from acquiring the land described in the first to fifth schedules hereto, AND preventing the 1st Respondent from relinquishing possession thereof, in terms of the section 2 notices marked as P7 and P9 and/or the section 38 notices marked as P8 and P10, without first formulating, devising and committing to a regularized/ formalized/ published scheme of channelling the totality of the compensation received for the relevant land acquisition directly into the objectives of the 'Agnes-Peter Charitable Trust';*
- D(2). Grant and issue a Writ of Prohibition preventing the 2nd and/or 3rd Respondents and/or their servants, agents, and successors from acquiring any land which forms the public bequest and/or public trust created by the Last Will marked as P5;*

IN THE ALTERNATIVE TO PRAYER D(2).

- D(3). In the event any land other than the land which forms the public bequest and/or public trust created by the Last Will marked as P5 is to be acquired in terms of the Section 2 notices marked as P7*

and P9, grant and issue a writ of mandamus compelling the 2nd and/or 3rd Respondents and/or their servants, agents and successors to forthwith takes steps, in terms of the law, to award compensation to the rightful owners thereof;

- K. Issue an interim order suspending the operation of the Section 2 notices marked as P7 and P9 until the final hearing and determination of this application, subject to such terms and conditions as to Your Lordships' Court shall seem to meet if any;*
- L. Issue an interim order suspending the operation of the Section 28 notices marked as P8 and P10 until the final hearing and determination of this application, subject to such terms and conditions as to Your Lordship's Court shall seem to meet if any;*
- M. Issue an interim order preventing the 2nd and/or 3rd Respondents and/or their servants, agents and successors from taking any further consequential steps in terms of Section 2 notices marked as P7 and P9, as well as the Section 38 notices marked as P8 and P10, until the final hearing and determination of this application, subject to such terms and conditions as to your Lordships' Court shall seem to meet, if any;*
- N. Issue an interim order preventing the 1st and/or 2nd and/or 3rd Respondents, and/or anyone or more of them and/or their servants and agents and successors, and/or anyone acting on their behalf or direction or advice, from making consequential orders and/or entering into agreements in pursuance of the Section 2 notices marked as P7 and P9, as well as the Section 38 notices marked as P8 and P10, until the final hearing and determination of this application, subject to such terms and conditions as to your Lordships' Court shall seem to meet, if any;*
- O. In the event the 1st and/or 2nd and/or 3rd Respondents, and/or anyone or more of them and/or their servants and agents and successors, and/or anyone acting on their behalf or direction or advice, from making consequential orders and/or entering into agreements in pursuance of the Section 2 notices marked as P7 and P9, as well as the Section 38 notices marked as P8 and P10, until the final hearing and determination of this application, subject to such terms and conditions as to your Lordships' Court shall seem to meet, if any;*

This matter was taken up before by different benches and finally before Justice L.T.B Dehideniya President CA and Justice Thurairaja on the 28th June 2017, the Petitioner made submissions and submitted that they will be confining themselves to the amended petition. Since the subject matter is greatly varied from the substantive application they moved issuance of formal notice on the Respondents and supported for interim relief as prayed in the second petition. Both counsels agreed that the subject matter will be confined to the amended petition. If the court issues notice and/or grant interim relief this matter will continue, if not this matter will be terminated with this order.

Before I proceed to the substantive matter, I wish to consider the preliminary objections raised by the senior DSG. Among other things, the Respondents raise the following objections.

- a. The Petitioners have no locus standi to file and maintain this application
- b. The necessary parties are not before the court.
- c. Laches

Further, they raise objections of the public purposes does not come within the ambit of writ jurisdiction. At present stage, the interim relief prayed cannot be granted and it will be a futile exercise. They also submitted that the acquiring progress had been taken to a stage where the balance of convenience lies with the state.

As per the available material, it is noted that the said property in question extends about 108 acres was a trust called 'Agnes-Peter Charitable Trust' and it was with the Public Trustee. The Petitioners claim that some of land belong to them. Considering the petition and the objections, the Petitioners have not established that this property entirely belongs to them or they are contesting this case on behalf of the public as public interest litigation case. The Petitioner submits that they have locus standi in this matter.

According to the case of **Environmental Foundation LTD Vs. Minister of Public Administration and Six others (1997) 2 SLR 306** it was held that:

"However, there are decisions both here and abroad which have expanded the principle of locus standi to include an applicant, who can show a genuine interest in the matter complained of and that he comes before Court as a public-spirited person, concerned to see that the law is obeyed in the interests of all [See: Wijesiri v Siriwardena], unless any citizen has standing, therefore, there are no means of keeping public authorities within the law, unless the Attorney-General will act- which frequently he will not. That private person should be able to obtain some remedy was, therefore "a matter of high constitutional principle". - Lord Denning M.R. - **R V Paddington Valuation Office (1966) 1 QB 380**. Nevertheless, the Court would not listen to a mere busybody who was interfering in things which did not concern him. But will listen to anyone whose interests are affected by what has been done. In any event, if the application is made by what for convenience one may call a stranger, the remedy is purely discretionary. Court retains the discretion to refuse to act at the instance of a mere stranger it considers that no good would be done to the public. As a party genuinely interested in the matter complained of, the Petitioner has the locus standi to make this application.

As per Shiranee Thilakawardena, J in **Jathika Sevaka Sangamaya v. Sri Lanka Ports Authority and Another - SLR - 146, Vol 3 of 2003 [2003] LKCA 81; (2003) 3 Sri LR 146;**

"Writ of Certiorari is available even to strangers because of the element of public interest. Every citizen has standing to invite the Court to prevent some abuse of power, and in doing so he may claim

to be regarded not as a meddlesome busybody but as a public benefactor"

The Respondents submit that the Petitioners do not have any locus standi.

The Oxford dictionary of law defines the English meaning of the Latin term "locus standi" as 'a place to stand'. Its legal definition is "*The right to bring an action or challenge a decision*". The Wharton's Concise Law Dictionary defines the term as "*The right of as party to appear and be heard on the question before any tribunal*". The Black's Law Dictionary defines as "*The right to bring an action or to be heard in a given forum*".

In the case of **A.R.Perera and others Vs. Central Freight Bureau of Sri Lanka (2006) 1 Sri LR 83**, the dictum of Lord Denning in **R V Paddington Valuation Office (1966) 1 QB 380** at 401 on locus standi is described as,

"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done"

In the case of **Premadasa V Wijeyewardena and others (1991) 1 Sri LR 333**, considering the right to bring an application for Writ of Certiorari, the court held that;

The law as to locus standi to apply for certiorari may be stated as follows. The writ can be applied for by an aggrieved party who has a grievance or by a member of the public. If the applicant is a member of the public he must have sufficient interest to make the application.

His Lordship A.W.A.Salam, J in the case of **M.M.Sonali Fernando Vs. A.G CA APN 144/2007** held that;

"In law, locus standi is generally understood to be right to bring an action, to be heard in Court, or to address the Court on a matter before it"

Considering the arguments submitted by both parties, I find that the Petitioners have not established that they have locus standi. For the purpose of completeness, I wish to consider the submissions made by both parties. The Respondent submits that the Petitioners are guilty of laches. Regarding the medical faculty, Section 2 notices were issued on 15th March 2016 and now it is processing the acquisition. Since both parties are not challenging, the court rules that the Petitioners have no objection of acquiring this said land for the purpose of constructing medical faculty for the state university.

Regarding the acquisition of land for industrial complex, Section 2 notice was issued on the 18th December 2015 and a Section 7 notice was issued on the 23rd May 2016. It is revealed that the Petitioners have not challenged at the initial stage when the acquisition process was proceeding. There is no explanation submitted by the Petitioner why he did not seek the statutory remedy.

In the case of **Seneviratne v. Tissa Dias Bandaranayake and Another (1999) 2 Sri LR 341** Amerasinghe, J adverting to the question of long delay, commented that

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If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, Nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.

In the case of **Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and Another (1996) 2 Sri LR 70** the court of appeal held that:

" A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

Considering the amended petition and two written submissions filed by the Petitioners could not offer a reasonable and plausible explanation for the delay. This warrants the court to find that the Petitioners guilty of laches. The court also observes that the Petitioners have not brought necessary parties before the court.

With the available material, we find that the acquisition procedure has reached a considerable stage and discussing the public purpose and urgency will not arise.

Anyhow, the court observes that the state authorities can be more transparent in declaring their purpose when they are acquiring the property, that will help the people to decide whether they are contesting this matter or not.

Considering all available materials, I do not find that this is an appropriate case for the court to issue the notice. Hence, issuance of notice is refused.

Since both parties agreed that if the issuance of notice is refused, the original application will also be terminated. Accordingly, I terminate further proceedings in this matter.

Notice refused and petition dismissed without cost.

JUDGE OF THE COURT OF APPEAL

L.T.B. Dehideniya J (P/CA)

I agree,

PRESIDENT OF THE COURT OF APPEAL