

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

In the matter of an Application for an  
Order/Mandate in the nature of a Writ of  
Certiorari under and in terms of Article 140  
of the Constitution.

C.A (Writ) Application No.352/2017

Kotagala Plantations PLC,  
53 1/1, Sir Baron Jayatilleke  
Mawatha, Colombo 01.

**PETITIONER**

Vs.

1. H.A. Kamal Pushpakumara,  
Divisional Secretary,  
Divisional Secretariat Office,  
Horana.
2. Ranjith Madduma Bandara,  
Hon. Minister of Public  
Administration and Management,  
Independence Square,  
Colombo 07
3. Gayantha Karunathilake,  
Hon. Minister of Lands and  
Parliamentary Reforms,  
“Mihikatha Madura”,  
Land Secretariat, No 1200/6,  
Rajamalwatte Road,  
Sri Jayawardanapura Kotte.
4. Patali Champika Ranawaka,  
Hon. Minister of Megapolis and  
Western Development,

17<sup>th</sup> and 18<sup>th</sup> Floors,  
 “Suhurupaya”,  
 Subhuthipura Road, Battaramulla.

5. Naveen Dissanayake,  
 Hon. Minister of Plantation  
 Industries,  
 B240,  
 Sri Jayawardanepura Kotte.
6. Sri Lanka State Plantations  
 Corporation,  
 No 11,  
 Duke Street, Colombo 01.
7. Hon. Attorney General,  
 Attorney General’s Department,  
 Colombo 12.

### **RESPONDENTS**

**Before** : L.T.B. Dehideniya J. (P/CA)  
 : Shiran Gooneratne J.

**Counsel** : Harsha Soza PC with Anurudda Dharmarathne and Ashan  
 Nanayakkara instructed by K.Upendra for the Petitioner.  
 : Nayomi Kahawita SC for the Respondent.

**Argued on** : 08.11.2017

**Decided on** : 28.11.2017

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

This is an application for a mandate in the nature of a writ of certiorari to quash an order published in the *Gazette* under section 38(a) of the Land Acquisition Act and to quash the notice issued under section 2 of

the said Act. The Petitioner Company is seeking an interim order restraining the Respondent from taking steps as per the said order published.

The Petitioner is the lessee of the land called Millawa Estate which was originally belonged to the Land Reform Commission and later vested in the Sri Lanka State Plantations Corporation. The Petitioner's grievance is that the portion of land that had been acquired was a high yielding rubber plantation therefore the Petitioner will lose enormous amount of which could have earned for the next 25 years.

The Petitioner in the petition explains the amount of money that that they expect to earn in the next 25 years. In my view, this is a matter for calculating the compensation, not a matter to prevent the acquisition. In paragraph 36 of the petition the Petitioner aver that the acquisition is illegal, unreasonable, and ultra vires and gives the reasons. Most of these reasons are in relation to the monetary and property loss that the Petitioner will suffer. Further the suitability of the land for the proposed public purpose. The purpose of acquiring the land is to establish a industrial zone. The petitioner's argument is that the land consists of sloping land and it is not suitable for the purpose. It is a matter for the designers of the project to decide and the Court has no expertise to decide on this matter. Further the Petitioner had not submitted any technical evaluation about the proposed project and the unsuitability of the land. Another reason submitted by the Petitioner is that there are lands belonging to other persons that can be acquired without acquiring the Petitioner's land. This is not a tenable argument.

The Petitioner states that certain land were acquired by the state prior to this acquisition but the lands were not utilized. Further it is pleaded that there is no urgency to acquire the land. But in the same breath, the Petitioner admit in paragraph 41 that the 1<sup>st</sup> Respondent is making all preparations to commence the work for an Industrial Zone upon the land that was acquired

explaining the urgency and that the land is going to be utilized for the purpose that it was acquired.

The Petitioner further states that, in the indenture of lease, the lessor had agreed to give the peaceful possession to the Petitioner for the period of lease. Any contractual obligation in between the lessor and the lessee will not prevent the State from acquiring a land for a public purpose. It is a matter to be considered in paying compensation.

The Petitioner submit that he was not given a hearing prior to making the acquisition order and it is a breach of natural justice. Under the proviso to the section 38(a) of the Land Acquisition Act the Minister is empowered to make an acquisition order on the urgency of acquiring the land. The Petitioner alleges that the decision to acquire is mala fidei. Other than that the land acquired is a high yielding plantation the Petitioner had not submitted any evidence to establish the malice. Acquiring certain other portions of the same estate prior to this acquisition does not establish malice.

The learned SC submitted that the possession of the acquired land had already obtained by the State.

Under these circumstances I do not see any reason to issue notice.

I refuse notice and dismiss the application.

President of the Court of Appeal

**Shiran Gooneratne J.**

I agree.

Judge of the Court of Appeal