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

In the matter of an Application for mandates in the nature of *Writs of Certiorari* & *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 125/2020

Karnahalupedige Duliyes Fernando alias
Dulip Weerarathne,
No. 120,
Kirigampamunuwa,
Polgasowita..

PETITIONER

Vs.

1. Minister of Lands and Land Development,
   "Mihikatha Medura",
   Land Secretariat,
   No. 1200/6,
   Rajamalwatta Road,
   Battaramulla.

2. The Divisional Secretary,
   Divisional Secretariat,
   Homagama.

3. The Secretary,
   Ministry of Roads and Highways,
   No. 216,
   Denzil Kobbekaduwa Mawatha,
   Koswatta,
   Battaramulla.

4. Road Development Authority,
   No. 216,
   Denzil Kobbekaduwa Mawatha,
   Koswatta,
   Battaramulla.

5. The Chairman,
   Road Development Authority,
   No. 216,
   Denzil Kobbekaduwa Mawatha,
   Koswatta,
   Battaramulla.

6. The Board of Directors,
   Road Development Authority,
   No. 216,
   Denzil Kobbekaduwa Mawatha,
   Koswatta,
   Battaramulla.

7. Director (Land),
   Road Development Authority,
   No. 216, Denzil Kobbekaduwa Mawatha,
   Koswatta,
   Battaramulla

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

K. Asoka Fernando, instructed by A. R. R. Siriwardena for the Petitioners.

Suranga Wimalasena DSG for the Respondents.

Written submissions tendered on:

04.09.2023 by the Petitioner.

Argued on: 22.06.2023.

Decided on: 29.02.2024.

S.U.B. Karalliyadde, J.

The Petitioner to this Writ Application became the owner of the land known as "Iriyagahapillewa" in the extent of 01 Rood and 22 Perches on Deed of Gift bearing No. 9720 dated 26.09.1973 marked as P1A. The said land is shown in the Surveyor General's Plan No. 144693 dated 10.04.1888 marked as P1B. Some portions of Iriyagahapillewa were acquired by the Road Development Authority, the 4th Respondent (the RDA) in terms of the Land Acquisition Act, No. 9 of 1950 (the Act) for the construction of Southern Expressway. Lot No. 4 depicted in Surveyor General's Plan No. 8623 dated 01.07.2003 (marked as P2B) and Lot No. 9 depicted in Plan No. 8920 dated 14.05.2008 (marked as P3B) were two Lots so acquired by the Gazette Notification No. 1298/6 dated 21.07.2003 (marked as P2A) and the Gazette Notification No. 1563/38 dated 22.08.2008 (marked as P3A) respectively. The Petitioner claims that the name of the land, the name of the Claimant and the address of the Claimant had been incorrectly mentioned in the said Gazette Notifications depriving the Petitioner of claiming compensation for those Lots. The Petitioner states that the name of the land "Iriyagahapillewa" which belongs to him has been incorrectly described in P2A and P3A as "Kiripellowita". The Petitioner claims that out of the entire land in extent of 1 Rood 22 Perches belongs to him, the extent of the portions

officially acquired in terms of the Act is 27.5 Perches and the balance portion in the extent of 34.5 Perches had also been utilized for the said project without officially acquiring. It has been admitted by the Divisional Secretary of Homagama (the 2nd Respondent) in the letter dated 28.02.2018 (marked as P8) sent to the Secretary, Ministry of Highways, that Lot No. 4 in plan 8623 (P2B) and Lot No. 9 in plan 8920 (P3B) are portions of the land known as "Iriyagahapillewa" belongs to the Petitioner and those Lots had been acquired in terms of the Act for the project of Southern Highway and in addition to that, the balance portion of the Petitioner's land had been utilized to construct the protective fence of the expressway without been officially acquired and compensated. The Petitioner has made several representations to the 2nd Respondent regarding this matter and by letter dated 19.03.2009 marked as P5, the 2nd Respondent admitted that the claims of the Petitioner concerning the acquisition and the utilization are correct.

The 2nd Respondent instituted actions in the District Court of Homagama on 29.06.2012 and deposited the compensation for the land acquired in terms of the Act. The Petitioner claimed the compensation deposited for Lot 9 in Plan P3B in the action bearing No. 13245/05. The learned Judge made an Order dated 06.12.2019 (marked as P6) dismissing the claim on the basis that the name of the land mentioned in the Gazette marked as P3B and the title deed marked as P1A are different. The Petitioner preferred an appeal to the Civil Appellate High Court of Homagama (marked as P7) against the Order of the District Court. At the Civil Appellate High Court, the matter was settled

between the Petitioner and the 2nd Respondent. Accordingly, the 2nd Respondent admitted that the owner and the person who is entitled to compensation for Lot 9 is the Petitioner (C7). The position of Petitioner in this Writ application is that he did not receive compensation equivalent to the market value for Lots 4 and 9 and any compensation for the portion of land in the extent of 34.5 Perches utilized for the project without acquiring legally. In the above outset, the Petitioner seeks the following substantive reliefs, *inter alia*,

(b) grant and issue a Writ of Certiorari quashing the Gazette notifications bearing Nos. 1298/6 dated 21.07.2003 and 1563/38 dated 22.08.2008.

(c) grant and issue a Writ of Mandamus directing the 1st and 2nd Respondents to take steps to re-publish the Gazette Notifications effecting corrections within a specific time frame as determined by this Court.

(d) grant and issue a Writ of Mandamus directing the 1st and 2nd Respondents to grant compensation to the portion of lands bearing Lot Nos. 4 and 9 as the market rate after re-publication of the said Gazette Notifications.

(e) grant and issue a Writ of Mandamus directing the 1st and 2nd Respondents to grant compensation to the balance portion of land which is in extent 34.5 Perches utilised by the Road Development Authority at the market rate in terms of the provisions of the Land Acquisition Act, No. 9 of 1950 as amended.

The learned DSG appearing for the Respondents submitted to the Court that the compensation to which the Petitioner is entitled to Lot 4 has been decided by the Land

Acquisition and Re-Settlement Committee (the LARC) as evidenced by the documents marked as R8, R9 and C 1 and for Lot 9 as evidenced by the documents marked as R20, R22 and C 3 still, the Petitioner disagreed with the compensation offered to those Lots on the basis that the compensation offered is far below the market value. The learned DSG further submitted to the Court that the name reflected in the Gazette Notifications as the Claimant does not create a legal barrier to the actual owner to claim and obtain compensation and a decision has already been taken to pay the compensation for the entirety of the land that had been acquired.

Analysis

The dispute between the parties in the instant Application regarding Lot 4 and Lot 9 of the land known as "Iriyagahapillewa" is twofold;

(a) the names of the land mentioned in the Gazette Notifications are incorrect and (b) the amount decided as compensation is below the market value.

The learned Counsel appearing for the Petitioner argued that the reason that the name of the land was incorrectly mentioned in the Gazette Notifications marked as P2A and P3A, the Petitioner did not receive due compensation for the land acquired. However, the learned DSG appearing for the Respondent submitted that the 2nd Respondent had held an inquiry into the claims for compensation under Section 9 of the Act and the Petitioner had participated in the inquiry and identified as the owner of Lots 4 and 9.

The impugned Gazette Notifications marked as P2A and P3A have been issued on 21.07.2003 and 22.08.2008 respectively. The Petitioner has instituted the instant Application in 2020 to quash the said Gazette Notifications by way of Writ of Certiorari. Therefore, it is clear that this Writ Application has been filed more than 12 years after the Gazette Notifications were published. the Petitioner has not explained the long delay in seeking relief from this Court. In *Biso Menika vs. Cyril de Alwis and Others*,[1] it was held that,

> *"The proposition that the application for Writ must be sought as soon as the injury is caused is merely an* ***application of the equitable doctrine that delay defeats equity*** *and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay.* ***An application for a Writ of Certiorari should be filed within a reasonable time from the date of the order, which the applicant seeks to have quashed****"* (emphasis added).

In the case of *Issadeen v. The Commissioner of National Housing*[2] Bandaranayake, J. dealing with a belated application for a writ of certiorari observed,

> *"It is however to be noted that delay could defeat equity. Although there is no statutory provision in this country restricting the time limits in filing an*

[1] (1982) 1 SLR 368.

[2] (2003) 2 Sri LR 10 at Page 15.

application for judicial review and the case law of this country is indicative of the inclination of the Court to be generous in finding a good and valid reason for allowing late applications, I am of the view there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy."

Considering the above-stated facts of the case and the court decisions, this Court is of the view that there is an unexplained delay in seeking reliefs which the Court compelled to refuse to issue a Writ of Certiorari as prayed for in the Petition. The learned Counsel for the Petitioner also argues that the compensation decided by the LARC for Lots 4 and 9 (C1 and C4) is considerably lower than the compensation decided in respect of Lot 5 of the same land (C4) and therefore, it is evident that the amount decided by the LARC for Lot 4 and 9 is below the market rate. The learned DSG submitted that the amount suggested to pay as compensation for Lots 4 and 9 is the market value as assessed by the Government Valuer in terms of Section 46 of the Act. Further, in terms of Section 45 of the Act, the market value should be decided upon which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity **on the date of publication of that notice** in the Gazette. Even though a higher value has been awarded as compensation for Lot 5 which is a portion of the same land, the date of publication of the notice in the Gazette for the acquisition of Lot 5 must be taken into account when determining the market value for the assessment of

compensation. In *C.E.A Perera v. The Assistant Government Agent, Kaluthara*[3], where Weeramantry, J. held:

> *"Section 45 (1) of the Land Acquisition Ordinance (Cap. 460) provides that the market value of a land for the purposes of that Ordinance shall be the amount which the land might be expected to have realized if sold by a willing seller in the open market as a separate entity* ***on the date of publication of notice under Section 7.****" (Emphasis added)*

Following that, Janak De Silva, J. in of *D. S. Fernando vs Minister of Higher Education and Highways*[4] stated that;

> *"It is evident that the market value of the land acquired must be determined on the date of the notice under Section 7 of the Act. The Section 7 notices for the two acquisitions were published on two different dates, 08.05.2013 and 19.04.2017. Thus, the market value of the two portions of land must be determined based on those two different dates on which the Section 7 notices were made although acquired for the same public purpose. There is no provision in the Act to apply one date to both acquisitions."*

In the instant Application, notices under Section 7 in respect of Lots 4 and 9 were published in the Gazettes on 21.07.2003 and 22.08.2008 respectively (P2A and P3A), However, the date of publication of the notice in the Gazette in respect of Lot 5 is on

[3] 74 N.L.R. 130.

[4] S.C.(F.R.) Application No: 360/2016 SC minutes dated 10.08.2023.

14.09.2010 (marked as R34). Therefore, the argument of the Petitioner based on the higher compensation paid for Lot 5 has no legal basis as the publication had been done on different occasions and it may result in different market values for different portions of the same land.

The decision under Section 17 of the Act regarding the compensation for Lots 4 and 9 has been delivered to the Petitioner by the documents marked as R9 and R22. The argument of the learned DSG appearing for the Respondents is that in terms of Section 22 of the Act, if the Petitioner had any concerns regarding the compensation allowed under Section 17, he should have appealed to the Board of Review against that award. But the Petitioner has not exhausted that remedy of appealing to the Board of Review. In *Obeysekera Vs. Albert and others*[5], this Court has held that,

> *" Certiorari being a discretionary remedy will not ordinarily be granted..... unless and until other remedies reasonably available and equally appropriate have been exhausted."*

In *Linus Silva Vs. The University Council of Vidyodaya University*[6] observed that "*The remedy by way of certiorari is not available where an alternative remedy is open to the petitioner is subject to the limitation that the alternative remedy must be an adequate remedy.*"

[5] (1979) 2 SLR 220.

[6] 64 NLR 104

The Court of Appeal in *Tennakoon Vs. Director-General of Customs*[7] held that.

> *"The petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under Section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction."*

In the instant Application, the Petitioner has not exhausted the right of appeal in terms of Section 22 of the Act to the Board of Review which is a reasonably available and adequate remedy. Therefore, this Court is of the view that for that reason also the Petitioner is not entitled to the prerogative Writs that he has prayed for.

The main concern of the Petitioner to this Writ Application is that he has not been adequately compensated. The position of the learned DSG is that he has been adequately compensated. The computation of compensation is a matter of fact. When the facts are in dispute, Writ Courts are reluctant to exercise its Writ jurisdiction. A.S. Choudri in his book titled "Law of Writs and Fundamental Rights" (2nd edn, Vol.2) on page 449 states thus;

> *"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."*

Referring to the above-stated quoting, in the case of *Thajudeen Vs. Sri Lanka Tea Board*

[7] 2004 (1) SLR 53

and Another[8], this Court has held thus.

> *"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation*[9]*, Porraju v. General Manager B. N. Rly*[10]*."*

In *Dr. Puvanendran and Another Vs. Premasiri and Two Others*[11] Supreme Court held that;

> *"The Writ of Mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by the Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty."*

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[8] (1981) 2 Sri LR 471 at page 474.

[9] AIR 1953 CALCUTTA 581.

[10] AIR 1952 CALCUTTA 610.

[11] (2009) 2 SLR 107 at page 112.

Citing the above-stated decision, it was held in *Wijenayake and others Vs. Minister of Public Administration*[12] that disputed facts cannot be decided by a Writ court.

This Court is not competent and has no expertise to decide the quantum of compensation and the duty of the Court when exercising Writ jurisdiction is to decide whether the decision of the administrative body is illegal, irrational, unreasonable and *ultra vires*. Lord Diplock in *Council of Civil Service Unions v Minister for the Civil Service*[13] defining grounds for judicial review stated that,

> *"Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds upon which administrative action is subject to control by judicial review. The first ground I would call "illegality," the second "irrationality" and the third "procedural impropriety."*

By referring to Lord Diplock's above statement, in *Regina v. Hull University Visitor, Ex parte*[14], Lord Browne-Wilkinson it was observed that,

> *"Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based*

[12] (2011) 2 SLR 247.

[13] (1985) AC 374(HL)

[14] (1993) AC 682 at page 701.

on the proposition that such powers have been conferred on the decision maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully."

Further, it is revealed that a settlement between the parties with regard to the compensation for Lot 9 has been entered before the Provincial High Court of Civil Appeal (C7). The view of this Court, therefore, is that the principle of *res judicata* applies regarding the compensation for Lot 9 and the Petitioner is not entitled to litigate the same in this Writ Application. In *Distilleries Company of Sri Lanka Vs. Randenigala Distilleries Lanka*[15], Mohan Pieris, PC, CJ stated that,

"The concept of res judicata is a well-established principle of law designed to ***protect a party from having to entertain repetitive legal attacks on the grounds of an issue that has already been decided in full and final settlement by a court of law.*** *Attempts of this kind under the smokescreen of being a fresh issue are frowned upon and cannot be entertained by courts, for such actions seek to discredit and abuse the finality of the legal process."* (emphasis added)

[15] SC (CHC) Appeal No. 38/2010 SC minutes at 19.12.2014.

Based on the above-stated facts and circumstances, I hold that the Petitioner is not entitled to the reliefs sought in this Writ Application. Therefore, I dismiss this Application. The Petitioner should pay Rs. 50,000/- to the State as costs of this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL