

**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* and  
*Mandamus* under and in terms of Article 140  
of the Constitution of the Democratic Socialist  
Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0643/2021**

**1. Dr. Moderage Joseph Heron Bernard  
Waas,**

“Hill Crest” Saundby, Nr. Retford,  
Nottinghamshire, DN22 ET,  
United Kingdom.

Appearing by his Power of Attorney  
holder,  
Moderage Arjun Neon Chandransa  
Waas, of No. 49, Woodlands Avenue,  
Kohuwala.

**2. Moderage Arjun Neon Chandransa  
Waas,**

No. 21, Winfrith Way, Nursling,  
Southampton, SO16 OXB  
United Kingdom  
and also of  
No.49, Woodlands Avenue, Kohuwala.

**3. Moderage Sriranjana Francis Ternan  
Waas,**

No. 55, Mount Avenue, Ealing, London  
W5 1PN, United Kingdom.

Appearing by his Power of Attorney  
holder,  
Moderage Arjun Neon Chandransa  
Waas of No. 49, Woodlands Avenue,  
Kohuwala.

**4. Moderage Athanasius Mary  
Shanthilal Waas,**

No. 204/A, Waterhouse Lane,  
Freemantle, Southampton, SO15 8RG

United Kingdom Appearing by his  
Power of Attorney holder Moderage  
Arjun Neon Chandransa Waas of No.49,  
Woodlands Avenue, Kohuwala.

**Petitioners**

**Vs.**

1. **K. G. Wijayasiri,**

1A. **H. M. S. P. Herath,**

The Government Agent and/or  
Divisional Secretary-Putlam.

2. **Ravindra Wickramasinghe,**

Additional Government Agent & Land  
Acquiring Officer-Puttalam District.

3. **Hon. Chamal Rajapaksa,**

3A. **Hon. Harin Fernanado,**

Minister of Tourism and Land,  
Ministry of Tourism and Land.

4. **R. Y. Yesmika,**

4A. **L. D. Ratnayake,**

Secretary-Land,  
Acquisition Board of Review,  
No. 204 1/1 Kaduwela Rd,  
Battaramulla.

5. **Puspika Muthukumarana,**

Government Chief Valuer,  
Valuation Department,  
No. 748, Maradana Road,  
Colombo 10.

6. **U. S. N. Fernanado,**

6A. **Y. P. Puspananda**,  
Divisional Secretary,  
Divisional Secretariat.  
Wennappuwa

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Shivan Cooray with Damithu Surasena and N. D. Sebastian for  
the Petitioners.  
Mihiri De Alwis, S. S. C. for the Respondents.

Argued on: 21.02.2024

Decided on: 12.06.2024

**MOHAMMED LAFFAR, J.**

The Petitioners in this Application are invoking the writ jurisdiction of this Court, seeking, *inter-alia*;

1. A Writ of *Certiorari* quashing the decision published in the Extraordinary Gazette Notification dated 12-05-1983 marked as **P12**.
2. A Writ of *Certiorari* quashing the decisions of the Respondents to award compensation of Rs. 160,000/- which is contained in the documents marked as **P35, P36** and **P38** pertaining to the land in dispute.
3. A Writ of *Mandamus* directing the Respondents to assess the compensation of the land in dispute to the market value existed at the time of the publication of Section 7 notice dated 09-12-2016.
4. Award compensation in a sum of Rs. 44,887,500/- each or in the alternative, provide the Petitioners with alternative land acceptable to the Petitioners.

One late Dr. Moderage Maria Joseph Waas was the owner of the entirety of the land to the extent of A2-R0-P31 which is morefully described in the first schedule to the Amended Petition. The said original owner, by deed bearing No. 1137 dated 17-09-1974 attested by C. A. B. De Fonseka, Notary Public marked as **P10** gifted a portion of the said land, namely lot B in plan bearing No. 5597 which is morefully described in the second schedule to the amended Petition, to the Petitioners, which is in extent of A1-R2-P31 (excluding 10 perches). Under Section 38 (a) of the Land Acquisition Act No. 28 of 1964 (as amended), the Minister of Lands and Land Development by the

Gazette Notification dated 12-05-1983 marked as **P12** authorized the acquiring Officer to acquire the land owned by the Petitioners in extent of 0.581 hectares. Subsequently, the 6<sup>th</sup> Respondent, Divisional Secretary of Wennapuwa published the notice under Section 7 of the said Act in Government Gazette dated 23-02-1984 (**P13**). In order to assess the compensation, the land in dispute was resurveyed by the state in plan bearing No. 2513 dated 19-10-1983 marked as **P14**. By letter dated 22-06-1987 marked as **P15**, the 6<sup>th</sup> Respondent informed the 1<sup>st</sup> Respondent that the compensation for the land in dispute to be a sum of Rs. 160,000/-.

Accordingly, the 1<sup>st</sup> Respondent, under Section 10 (1) (a) of the said Act, issued a notice dated 10-01-1992 marked as **P16**, to the said original owner and his power of Attorney, namely A.G. Waas with regard to the said compensation. As such, the Petitioners state that the 1<sup>st</sup> Respondent neglected to serve notices on the Petitioners who are the rightful owners of the subject matter, which is contrary to Section 4 of the said Act. The Petitioners further averred that the compensation awarded by the acquiring officer which is stipulated in **P17** that is the award made under Section 17 of the said Act is erroneous and unreasonable.

Thereupon, the said original owner and his power of attorney preferred an appeal to the Board of Review to enhance the said compensation (**P18**). On 30-03-1994, when the appeal was taken up for argument, the attorney-at-law appearing for the original owner moved to withdraw the appeal on the footing that the original owner had passed away and the original owner was not the lawful owner of the subject matter whereas he had already gifted his rights to the Petitioners much prior to the acquisition. Accordingly, the appeal was dismissed (**P22**). On 09-07-1997, the Petitioners made a representation to the 6<sup>th</sup> Respondent and expressed their dissatisfaction with regard to the proposed compensation proposed. Moreover, in the alternative, the Petitioners requested the Respondents to grant them an alternative land that was refused by the Respondents.

When the Respondents came to know that the lawful owners of the subject matter are the Petitioners, the latter revoked the previous steps taken in terms of the provisions of the said Act and published afresh notice in the Government Gazette on 09-12-2016 (**P28**) under Section 7 of the said Act. Thereafter, a fresh inquiry in respect of the claim of compensation was held on 07-02-2017 wherein the Petitioners claimed a sum of Rs. 179,550,000/- (**P30 ii**). After inquiry, on 10-04-2018, the 5<sup>th</sup> Respondent informed the 6<sup>th</sup> Respondent that the previous estimate which reflects in **P15** is confirmed and accordingly, the 6<sup>th</sup> Respondent by letter dated 08-04-2018 (**P36**) informed the Petitioners that the compensation to be paid to the Petitioners would be the amount depicted in **P15** and accordingly, necessary steps would be taken to issue an award under Section 17 of the said Act (**P36**). Subsequently, Section 17 award was made and accordingly, the Petitioners are entitled to a sum of Rs. 40,000/- each (**P38**). The Petitioners, having declined to accept

the said amount of compensation requested for an alternative land in lieu of the said compensation (**P40**). In response to **P40**, the Commissioner General of Land by letter dated 24-02-2020 (**P41**), requested the Divisional Secretary of Kalpitiya to look into the possibility of providing the Petitioners alternative land within the Divisional Secretariat Division of Kalpitiya. By letter dated 04-09-2020 (**P44**), the Divisional Secretary of Imbulpe was requested to look into the possibility of providing the Petitioners alternative land within the Divisional Secretariat Division of Imbulpe. By letter dated 12-07-2021 (**P51**), the Divisional Secretary of Imbulpe informed the Land Commissioner that the land identified by the Petitioners is not the state land and therefore, the Respondents could not provide the Petitioners with an alternative land.

In those circumstances, the Petitioners pleads that the act of the Respondents is contrary to the provisions of the said Act, *mala-fide*, unreasonable, irrational and illegal.

In this scenario, the questions to be considered by this Court, in a nutshell, are as follows;

1. Whether the Respondents have adhered to the provisions of the Land Acquisition Act.
2. Whether the Respondents have taken necessary steps to provide the Petitioners with an alternative land.
3. Whether the compensation advanced by the Respondents was assessed in terms of the provisions of the said Act.

In the process of the acquisition of the land in dispute, the Respondents had taken steps in terms of the provisions of the said Act under the impression that the original owner (father of the Petitioners) was the owner of the subject matter. When it was brought to the notice of the Respondents that the lawful owners of the subject matter were the Petitioners, the Respondents rightly, revoked the previous steps and took fresh steps under the provisions of the said Act. As required by law, afresh publication was made, a fresh inquiry was held, necessary notices were issued and an award under Section 17 was made. Having scrutinized the documents tendered, it is abundantly clear that the erroneous steps inadvertently taken by the Respondents under the impression that the father of the Petitioners was the owner of the land in suit, were subsequently rectified by the Respondents in terms of the provisions of the said Act. In this context, I am of the view that there is no basis to quash the proceedings and the decision of the Respondents pertaining to the acquisition of the land in dispute.

It is evident, that the Respondents had made adequate efforts to provide the Petitioners with an alternative land. However, due to reasons beyond their control, they could not provide an alternative land.

Under Section 45 of the said Act, the assessment of compensation should be calculated at the market value of the subject matter as at the date of the notice under Section 7 of the Act. Section 45 reads as follows;

*“(1) For the purposes of this Act the market value of a land in respect of which a notice under Section 7 has been published shall, subject as hereinafter provided, 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 that notice in the Gazette :*

*Provided that, in determining that amount, all such returns and assessments of income from, or of the capital or annual value of, that land as have been made or acquiesced in by the owner of that land for the purposes of any rate or tax imposed in respect of that land, shall be taken into consideration.*

*(2) For the purposes of this Act the market value of a servitude shall be*”

*(a) where it is a new servitude which is to be created by its acquisition under this Act, be the amount by which the market value of the servant tenement of the servitude will be diminished by the creation of the servitude, or*

*(b) where it is an existing servitude which is to be extinguished by the acquisition of the servitude and its servant tenement under this Act, be the amount by which the market value of the dominant tenement of the servitude will be diminished by the extinction of the servitude.*

*(3) Where any portion of a land which is to be acquired under this Act is situated within any street lines or building limit defined by or under any other written law, the market value of that portion shall be the market value which that portion would have if it does not fall within such street lines or building limit.”*

In the case of **Marie Indira Fernandopulle Vs. E.L. Senanayake, Minister of Lands and Agriculture**<sup>1</sup> the Court observed that;

*“.....the Minister ordinarily has no power to vest the land in the State until an award is made in terms of Section 17 of the Act. Even though the market value is calculated as at the date of the notice under Section 7 the award can only be made after 31 days of the date of the notice. If there is a reference to Court under the provisions of Section 10 of the Act such award will be made at a such later date (Section 17).....the intention of the legislature is, clear, i.e., that the officers of the State cannot take possession until and unless an offer of*

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<sup>1</sup> 79ii NLR 117 at 117.

*payment of compensation is made and the acquisition proceedings are concluded.”*

The extent of the land in dispute was approximately A1-R2-P31 (excluding 10 perches). The compensation awarded by the state was a sum of Rs. 160,000/-. The learned Senior State Counsel submits that the said compensation was calculated in accordance with the market value. Since the Petitioners are vehemently objecting and disputing the calculation, the onus is on the Respondents to establish the fact that the assessment of compensation was in terms of Section 45 of the said Act, that is to say, on the market value, with strong and cogent evidence. It is pertinent to note that the Respondents totally failed to adduce any evidence to substantiate the fact that the calculation was on the market value. In the absence of any materials to establish the fact that the said compensation was calculated on the market value, this Court is not in a position to accept the contention of the Respondents that the said compensation awarded by them is in terms of the provisions of the said Act.

At this juncture, the attention of this Court is drawn to the observation made by the Supreme Court in **Choolanie Vs. Peoples Bank**<sup>2</sup>, where it was held that;

*“Satisfactory reasons should be given for administrative decisions. A decision not supported by adequate reasons is liable to be quashed by Court.*

*Per Dr. Shirani Bandaranayake, J.*

*"..... giving reasons to an administrative decision is an important feature in today's context, which cannot be lightly disregarded. Furthermore, in a situation, where giving reasons have been ignored, such a body would run the risk of having acted arbitrarily in coming to their conclusion."*

It is pertinent to note that the decisions made by public officers or authorities without adequate basis or reasons are to be considered arbitrary decisions and those decisions are liable to be quashed *in limine*. The necessity of providing reasons for administrative decisions is an essential feature in good governance and cannot be overlooked. When an administrative body fails to offer satisfactory reasons for its decisions, it risks acting arbitrarily. The need for giving reasons ensures that decisions are made transparently and accountably, preventing abuse of power and ensuring that decisions are justifiable and fair. In the absence of adequate reasons, those affected by the decision are left without a clear understanding of why a particular outcome was reached, leading to a perception of unfairness and potential injustice,

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<sup>2</sup> 2008 (2) SLR-p93.

further echoing the maxim coined by Lord Hewart, the Lord Chief Justice of England “justice must not only be done, but it must also be seen to be done.”

In those circumstances, I am of the view that the foregoing decisions of the Respondents with regard to the compensation payable to the Petitioners are liable to be quashed on the basis that the said decisions were not supported by adequate reasons.

It appears also to this Court that the Petitioners have also failed to buttress the calculation of the compensation claimed by them, namely a sum of Rs. 44,887,500/-.

For the foregoing reasons, I hold that the Petitioners are entitled to the reliefs as prayed for in paragraphs “c” and “d” of the prayers to the amended Petition dated 31-03-2022. The decision of the Respondents to award a sum of Rs. 160,000/- as compensation for the land in dispute is quashed. The Respondents are directed to assess the compensation in respect of the land in question to the market value that existed at the time of the publication of Section 7 notice on 09-12-2016 with adequate materials.

*Application allowed. No costs.*

**JUDGE OF THE COURT OF APPEAL**