

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

In the matter of an Application for
orders in the nature of Writs of
Mandamus and in terms of Article
140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

C.A.(Writ)Application No. 99/2015

(Wesleyan Methodist Missionary
Trust Association, of Methodist
Headquarters No.252, Galle Road,
Colombo 03 by the holders of power
of Attorney)

01. Rev. William Premkumar Ebenezer
Joseph
Methodist Headquarters,
No.252, Galle Road,
Colombo 03.
02. Rev. Jayasinghege Chrishantha
Samuel Rohitha De Silva
Methodist Headquarters,
No.252, Galle Road,
Colombo 03.
03. Rev. Asiri Perera
Methodist Headquarters,
No.252, Galle Road,
Colombo 03.

Petitioners

Vs.

01. K. Pushpalal Kumarasinghe
Chairman,
Ambalangoda Pradeshiya Sabha,
Batapola.
02. W. P. Gunasekara
The Secretary,
Ambalangoda Pradeshiya Sabha,
Batapola.
03. Chandima Muhandiram
The Commissioner for Local
Government
Dpt. of Local Government (Southern
Province)
6th Floor,
District Secretariat,
Galle.
04. Sarasi S. Gunasekara
Divisional Secretary,
Divisional Secretariat,
Ambalangoda.
05. S.T. Kodikara
The Secretary for the Ministry of
Public & Home Affairs,
Ministry of Public Administration
& Home Affairs,
Independence Square,
Colombo 07.
06. Hon. Attorney General
Attorney General's Department,
Hulfsdorp,
Colombo 12.

Respondents

BEFORE : HON. JUSTICE ACHALA WENGAPPULI

COUNSEL : Ravindranath Dabare with Savanthi
Ponnamperuma for the Petitioners.
Shantha Jayawardena with Chamara
Nanayakkarawasam for the 2nd
Respondent.
Anusha Fernando D.S.G. for the 3rd to 6th
Respondents.

WRITTEN SUBMISSIONS

TENDERED ON : 17th January, 2020 (by the 2nd Respondent)
21st January (by the Petitioner)

DECIDED ON : 28th February, 2020

HON. JUSTICE ACHALA WENGAPPULI

The Wesleyan Methodist Missionary Trust Association, through its power of Attorney Holders acting as the three joint Petitioners, invoked the jurisdiction conferred on this Court by Article 140 of the Constitution in filing this application by which they seek relief primarily by way of issuance of a Writ of *Mandamus* against Chairman, *Ambalangoda* Pradeshiya Sabha (1st Respondent) and Secretary of the said Pradeshiya Sabha (2nd Respondent) and the Divisional Secretary of *Ambalangoda* (4th Respondent) to pay Rs. 8,80,000.00 for the acquired land as per the Notice

03-2010 under Section 17 of the Land Acquisition Act, official interest and delay charges.

It is stated by the Petitioners that Lot 1 and 2 of the Surveyor General's Plan No. 2574 dated 01.12.1994 which depicts a part of Lot No. 1 in Plan No. 746 surveyed on 18.05.1963 has been acquired on behalf of the 1st Respondent for the purpose of building a crematorium under its management in 1997, by the 4th Respondent who acted as the Acquiring Officer under the provisions of Land Acquisition Act No. 9 of 1950.

After the acquisition, possession of the said land was handed over to the 1st Respondent, who constructed a crematorium on it. The Petitioners claim that during the inquiry under Section 9 of the said Act, they sought compensation from the 4th Respondent. They also state that after a lapse of 12 years and after the said inquiry under Section 9, the 4th Respondent had published the required notice under Section 10(1)(a) of the said Act on 28.09.2009 and the 4th Respondent, consequent to his determination under Section 17 of the said Act, declared that the Petitioners are entitled to Rs. 8,80,000.00 as compensation for the land that had been acquired for the 1st Respondent. This determination was duly communicated to the 1st Respondent by the 4th Respondent by his letter dated 23.04.2010, marked as 4R5.

Thereafter, the 4th Respondent had, in a series of correspondence with the 1st Respondent directed the Pradeshiya Sabha to deposit the already decided quantum of compensation in his office. The 1st Respondent however, had informed the Petitioners that there is a significant disparity of the land prices at the time of actual acquisition and

now. It also stated that since it had already deposited the required amount it cannot make another payment as compensation. This position had been communicated to the 4th Respondent as well and he had called for proof of the claim of the 1st Respondent, since there was no official record available in his office about such a payment.

The Petitioner sought intervention of the 3rd Respondent, the Presidential Secretariat, Hon. Member of Parliament for Galle District, Department of Christian Religious Affairs and District Secretary without any success in their claim of compensation. The 4th Respondent had directed the 1st Respondent to deposit the required funds for the payment of compensation by letters marked as P6/4R6, P8, 4R7 and P12. The Petitioner had requested the 1st Respondent to make available the required funding by letters marked as P9, and P10(c) but failed to elicit any response from the 1st Respondent.

The 2nd Respondent, having raised two preliminary objections to the maintainability of the petition of the Petitioners in his objections, admitted that after identifying a suitable land for the cemetery, the 1st Respondent initiated the acquisition process. As per the valuation of the Valuation Department, which was conveyed to the 1st Respondent by letters dated 02.03.1984 and July 1985 (2R2 and 2R3), a sum of Rs. 17,600.00 was indicated. Acting upon the said valuation, the 1st Respondent had deposited Rs. 20,000.00 with the Divisional Secretary on 28.02.1987 (2R4, 2R5, 2R6, 2R7, 2R8 and 2R9) and the said payment was confirmed by the receipt dated 19.02.1987 (2R10). The 2nd Respondent further stated that the 1st and 2nd Respondents have acted according to law and there is no failure

on their part in discharging of any legal obligations and had therefore prayed for dismissal of the petition of the Petitioners.

In this objection, the 3rd, 4th and 5th Respondents have stated that Survey Department had prepared a Plan bearing No. 2574 of 07.08.1995, and admits that the land described in the petition of the Petitioners corresponds to the cumulative area in Lots 1, 2 and 4 of the said Plan. The 3rd, 4th and 5th Respondents further stated that consequent upon a request by the 1st Respondent, notice, as required under Section 38(A) of the Land Acquisition Act, was published in Gazette No. 7415/11 of 16.11.1992. Thereafter, the 4th Respondent had taken over the possession of the said land and it was subsequently determined under Section 17 of the said Act that the Petitioners are entitled to be paid a sum of Rs. 8,80,000.00 as compensation. The quantum of compensation was determined upon the valuation of the Chief Valuer, who informed the 4th Respondent by his letter dated 11.03.2010 that the value of compensation for the land that had been acquired is estimated at Rs. 8,80,000.00 (4R4). The 1st Respondent was thereafter instructed to make the compensation amount available to the 3rd Respondent. It is also stated by the 3rd Respondent that the 3rd to 5th Respondents have taken steps according to law and thereby sought that the petition of the Petitioners be dismissed.

The Petitioners, have relied on the statutory provisions contained in Section 29 of the Land Acquisition Act, in support of their application for the issuance of a Writ of *Mandamus*. They submitted that there is a statutory duty cast on the acquiring officer by virtue of Section 29 of the Land Acquisition Act to pay compensation to "each person who is entitled to compensation" which the 4th Respondent had failed to comply.

It is clear from the respective positions taken up by the parties in their pleadings, there is no dispute to the fact that the land belonged to the Petitioners was acquired by the 4th Respondent on behalf of the 1st Respondent. It is also not disputed that the Petitioners are entitled to be paid compensation upon acquisition of their land by the 1st Respondent. The contentious issue is the quantum of compensation that is payable to the Petitioners. The 2nd Respondent claims that the 1st Respondent had already deposited Rs. 20,000.00 and thereby fulfilled their part of the obligation. It is clear from the annexures to the objections of the 2nd Respondent that *Ambalangoda* Pradeshiya Sabha never made any payment. The deposit of Rs. 20,000.00 was made, upon the funds released from the Decentralised Budgetary allocation of a Hon. Member of Parliament, who represented the area at that point of time.

The Petitioners and the 3rd to 5th Respondents claimed that the quantum of compensation had been determined as Rs. 8,80,000.00 by the 4th Respondent and the 1st and 2nd Respondents have failed to release or deposit the said sum of money with the 4th Respondent who is the designated authority to pay compensation as the Acquiring Officer.

Before this Court ventures to consider the submissions of the contesting parties, it is pertinent to consider the two “preliminary objections” raised by the 2nd Respondent.

The first of the objections was the Petitioner’s failure to name *Ambalangoda* Pradesheeya Sabha as a party necessary to the determination of the instant application. The second objection related to the failure of the

Petitioners to name holder of the office of Secretary of the *Ambalangoda Pradeshiya Sabha*.

In dealing with the objection as to the failure to name necessary parties, the 2nd Respondent cited several authorities where this Court had treated the failure to name a necessary party as fatal to the maintainability of the application. The judgments in *Ravaya Publishers and Others v Wijedasa Rajapaksha, Chairman, Sri Lanka Press Council and Others* (2001) 3 Sri L.R. 213, *Abayadeera v Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo* (1983) 2 Sri L.R. 267 and **CA Application 178/2012** - decided on 09.08.2012, have all taken the consistent view that the failure to name necessary parties are fatal to the respective applications.

When an objection is taken with regard to the failure to name a necessary party to an application, the Courts would then decide any such objection by applying a test in determining whether a particular party is a necessary party or not in that particular instance. In *Ravaya Publishers and Others v Wijedasa Rajapaksha, Chairman, Sri Lanka Press Council and Others* (ibid), it was held by J.A.N. de Silva J (as he was then);

"In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings."

The Petitioner had made the Chairman of the Preadeshiya Sabha as the 1st Respondent and the Secretary of the said Sabha as the 2nd

Respondent. In this particular situation, the pivotal issue is the failure of the said Sabha to deposit the required sum of money with the 4th Respondent to be payable to the Petitioners after determination as per Section 17 of the Land Acquisition Act. The Petitioners have therefore sought a Writ of *Mandamus* against the Acquiring Officer, citing him as the 4th Respondent in addition to the 1st and 2nd Respondents. In the event of this Court issuing a Writ of *Mandamus* on these Respondents, they should comply with that order. Once the Court issues an order, the relevant Respondent must comply. There is no question of Pradeshiya Sabha making a determination whether to comply with the order of Court or not as it did with the determination of the 4th Respondent. There is no decision making process that is involved with the Pradeshiya Sabha, in complying with an order of Court. Hence, the relevant Pradeshiya Sabha is not a necessary party, in that context.

The Petitioners have rightly sought a *Mandamus* against the 4th Respondent since he is the Acquiring Officer who is statutorily duty bound to pay compensation. Similarly, they also sought a *Mandamus* on the 2nd Respondent to provide the necessary finances to the 4th Respondent, if this Court decided to issue the Writ on him. Once the 4th Respondent had determined the amount of compensation, particularly the 2nd Respondent as the Chief Administrative Officer of the relevant Pradeshiya Sabha (as per Section 9(2) of the Pradeshiya Sabha Act No. 15 of 1987), is under a similar public duty to make available the necessary funding, in fulfilment of the 4th Respondent's statutory duty. In that context, even if the Pradeshiya Sabha is cited as a respondent either as a legal entity or by adding each member of the Sabha as individual

Respondents, that fact would not make any difference and therefore fails to satisfy the above reproduced requirement in identifying it as a necessary party.

However, the 2nd Respondent did not proceed with his 2nd preliminary objection at the hearing of this application. It is sufficient to refer to Rule No. 5(2) of the Court of Appeal (Appellate Procedure) Rules 1990, wherein it is provided that a *"... public officer may be made a Respondent to any such application by reference to his official designation only..."*.

It appears that the 2nd Respondent primarily based his argument on the document marked 2R2. In this letter addressed to the Designated Officer of *Batapola* District Development Council, the local Government body that preceded Pradeshiya Sabhas, which were established by Act No.15 of 1987, the Chief Valuer informs that his "preliminary assessment" for the purpose of acquisition of the land for a cemetery is Rs. 17,600.00. He further emphasises in that letter itself that the said valuation is not a final assessment. The 4th paragraph of the said letter reiterates the fact that the final assessment will be forwarded to the Acquiring Officer once the initial steps in the process of acquisition had commenced and the Surveyor General prepares the Plan.

The Chief Valuer conveyed his final valuation to the 4th Respondent by his letter dated 11.03.2010 (4R4) and therein the land that had been acquired was valued at Rs. 8,80,000.00. Acting upon the said final valuation, the 4th Respondent had determined that the Petitioners are entitled to compensation quantified at Rs. 8,80,000.00.

When the predecessor of the *Ambalangoda* Pradeshiya Sabha deposited Rs. 20,000.00 in fulfilment of the requirement to commence preliminary stages of the process of acquisition of Petitioner's land, it had taken upon itself of the legal consequences that flow from that point onwards. The 2nd Respondent's submission that it is the duty of the 4th Respondent to obtain necessary funds to pay compensation to the Petitioners from the now defunct Galle District Development Council could not be accepted as a valid proposition in view of clear provisions that are contained in Section 16(3) of the Pradeshiya Sabha Act where it states that all assets and liabilities acquired or incurred by a Development Council in the exercise of its local Government powers with respect of a Pradeshiya Sabha area is vested in the said Sabha after the appointed date.

Since there was no challenge to this determination made by the 4th Respondent under Section 17 of the Land Acquisition Act, it is therefore incumbent upon the 1st and 2nd Respondents to comply with the determination made by the 4th Respondent.

Learned Counsel for the Petitioner invited the attention of this Court to the judgment in CA (Writ) Application 512/2011, decided on 05.09.2019 on almost identical factual setting. In this judgment it is revealed that the Petitioner sought a Writ of *Mandamus* on the Acquiring Officer, who disclosed to Court that the land was acquired on behalf of State Timber Corporation and the delay of payment of compensation was due to the failure of the said Corporation to deposit the sum mentioned in the award made under Section 17 of the Land Acquisition Act.

Upon this revelation, this Court granted relief to the Petitioner by issuing a Writ of Mandamus, whilst stating that;

"Clearly the dispute as to the payment of compensation is between the 2nd and 3rd Respondents, one an agent of the State and the other a public Corporation for whom the land was acquired. I am of the view that such an internal issue cannot deprive the Petitioner what it had been awarded according to law. It is the duty of the State to ensure that resources are available to comply with awards made under Section 17 of the Act. The failure to do so cannot deprive the Petitioner of what is due according to law."

In relation to the instant application too, this Court finds that the inordinate delay was a result of the dispute between the *Ambalangoda Pradeshiya Sabha* and the 4th Respondent upon the former's failure to deposit the sum awarded by the latter as the Acquiring Officer acting under Section 17 of the Land Acquisition Act in fulfilment of the statutory requirement as per 2R3.

Therefore, having considered the respective positions of the contesting parties, this Court issues a Writ of Mandamus on the 4th Respondent and also on the 1st and 2nd Respondents, since it is of the view that the Petitioners are entitled to relief as they have prayed for in paragraphs (b) "Grant an order in the nature of Writ of *Mandamus* directing the Secretary of *Pradeshiya Sabha Ambalangoda* to honour their *Legal Obligations*". (c) "Order Secretary of *Pradeshiya Sabha* ,

Ambalandoga to pay Rs. 8,80,000.00 for the acquired land as per the Notice 03-2010 under Section 17 of the Land Acquisition Act, and Official interest, delay Charges". and (d). "Order to pay Legal interest for the period from 1997 to 2015". The Petitioners are entitled to recover interest as per Section 35 of the Land Acquisition Act.

The 4th Respondent is ordered to finalise the payment of compensation to the Petitioners within six calendar months from the date of this Order.

This Court further orders the 1st and the 2nd Respondents to pay costs in their official capacity in a sum of Rs. 50,000.00 each to the Petitioners along with the amount of compensation already determined by the 4th Respondent under Section 17 of the Land Acquisition Act.

Application is allowed.

JUDGE OF THE COURT OF APPEAL