

**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 Prohibition in terms of Article  
140 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka

**CA (Writ) Application No: 401/2019**

Wanniarachchi Kankanamge Sarath,  
12, Mahabuthgamuwa,  
Mulleriyawa New Town.

**PETITIONER**

- 1) Road Development Authority.
- 2) D.M.Dayaratne,  
Director Lands and Colombo District  
Acquiring Officer.
- 3) Sunil Hettiarachchi,  
Secretary, Ministry of Highways.
- 4) B. Ranaweera,  
Additional Secretary (Development),  
Ministry of Highways.
- 1<sup>st</sup> – 4<sup>th</sup> Respondents at 4<sup>th</sup> Floor,  
'Maga Neguma Maha Medura',  
Denzil Kobbekaduwa Mawatha,  
Koswatte, Battaramulla.
- 5) Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** Yasantha Kodagoda, P.C., J / President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** J.P. Gamage with Rasika Wellappili for the Petitioner

Avanti Weerakoon, State Counsel for the  
Respondents

**Supported on:** 20<sup>th</sup> November 2019

**Written Submissions:** Tendered on behalf of the Respondents on 29<sup>th</sup>  
November 2019

**Decided on:** 13<sup>th</sup> January 2020

**Arjuna Obeyesekere, J**

The Petitioner owns one half of a land in extent of 2.25P situated in Mahabuthgamuwa within the Kotikawatte – Mulleriyawa Pradeshiya Sabha area. The Petitioner states that he is carrying on a business of manufacturing rubber bushes, beadings and packing under the name of 'Sarath Rubber Industries' at the said premises.<sup>1</sup>

The Petitioner states further that proceedings in terms of the Land Acquisition Act, as amended (the Act) to acquire the said land for the purpose of road expansion and development work, commenced in 2012 and that the Minister has made an Order under proviso (a) to Section 38 of the Act to take over immediate possession of the said land.<sup>2</sup> It does not appear that the Petitioner had any objection to the said acquisition, even though he had to relocate his

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<sup>1</sup> The Certificate of Registration of the said business has been annexed to the petition marked 'P8'.

<sup>2</sup> The Order under proviso (a) of Section 38, published in Extraordinary Gazette No. 1830/50 dated 4<sup>th</sup> October 2013, has been annexed to the petition marked 'P3'.

business premises. The Petitioner had accordingly submitted a claim for compensation, and had participated at the inquiry held in terms of Section 9(1) of the Act to determine the said claim.

Part VI of the Act and in particular Sections 45 and 46, contain provisions relating to the assessment of compensation.

The relevant parts of Section 46 (1) are re-produced below:

*"The amount of compensation to be paid under this Act to any person interested in a land shall-*

*(a) where the compensation is for the acquisition of that land, be based on the market value of that land, or ....*

*and shall be proportionate to his interest in that land. No additional compensation shall be allowed to him in consideration of the compulsory nature of the acquisition, but, where it is the land which is to be acquired, he shall be entitled to:*

*(iii) compensation for any such loss of earnings from any business carried on the land on the aforesaid date as may be caused by the acquisition of the land*

*Provided that*

*(b) the amount of the compensation under paragraph (iii) of this subsection shall not exceed three times the average annual net profits from the business, as shown by the books of accounts, for the*

*three calendar years immediately preceding the date on which the notice under section 7 in respect of the land is published in the Gazette; and ...”*

The relevant parts of Section 45 (1) are re-produced below:

*“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 realised 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, ....”*

The Petitioner states that the Acquiring Officer published his award under Section 17(1) of the Act on 24<sup>th</sup> November 2015. In terms of the said award, annexed to the petition marked 'P5', the Petitioner had been awarded a sum of Rs. 560,000 as compensation for his one half share of 2.25P. The Petitioner states that the Acquiring Officer failed to take into consideration *inter alia* his loss of earnings from his business, and therefore he filed an appeal with the Board of Review, as provided for in Section 21 of the Act. This is the remedy provided by the legislature to any person dissatisfied by an award made under Section 17(1). In the said appeal annexed to the petition marked 'P6', the Petitioner had brought to the attention of the Board of Review, *inter alia* that he has taken loans from banks in a sum of Rs. 3 million, and that the value of his machinery exceeds Rs. 10 million, and claimed an enhancement of compensation in a sum of Rs. 40 million. The appeal filed by the Petitioner is pending before the Board of Review. This Court must observe that the legislature has provided a person dissatisfied with the decision of the Board of



Review with a further right of appeal to this Court in terms of Section 28, on a question of law.

In order to afford relief expeditiously to persons whose lands have been acquired and thereby expedite the acquisition process, the Government has established a Land Acquisition Review Committee, commonly referred to as the 'LARC' and an appellate body known as the 'Super LARC'. By a letter dated 25<sup>th</sup> June 2018 annexed to the petition marked 'P7', the Petitioner had been informed by the 2<sup>nd</sup> Respondent that the claim of the Petitioner had been considered by the 'LARC' and the 'Super LARC', and that the compensation payable to the Petitioner had been enhanced by a sum of Rs. 496,703. Together with interest, the Petitioner was entitled to receive a sum of Rs. 1,226,047 as compensation for the acquisition of his one half share of 2.25P.

As the Petitioner continued to be dissatisfied with the quantum of compensation awarded to him, he had made further representations to the 1<sup>st</sup> Respondent, which resulted in the 2<sup>nd</sup> Respondent, the Acquiring Officer for the Colombo District, making a request to the Chief Valuer to consider if the compensation due to the Petitioner on account of loss of business can be enhanced.<sup>3</sup> The learned State Counsel has produced the reply sent by the Chief Valuer, wherein he has stated that:

“අදාළ ව්‍යාපාර භාණ්ඩ ගණනය කිරීම සඳහා, විගණනය කරන ලද ගිණුම් වාර්තා හා ඒ අනුව ගෙවන ලද ආදායම් පත්‍රිකා අවශ්‍ය වන අතර ලබාදී ඇති ලේඛන උපයෝගී කර ගනිමින් විධිමත් ව්‍යාපාර භාණ්ඩ ගණනය කළ නොහැකි බව කාරුණිකව දන්වා සිටීම.”<sup>4</sup>

<sup>3</sup> Vide letter dated 30<sup>th</sup> October 2018 annexed to the petition marked 'P11'.

<sup>4</sup> Vide letter dated 27<sup>th</sup> August 2019 annexed to the written submissions of the Respondent, marked 'X'.

The Petitioner has not handed over the premises in spite of several notices being served on him<sup>5</sup>, as a result of which the Respondents have filed action in the Magistrate's Court of Colombo in terms of Section 42(2) of the Act<sup>6</sup>, and obtained a Writ of execution to eject the Petitioner from the said land<sup>7</sup>.

Being dissatisfied with the aforementioned Order of the learned Magistrate, the Petitioner has filed this application, seeking *inter alia* the following relief:

- (a) A Writ of Certiorari to quash the decision reflected in the letters marked '**P12**', '**P12a**' and '**P12b**' to take over possession of the land belonging to the Petitioner;
- (b) A Writ of Prohibition preventing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from taking possession until a proper valuation is done.

The learned State Counsel appearing for the Respondents submitted that the land of the Petitioner, together with several other lands, is required for the Ambathale Road widening Project, which is funded by the Organisation of Petrol Exporting Countries (OPEC). She submitted that the acquisition process commenced way back in 2013, and that while the 1<sup>st</sup> Respondent has taken possession of all other lands required for the Project, the Petitioner's land is the only land that remains to be taken over by the 1<sup>st</sup> Respondent. She

<sup>5</sup> The following notices have been served on the Petitioner:

- (a) Letter dated 7<sup>th</sup> February 2014 marked 'P12b';
- (b) Letter dated 13<sup>th</sup> July 2018 marked 'P12';
- (c) Letter dated 23<sup>rd</sup> May 2019 marked 'P12a'.

<sup>6</sup> Section 42(2) reads as follows: "Where any officer directed by an Order under section 38 to take possession of any land is unable or apprehends that he will be unable to take possession of that land because of any obstruction or resistance which has been or is likely to be offered, such officer shall, on his making an application in that behalf to the Magistrate's Court having jurisdiction over the place where that land is situated, be entitled to an order of that court directing the Fiscal to deliver possession of that land to him for and on behalf of the State"

<sup>7</sup> The nature of an application under Section 42(2) has been discussed in Mohammed Lebbe vs Madana [66 NLR 239].

submitted further that the Project is due for completion by end December 2019 and that possession of the land currently occupied by the Petitioner is required on an urgent basis, as it is preventing the successful completion of the Project. The Petitioner has not disputed any of these facts.

The principal submission of the learned Counsel for the Petitioner is that the Petitioner has *not refused to hand over possession of the land* but that *he must be paid reasonable compensation*, if he is to vacate the said land. This Court observes that the conduct of the Petitioner however amounts to a refusal to handover the property in issue to the State. The question that this Court must therefore consider is whether payment of compensation that is acceptable to the Petitioner is a condition precedent to the handing over of possession of the land owned and possessed by the Petitioner.

Part V of the Act contains provisions dealing with taking over possession of a land. Section 38 of the Act reads as follows:

*"At any time after an award is made under Section 17, the Minister may by Order published in the Gazette –*

*(a) Where the award relates to the acquisition of any land, direct the acquiring officer ... to take possession of that land for and on behalf of the State..."*

Thus, in terms of Section 38(a), possession can be taken over any time after an award is made under Section 17. There is no requirement that the State must await the outcome of the appeal that a party may make against the said award. This Court is therefore of the view that the Minister is entitled to make



an order that possession be taken over, soon after an award is made under Section 17(1), pending the outcome of an appeal to the Board of Review.

The Act has provided the State with an accelerated procedure for the taking over of possession of any land that is the subject of an acquisition under the Act. In terms of proviso (a) of Section 38 of the Act, the Minister may make an Order to take possession of the land that is the subject matter of an acquisition, where it becomes necessary to take **immediate possession of any land on the ground of any urgency**, after a notice under either Section 2 or 4 has been exhibited. Where an Order is so made, the Acquiring Officer need not await an award under Section 17(1) to take over possession of the land.

The Order made by the Minister under proviso (a) of Section 38 in respect of the Petitioner's land has been annexed to the petition marked 'P3'. The material that has been placed before this Court by the Respondents amply demonstrates the urgent need to take over immediate possession of the land belonging to the Petitioner. In fact, the Petitioner is not alleging that there is no urgency in taking over possession. The only argument of the Petitioner is that the compensation is inadequate.

In these circumstances, this Court is of the view that the Respondent is entitled to take possession of the Petitioner's land, any time after an Order is made in terms of proviso (a) of Section 38. The fact that an award under Section 17(1) has not been made or where an award has been made the fact that the Petitioner has filed an appeal against such award or that compensation has not been paid is irrelevant in terms of the Act, when it comes to taking over of possession of the land. The payment of compensation and/or a final determination by the Board of Review or by this Court with regard to the



entitlement and/or the quantum of compensation are not conditions precedent to the taking over of possession. In these circumstances, this Court does not see any merit in the submission of the learned Counsel for the Petitioner that the Petitioner is not required to hand over possession until a final determination is made with regard to compensation or until he is paid reasonable compensation.

There is one other matter that this Court wishes to advert to. This Court observes that the initial quantum of compensation offered to the Petitioner was a sum of Rs. 560,000. According to the minutes of the meeting that the 'Super LARC' had with the Petitioner, annexed to the counter affidavit of the Petitioner marked 'P10(viii)', the Petitioner had agreed to the following course of action:

“2005, 2006, 2007 වර්ෂ වලට අදාළව ගිණුම් වාර්තා ඉල්ලුම්කරු විසින් ව්‍යාපෘතියට භාරදුන් පසු, ව්‍යාපාර කානිය ගණනය කර ඒ අනුව ව්‍යාපාර ආදායම් අනිමිම වෙනුවෙන් ලබා දෙන දිමනාව ලබා දීමට කමිටුව තීරණය කරන ලදී. ආදායම් බදු ගෙවීම පිළිබඳ වාර්තා සහ ඉහතින් සඳහන් කළ ගිණුම් වාර්තා 2018/03/28 දිනට පෙර ලබා දිය යුතු බවට ඉල්ලුම්කරු වෙත දැනුම් දෙන ලදී.”

The Petitioner had annexed to the petition the Statements of Account for the years 2005-06 and 2006-07 submitted by him to the 'Super LARC', marked 'P10(ix)' and 'P10(x)'. This Court has examined same and observes that while the total revenue of the Petitioner for the said years was Rs. 1,736,113/- and 1,786,703/-, his annual profit for each of the said years had only been Rs. 353,785/- and 360,172/-. This Court is at a loss to understand the reason to call for the accounts of 2006 and 2007 when the acquisition had commenced in 2012. Be that as it may, the Petitioner has not complained of this fact nor has

the Petitioner placed before this Court the statements of account for the subsequent years to demonstrate that his revenue and/or profit was higher than what the 'Super LARC' considered. The fact that the 'Super LARC' has increased the quantum of compensation by Rs. 496,703 demonstrates that the reasons urged by the Petitioner for an enhancement of the compensation has been given due consideration. The said enhancement is in fact in excess of the quantum provided by Regulation 4(2)(g) of the Land Acquisition (Payment of Compensation) Regulations, 2013<sup>8</sup> and is within the quantum of compensation provided for in Section 46 of the Act, for loss of earnings.

The Petitioner has annexed to the petition marked 'P9(b)' – 'P9(e)' photographs depicting his business establishment. This Court has examined the said photographs and observes that the machinery and equipment of the Petitioner can be re-located without any difficulty. The Petitioner has also annexed to the petition marked 'P10(i)' – 'P10(iv)', several letters issued by banks to support his position that he has taken loans for his business. This Court has examined the said documents and observes that each of the loans referred to in the said letters have been obtained by the Petitioner after the acquisition process commenced. In the said circumstances, it appears to this Court that the Respondents have acted reasonably in determining the

<sup>8</sup> The said Regulations, published in Extraordinary Gazette No. 1864/54 dated 30<sup>th</sup> May 2014, have been produced by the Respondents marked 'R2'. Regulation 4(2)(g) reads as follows:

(c) ව්‍යාපාර අභිමත:- පහත ආකාරයට සිදුකරනු ලබන ව්‍යාපාර වාරිකකරණයකට අනුව ගෙවීම කරනු ලැබිය යුතුය:-

ව්‍යාපාර වර්ගය	නිමිකම
(1) අවිධිමත් (ආදායම් බදු නොගෙවන අයකු)	උපකාරක ලේඛන මගින් ආදායම තහවුරු කරන්නේ නම්, රු. 15,000 ක් හෝ මාස 3 ක් දක්වා වන දළ ආදායම් යන දෙකෙන් වැඩි මුදල.
(2) විධිමත් (ආදායම් බදු ගෙවන අයකු)	ව්‍යාපාරය මුළුමනින් ම අභිමත වන්නේ නම්, ඉදිරිපත් කරනු ලබන බදු ප්‍රකාශන ලේඛනවලට අනුව පහතේ 2 වන වගන්තිය යටතේ දැන්වීම පල කළ දිනට පූර්වාසන්න වසර 3 ක කාලයක දළ සැකසුම් ලාභයේ සාමාන්‍ය. ව්‍යාපාරයට තාවකාලිකව භාඩා වන්නේ නම් ලාභ කමිටුව විසින් ගෙවීම තීරණය කරනු ලැබිය යුතුය.

compensation payable to the Petitioner. This finding shall not prevent the Board of Review from considering the matters urged before it by the Petitioner, including any documents to substantiate his revenue and profits for the relevant period, and arriving at a decision in terms of the law.

In the above circumstances:

- (a) This Court does not see any legal basis to issue formal notice of this application on the Respondents:
- (b) This Court directs the Respondents to pay the Petitioner the compensation awarded by 'Super LARC' within a period of eight weeks from the taking over of possession of the said land.

Subject to the above direction, this application is dismissed, without costs.



**Judge of the Court of Appeal**

**Yasantha Kodagoda, P.C., J/ President of the Court of Appeal**

I agree



**President of the Court of Appeal**