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 Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 188/2014

D.T.A. Attale,
No. 363, Sirimavo Bandaranayake Mawatha,
Colombo 14.

PETITIONER

Vs.

1. L.A. Kalukapuarachchi,
   Divisional Secretary, Kesbewa.

1A. Y.K.S. Jeewamala,
   Divisional Secretary, Kesbewa,
   Divisional Secretariat, Kesbewa.

2. Dr. I.H.K. Mahanama,
   Secretary, Ministry of Land.

2A. W.H. Karunarathne,
   Secretary to the Ministry of Land.

2B. R.A.K. Ranawaka,
   Secretary, Ministry of Land.

3. Irin Nanayakkara,
   Director of Lands.

3A. Medha Bemmulla,
   Director of Lands (Acquisition).

4. M.K.A.D.S. Gunawardena,
Minister of Land.

4A. John A.E. Amaratunga,
Minister of Land.

4B. Gayantha Karunathilake,
Minister of Land.

4C. S.M. Chandrasena,
Minister of Land & Land Development.

2nd – 4C Respondents at
Ministry of Land and Land Development,
'Mihikatha Medura',
Rajamalwatta Road, Battaramulla.

RESPONDENTS

Before: **Mahinda Samayawardhena, J**
Arjuna Obeyesekere, J

Counsel: Faisz Musthapha, P.C., with Shantha Jayawardena for the Petitioner

Ms. Chaya Sri Nammuni, Senior State Counsel for the Respondents

Argued on: 9th June 2020

Written Submissions: Tendered on behalf of the Petitioner on 8th August 2019.

Tendered on behalf of the Respondents on 18th November 2019.

Decided on: 17th July 2020

Arjuna Obeyesekere, J

The issue that arises for the determination of this Court is whether the publication of the notice marked '**P68**' by the 1st Respondent, the Divisional Secretary, Kesbewa rescinding the notice issued in terms of Section 7 of the Land Acquisition Act No. 9 of 1950, as amended (the Act), marked '**P48**', and thereby restoring the previous notice issued in terms of Section 7, marked '**P12**', subject to the amendment to '**P12**' set out in the notice marked '**P69**', is *ultra vires* the powers of the 1st Respondent.

A consideration of the above issue requires this Court to set out in detail the background facts, spanning over a period of fifteen years.

The Petitioner states that by virtue of Deed of Transfer No. 533 dated 4th October 1990, he became the owner of a land in extent of 1A 3R 12P situated in Pannipitiya. The said land is depicted in Plan No. 2185 dated 20th September 1980. The Petitioner states that prior to him purchasing the said land, his predecessor in title had caused the said land to be re-surveyed and sub-divided into twenty three lots, with Lot No. 23 serving as the road to Lot Nos. 1-10 situated on the north of the roadway and Lot Nos. 11 - 22 situated on the south of the roadway, as depicted in Plan No. 2412 dated 14th July 1990. A copy of the said Plan has been marked '**P2A**'. Although the Petitioner claims that his predecessor in title prepared the said sub-division plan, it appears that '**P2A**' was in fact prepared by the Petitioner, prior to purchasing the said land.[1]

Be that as it may, the Petitioner states that the said lots were not physically demarcated on the ground nor had his predecessor in title sold any of the lots separately. Thus, the Petitioner claims that at the time he purchased the said

[1] Vide paragraph 1.2 of the petition filed by the Petitioner in CA (Writ) Application No. 2498/04, marked 'P29'.

land, it had remained as one lot. After purchasing the said property in October 1990, the Petitioner had sold Lot Nos. 7, 9 – 15, and 17 depicted in Plan No. 2412 marked '**P2A**' to third parties (extent of the land sold aggregating to 98P), together with the right of way over Lot No. 23.[2] The Petitioner had continued to be the owner of Lot Nos. 1-5, 8, 18 – 22, together with the right of access over Lot No.23, of the Plan '**P2A**'.[3]

By a notice published in terms of Section 92 of the National Water Supply and Drainage Board Act No. 2 of 1974 in Extraordinary Gazette No. 870/11 dated 10th May 1995, the Minister in charge of the National Water Supply and Drainage Board had approved the acquisition of part of the aforementioned land, in extent of 3R 28P. The said notice marked '**P4**' recognises the Petitioner as the person claiming the land. When one considers the boundaries of the land identified to be acquired, as referred to in '**P4**', and the shaded area in '**P2A**', it becomes clear that the land that is referred to in '**P4**' are Lot Nos. 1-5, 17-22 and part of Lot No. 23 of '**P2A**'.

The Petitioner states that on 5th February 1996, he received under registered post a notice dated 10th December 1995 issued under Section 2 of the Act, annexed to the petition marked '**P3**', in respect of a portion of land in extent of 3R 28P. There is no dispute that that the notices '**P3**' and '**P4**' have been issued in respect of the same land – namely Lot Nos. 1 – 5 and 17-22 and part of Lot No. 23, of Plan No. 2412, marked '**P2A**'. It must be noted that Lot Nos. 8 and 16 of Plan No. 2412 was not affected by '**P3**' and '**P4**'.

A notice under proviso (a) of Section 38 of the Act to take immediate possession of the land, on the ground of urgency, had been published in

[2] The Petitioner is not claiming any rights over Lot Nos. 6 and 16 of 'P2A' – vide paragraph 1.2 and 1.3 of 'P29'.
[3] Vide letter dated 14th March 1999 marked 'P13' sent by the Petitioner.

Extraordinary Gazette No. 978/5 dated 3rd June 1997, marked '**P6**'. By the time '**P6**' was issued, an Advance Tracing No. CO/KSB/96/21 marked '**P7**' had been prepared in November 1996 in respect of the land that was to be acquired. The said Advance Tracing '**P7**' consists of four lots numbered as 1 – 4, containing in extent of 0.3651H. It appears that the division and demarcation of the land into four lots had been done, for two reasons.

The first is that the roadway, i.e. Lot No. 23 in the Plan marked '**P2A**', divided the land claimed by the Petitioner into two. The said Lot No. 23 in '**P2A**' did not belong to the Petitioner, as it was the roadway to the aforementioned Lots of land that the Petitioner had alienated. As the Petitioner, and those who had purchased lots from the Petitioner only had a right of way over Lot No.23 of '**P2A**', this was reflected by having that part of Lot No. 23 that was being acquired, identified as a separate lot, namely Lot No. 2 in the Advance Tracing.

The second reason is that the Petitioner was not claiming any rights over Lot No. 4 of '**P7**' which appears to be Lot No. 17 in '**P2A**' which had been sold by the Petitioner prior to acquisition proceedings commencing in 1995. Thus, the Petitioner was claiming the land north of the roadway and south of the roadway in '**P2A**', and these two lots were accordingly depicted as Lot Nos. 1 and 3 in the Advance Tracing '**P7**'. This position is clearly reflected in the column, "**හිමිකම් කියන්නාගේ නම සහ ලිපිනය**" on '**P7**'. Possession of the said land had accordingly been taken over as four lots and the Petitioner does not seem to have had any objection to the land to be acquired, not being depicted as one Lot, in '**P7**'.

The notice in terms of Section 5 of the Act declaring that the said land is to be acquired for a public purpose had been published in Extraordinary Gazette No. 999/5 dated 28th October 1997, marked '**P10**', where the land had been

referred to with reference to the aforementioned Advance Tracing '**P7**'. The extent of the land referred to in the said Notice is 0.3651H.

After '**P3**' and '**P10**' were issued, the Divisional Secretary appears to have realized that acquiring part of Lot No. 23 in Plan No. 2412 would deprive access to those who had purchased land from the Petitioner. It appears that the Petitioner had agreed to provide a strip of land, having a width of 1.5m, and situated to the south of Lot Nos. 17-22 of '**P2A**', to enable the Pradeshiya Sabha to combine this strip of land with the already existing road known as the '3rd Lane' and thereby provide access to Lot Nos. 6-10, and 11-16 in Plan '**P2A**'.[4] The roadway is set out in the Notice published under Section 24 of the Pradeshiya Sabha Act No. 15 of 1987, in Gazette No. 1008 dated 26th December 1997, marked '**P4A**'.

The Petitioner states that in August 1998, the Surveyor General prepared Preliminary Plan No. CO 7928, annexed to the petition marked '**P11**' depicting the land that was to be acquired as eleven lots numbered as Lot Nos. 1-11. The total extent of the said eleven lots was 0.3697H.

Having examined '**P11**', it must be noted that:

a) The part of the roadway – i.e. Lot No. 23 in '**P2A**' which was to be acquired, had been demarcated as four lots in '**P11**', namely Lot Nos. 3, 4, 5 and 6;

b) The part of the land that was being claimed by a person other than the Petitioner – i.e. Lot No. 4 in '**P7**' - had been demarcated as Lot No. 7 in '**P11**';

[4] Vide paragraph 3 of 'P29'.

c) The strip of land that the Petitioner had agreed to provide for the alternate roadway had been demarcated as Lot No. 11 in '**P11**';

d) Lot Nos. 6 and 8 in '**P11**' was part of the roadway that was now going to connect the 3rd Lane with those who had purchased Lot Nos. 6-10, and 11-16 in Plan '**P2A**' from the Petitioner;

e) The Petitioner was entitled to claim ownership rights only with regard to Lot Nos. 1, 2, 8, 9, 10 and 11, on '**P11**'.

The Divisional Secretary had thereafter published the Notice under Section 7 of the Act, annexed to the petition marked '**P12**' in Extraordinary Gazette No. 1066/4 dated 8th February 1999. '**P12**' refers to the Preliminary Plan '**P11**', and contain details of the eleven lots depicted in '**P11**', with the total extent of land being 0.3697H. The Petitioner has responded to the said Notice '**P12**' by his letter dated 14th March 1999, marked '**P13**' claiming compensation at the rate of Rs. 75,000/- per perch, in respect of an extent of 3R 14.5P, being the aggregate extent of Lot Nos. 1 – 6, and 8 – 11 of '**P11**', which, according to the Petitioner, was the total extent of the land belonging to him that was sought to be acquired. As noted earlier, at this point of time, Lot Nos. 3 - 6 of '**P11**' formed parts of the roadway in '**P2A**' (i.e. part of Lot No. 23) over which the Petitioner only had a right of way.

The following paragraph in '**P13**' sets out the claim of the Petitioner:

> "**එම කැබලි වලින්, අංක** 1,2,3,4,5,18,19,20,21 **සහ** 22[5] **දරණ ඉඩම් කැබලි සහ අංක** 23 **දරණ ප්‍රවේශ මාර්ගයක් සඳහා වෙන්කල ඉඩමේ කොටසක් ද, මෙම අත්පත් කර ගැනීමට අදාල වන්නේය. එම කැබලි ඔබ විසින් අත්පත් කර ගැනීමෙන් පසු, ඔබගේ**

[5] This is a reference to the Lots in 'P2A'.

අංක: මු.පි.කො. අංක 7928 දරණ 1998 අගෝස්තු මසැති පිඹුරේ අංක 1,2,3,4,5,6,8,9,10 සහ 11 යනුවෙන් පෙන්වා ඇත. අත්පත් කරගත් බිම් ප්‍රමාණය රැ:3 පර්:18 කි."

In addition to the composite claim in '**P13**', by several letters dated 15th March 1999, the Petitioner had lodged separate claims in respect of Lot Nos. 1 – 6, and 8 – 11 of '**P11**'.[6]

The Petitioner had participated at the Inquiry that was held on 26th March 1999 in terms of Section 9 of the Act. According to the notes of the Acquiring Officer marked '**1R23a**' – '**1R23i**', the Petitioner had claimed as compensation, a sum of Rs. 75,000 per perch as the land value, and a further sum of Rs. 5597 per perch as development costs.

The Acquiring Officer, acting in terms of Section 10(1)(a) of the Act had issued his decision dated 28th August 1999 in respect of Lot Nos. 1, 2, and 8 - 11 of '**P11**' in favour of the Petitioner. The separate decisions made in respect of each lot has been marked '**P16a**' – '**P16f**'.

The Award under Section 17(1) of the Act had subsequently been made in favour of the Petitioner, declaring that the Petitioner is entitled to a sum of Rs. 4,251,000 as compensation, in respect of Lot Nos. 1, 2, and 8 - 11 of '**P11**'.[7] Dissatisfied with the quantum of compensation, the Petitioner, by a letter dated 30th May 2000, marked '**P18**', had appealed to the Board of Review, stating as follows:

"එම ලිපිය මගින්, මා හට අයත් පැලැන්වත්ත යන ගම පිහිට 'දිගනගොඩැල්ලවත්ත' නැමති ඉඩමේ කැබලි අංක 1,2,8,9,10 සහ 11 දරණ ඉඩම් කැබලි අත්පත් කර ගැනිම

[6] Vide 'P15a' – 'P15j'.
[7] Vide 'P17'.

වෙනුවෙන් අනුමත වන්දි මුදල රුපියල් හතලිස් දෙලක්ෂ පනස් එක් දහසක් (රු: 4,251,000/= බව මා වෙත දන්වා එවා ඇත. මෙකී වන්දි මුදල සලකා බලන කළ මා සතු එකී ඉඩම් කැබලි වල, එක් පර්චසයක වටිනාකම ගණනය කර ඇත්තේ දල වශයෙන් රුපියල් තිස් නම දහසක් (රු: 39,000/=) වැනි මුදලකටය.

මෙම වන්දි මුදල් තීරණය සම්බන්ධයෙන් මා එකඟ නොවන අතර, ඒ සම්බන්ධයෙන් පහත කරුණු කෙරේ ඔබගේ අවධානය යොමු කරවම්.

ඉහත කී ලෙස පවරාගත් ඉඩම් කැබලි වෙනුවෙන් සහ එම කැබලි පැවති තත්වයට වඩා වැඩිදියුණු කිරීම වෙනුවෙන් ද, එම කැබලි වල සුඛෝපභෝගී සහ අර්ධ සුඛෝපභෝගී නිවාස සැදීමට සැලසුම් කිරීම වෙනුවෙක් ද, ඊට අදාල සහතික ලබා ගැනීම සහ ඒ හා සම්බන්ධ සියළු කටයුතු කිරීම වෙනුවෙන් ද, මා විසින් ඉතා විශාල මුදල් ප්‍රමාණයක් වැය කර ඇත්තෙම්. ඒ තුලින් මෙම ඉඩමේ වටිනාකම ඉහල ගොස් ඇති අතර, තවදුරටත් සැලසුම් කළ ව්‍යාපෘතිය ආරම්භ කර පවත්වාගෙන ගියේ නම්, වැඩි ආදායමක් උපයා ගැනීමේ දිර්ඝ කියාවලිය අතරමග නතරවීමේ හේතුවෙන් ද මා හට බලවත් පාඩුවක් සිදුවී ඇත.

තවද, මෙම ඉඩම කැබලි පවරා ගන්නා අවස්ථාව වන විට, එම ප්‍රදේශයේ ඉඩම් වල පර්චසයක මිල රු: 65,000/= ක් වූ බව ද මම ප්‍රකාශ කර සිටිම්.

එසේ වුවද, මෙකී ඉඩම් කැබලි තක්සේරු කිරීමේදී ඉහත කී කරුණු සැලකිල්ලට නොගෙන. එම තක්සේරුව කර ඇති අතර, ඒ සම්බන්ධයෙන් විරෝධතාවයන් පලකර සිටිම්.

එබැවින්, මා විසින් අයැද සිටින්නේ:

x පවරාගත් ඉඩම් කොටස් වල වටිනාකම පර්චසය, මා තක්සේරු කර ඇති පරිදි රු:75,000/= ක් වශයෙන් තක්සේරු කරනමෙන්ද,

x විකල්පව සමාලෝචන මණ්ඩලය සාධාරණයැයි තීරණය කරනු ලබන (මා විසින් තක්සේරු කළ මුදලට ආසන්නව) එම ප්‍රදේශයේ පරිවාසයට මිළට සාපේක්ෂකව එම මුදල තක්සේරු කරන ලෙසටද,

x ඒ සඳහා සාධාරණ පොලි මුදලක් ගෙවන ලෙසටද,

x ගරු සමාලෝචන මණ්ඩලය මැනවැයි හැගෙන වෙනත් සහනද වේ."

Thus, the Petitioner's grievance at this stage was limited to the value determined by the Valuation Department.

The inquiry under Section 9 in respect of Lot Nos. 3-6 of '**P11**', which are the lots, that were sought to be acquired from the roadway demarcated as Lot Nos. 23 in '**P2A**' , had been held on 8th March 2000. It appears from the notes of inquiry marked '**P22**' that those persons who had purchased Lot Nos. 6-10, and 11-16 in Plan '**P2A**', had indicated that they have no further claim in respect of Lot Nos. 3-6 in '**P11**', as an alternate roadway had been provided by combining Lot Nos. 6, 8 and 11 in '**P11**' with the existing Pradeshiya Sabha Road. The alternate roadway has been demarcated as Lot Nos. 6, 8, and 11 in '**P11**'. After the conclusion of the inquiry, the Acquiring Officer had made an Order in terms of Section 10(1)(a) of the Act on 9th November 2000, in favour of the Petitioner, in respect of Lot Nos. 3-6 of '**P11**'.[8] This Order had subsequently been cancelled and replaced with an Order dated 31st March 2004, marked '**P27**'.

The Acquiring Officer however had not made any award for compensation in respect of Lot Nos. 3 - 6 of '**P11**' in terms of Section 17. For that reason, at the request of the Petitioner, the Board of Review had laid by the appeal that had been lodged by the Petitioner against the Award under Section 17(1) in respect of Lot Nos. 1, 2, and 8 - 11 of '**P11**', until the award was given by the Acquiring Officer in respect of Lots 3, 4, 5 and 6 of '**P11**'.[9]

In December 2004, the Petitioner had filed CA (Writ) Application No. 2498/04, seeking *inter alia* a Writ of Certiorari to quash the following documents:

a) The Preliminary Plan marked '**P11**';

b) The Section 7 notice marked '**P12**';

[8] Vide 'P23'.
[9] Vide proceedings of the Board of Review held on 28th May 2002, marked 'P20'.

c) The Section 9 inquiry proceedings held on 22nd March 1999;

d) The determinations made in terms of Section 10(1)(a) dated 28th August 1999, 9th November 2000 and 31st March 2004;

e) The award dated 16th May 2000 made in terms of Section 17 declaring that compensation be paid to the Petitioner in respect of Lots 1, 2 and 8-11 of '**P11**';

I have examined the petition filed in the aforesaid application, marked '**P29**', and observe that the Petitioner had complained that '**P11**' had been prepared in callous disregard for the Petitioner's interests and that '**P11**' widely differs from '**P7**'. The issue appears to be the depiction of the Petitioner's land in '**P11**' as several lots, as opposed to two lots in '**P7**', which the Petitioner claims has been done without any reason, and has adversely affected his rights. It is noted that the Petitioner had no objection to his land being depicted as separate lots in '**P7**', but appears to have taken up issue with the further division of the said lots in '**P11**'. It is on this basis that the Petitioner was seeking to quash Plan '**P11**', and the Section 7 notice '**P12**'. It is noted further that other than this objection, the Petitioner does not appear to have had an issue with the extent of the land depicted in the two plans.

When the above application was taken up for argument on 28th May 2008, the learned Counsel for the Petitioner had informed Court that he is not pursuing the relief sought by him to quash either '**P11**' or the Section 7 notice, '**P12**'.

This Court, by its judgment delivered on 5th September 2008, marked '**P30**' had held as follows:

"*From the submissions made by Counsel for the Petitioner and the learned Deputy Solicitor General and the perusal of the Departmental file, it appears that the Divisional Secretary has made two orders in relation to the determination under Section 10(1), one on 9th November 2000, and the other on 31st March 2004. As the Divisional Secretary cannot make two decisions in relation to one inquiry, this Court quashes the decision made by the Divisional Secretary in relation to Section 10(1) Orders made and published on 28th August 1999, 9th November 2000, 31st March 2004, and the award under Section 17 dated 16th May 2000. The Court directs the Divisional Secretary to hold a fresh inquiry under Section 9 based on the notice published under Section 7 dated 8th February 1999 and after giving notices to the relevant parties who made a claim in pursuance of the above notice*."

Even though the Petitioner had categorically stated to this Court in the earlier application that he is no longer challenging the validity of either '**P11**' or '**P12**', and even though the judgment of this Court was that the acquisition process must recommence from Section 9 onwards based on the Section 7 notice marked '**P12**', the Petitioner had continued to agitate that proceeding with the acquisition on the basis of separate lots as set out in '**P11**', as opposed to three Lots as set out in the Advance Tracing marked '**P7**' is prejudicial to his rights. The basis for this argument which is that great prejudice would be caused to him by valuing the land as separate Lots, is reflected in the following paragraph in letter dated 27th February 2009, marked '**P32**':

"(අ) මගෙන් රජයට අත්පත් කරගත් ඉඩමේ කායික හා නිරවුල් භුක්තිය භාරගැනිමෙන් පසු,1998 අගෝස්තු මසදි මිණුම්පති විසින් සකස්කර ඇති මු.පි.කො. 7928 හේතුකොටගෙන මා හට විශාල අසාධාරණයක් හා පිරිමසාලිය නොහැකි පාඩුවක් සිදුවි ඇති නිසාත්, මාගේ ඉඩම, ඒකක 3ක් ලෙස පාරවශ්‍යතාවයකින් තොරව 38(අ) යටතේ රජය භාරගෙන ඇති නමුත් මෙම කොා: 7928 මු.පි. මගින් එම තත්වයද, වෙනස් කරමින්

මාගේ ඉඩම කැබලි 11කට (මායිම් වෙනස් කරමින්) වෙන්කොට ඇති නිසා හා එමගින් පාරවශ්‍යතාවයන්ද, මතුවන අයුරින් මෙම පිඹුරුපත සකස් කර ඇති නිසාත්, මෙම මු.පි.කො. 7928 උපයෝගි කර ගනිමින් 9 වෙනි වගන්තිය යටතේ පරීක්ෂණ පැවැත්වීම අත්හිටුවා 1997-02-18 දිනැති Co/KSB/96/21 දරණ ප්‍රගමන අනුරේඛණය හා 1997-06-03 දින හා අංක 978/5 දරණ අති විශේෂ ගැසට් නිවේදනයේ ප්‍රසිද්ධ කරන ලද 38(අ) අතුරු විධානය යටතේ, ගරු කෘෂිකර්ම, ඉඩම් හා වනසම්පත් අමාත්‍යතුමාගේ අංක එල්/03/පේ/95/ඩබ්.එස./204 හා ප්‍රා.ලේ.ගේ යොමු අංක අ.ත් 3/1/19 දරණ 197 අංක 154 දරණ ආඥාවෙන් ප්‍රසිද්ධ කරන ලදුව, අත්පත් කර ගත්තාවු ඉඩම එහි කායික භුක්තිය මා රජයට භාරදෙන අවස්ථාවේ තිබූ නිවැරදි තත්වයන්ට අනුකූල වනසේ හා ජල සම්පත් මණ්ඩලය මාගේ ඉඩමෙන් සත්‍ය වශයෙන් අත්පත් කරගෙන අදාල ව්‍යාපෘතියට යොදවා ඇති මුළු වපසරියේ නිවැරදි තත්වයන් හා හිමිකම් මතුවනසේ නිවැරදිව සකස් කළ මූලික පිඹුරක් මත මෙම වන්දි පරීක්ෂණය පවත්වනමෙන්ය. (නිවැරදි ත්ත්වය හා හිමිකම් මතුවනසේ සකස් කරන ලද අනු රේඛනයක් මෙයට ඇමුණුම් අංක 10 ලෙස යාකොට ඇති අතර, මු.පි.කො. 7928හි කැබලි අංක 1,2,3,4,5,9 සහ 10 ලෙස කොටස් කර පෙන්වා ඇති මට අයත් ඉඩම් කොටස් "A" වශයෙන් තනි ඒකකයක් ලෙසට එහි පෙන්වා ඇත. ඒ අනුව, මූලික පිඹුරක් සකස් කර දෙනමෙන් ඉල්ලම්. එම මූලික පිඹුරේ කැබලි අංක 1,2,3,4,5,9 සහ 10 මට අයත් එක් ඉඩම් කොටසක් ලෙස පෙන්වනමෙන් ඉල්ලම්."

Annexed to '**P32**' was a sketch of a plan prepared by the Petitioner, showing the amalgamation of Lot Nos. 1 - 5, 9 and 10 of '**P11**' into a single lot marked '**A**'. Thus, on the Petitioner's own admission in '**P32**', and as evidenced by the Petitioner's own sketch annexed thereto, the claim of the Petitioner was limited to Lots 1, 2, 3, 4, 5, 9, and 10 of '**P11**'. Very importantly, the Petitioner had no issues either with the boundaries depicted in '**P11**' or with the extent of land that the Petitioner was entitled to, as set out in '**P11**'.

While the Petitioner's request in '**P32**' that his land be identified as one lot was under consideration, the Acquiring Officer had made a determination on 30th November 2009, under Section 10(1)(a) of the Act, accepting the Petitioner's claim in respect of Lots 1, 2, 3, 4, 5, 9 and 10 of '**P11**'. The Petitioner's claims to the said lots crystallised only at this point of time. It is noted that Lot Nos. 6,

8 and 11 in '**P11**' formed part of the roadway that was provided in lieu of the part of Lot No. 23 in '**P2A**'.

The Secretary, Ministry of Land, by letter dated 30th September 2011, marked '**P42**' had informed the Acquiring Officer as follows:

> "එම ලිපියේ සඳහන් පරිදි මු.පි.කො. 7928 මූලික පිඹුරේ කැබලි අංක 1,2,3,4,5,9,10 ලෙස ඉඩම් කොටස් වශයෙන් ගණනය කරන ලද තක්සේරු වටිනාකම ඔබ වෙත එවා ඇති බව සඳහන් වේ. එහෙත් එම ඉඩම මූලික පිඹුරේ වෙන්වෙන්ව කොටස් වශයෙන් සැලකුවද, එය තමාට අයත් එක් ඉඩමක් වන බවත් එම ඉඩමේ හිමිකරු ලෙස ඉදිරිපත් ව් ඇති ඩී.ටී.ඒ.අතලේ මහතා වෙත දන්වා ඇත. එමෙන්ම තමාට අයත් එම ඉඩම කැබලි වශයෙන් නොව තනි ඒකකයක් ලෙස මැනුම් කටයුතු කොට අදාල වන්දි මුදල ලබාගැනීමට අපේක්ෂා කරන බැව් ඔහු වැඩිදුරටත් දන්වා සිටී.
>
> එබැවින් මෙතෙක් 17 වගන්තියේ ප්‍රධානය නිකුත් කර නොමැති නම් මෙම ඉඩම තනි ඒකකයක් ලෙසට පැහැදිලි කිරීමේ අණුරේඛණයක් සකස් කරවා ගෙන ඒ අනුව මගේ සමාංක හා 2009.06.23 දිනැති ලිපිය මගින් ලබාදී ඇති උපදෙස් පරිදි 10(1) තිරණය ලබාදී වන්දි තක්සේරු කරුවාගෙන ගෙවීම් කටයුතු සිදුකරන ලෙස කාරුණිකව දන්වමි."

Accordingly, the Surveyor General, on a request to survey marked '**P45**', has amalgamated Lot Nos. 1, 2, 3, 4, 5, 9, and 10 as depicted in '**P11**', on 'P11' itself, and re-numbered the amalgamated lot as Lot No. 12. A copy of Plan No. PP/CO/7928, depicting the said amendment effected on 19th December 2011 has been annexed to the petition marked '**P46**'. Thus, the Petitioner's grievance that the land acquired from him must be taken as one lot for the purpose of calculating compensation has been given effect to by the Respondents. As noted earlier, Lot No. 12 corresponds with Lot marked 'A' in the sketch provided by the Petitioner together with his letter '**P32**'.

The issue that culminated in this application begins with the above decision on the part of the Respondents to accede to the request of the Petitioner to depict the land acquired from him as one lot. Once the amended plan '**P46**'

was prepared in order to reflect the amalgamation of Lot Nos. 1 – 5, 9 and 10 as Lot No. 12, the Acquiring Officer had published a Section 7 notice in Extraordinary Gazette No. 1745/34 dated 17th February 2012 marked '**P48**', in respect of Lot No. 12 of '**P46**'. Having done so, it had *dawned* on the Respondents that on an application of the provisions of Section 45 of the Act, compensation will have to be calculated as at the date of '**P48**'. The 1st Respondent had corrected this error by firstly rescinding '**P48**', by the notice marked '**P68**'. He had thereafter published the following Notice, marked '**P69**':

> "*The general public is hereby informed that Notice under Section 7 of the Land Acquisition Act No. 28 of 1964 that I have published in the Gazette No. 1066/4 dated 2nd February 1999 of the Democratic Socialist Republic of Sri Lanka will be amended as follows:*
>
> *Description of the land to be acquired:*
>
> *The allotment of land extent of 0.3059 hectare depicted as Lot No. 12 in the Preliminary Plan NO. CO 7928 dated 19th December 2011 prepared by the Surveyor General, situated in the village called Pelanwatte in the Divisional Secretary's Division of Kesbewa in Colombo District of the Western Province.*
>
> *Name of land: Diganagodella Watta; Description: Open waste and land water pool; Claimant: D.A.T.Athale, No. 363, Sirimavo Bandaranaike Mawatha, Colombo 14; Extent: 0.3059 hectare.*"

The effect of '**P69**' was that it was only an amendment to the first Section 7 notice '**P12**'.

Dissatisfied by the rescission of '**P48**' by '**P68**', and the amendment made to '**P12**' by '**P69**', the Petitioner filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash '**P68**';

b) A Writ of Certiorari to quash the Section 7 Notice dated 2nd August 1999 marked '**P12**', and the amendment thereto, effected by the Notice dated 30th April 2014 marked '**P69**';

c) A Writ of Mandamus directing the Respondents to hold an inquiry in terms of Section 9 based on the Section 7 notice dated 17th February 2012 marked '**P48**'.

Prior to considering the argument of the Petitioner that the above course of action is *ultra vires* the powers of the 1st Respondent, I would like to briefly set out the procedure that must be followed when the State wishes to acquire a land belonging to a private individual. The acquisition process commences with Section 2(1), which reads as follows:

> *"Where the Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area."*

In terms of Section 2(3), any officer authorized by the Acquiring Officer may carry out on any land in the area referred to in Section 2(1), the activity set out in Section 2(3), and all other acts necessary, in order to investigate the suitability of that land for the public purpose mentioned in the notice,

including the carrying out of surveys, checking the subsoil, demarcating boundaries, etc.

Section 4(1) provides that where the Minister considers that a particular land is suitable for a public purpose, he shall direct the acquiring officer to cause a notice in accordance with Section 4(3) to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land. The notice under Section 4(3) shall state *inter alia* that the Government intends to acquire that land for a public purpose, and that written objections to the intended acquisition may be made to the Secretary to such Ministry as shall be specified in the notice. In terms of Section 4(4), where a notice relating to the intended acquisition is exhibited, and objections are made to the Secretary by any persons interested in such land and within the time allowed, the appropriate Secretary shall consider such objections, and make recommendations to the Minister. In terms of Section 4(5) of the Act, the Minister shall consider the said recommendations, and decide whether the land should or should not be acquired under the Act.

The next step in the acquisition process is set out in Section 5, which reads as follows:

> *"(a) Where the Minister decides under subsection (5) of section 4 that a particular land ... should be acquired under this Act, he shall make a written declaration that such land ... is needed for a public purpose and will be acquired under this Act, and shall direct the acquiring officer of the district in which the land which is to be acquired ... is situated to cause such declaration in the Sinhala, Tamil and English languages to be published in the Gazette and exhibited in some conspicuous places on or near that land.*

(b) A declaration made under subsection (1) in respect of any land ... shall be conclusive evidence that such land ... is needed for a public purpose.

(c) The publication of a declaration under subsection (1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.

Section 6 provides that once a declaration is made under Section 5, the acquiring officer may cause a survey and a plan of that land to be made by the Survey Department.[10]

Section 7(1) of the Act requires the Acquiring Officer to "*cause a notice in accordance with Section 7(2) to be published in the Gazette and cause that notice in those languages to be exhibited in some conspicuous places on or near that land*."

Section 7(2) reads as follows:

"*The notice referred to in subsection (1) shall-*

(a) describe the land ... which is intended to be acquired;

*(b) state that it is intended to acquire such land ... under this Act and that **claims for compensation** for the acquisition of such land ... may be made to the acquiring officer mentioned in the notice; and*

[10] See Hewawasam Gamage v. The Minister of Agriculture [76 NLR 25] - *"In my opinion section 6 of the Act makes it imperative and obligatory that the acquiring officer should, after the section 5 declaration, cause a survey and a plan of the land to be made, if a plan has not been made under section 2 (3) or if there is no other suitable plan available."*

(c) *direct every person interested in the land which is to be acquired ... to appear, personally or by agent duly authorized in writing, before such acquiring officer on a date and at a time and place specified in the notice (such date not being earlier than the twenty first day after the date on which the notice is to be exhibited for the first time on or near the land), and, at least seven days before the date specified in the notice, to* ***notify in writing*** *under the hand of that person or any agent duly authorized as aforesaid to such acquiring officer* ***the nature of his interests in the land, the particulars of his claim for compensation, the amount of compensation and the details of the computation of such amount*** *....”*

The purpose of holding the Inquiry referred to in Section 7(2)(c) is set out in Section 9(1) of the Act. In terms of Section 10(1), at the conclusion of an inquiry held under Section 9, the acquiring officer holding the inquiry shall either-

(a) make a decision on every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired and on every such dispute as may have arisen between any claimants as to any such right, title or interest, and give notice of his decision to the claimant or to each of the parties to the dispute; or

(b) refer the claim or dispute for determination as provided for in section 10(2).

Section 17(1) of the Act reads as follows:

"*The acquiring officer who holds an inquiry under section 9 shall, as soon as may be after his decisions under section 10 have become final as provided in that section or after the final determination of any reference made under that section and subject to the other provisions of this section, make an award under his hand determining-*

(a) the persons who are entitled to compensation in respect of the land or servitude which is to be acquired;

(b) the nature of the interests of those persons in the land which is to be acquired or over which the servitude is to be acquired;

(c) the total amount of the claims for compensation for the acquisition of the land or servitude;

(d) the amount of the compensation which in his opinion should, in accordance with the provisions of Part VI of this Act, be allowed for such acquisition; and

(e) the apportionment of the compensation among those persons.

Such acquiring officer shall give written notice of the award to the persons who are entitled to compensation according to the award"

In terms of Section 38, once an award is made under Section 17, and unless possession of the land has already been taken over previously on the ground of urgency, as provided for in proviso (a) to Section 38, the Minister may, by an Order published in the Gazette, direct the Acquiring Officer to take possession of the land, for and on behalf of the State, thus bringing the process of acquisition to a closure.

Part VI of the Act provides for the assessment of the compensation that is payable to a person whose land has been acquired. Section 45(1) of the Act reads as follows:

> "*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***:"

Having gone through the lengthy and time consuming procedures set out in Sections 2, 4, 5 and 6 of the Act, the first step that the Acquiring Officer takes in calling for claims to ownership and compensation is set out in Section 7, and hence appears to be the rationale for fixing the date of such notice for the determination of the value.

The cumulative effect of Sections 7, 17 and 45 is that while a person whose land has been acquired in terms of the Act is entitled to receive compensation calculated at market value, the market value shall be determined as at the date on which the Section 7 notice is published in the Gazette. Hence, the importance of the date of publication of the Section 7 notice, and the reason for this application.

I shall now consider the argument of the learned President's Counsel for the Petitioner, which was that the land in respect of which claims were called by the first Section 7 notice '**P12**', has now changed, and that the second Section 7 notice '**P48**' reflects the said change, and hence, the decision of the Respondents to revert to '**P12**' is *ultra vires* the powers of the 1st Respondent in terms of the Act.

The purpose of issuing a notice under Section 7 is three fold – the first is to manifest the intention of the State to acquire the land that is referred to in the said notice. The second is to direct every person interested in the land that is to be acquired to notify in writing to the Acquiring Officer the nature of his interests in the land, **the particulars of his claim for compensation**, **the amount of compensation** and the details thereof. The third is to direct such persons to appear before the Acquiring Officer on a date specified in such notice, on which date, the inquiry contemplated by Section 9 of the Act would take place.

There is no dispute that the first Section 7 notice '**P12**' complied with the above requirements. While the learned President's Counsel for the Petitioner submitted that the Petitioner has not, and is not objecting to the acquisition, what is important here is that the intention of the State to acquire the land as declared by '**P12**' has been given effect to, and possession of the land has been taken over by the State in **July 1997**. The Petitioner has admitted that he handed over the land to the Respondents on 21st July 1997 – vide '**P9**' - and has admitted that the land has already been acquired – vide '**P13**'. Thus, for the purposes of the Act, acquisition of the land belonging to the Petitioner has been completed as far back as in July 1997.

In response to the first Section 7 notice '**P12**', the Petitioner had lodged his claim in respect of the land that is claimed by him[11]. I have already noted the manner in which the claim of the Petitioner evolved over a period of time and crystallized into a claim for Lot Nos. 1, 2, 3, 4, 5, 9 and 10 of '**P11**'.

[11] Vide 'P13' and 'P15a' – 'P15j'.

After the judgment of this Court was delivered in CA (Writ) Application No. 2498/2004 on 5th September 2008 directing that proceedings be continued from the point of the first Section 7 notice '**P12**', the Respondents have taken steps to conduct the Section 9 inquiry in respect of Lot Nos. 1, 2, 3, 4, 5, 9 and 10, in extent of 0.3059H. The Petitioner has not raised any objection with regard to the extent of land that he is claiming. The Acquiring Officer had thereafter proceeded to make a determination in terms of Section 10(1)(a) – vide '**P37**'.

After the amalgamation of Lot Nos. 1, 2, 3, 4, 5, 9 and 10 into Lot No. 12, the Acquiring Officer has made a further determination in terms of Section 10(1)(a) on 6th June 2012 – vide '**P53**' - with the learned President's Counsel for the Petitioner submitting during the course of his oral submissions that the Petitioner's claim is now limited to Lot No. 12 in '**P46**'.

Having considered the totality of the above material, the following matters are clear:

a) '**P12**' was published with regard to Lot Nos. 1 – 11 depicted in Plan No. 7928 marked '**P11**';

b) The Petitioner's claim has now crystallized in respect of Lot Nos. 1, 2, 3, 4, 5, 9 and 10 of '**P11**';

c) At the Petitioner's request, the said Lot Nos. 1, 2, 3, 4, 5, 9 and 10 of '**P11**' were amalgamated into Lot No. 12, as depicted in the amendment made on '**P11**' itself – vide '**P46**';

d) The necessity to amend the first Section 7 notice '**P12**' arose only because the Respondents decided to accede to the request of the Petitioner that the land claimed by him be shown as one lot, and for no other reason;

e) Even so, the amendment that was required to '**P12**', was only a simple reference to Lot No. 12 in lieu of Lot Nos. 1, 2, 3, 4, 5, 9 and 10;

f) The extent of the land belonging to the Petitioner that was to be acquired, the boundaries of the overall land, and the nature of the land that the Petitioner is claiming as depicted in '**P11**' has not changed in '**P46**'.

I am therefore of the view that:

(a) As the description of the land, the extent of the land and the overall boundaries of the land claimed by the Petitioner have not changed;

(b) As Lot No. 12 is the precise area of land that the Petitioner himself identified as Lot '**A**' in the sketch annexed to his letter marked '**P32**';

(b) As the Petitioner's entitlement to claim compensation in respect of the land claimed by him remains intact,

the correct course of action that the Acquiring Officer was required to take was to publish an amendment to the first Section 7 notice.

As stated by Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**,[12] "*by 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it*." Section 45(1) clearly lays down that

[12] 1985 AC 374.

compensation must be calculated as at the date on which the notice under Section 7 is published. Given the factual circumstances of this application, the Acquiring Officer clearly erred, and in fact acted wrongfully and irrationally when he published a fresh Section 7 notice (vide '**P48**') when a valid Section 7 notice '**P12**' already existed. The error having been pointed out to him, it is my view that not only was it within the power of the Acquiring Officer, but he was also required in terms of the Act to cancel the second Section 7 notice (vide '**P48**'), and take steps to publish an amendment to the first Section 7 notice, by substituting Lot No. 12 for Lot Nos. 1, 2, 3, 4, 5, 9 and 10. Such a decision is neither *ultra vires* nor illegal, and is a manifestation of the provisions of Section 7.

It is appropriate to reiterate the fact that the Petitioner challenged the first Section 7 notice '**P12**' in the previous application filed before this Court,[13] and at the argument stage of that application, had informed this Court that he is no longer challenging the said Section 7 notice. By its judgment,[14] this Court had directed the *Divisional Secretary to hold a fresh inquiry under Section 9* ***based on the notice published under Section 7 dated 8th February 1999*****.** I am of the view that the 1st Respondent must act in terms of the said judgment, subject to the amendment effected thereto by '**P69**' to reflect the request of the Petitioner.

In the above circumstances, I am of the view that:

(a) The 1st Respondent has not acted *ultra vires* the powers conferred on him by the Act by rescinding the second Section 7 notice marked '**P48**' (by '**P68**');

[13] Vide 'P29' and 'P30'.
[14] Annexed to 'P30'.

(b) The 1st Respondent has not acted *ultra vires* the powers conferred on him by amending the first Section 7 notice marked '**P12**', by '**P69**'.

Before I conclude, I must state that the Petitioner, knowing fully well that the amalgamation of Lot Nos. 1-5, 9 and 10 to Lot No. 12 took place solely to satisfy his request, and knowing fully well that the Acquiring Officer had made an error when he published '**P46**', has sought to take advantage of such error. That is not the conduct that is expected of a person who is seeking a discretionary remedy. In **Fernando, Conservator General of Forests and two others vs. Timberlake International Pvt. Ltd. and another**[15], the Supreme Court, having held that the conduct of an applicant seeking Writs of Certiorari and Mandamus is of great relevance because such Writs, being prerogative remedies, are not issued as of right, and are dependent on the discretion of Court, stated that, "*It is trite law that any person invoking the discretionary jurisdiction of the Court of Appeal for obtaining prerogative relief, has a duty to show uberrimae fides or ultimate good faith*,...".

As observed by the Supreme Court in **Namunukula Plantations Limited vs Minister of Lands and Others**,[16] "*If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the Court not only has the right but a duty to deny relief to such person.*" I am of the view that such duty commences prior to the institution of action, and that the Petitioner has not come before this Court with clean hands.

[15] [2010] 1 Sri LR 326.
[16] SC Appeal No. 46/2008; SC Minutes of 13th March 2012; per Saleem Marsoof, P.C./J.

In the above circumstances, I see no merit in this application. The application of the Petitioner is accordingly dismissed, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal