

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

CA (Writ) Application No: 9/2019

Undiya Ralalage Lishantha Prabhakara
Bandara Seneviratne,
Henepola, Wadakada.

PETITIONER

Vs.

1. Anoma Dissanayake,
Divisional Secretary, Polgahawela.
2. District Secretary,
District Secretariat, Kurunegala.
3. Hon. Kabir Hashim,
Minister of Highways and Road
Development.
4. Secretary,
Ministry of Highways and Road
Development.
- 3rd and 4th Respondents of
'Maganeguma Mahamedura'
Koswatte, Battaramulla.
5. Weerakoon Mudiyanseelage Mahinda
Siri Weerakoon,
Hiripanwella, Wadakada.

6. Herath Mudiyanseelage Siriwardena Herath,
Habarawa, Wadakada.
7. Mudaligedara Dharmadasa,
Henepola, Wadakada.
8. Mudaligedara Lakshitha Pushpakumara,
Henepola, Wadakada.
9. Road Development Authority,
Koswatte, Battaramulla.
10. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: Pradeep Perera for the Petitioner

Sabrina Ahamed, State Counsel for the 1st – 4th, 9th
and 10th Respondents

Harith De Mel for the 7th and 8th Respondents

Supported on: 8th July 2019

Written Submissions: Tendered on behalf of the Petitioner on 2nd August 2019

Tendered on behalf of the 1st – 4th, 9th and 10th
Respondents on 26th July 2019

Tendered on behalf of the 7th and 8th Respondents on
29th July 2019

Decided on: 17th February 2020

Arjuna Obeyesekere, J

The Petitioner states that he became the owner of a land in extent of 2 ½ acres, situated in Polgahawela by virtue of Deed of Transfer No. 3839 dated 23rd October 1989. In 2010, the Petitioner had executed a lease over part of the said land in favour of the 5th Respondent.¹ The Petitioner states further that in satisfaction of a *monetary debt transaction* between him and the 6th Respondent, he transferred the same land, subject to the said lease, to the 6th Respondent, by Deed No. 490 dated 10th August 2013, on the understanding that the said land would be re-transferred to the Petitioner upon the payment of the said debt.² Barely five months later, the 6th Respondent transferred the said land to the 7th and 8th Respondents, by Deed No. 571 dated 22nd January 2014, subject to the leasehold rights of the 5th Respondent.

Almost three years later, the 1st Respondent, Divisional Secretary, Polgahawela had issued a notice dated 11th August 2016 under Section 2 of the Land Acquisition Act (the Act) informing the public that the lands mentioned in the said notice, including part of the aforementioned land that by then had been transferred to the 7th and 8th Respondents, is required for a public purpose, namely the construction of the Central Expressway. The Minister of Lands had subsequently made an Order under proviso (a) of Section 38 of the Act to take immediate possession of the lands referred to in the said Order, including the aforementioned land. The said Order had been published in Extraordinary Gazette No. 2008/23 dated 2nd March 2017, produced by the 1st Respondent marked '1R4'. According to the 1st Respondent, the Acquisition Tenement List

¹ The lease rental payable for the entire lease period of 10 years is Rs. 120,000.

² The consideration for the said transfer is Rs. 300,000, which the Attorney-at-Law attesting the Deed has certified was paid in his presence.

annexed to the Preliminary Plan lists the 7th and 8th Respondents as being the claimants to the said land.

The Petitioner as well as the 5th, 7th and 8th Respondents had submitted their respective claims in response to the publication of the notice under Section 7(1) of the Act.³ The 1st Respondent had thereafter held an inquiry in terms of Section 9(1) where each of the above claims had been considered. Having been satisfied that the 7th and 8th Respondents are the owners of the said land, subject to the leasehold rights of the 5th Respondent, the 1st Respondent had arrived at the decision that compensation for the said land should be paid to the 5th, 7th and 8th Respondents. While the Order made under Section 10(1)(a) of the Act has been produced marked '1R10', the award made under Section 17(1) of the Act has been produced marked '1R13'.

The said decision in '1R10' had accordingly been conveyed to the Petitioner by the 1st Respondent, by her letter dated 3rd October 2018, annexed to the petition marked 'P13'. Dissatisfied by the said decision, the Petitioner filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision of the 1st Respondent contained in the letter marked 'P13' to award compensation to the 7th and 8th Respondents;
- b) A Writ of Prohibition prohibiting the 1st Respondent from taking steps to pay compensation to the 7th and 8th Respondents;

³ 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. The said notice shall specify that it is intended to acquire the land referred to in the said notice under the provisions of the Act and that claims for compensation for the acquisition of such land may be made to the acquiring officer mentioned in the notice.

- c) A Writ of Mandamus directing the 1st Respondent to refer the dispute with regard to the claims for compensation to the District Court, as provided for in Section 10(3) of the Act.

As observed at the outset, the Petitioner's position is that the transfer he effected in favour of the 6th Respondent was in satisfaction of a *monetary debt transaction* between the Petitioner and the 6th Respondent, and was subject to the understanding that the said land would be re-transferred to the Petitioner upon the payment of the said debt. The Petitioner is therefore arguing that the said transfer was only a '*conditional transfer*' and that he continues to remain the '*owner*' of the land, with the result that the compensation for the acquisition of the land should be paid to him.

After the publication of the notice under Section 2 of the Act, which as observed earlier, was almost three years after the execution of the Deed of Transfer in favour of the 6th Respondent, the Petitioner filed an application with the Debt Conciliation Board in terms of Section 14(1) of the Debt Conciliation Ordinance No. 39 of 1941, as amended. The purpose of a debtor making an application under Section 14(1) is to seek the assistance of the Debt Conciliation Board to effect a settlement of the debt/s owed by such debtor to his secured creditor/s. It is common ground that the application made by the Petitioner is presently pending before the Debt Conciliation Board. The Petitioner had informed the 1st Respondent Acquiring Officer of the pending inquiry, and had requested that any determination on the payment of

compensation be deferred, pending the outcome of the decision of the Debt Conciliation Board.⁴

The complaint of the Petitioner to this Court is that, as there existed a dispute with regard to the ownership of the said land, the Acquiring Officer ought to have referred the said dispute to the District Court, as provided for in Section 10(1)(b) of the Act, instead of acting under Section 10(1)(a). What this Court is therefore called upon to determine in this application is whether the said decision '1R10' of the Acquiring Officer conveyed by 'P13' is *ultra vires* the powers of the Acquiring Officer in terms of the Act, and/or whether the Acquiring Officer's decision is unreasonable.

Prior to considering the complaint of the Petitioner, it would be useful to lay down the provisions of the Act which deals with the consideration and determination of claims for compensation for lands that are sought to be acquired under the Act.

Once the notice under Section 7(1) of the Act calling for claims is published, the Acquiring Officer is required by Section 9(1) of the Act to hold an inquiry to determine:

“(a) the market value of that land or of the servitude which is to be acquired over that land;

(b) such claims for compensation as may have been notified to him within the time allowed therefor by that notice;

⁴ Vide the letters marked 'P7', 'P8a' and 'P9' annexed to the petition.

(c) *the respective interests of the persons claiming compensation; and*

(d) *any other matter which needs investigation for the purpose of making an award under section 17."*

There is no dispute between the parties that an inquiry as provided for in Section 9(1) was held, and that the Petitioner was afforded an opportunity of placing material to support his claim. This Court observes that the Petitioner has not complained to this Court in his petition with regard to the manner in which the inquiry was conducted, and for that reason, would disregard the averment in paragraph 21 of the written submissions filed on behalf of the Petitioner where it has been alleged that a proper inquiry had not been conducted .

In terms of Section 10(1) of the Act:-

"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 hereinafter provided."*

In this application, the 1st Respondent Acquiring Officer had made a decision under Section 10(1)(a) and conveyed her decision to the Petitioner by letter marked 'P13', which the Petitioner admits to having received on 2nd November 2018.

The reference contemplated under Section 10(1)(b) as well as under Section 10(2), which section would be discussed later, is a reference to the "*District Court or the Primary Court having jurisdiction over the place where the land which is to be acquired or over which a servitude is to be acquired is situated, ...*".⁵ The purpose of making a reference to the District Court is to enable the District Court to make a determination on the claims that have been referred to it by the Acquiring Officer, either in terms of Section 10(1)(b) or Section 10(2). In terms of Section 10(4), once a reference has been made to the District Court, the acquiring officer shall defer making an award under Section 17 in respect of the land to which such reference relates to.

In the absence of a reference being made to the District Court as aforesaid, the Acquiring Officer shall act in terms of Section 17(1) of the Act and make an award under his hand determining *inter alia* the persons who are entitled to compensation in respect of the land or servitude which is to be acquired.⁶ The award under Section 17(1) brings to a closure the role of the Acquiring Officer with regard to the determination of claims for compensation for lands acquired under the Act.

This Court shall now consider the complaint of the Petitioner that the decision of the Acquiring Officer, produced by the Respondents marked '1R10',

⁵ Vide Section 10(3) of the Act.

⁶ The Award has been produced by the Respondents marked '1R13'.

accepting the title of the 7th and 8th Respondents to the said land is *ultra vires* his powers and is unreasonable.

The material that has been placed before this Court is the same material that the Petitioner placed before the Acquiring Officer. This Court has examined the Deed of Transfer in favour of the 6th Respondent, annexed to the petition marked 'P3' and observes that it does not contain any clause:

- (a) reflecting the monetary transaction referred to by the Petitioner;
- (b) requiring the land to be re-transferred to the Petitioner; or
- (c) restricting the 6th Respondent from alienating the land to a third party,

even though 'P3' does contain a clause that it is subject to the leasehold rights of the 5th Respondent.

This Court must observe further that the Petitioner has not produced before the Acquiring Officer any material to substantiate his position that the land was transferred to the 6th Respondent as part of a monetary transaction and/or that he subsequently requested the 6th Respondent to re-transfer the said property to him, upon the payment of the debt, and/or that the Petitioner had the necessary resources to re-pay the 'debt', and/or that he took steps prior to filing an application with the Debt Conciliation Board to have the said land re-transferred to him.

When one takes into consideration the material that was placed before the Acquiring Officer by the Petitioner, or more appropriately, the lack of it, and

the Deed of Transfer produced by the 7th and 8th Respondent conferring them with absolute title, it is clear to this Court that there could not have been any doubt in the mind of the Acquiring Officer that the 7th and 8th Respondents had an unencumbered title. It was in these circumstances that the Acquiring Officer had held that compensation should be paid to the 7th and 8th Respondents as the ownership of the land is with the 7th and 8th Respondents. This Court is satisfied that it was a decision which had been arrived at by considering the *respective interests of the persons claiming compensation* and that it is a decision well within the powers of the Acquiring Officer in terms of Section 10(1)(a) of the Act. Hence, the said decision cannot be said to be *ultra vires* the powers conferred by the Act on the Acquiring Officer.

The next argument of the learned Counsel for the Petitioner was that the said decision is unreasonable and irrational. Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**⁷, described 'irrationality' as follows:

"By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'⁸. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

This Court, having taken into consideration the aforementioned material that was placed before the Acquiring Officer, is satisfied, for the reasons referred to earlier, that the decision of the Acquiring Officer is a decision that a *sensible person who had applied his mind to the question to be decided could have*

⁷ (1985) AC 374

⁸ Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1KB223

arrived at it. The Petitioner, by not furnishing any material to substantiate his claim, has not helped his cause and has only himself to blame. This Court cannot therefore agree with the submission of the learned Counsel for the Petitioner that the said decision is unreasonable and irrational.

At this stage, this Court would like to advert to an important provision in the Act, namely Section 10(2), which confers a statutory remedy on a person dissatisfied with a decision made under Section 10(1)(a), or to put it differently, by a refusal to refer a claim to the District Court .

Section 10(2) reads as follows:

*"A claimant whose claim is wholly or partly disallowed, or a party to a dispute which is determined, by the decision of an acquiring officer under subsection (1) may, **within fourteen days of the service on him of notice of the decision, make application to that acquiring officer for the reference of the claim or dispute, as the case may be, for determination as hereinafter provided; and that acquiring officer shall make a reference accordingly.**"*⁹ (emphasis added)

Thus, if the Petitioner was dissatisfied by the decision of the Acquiring Officer conveyed to him by 'P13', he ought to have made use of the statutory remedy provided to him, and demanded that the 1st Respondent refer his claim to the District Court, as provided by Section 10(3) of the Act. The Petitioner admits that he received 'P13' on 2nd November 2018. Although he replied 'P13' by his letter dated 5th November 2018 marked 'P14', the Petitioner did not make a

⁹ The words, '*and that acquiring officer shall make a reference accordingly*' is a reference to the provisions of Section 10(3) of the Act.

request as provided for in Section 10(2) nor has the Petitioner complained to this Court that he made a request under Section 10(2) but that the Acquiring Officer failed to act upon it. In these circumstances, this Court is of the view that it was within the powers of the Acquiring Officer to proceed to make an award under Section 17(1) of the Act.

This Court must observe further that the Petitioner is not without a remedy, as Section 57(1) of the Act preserves the right of the Petitioner to claim from the 7th and 8th Respondents the compensation that the State would pay them, in the event of a favourable ruling by the Debt Conciliation Board.¹⁰ For the avoidance of doubt, this Court wishes to state that this decision shall not prevent the Debt Conciliation Board from arriving at a decision in terms of the Debt Conciliation Ordinance, after having taken consideration the evidence presented before it by the parties.

In the above circumstances, this Court does not see any legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal

¹⁰ Section 57(1) reads as follows: "Nothing contained in this Act shall affect the right of any person who is lawfully entitled to any compensation which is paid under this Act to any other person to recover that compensation from that other person"