

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

In the matter of application for the grant of a
Writ of Mandamus under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

1. Nalinda Andrew Samarakoon
2. Yeshan Mark Harinda Samarakoon
3. Aanjanee June Seneviratne

All of No.30/2, Colonel T.G Jayawardane
Mawatha,
Colombo 03.

Petitioners

Case No: CA (Writ) 371/2012

Vs.

1. Hon. Janaka Bandara Tennakoon
Minister of Land and Land Development,
"Mihikatha Medura",
Land Secretariat,
No. 1200/6, Rajamalwatte Road,
Battaramulla.
2. Sri Lanka Land Reclamation and
Development Corporation
No. 351, Kotte Road,
Welikada,
Rajagiriya.

3. Harshan De Silva
Chairman,
Sri Lanka Land Reclamation and
Development Corporation,
No. 351, Kotte Road,
Welikada,
Rajagiriya.

4. C.L.W Dissanayake
Divisional Secretary,
Divisional Secretariat,
Wattala.

Respondents

Before: Janak De Silva J.

Counsel:

Kuvera De Zoysa P.C. with Ameer Maharroof for the Petitioners

Vikum De Abrew SDSG for the Respondents

Written Submissions tendered on:

Respondents on 12.03.2019

Argued on: 13.02.2019

Decided on: 10.05.2019

Janak De Silva J.

The Petitioners claim that a portion of land they owned namely lots 3 and 4 in plan marked P1 (said land) was acquired by the State in terms of an order made in 1995 under proviso (a) to section 38 of the Land Acquisition Act as amended (Act). In 2002 this Court in C.A. Writ Application No. 1298/2000 issued a writ of certiorari quashing the said order marked P11 on the

application of some other parties whose lands were also acquired in terms of the said order. The Petitioners claim they became aware of the said judgment in July 2006.

The Petitioners submit that there are a number of squatters on the said land and have sought the following relief from Court:

- (a) A mandate in the nature of a writ of mandamus compelling any one or more Respondents to alienate and/or hand over to the Petitioners with peaceful and undisturbed possession of the said land;
- (b) A mandate in the nature of mandamus, in the alternative to (a) above to provide alternative land, equivalent to the present market value of the said land which would be acceptable to the Petitioners.

The essence of the complaint of the Petitioners is that squatters are in possession of part of their land that was once acquired by the State and that there is a duty on the State to give back peaceful and undisturbed possession of the said land to the Petitioners.

I agree that once the State acquires private property and then for some reason later on it is given back to the original owners, there is a public duty to ensure that it is given back in the same condition it was at the time it was acquired. The question is whether this public duty is applicable to the instant matter.

In this context the report dated 15.07.1993 on the exhibition of the section 2 notice under the Act on the said land prepared by the relevant Grama Niladhari (R1) becomes important as it states that there are about 200 unauthorised occupants on the land proposed to be acquired. In fact, the application to acquire these lands dated 13.11.1992 (R2) also states that there are unauthorised structures on the land. The Petitioners at paragraph 8 of the petition states that their predecessor Mahesh Samarakoon was in occupation of the said land until his demise in 2011 which is 11 years after the quashing of the order of acquisition.

Hence the question of the State handing back peaceful and undisturbed possession to the Petitioners does not arise as there is nothing to show that the State took possession of the said land.

Furthermore, since the order of acquisition has been quashed the said land is no longer state land and therefore the State is not in a position to take any steps in relation to private land. Mandamus will not issue where it would be futile or not possible to obey. [*Mowjood v. Pussadeniya and Another* (1987) 2 Sri.L.R. 287]. Therefore, the first prayer for writ of mandamus must fail.

The second prayer is to compel the Respondents to provide alternative land, equivalent to present market value of the said land. It is trite law that to issue a writ of mandamus there must be a public or statutory duty. [*De Alwis v. De Silva* (71 NLR 108); *Weligama Multi Purpose Cooperative Society Ltd. v. Chandradasa Daluwatte* (1984) 1 Sri.L.R. 195; *Hakmana Multi Purpose Cooperative Society Ltd. v. Ferdinando* (1985) 2 Sri.L.R. 272; *Piyasiri v. Peoples Bank* (1989) 2 Sri.L.R. 47; *Sannasgala v. University of Kelaniya* (1991) 2 Sri.L.R. 193; *Samaraweera v. Minister of Public Administration* (2003) 3 Sri.L.R. 64]

The only statutory provision in the Act dealing with the exchange of lands is section 36 which permits a transfer of any other land belonging to the State in lieu of compensation payable under the Act for land acquired by the State. However, in the instant matter no compensation is due to the Petitioners as their land is not acquired by the State anymore. Therefore, there is no public duty to provide alternative land to the Petitioners. In *Perera v. National Housing Development Authority* [(2001) 3 Sri.L.R. 50 at 53] J.A.N. De Silva J. (as he was then) held:

“Mandamus is not intended to create a right but to restore a party who has been denied his right to the enjoyment of such right”.

Hence even the second prayer for a writ of mandamus must fail.

There is also the question of delay. This application was filed in 2013 which is 11 years after the said land became private land. In *Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another* [(1996) 2 Sri.L.R. 70] Jayasuriya J. held:

" A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has discretion to deny him relief having regard

to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

In that case relief was refused since there was a delay of over two and half years since making the order challenged. The principle is equally applicable to the issue of a writ of mandamus.

For the foregoing reasons, the application of the Petitioners is dismissed with costs.

Judge of the Court of Appeal