

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 Mandamus in terms  
of Article 140 of the Constitution of  
the Democratic Socialist Republic of  
Sri Lanka.

C.A.(Writ)Application No. 319/2013

Kegalle Plantations PLC  
No. 310, High Level Road,  
Navinna,  
Maharagama.

PETITIONER

Vs.

01. M.M.P.Priyangani Pethangoda,  
Divisional Secretary,  
Divisional Secretariat,  
Mawanella.
02. T. Asoka Pieris,  
The Secretary,  
Ministry of Lands and Land  
Development,  
"Mihikatha Medura",  
1200/6, Rajamalwatta Road,  
Battaramulla.

- 2A. I.H.K. Mahanama  
The Secretary,  
Ministry of Lands and Land  
Development,  
"Mihikatha Medura",  
1200/6, Rajamalwatta Road,  
Battaramulla.
03. Hon. Janaka Bandara Tennakoon,  
Minister of Lands and Land  
Development ,  
Ministry of Lands and Land  
Development,  
"Mihikatha Medura",  
1200/6, Rajamalwatta Road,  
Battaramulla.
- 3A. Hon. M.K.D.S. Gunawardena,  
Minister of Lands and Land  
Development ,  
Ministry of Lands and Land  
Development,  
"Mihikatha Medura",  
1200/6, Rajamalwatta Road,  
Battaramulla.
- 3B. Hon. John A.E. Amaratunga,  
Minister of Lands and Land  
Development ,  
Ministry of Lands and Land  
Development,  
"Mihikatha Medura",  
1200/6, Rajamalwatta Road,  
Battaramulla.

4. Sudharma Karunaratne  
Secretary,  
Ministry of Plantation Industries,  
No. 55/75, Vauxhall Lane,  
Colombo 2.

4A. Damitha de Zoysa,  
Secretary,  
Ministry of Plantation Industries,  
No. 55/75, Vauxhall Lane,  
Colombo 2.

4B. Upali Marasinghe  
Secretary,  
Ministry of Plantation Industries,  
11<sup>th</sup> Floor, Sethsiripaya 2<sup>nd</sup> Stage,  
Battaramulla.

Respondents

BEFORE : ACHALA WENGAPPULI, J.

COUNSEL : Kushan de Alwis P.C. with Hiran  
Jayasuriya for the Petitioner.  
Milinda Gunathilake S.D.S.G. for the  
1<sup>st</sup> to 4<sup>th</sup> Respondents

ARGUED ON : 14.11. 2019.

WRITTEN SUBMISSIONS

TENDERED ON : 18.12.2019 ( by the 1<sup>st</sup> - 4<sup>th</sup> Respondents)  
13.01.2020 (by the Petitioner)

DECIDED ON : 07.08.2020

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**ACHALA WENGAPPULI, J.**

The Petitioner Company, *Kegalle Plantations PLC*, has invoked the jurisdiction of this Court conferred under Article 140 of the Constitution, seeking Writ of Certiorari, in quashing the decision of the 3<sup>rd</sup> Respondent to acquire 8.050 Hectares of land from the 'Newlands Division' of *Ambadeniya Estate* or "*Newlandwatta*" and the Notice published by the 1<sup>st</sup> Respondent, under Section 4 of the Land Acquisition Act, marked as P10. The Petitioner Company also seeks a Writ of Certiorari, in quashing the decision made by the 3<sup>rd</sup> Respondent in terms of Section 5 of the said Act and published in the Gazette Extraordinary No. 1794/6 dated 21.01.2013, marked as P12.

It is stated that the Petitioner Company is the lessee of Janatha Estates Development Board (JEDB), which owned and managed *Ambadeniya Estate*, before it took over "the functions and carry on the business" of the said Estate, under Section 3(2) of Public Companies Act No. 23 of 1987, after an Order published in the Gazette Extraordinary No. 720/2 dated 22.06.1992. The JEDB then entered into a Memorandum of Record and also executed irrevocable Power of Attorney No. 636 dated 16.08.1995. Thereafter the JEDB executed Indenture of Lease No. 739 dated 18.03.1998, by which it had leased out the said estate to the Petitioner Company until 21.06.2045. The Petitioner Company therefore claims that it is in "lawful possession" of the said Estate.

The Petitioner Company then developed the said Estate by spending large sums of money on the rubber plantation given the commercial

viability of the Company would depend on the projected income from the said Estate.

On 24.02.1999, the Petitioner Company received Notice, issued under Section 2 of the Land Acquisition Act, in respect of a land in extent of about 20 acres from the said Estate (P9) and on 11.06.2001, it received Notice issued under Section 4 of the said Act, indicating a total of 8.050 another Hectares, to be acquired for a public purpose from the said Estate (P10).

In response to the said Notice P10, the Petitioner Company objected to the proposed acquisition, by a letter dated 27.06.2001 (P11), setting out in detail the grounds upon which it had objected on and expected said objections to be considered. In anticipation of an inquiry, the Petitioner Company had in its possession of all material documents to establish the validity of its grounds of objection. However, the Petitioner Company claims that no inquiry into its objections was held and since "no further steps were taken in respect of the said proposed acquisition", the Company believed that "intended acquisition has been abandoned" and continued to develop the said portion of land and enjoy its lease holding rights.

In February 2013, the Petitioner Company was served with a copy of the Gazette Extraordinary No. 1794/6 of 21.01.2013 by which the 3<sup>rd</sup> Respondent has made a decision and/or declaration under Section 5(1) of the Land Acquisition Act to acquire the said specified extent of land from the said Estate, for the public purpose of "village expansion".

It is under these circumstances, learned President's Counsel for the Petitioner Company claims that the " ... purported decision by the 3<sup>rd</sup> Respondent to acquire the said portion of land from the 'Newlands Division' of the said Estate ... has been arrived at after twelve (12) years and six (6) months after the Section 4 Notice (P10) was issued and without holding an inquiry and/or affording an opportunity to the Petitioner to substantiate its objections taken against the said Section 4 Notice" and, therefore is "unlawful, arbitrary, mala fide and unreasonable."

The 1<sup>st</sup> to 4<sup>th</sup> Respondents, in their objections and in replying to the claim of the Petitioner Company objecting to the proposed acquisition stated that no objections "are available in the relevant files of the Respondent."

At the hearing, learned Senior Deputy Solicitor General has challenged the standing of the Petitioner Company to come before this Court claiming relief, by contending that its rights are limited to the rights that are specified in the said Indenture of Lease, and in their failure to name JEDB, who actually owned the land, a necessary party, no relief is obtainable. In addition, the Respondents also contend that the process of holding an inquiry with regard to land acquisition is set out in Sections 7, 8, 9 and 10 of the Land Acquisition Act and the Petitioner Company did not allege that such a process did not take place.

In support of their contention that the Petitioner Company had no standing, learned Senior Deputy Solicitor General relied on the judgments of this Court in CA 228/2012 Writ - decided on 14.06.2016, where it was noted that the Petitioner in that application is a lessee of the 3<sup>rd</sup>

Respondent and "... has no any statutory right to possess the land and therefore he cannot seek judicial review." The special leave to appeal application No. SC/SPL/LA/141/2016, challenging the said decision, was dismissed by the Supreme Court on 28.03.2018.

This Court, in its judgment of *Perera & Others v Central Freight Bureau of Sri Lanka & another* (2006) 1 Sri L.R. 83, has considered a similar objection as to the standing of the Petitioner. The Court, cited *Premadasa v Wijewardena & Others* (1991) 1 Sri L.R. 333 where *Tambiah CJ* observed that "*the law as to locus standi to apply for Certiorari may be stated as follows: The Writ can be applied for by an aggrieved party who has a grievance ...*".

It is undisputed that the Petitioner Company came into possession of the extent of land proposed to be acquired, with the execution of the Indenture of Lease P8. It is correct that the rights of the Petitioner Company are restricted to the ones that had been specified therein. When the 3<sup>rd</sup> Respondent made the declaration under Section 5(1) of the Land Acquisition Act to acquire the said specified extent of land from the said Estate, for the public purpose of "village expansion" which had been said to be developed by the Petitioner Company as part of its rubber plantation of Newlands Estate is qualified to be treated as a grievance.

In the judgments relied upon by the Respondents, this Court had taken a particular view in relation to the standing of a lessee who had no statutory rights to possess the disputed portion of land, to seek relief under judicial review.

It is noted that, in *Edwin v Tillakaratne* (2001) 3 Sri L.R. 34, this Court has held, in respect of Section 7 of the Land Acquisition Act, that "... a 'person interested' may fall into any one of the categories of persons who have an "interest" in the land as owner, co-owner, mortgagee and includes also a lessee."

The Supreme Court, in its judgment of *Balangoda Plantations PLC v Janaka Bandara Tennakoon, Minister of Lands and Land Development & Others* - S.C. (Writ) 01/2014 - decided on 28.07.2016, dealt with a similar objection taken on *locus standi* of the Petitioner who was placed in almost an identical factual situation as the Petitioner Company. It was noted by the Court that "*the objection raised in this regard is based mainly on the position that 7<sup>th</sup> Respondent, the State Plantation Corporation, is the owner of the land in dispute and the Petitioner is only a lessee of the 7<sup>th</sup> Respondent.*" Having quoted with approval of the views expressed in *Bogawantalawa Plantations Ltd. v Minister of Home Affairs and Plantation Industries* (2004) 2 Sri L.R. 329, on the expansion of the scope of applicability principles of standing, the apex Court ruled that the Petitioner had sufficient *locus standi* to seek judicial review.

Therefore, this Court is of the view that the Petitioner Company has sufficient interest to move this Court for judicial review and therefore has sufficient *locus standi* to maintain this application.

The main thrust of the complaint by the Petitioner Company is on the failure to consider its objection to the Notice issued under Section 4, and also of the failure to afford an opportunity to substantiate its objection at an inquiry.



In their response, the Respondents contended that there was no denial of an inquiry under Sections 7, 8, 9 and 10 of the Land Acquisition Act by the Petitioner Company and therefore the question of not considering the objections does not arise. Therefore, it is time this Court deals with this particular issue.

The Sections 7, 8, 9 and 10 of the Land Acquisition Act no doubt deals with the inquiries that are associated with payment of compensation. Sections 7 and 8 deal with the manner of any person interested in the land to be acquired should seek compensation, while Sections 9 and 10, under "Part II" and "INQUIRY INTO CLAIMS, REFERENCE TO COURT, AND ACQUIRING OFFICER'S AWARD", deals with determination of the quantum of compensation and the persons who are entitled to such compensation.

The circumstances that had been relied upon by the Petitioner Company do not indicate that its complaint is on the procedure adopted by the Respondent on payment of compensation, but refers to an initial stage, which are dealt under Section 4 of the said Act.

This Court already noted that the Petitioner Company claimed that it had objected to the proposed acquisition, when the Notice under Section 4 was served. A copy of the objections addressed to the 2<sup>nd</sup> Respondent was tendered annexed to the petition marked P11. The said document is titled "Objections to Notice issued in terms of Section 4 of the Land Acquisition Act" and contains "Original by Hand, Counterpart Original by Registered Post". It was dated 27.06.2001.

The Notice under Section 4 of the said Act is dated 11.06.2001 and the Petitioner Company had objected to the proposed acquisition after 16 days of the issuance of the said Notice. Section 4(3)(d) of the Act imposes a duty on the relevant authority to specify a time period within which any objections could be raised on the proposed acquisition. This statutory requirement was fulfilled by the 1<sup>st</sup> Respondent, as it was indicated in the said Notice (P10) that any objections should be raised before 30.06.2001 and should be addressed to the 2<sup>nd</sup> Respondent. The Petitioner Company had complied and raised its objection during the stipulated time period and had addressed the same to the 2<sup>nd</sup> Respondent.

The document P11 indicates that the Petitioner Company had dealt extensively with its basis of objections and had quantified the ensuing loss that would be incurred upon the proposed acquisition, in excess of Rs. 5.5 Million. The document P11 has twenty documents attached to it marked X1 to X20. Among these documents, the Petitioner Company has annexed a document marked X10, by which the 2<sup>nd</sup> Respondent indicated to a trade union that only undeveloped Estate lands would be considered to be acquired for distribution of land among the landless, without endangering the employment prospects of the Estate labour community.

Relevant part of Section 4(4) of the Land Acquisition Act in respect of any objections for the proposed acquisition is reproduced below;

*“Where a notice relating to the intended acquisition of a land or of a servitude over a land is exhibited under subsection (1) and objections to such acquisition are made to the appropriate Secretary by any of the persons interested in the*

*land within the time allowed therefor by the notice, the appropriate Secretary shall consider such objections or direct an officer to consider such objections on his behalf and to make recommendations to him. When such objections are considered every objector shall be given an opportunity of being heard in support thereof."*

The wording is clear that the appropriate Secretary was statutorily bound to "*consider such objections*" and "*every objector shall be given an opportunity of being heard in support thereof*".

The obscure and evasive claim of the Respondents, in respect of the objections raised by the Petitioner Company to the effect that "*the objections marked P11 are not available in the relevant files of the Respondent and consequently deny the averments contained therein*" could not be accepted. Surely there must be minutes made by the relevant officials who were concerned with the decision making in relation to the P11 document which either confirm or negate the Petitioner Company's claim. The Petitioner Company cannot be placed at a disadvantageous position owing to this fact as it is not responsible for the proper maintenance of files of the Respondents.

Thus, it is clear that the document P11 containing the objections to the proposed acquisition was not considered by the 2<sup>nd</sup> Respondent and the Petitioner Company was not afforded an opportunity to present its position as per the statutory requirement. In these circumstances the process of acquisition that had proceeded beyond the issuance of Section 4 Notices is tainted with illegality and ought to be nullified owing to that reason.

Therefore, this Court is of the view that the Petitioner Company is entitled to the relief prayed for in paragraphs (b) and (c) of its prayer. Accordingly, this Court issues Writs of Certiorari quashing the decision of the 3<sup>rd</sup> Respondent to acquire 8.050 Hectares from the 'Newlands Division' of the *Ambadeniya* Estate or '*Newlandwatta*' as referred to by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and his decision made in terms of Section 5 of the Land Acquisition Act and published in Gazette Extraordinary No. 1794/6 dated 21.01.2013.

This Court further directs the 2<sup>nd</sup> Respondent to consider the objections of the Petitioner Company and act according to law.

The application of the Petitioner Company is accordingly allowed.

Parties will bear their costs.

**JUDGE OF THE COURT OF APPEAL**