

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

D.M.M.B. Dissanayake,  
No. 116/2,  
Pohonnaruwa,  
Meerigama.  
Petitioner

**CASE NO: CA/WRIT/260/2018**

Vs.

1. Y.I.M. Silva,  
Divisional Secretary,  
Divisional Secretariat,  
Meerigama.
2. Gayantha Karunathilake,  
Minister,  
Ministry of Land and Land  
Development,  
“Mihikatha Medura”  
Land Secretariat,  
No.120C/6,  
Rajamalwattae Road,  
Sri Jayawardenapura Kotte.

3. I.H.K. Mahanama,  
Secretary,  
Ministry of Land and Land  
Development,  
“Mihikatha Medura”  
Land Secretariat,  
No.120C/6,  
Rajamalwattae Road,  
Sri Jayawardenapura Kotte.
4. Kabeer Hashim,  
Minister,  
Ministry of Highways and Road  
Development,  
9<sup>th</sup> Floor,  
Sethsiripaya,  
Battaramulla.
5. D.C. Dissanayake,  
Secretary,  
Ministry of Highways and Road  
Development,  
9<sup>th</sup> Floor,  
Sethsiripaya,  
Battaramulla.
6. Attorney General,  
Attorney General’s Department,  
Hulftsdorp,  
Colombo 12.  
Respondents

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

Counsel: Lakshan Dias with Dayani Panditharathne for  
the Petitioner.  
Suranga Wimalasena, S.S.C., for the  
Respondents.

Argued on: 30.06.2020

Decided on: 23.07.2020

Mahinda Samayawardhena, J.

Admittedly, the Petitioner's land was acquired, in accordance with the proper procedure under the Land Acquisition Act, for the construction of the Central Expressway, and compensation was awarded to the Petitioner following the acquisition.

The Petitioner has filed this application mainly against the Minister of Lands and the Minister of Highways and Road Development, seeking to compel them by mandamus to (a) divest the said land and (b) enhance compensation, on the basis the land is not being used for the public purpose it was acquired for and is instead being used by a sports society as a volleyball court.

The said two reliefs are irreconcilable; they are not sought in the alternative.

Be that as it may, according to the statements of objections of the Respondents, the construction of the Central Expressway is

underway, and a part of the land acquired from the Petitioner has been given to the said sports society as a temporary measure until an alternative land is identified for them. The Respondents have tendered a spate of documents to establish that the public purpose for which the land was acquired has not changed and the area used at present as the temporary volleyball court will be used to construct the proposed office buildings of the Central Expressway.

The Petitioner cannot seek divestiture under section 39A of the Land Acquisition Act. In order for a divesting claim to be made under section 39A, the Petitioner shall satisfy four criteria. The first criterion is “*no compensation has been paid under the Act to any person or persons interested in the land in relation to which the said divesting Order is to be made*”. Admittedly, the Petitioner received compensation without any protest. Therefore, he cannot in law make a claim for divestiture.

The Petitioner admittedly did not appeal against the award of compensation in the manner set out in Part III of the Land Acquisition Act; nor did he appeal to the special tribunals created for this purpose, i.e. the Land Acquisition Resettlement Committee (LARC) and the Super Land Acquisition Resettlement Committee (Super LARC). He says he did not do so as a responsible citizen. Then he cannot now move this Court to enhance the quantum of compensation. This is not the task of the writ Court.

Both reliefs sought by the Petitioner are plainly misconceived in law.

I dismiss the application of the Petitioner with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal