

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 under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

1. L. D. Mithradewa.
No. 72/1, Katupitiya,
Kosgolla.
2. D. W. Somaseeli.
No. 72/1, Katupitiya,
Kosgolla.

C.A. Case No. WRT- 0375/21

PETITIONERS

Vs

1. S. M. C. Gooneratne.
Divisional Secretary of Thumpane,
Divisional Secretariat,
Galagedara.
2. Minister of Lands
Ministry of Lands,
'Mihikatha Medura'
Rajamalwatta Road,
Battaramulla.
3. O. D. Saman Thilakasiri Gunasekara.
Galagedara,
Opalla.

RESPONDENTS

BEFORE : M. T. MOHAMMED LAFFAR, J
WICKUM A. KALUARACHCHI, J

COUNSEL : Chamara Nanayakkarawasam, for the Petitioners.
Z. Zain, DSG, for the 1st Respondent.
Sanjaya Kodithuwakku, for the 3rd Respondent.

WRITTEN SUBMISSIONS

TENDERED ON : 24.11.2023 (On behalf of the Petitioners)
23.11.2023 (On behalf of the 1st Respondent)
24.11.2023 (On behalf of the 3rd Respondent)

ARGUED ON : 20.10.2023

DECIDED ON : 10.01.2024

WICKUM A. KALUARACHCHI, J.

The 3rd respondent was the original owner of the subject land of this application. The petitioners purchased the said land from the 3rd respondent by the Deed of Transfer No. 10469 dated 23.03.2004. The 3rd respondent agreed with the petitioners to have the land re-transferred in the event the 3rd respondent pays back the money obtained from the petitioners with the interest. The petitioners claimed that they have become absolute owners of the subject land as the 3rd respondent has failed to act upon the agreement.

Then, the land was acquired by the State as per the Gazette Extraordinary No. 1981/77 dated 25.08.2016 (P-3). The petitioners stated that they were not aware that the land had been acquired by the State, the petitioners were cheated by the 3rd respondent to sign a deed re-transferring the property to

him, but in fact, the petitioners had no title to the land to confer on the 3rd respondent by a Deed of Transfer because the land had been acquired by the State. The 3rd respondent's position was that there was no transfer of beneficial interest of the property but only a nominal transfer had taken place.

Anyhow, the notice under Section 7 of the Land Acquisition Act was published in respect of lots 641,642 and 643 of the preliminary plan No. 198 prepared by the Surveyor General. Inquiry under Section 9 of the Act was held. The compensation for the acquisition of land was first awarded to the petitioners by the awards P-6(a), P-7(a) and P-8(a). Subsequently, on or about 02.12.2020, the 1st respondent made minutes on P-6(a), P-7(a) and P-8(a) cancelling those awards. The petitioners stated that thereafter they received fresh notices dated 02.09.2020 issued by the 1st respondent under Section 10 (1) (a) of the Land Acquisition Act stating that the 3rd respondent was determined as the owner of the said land.

The petitioners by this application seek to quash awards P-14, P-15 and P-16. The petitioners also seek Writ of Certiorari quashing the decision of the 1st respondent to cancel awards contained in P-6(a), P-7(a) and P-8(a). In addition, the petitioners seek a Writ of Certiorari quashing the decision of the 1st respondent not to refer the dispute to the District Court and a Writ of Mandamus directing the 1st respondent to refer the dispute to District Court for determination under Section 10 (2) of the Land Acquisition Act.

At the hearing, the learned Counsel for the petitioners, the learned Deputy Solicitor General for the 1st respondent and the learned Counsel for the 3rd respondent made oral submissions. Subsequently, all three parties tendered written submissions, in addition to the oral submissions that they have made.

The contention of the learned Counsel for the petitioners was that the 3rd respondent obtained the petitioners' signatures for a deed by

misrepresentation and fraud. The learned Counsel contended that the petitioners were cheated by the 3rd respondent to sign a deed transferring the property to him and the petitioners were not aware that the land had been acquired by the State. Further, the learned Counsel contended that the 3rd respondent had submitted a document prepared using a blank sheet signed by the petitioners expressing the petitioners' consent for payment of compensation to the 3rd respondent in respect of the said land.

The main allegation of the learned Counsel for the petitioners was that after revoking awards made in favour of the petitioners, although a fresh inquiry was called for, the petitioners were not given a hearing. The learned Counsel for the petitioners contended further, although, it was mentioned in P-14, P-15 and P-16 that if the petitioners wish to have the dispute referred to the District Court, they should apply within fourteen days, when the petitioners made an application to refer the matter to the District Court, the 1st respondent refused to refer the dispute to the District Court. The contention of the learned Counsel was that the 1st respondent has no power to do so.

The learned Deputy Solicitor General appearing for the 1st respondent raised following objections and urged to dismiss the application.

- i. The petitioners have willfully suppressed and/or misrepresented material facts, have failed to come before Court with clean hands and are in breach of the duty of disclosure, thus, lack *Uberima Fides*.
- ii. The petitioners have failed to disclose a public duty owed to them by the respondents.
- iii. The petitioners are guilty of laches and there is an inordinate delay in filing this application.

In addition to the aforesaid objections, the learned DSG pointed out that the major facts pertaining to the application are in dispute and thus the petitioners cannot invoke the writ jurisdiction of this Court. With regard to

the delay, the learned DSG pointed out that the awards P-6(a), P-7(a) and P-8(a) were issued on 2nd December 2020, awards P-14, P-15 and P-16 were issued on 21st August 2020 but the petitioners came before this Court on 5th August 2021 which is over a year later. As pointed out by the learned DSG there is no averment in the petition to explain the delay. Unexplained delay is a reason to dismiss this application.

The learned Counsel for the 3rd respondent agreed with the submissions made by the learned Deputy Solicitor General. The learned Counsel for the 3rd respondent submitted further, if compensation had been awarded to a wrong person, the aggrieved party has a remedy in terms of Section 57(1) of the Land Acquisition Act. When there is an alternative remedy, the learned Counsel contended that the petitioners are not entitled to seek the discretionary remedy by way of a writ.

The petitioners have filed this application for the purpose of obtaining compensation for the acquisition of subject land. The petitioners' complaint is that awarding compensation to the third respondent is incorrect and that they should be compensated.

Initially, in terms of Section 17 of the Land Acquisition Act, the awards P-6(a), P-7(a) and P-8(a) were made in favour of the petitioners. However, as it was found that the said decisions under Section 10(1)(a) and Section 17 of the Land Acquisition Act had been made erroneously, said awards were revoked and a fresh inquiry was called. Then, the 1st respondent decided in terms of Section 10(1)(a) of the Land Acquisition Act that the 3rd respondent was the owner of the aforesaid three allotments of land.

Section 10 of the Act reads as follows:

(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 hereinafter provided.

(2) 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.

(3) Every reference under the preceding provisions of this section shall be made 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, according as the total amount of the claims for compensation for the acquisition of the land or servitude exceeds or does not exceed one thousand five hundred rupees.

(4) In every case in which a reference is made to the District Court or to the Primary Court as hereinbefore provided, the acquiring officer shall defer the making of his award under section 17 in respect of the land or servitude to which such reference relates until a determination on such reference is made by that court or, in the event of an appeal under section 14, by the Court of Appeal.

(5) Where an acquiring officer makes a decision on any claim or dispute under subsection (1), and the claim or dispute is not referred for determination as provided in subsection (3), the decision shall be final.

The main allegation made by the learned Counsel for the petitioners was that the 1st respondent did not refer the dispute to the District Court although the petitioners requested to refer the dispute to the District Court. It is correct that in P-14, P-15 and P-16, it is mentioned that if the matter needs to be referred to the District Court, an application has to be submitted to the 1st respondent within fourteen days.

Referring a dispute to the District Court is done in terms of Section 10(1)(b) when there is a dispute between claimants. In this matter, the only claimant for the subject land according to the Gazette Extraordinary No. 1981/77 was the 3rd respondent. When there was only one claimant, there was no dispute to be referred to the District Court. The claimants should have made their claims before the Divisional Secretary. If there is a dispute regarding those claimants only, the matter is referred to the District Court. What has happened here is only the 3rd respondent was the claimant before the Divisional Secretary. After issuing the awards P-14, P-15 and P-16, the petitioners came forward and requested to refer the matter to the District Court. Section 10(1) of the Act does not permit to refer the matter to the District Court in such instances. Therefore, the 1st respondent correctly refused to refer the matter to the District Court.

Apart from that, the petitioners have made a statement before the Divisional Secretary of Thumpane on 19.03.2018 specifically expressing their consent to pay the 3rd respondent the entire compensation. The relevant portion of the statement of the petitioners is as follows:

“ඒ අනුව මෙම ඉඩමේ හිමිකම අප වෙත පැවරුනත් ඉහත කරුණු අනුව ඉඩමට අදාළ වන්දි මුදල සම්පූර්ණ වශයෙන්ම තිලකසිරි යන අයට ගෙවීම සම්බන්ධයෙන් අපගේ එකඟතාවය ප්‍රකාශ කර සිටිමු.”

At the hearing of this application, the learned Counsel for the petitioners contended that the petitioners' signatures have been obtained to the said statement fraudulently. He stated that petitioners' signatures were obtained to a blank paper. This statement is contained in the inquiry held in terms of Section 9 of the Land Acquisition Act. The said document has been marked as 1-R8F. Recording the said statement was an official act performed in the Divisional Secretariat of Thumpane. The officer who recorded the statement has signed at the end of the statement. The Divisional Secretary stated at the beginning of making the statement that the statement is made in front of her. After making the statement, the Divisional Secretary has signed stating that it was made before her. The allegation made by the learned Counsel for the petitioners that the Divisional Secretary has fraudulently obtained petitioners' signatures for a statement that they have not made is a very serious allegation. Apart from making that allegation in this Court, it is strange to see that the Petitioners have not made a complain to anywhere else that the Divisional Secretary has fraudulently obtained their signatures for a blank sheet and recorded a false statement that they did not make.

In perusing the document 1-R8F, it is apparent that in the page where the petitioners' statement is recorded, part of the 3rd respondent's statement also appears at the top of the page. Petitioners' statement appears in the middle of the page. So, this is a continuation of recording statements of the parties. In addition, the petitioners have not just placed their signatures at the end of the statement but they placed their signatures in front of their names. Hence, if the petitioners placed their signatures to a blank sheet, their signatures cannot exactly come to the end of their statement and exactly in front of their names. It cannot happen under any circumstances. Hence, it is apparent that

the allegation made by the learned Counsel for the petitioners against the Divisional Secretary is baseless. Anyhow, the petitioners admit that their signatures appear in that document. The Divisional Secretary certified that the petitioners made that statement before her and placed their signatures. This is an official act performed by the Divisional Secretary under the provisions of the Land Acquisition Act. According to Section 114 illustration (d) of the Evidence ordinance, the Court may presume that judicial and official acts have been regularly performed. In the case of **Jayaweera V. Assistant Commissioner of Agrarian Services Ratnapura and Another** – (1996) 2 Sri L.R. 70, it was observed that there is a presumption that official and legal acts are regularly and correctly performed. Therefore, the petitioners cannot maintain this application on that allegation as it is not proved in a Court with competent jurisdiction or anywhere else that the said statement have been recorded fraudulently by the Assistant Divisional Secretary who conducted the inquiry under Section 9 of the Land Acquisition Act.

The statement made by the petitioners during Section 9 inquiry appears in the document marked 1-R8F. According to the statement of the petitioners contained in 1-R8F, the petitioners categorically requested to pay the compensation to the 3rd respondent. This is a proof not only that the petitioners did not claim compensation but also, they requested to pay the same to the 3rd respondent. Hence, there was only one claimant, and there was no dispute among claimants and there was no necessity to refer the matter to the District Court. Accordingly, the 1st respondent correctly made the awards P-14, P-15 and P-16 to the 3rd respondents and refused the matter to be referred to the District Court. In the circumstances, I hold that the petitioners are not entitled to seek the reliefs prayed for in the petition.

Accordingly, the Writ application is dismissed with costs fixed at Rs. 25,000/-

JUDGE OF THE COURT OF APPEAL

M. T. Mohammed Laffar, J

I agree.

JUDGE OF THE COURT OF APPEAL