

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

CA/WRIT/170/2021

1. S. W. P. P.A. Chinthala Lalani
Rajapaksha Senevirathna,
No.103/D, Dagonna Road,
Boragodawaththa,
Minuwangoda.
2. Jayalath Arachchige
Rathnathilaka
No. 56/2, New Road, Galloluwa,
Minuwangoda.

PETITIONERS

Vs.

1. Hon. Minister of Lands,
Ministry of Lands,
S.M. Chandrasena,
“Govijana Mandiraya”
No. 80/5, Rajamalwaththa Road,
Battaramulla.
2. Divisional Secretary,
Divisional Secretariat,
Minuwangoda.
3. Minuwangoda Urban Council,
Minuwangoda.
4. Secretary Urban Council
P. A. S. S. Sandaruwan,
Urban Council,
Minuwangoda.

RESPONDENTS

Before: Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel: Chaturanga Perera for the Petitioner.

Rohana Jayasundara with Lakmini Hangawaththa for the 3rd and 4th
Respondents.

Argued on: 09.10.2023

Written Submissions- Petitioners - 23.11.2023

3rd Respondent - 14.11.2023

Decided on: 13.12.2023

Sobhitha Rajakaruna J.

The 1st Petitioner claims that she submitted a building plan to the 3rd Respondent- Minuwangoda Urban Council ('Urban Council') for approval in November 2018 as she intended to construct a building on the subject land. The building plan has not been approved by the said Urban Council and accordingly, she seeks a mandate in the nature of a writ of Mandamus directing anyone or more of the Respondents to expeditiously conclude the process of approving the said building plan. In addition to the aforesaid relief, the Petitioners are seeking for a mandate in the nature of a writ of Mandamus directing any one or more of the Respondents to hand over free and vacant possession of the said subject land. According to the Amended Petition dated 21.10.2022, the subject land claimed by the Petitioners is in the extent of 6.29 perches (Acres 0 -Roods 0 -Perches 6.29). It is noted that the 1st and 2nd Respondents have been released from these proceedings.

By way of an order made under section 38A of the Land Acquisition Act No. 09 of 1950 published in Gazette Extraordinary No. 1089/ 18 on 22.07.1999 (marked 'P2' / '3R3') the Lot Nos. 03 and 23 depicted in Surveyor General's Plan No. Gam/ Minu/98/ 24 made on 13.02.1999 have been acquired by the State. The extent of the said Lot Nos. 03 and 23 are hectares 0.01604 and 0.01657 respectively. Whereas, the State has acquired a total of 12.89 perches (0.03261 hectares). The contention of the Petitioners is that the husband of the 1st Petitioner was in possession of a land in extent of 21 perches from which the aforesaid portion of land had been acquired by the State. Although the balance portion of 8.11 perches has been transferred to various parties subsequently, the 1st Petitioner has made several representations to the relevant authorities claiming compensation in respect of the said portion of land which is in the extent of 8.11 perches. This court is unable to examine and arrive at any conclusion as to who would be entitled to such compensation

and to the title regarding the said portion of land which is in the extent of 8.11 perches. The duty cast upon this Court is to consider whether a writ of Mandamus can be issued against the 3rd and 4th Respondents as prayed for in the Prayer of the Petition.

In this context, I need to examine the involvement of the Urban Council in the affairs relating to the instant Application. To my mind, the Petitioners' primary claim emanates from the Deed of Assignment ('P16') No. 157 attested by E.M.M.N. Ekanayake Notary Public on 16.01.2018. One of the witnesses to the said 'P16' is the Secretary of the said Urban Council. The said Secretary has placed her signature therein to endorse the said assignment for which purpose the said deed has been executed.

In the said Deed of Assignment, the Urban Council has assigned the land morefully described in its schedule which is an extent of 6.29 perches. The said Schedule refers to Lot No.11 of Surveyor General's Plan No. Mu. Pi. Gam 3072. Based on such Lot No.11 another plan No. 2923 has been made by J.M. Wijewardena Licensed Surveyor. Significantly, the said Deed of Assignment elaborates the reasons why the block of land morefully described in its schedule was assigned to the Assignee mentioned therein. According to the conditions depicted in 'P16', the Urban Council referring to the block of land acquired by way of the relevant orders published in the Gazette Extraordinary No. 1089/18 and No. 1165/19 under the Land Acquisition Act, declares that when acquiring such land under the above Gazette Notifications a portion of land in the extent of 8.11 perches has been left out without being duly acquired. Thus, in order to facilitate the assignee in 'P16' the Urban Council has purportedly released a block of land in extent of 8.11 perches from Lot No. 11 of the Surveyor General's Plan No. Mu. Pi. Gam 3072.

Although it appears, *prima facie*, that the Surveyor General's Plan No. Mu. Pi. Gam 3072 reflects an acquisition of land under the Land Acquisition Act however, no adequate material has been presented to the Court to establish any link between Lot No.11 of Mu. Pi. Gam 3072 and Lot No. 03 and 23 of Surveyor General's Plan No. Gam/ Minu/98/24. Hence, this court is unable to arrive at any conclusion as to whether the portion of land assigned under the said 'P16' is State land. Moreover, I cannot gather any provision of law on the Urban Council's authority to assign land vested in it under section 44 of the Land Acquisition Act. In terms of the certificates of handing over possession marked '3R5' and '3R6' it is envisaged that only the possession of the said Lot No. 03 and 23 of Surveyor

General's Plan No. Gam/ Minu/98/24 has been handed over to the Urban Council by the respective Acquiring Officer.

The procedure of divesting of lands where actual possession has been taken by the State is provided in section 39A of the Land Acquisition Act and there is no evidence in the instant Application that the relevant Minister has made a divesting order under the said section 39A. Based on such circumstances this Court is unable to identify the purported subject land or to declare the Lot No. 11 of Mu. Pi. Gam 3072 to be either State or private land. I take the view that this is not a fit case to engage in an exercise of examining the title of the Petitioners and anyhow, it should be adjudicated in a suit where parties would have reasonable opportunity of examining their respective witnesses.

In contrast, I need to make an observation that, in my view, a reasonable prejudice has been caused to whoever the assignee in 'P16' for the mere reason that the Urban Council has got the said 'P16' executed without duly identifying the land described in the Schedule to 'P16' and also in the presence of a clear ambiguity whether it is lawful for the Urban Council to assign a particular land vested in the Urban Council by way of a Deed of Assignment. Furthermore, it appears that the Urban Council has induced an expectation within 1st Petitioner especially based on letters such as 'P6' (a letter dated 29.12.2017 addressed to the 1st Petitioner by the Urban Council) and 'A4' (a letter dated 03.01.2018 addressed to the 1st Petitioner's Attorney- At- Law by the Urban Council) that land in extent of 8.11 perches would be released to the 1st Petitioner. However, this Court is unable to grant any of the reliefs prayed for in the prayer of the Petition since no effective conclusion can be arrived at during the proceedings of this case in respect of the identification of the subject land and the Petitioner's title to the subject land.

Based on such circumstances, and subject to the aforesaid observations I proceed to dismiss the instant Application.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal