

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

In the matter of an application for
Orders in the nature of Writs of
Certiorari and Prohibition under Article
140 of the Constitution.

Madulsima Plantations PLC,
833, Sirimavo Bandaranaike Mawatha,
Colombo 14.

Petitioner

CA/Writ/0012-19

Vs

1. R. T. P. Sumanasekera
Divisional Secretary
Divisional Secretariat,
Ambagamuwa Korale,
Ginigathhena,
Nuwara Eliya District.

2. Gayantha Karunathilleke,
Minister of Lands and Parliamentary
Reforms, 80/5,
“Govijana Mandiraya”,
Rajamalwatta Mawatha,
Battaramulla.

- 2A. Hon. S. M. Chandrasena,
Minister of Environment and Wildlife
Resources and Minister of Lands &
Land Development,
“Mihikatha Medura”,
Land Secretariat,
Rajamalwatta Avenue,
Battarmulla.

And presently:

Minister of Lands,
Ministry of Lands,
“Mihikatha Medura”,
Land Secretariat,
Rajamalwatta Avenue,
Battarmulla.

- 2B. Hon. Harin Fernando
Minister of Tourism & Lands,
Ministry of Tourism & Lands,
“Mihikatha Medura”,
Land Secretariat,
Rajamalwatta Avenue,
Battarmulla.
3. Sri Lanka State Plantations
Corporation
No. 11, Duke Street,
Colombo 01.
4. Sri Lanka Sustainable Energy
Authority
3G-17 BMICH,
Buddhaloka Mawatha,
Colombo 7.
5. Dr. W. D. A Sanjeewa Rodrigo
Director General,
Sri Lanka Sustainable Energy
Authority,
3G-17 BMICH
Buddhaloka Mawatha,
Colombo 7.
- 5A. Mr Athula Jayathunge
Director General
Sri Lanka Sustainable Energy
Authority,
3G-17 BMICH,
Buddhaloka Mawatha,
Colombo 7.
6. Norwood Hydro (Private) Limited,
121A, Sarankara Road,
Dehiwela.

7. Secretary,
Ministry of Lands and
Parliamentary Reforms,
80/5, "Govijana Mandiraya"
Rajamalwatta Mawatha,
Battaramulla.

And,
Secretary,
Ministry of Lands and Land
Development,
"Mihikatha Medura",
Land Secretariat,
Rajamalwatta Avenue,
Battaramulla.

And presently,

Secretary.
Ministry of Tourism & Lands,
"Mihikatha Medura",
Land Secretariat,
Rajamalwatta Avenue,
Battaramulla.

Respondents

Before : **Hon. M Sampath K. B. Wijeratne, J.(CA)**

: **Hon. M. Ahsan R. Marikar, J.(CA)**

Counsel : Maithree Wickramasinghe P.C. with Rakitha
Jayathunga for the Petitioner
S. Kumarasinghe for the 3rd and 4th Respondents
A. Gajadeera, S. C. For all the Respondents.

Written Submissions : Written submissions filed by Petitioner on
22.07.2019.
Further written submissions filed by Petitioner on
20.03.2024.

Written submissions filed by 1st to 5th and 7th Respondents on 25.09.2019.
Written submissions filed by 6th Respondent on 18.12.2019.

Argued on : 16.01.2024

Decided on : 10.05.2024

M. Ahsan R. Marikar, J. (CA)

Introduction

- 1) The Petitioner is the lessee of the property referred to in the 6th paragraph of the petition dated 3rd January 2019. The said property (herein after referred to as Venture Estate) had been leased out to the Petitioner for a period of 53 years from the date of executing the amended lease agreement marked and produced as X6A.
- 2) The Petitioner had instituted this action against the Respondents, prohibiting and preventing the 1st to 5th and 7th Respondents from taking any steps to hand over any part of the land referred to in X35(a).
- 3) For the said purpose the Petitioner has prayed for the following prayers to obtain the relief from this court. The said prayers are as follows;
 - a) Issue notice on the Respondents;
 - b) Grant and issue Writ of Certiorari quashing the order X 35(a);
 - c) Grant and issue a Writ of prohibition preventing the 1 to 5 ad 7th Respondents from taking any steps to hand over any part of the land referred to in X35(a) to the 6th Respondents;
 - d) Grant and issue grant a Writ of Prohibition preventing any steps being taken by under the Land Acquisition Act pursuant to the Order X35(a);
 - e) Grant and issue a Writ of Prohibition preventing the..... (Not pleaded anything)

f) Grant and issue a Writ of Certiorari quashing any decision made by the 4th Respondent that any part of Venture Estate including the area set out in X35(a) is required for any purpose of the 4th Respondent;

g) Grant and issue an interim order

- i. Staying the operation of X35(a);
- ii. Restraining the Respondents from taking any steps under the Land Acquisition Act in respect of the land described in X35(a) or any part of Venture Estate, Nuwara Eliya;
- iii. Restraining the Respondents from carrying out activity on the land described in X35(a) or on any part of Venture Estate, Nuwara Eliya;
- iv. Restraining the 6th Respondents from entering into possession of the land described in X35(a) or on any part of Venture Estate, Nuwara Eliya;
- v. Restraining 1 to 5 and 7th Respondents from handing over possession of any part of the land described in X35(a) to the 6th Respondent;

h) Make order for costs in the Petitioner's favour; and

i) Grant such other and further relief to the Petitioner as to your Lordship's Court shall seem meet.

Facts of the Petitioner's case

- 4) The Petitioner is a lessee of the Venture Estate for a period of 53 years after executing the amended lease agreement which is marked and produced as X6A. The said Estate contains a water resource capable of generating Hydro Power which the Petitioner intended to use for the purpose of generating electrical power by establishing a Hydro Power project.

- 5) The said purpose requires the approval of the Sri Lanka Sustainable Energy Authority which is empowered by Act No.35 of 2007. The Petitioner had made an application with the letter dated 9th May 2012 marked as X9 to engage in carrying on a grid renewable project of the type Small Hydro. The said application had contained the relevant documents.
- 6) As the Petitioner had not received any reply after sending the said application, the Petitioner had written to the Ministry of Power and Energy stating that a previous application had been considered for the said Power project.
- 7) The Petitioner had vehemently denied that the 6th Respondent had submitted an application under section 16(2) of the SLSEA Act and there is no application bearing No. referenced to A16710.
- 8) The application marked and produced as 4R2 had been made by Mohamed Osman Jafer and not by the 6th Respondent. On the said grounds the Petitioner had implicated that there is collusion between the 4th, 5th and 6th Respondents.
- 9) Further the application for the Hydro Project obtained by reference No. A16710 was valid till 1st August 2013 and should terminate automatically thereafter by operation of Law.
- 10) The Petitioner had received a notice under Section 2 of the Land Acquisition Act dated 3/8/2016 indicating that the land sort to be acquired for the purpose of mini-Hydro Power Project was on Norwood Estate. The Petitioner had contended in the said notice the Venture Estate name is not referred to and the purported notice had been sent to identify and to acquire a portion of Norwood Estate.
- 11) Subsequently on 24th January 2017 notice had been sent under the Authority of the Surveyor General, that a surveyor will enter Venture Estate to survey the land which is in dispute in this action.
- 12) Later as referred to in paragraphs 16 to 19 of the petition, the Petitioner had participated for inquiries and objected for acquiring part of Venture

Estate, as there was no valid permit granted for the Hydro Power project to acquire the disputed land under Section 16(2),16(3) and Section 17(1) of the SLSEA Act.

- 13) Under the said circumstances, the Petitioner had invoked the Writ Jurisdiction of this court to quash X35(a), preventing the 1st to 5th and 7th Respondents from taking any steps to acquire part of the leased land in dispute in the instant action.

Objections of the Respondents

- 14) The 2nd and 3rd Respondents had raised a preliminary objection on the basis that the rights of the Petitioner are contractual in nature. It cannot be challenged by way of a Writ application and public purpose of the acquisition cannot be disputed.
- 15) Beside that the lawful owner of the property is the 3rd Respondent. Therefore, the Petitioner cannot proceed against the 3rd Respondent.
- 16) Furthermore, the State's leasehold rights are not exclusive rights to enjoy the natural resources which had been vested in the Republic by Law.
- 17) The 4th and 5th Respondents have contended 4R2 hydro project application had been forwarded by Mohamed Osman Jafer for which the SLSEA granted provisional approval since the resources were available.
- 18) Amendment of the project proponent's name was affected on request by Norwood Hydro (Private) Ltd.
- 19) Subsequently the validity period of the provisional approval had been extended in 2011 and in 2012 up to 3rd December 2013 by 4R6 to 4R13 documents.
- 20) The Petitioner had also made an application and it had been rejected in accordance with chronological order.
- 21) An Energy permit under Section 18 of the Sri Lanka Sustainable Energy Authority had been issued to the 6th Respondent by 4R16 document and the 6th Respondent requested that the land on which the resource is

situated to be acquired and given to the 6th Respondent. By the Gazette notification marked and produced as 4R19 the said area where the resource was situated had been declared as an Energy Development area under Section 12 of the Sri Lanka Sustainable Energy Authority Act.

- 22) Subsequently under Section 2 of the Land Acquisition Act dated 3/8/2016 4R20 notice had been published. However, it had been revealed that the said land was improperly identified. Thus, revised Section 2 notice had been issued by 4R20 document.
- 23) Later the Petitioner had made a complaint against the acquisition. The Extra Ordinary Gazette had been published for the acquisition purpose which is reflected in 4R21.
- 24) The 6th Respondent in his objections had contended notwithstanding any agreement/contract between the 3rd Respondent and the Petitioner Company, the absolute ownership of Renewable Energy Resources including rivers remains with the State in the land leased by the Petitioner.
- 25) Further, by an oversight the 6th Respondent incorrectly referred to the project location as the Norwood Estate, which is situated in Venture Estate in the Norwood area. Subsequently the said error was rectified.
- 26) The 6th Respondent had answered X35(a) stating that the proposed mini hydro project would generate electricity and supply the National Grid which will help the government to supply power for the public.
- 27) Therefore, the disputed land can be acquired for the said purpose as this project is a public project. Furthermore, Section 30(1) of the Land Acquisition Act allows the government to acquire land for public purposes for the Sri Lanka Sustainable Energy Authority. The 6th Respondent is only a developer and a permit holder.
- 28) The 6th Respondent has reiterated as he has provisional approval, he is lawfully entitled to the land in question to commence his project.

Disputed facts

- 29) Prior to the argument, the Petitioner and the 6th Respondent had tendered written submissions. Subsequently matter was taken up for argument on 16th January 2024 and the counsels appearing for the 3rd and 4th Respondents concluded their argument. The matter resumed on 19th February 2024 and the other Respondents and the Petitioner concluded their argument. Both parties were allowed to file a synopsis of their arguments raised before court. The Petitioner and 6th Respondent had filed their synopsis.
- 30) In considering the petition, objections, written submissions, documents and arguments raised before this court, to address the issues in this matter the following disputed points should be considered.
- I. Has the Petitioner leased Venture Estate for a period of 53 years from the 3rd Respondent?
 - II. Is the Sri Lanka Sustainable Energy Authority empowered by Act No.35 of 2007 to acquire any land for the purpose of developing hydro power projects?
 - III. Has the 6th Respondent received a permit from the Sri Lanka Sustainable Energy Authority to develop a hydro power project within the resources stated in Venture Estate? and/or is the said permit in existence?
 - IV. If not, are the 1st to 5th Respondents entitled to acquire the resource area referred to in the 6th Respondent's permit for public purposes?
 - V. If not, is the Petitioner entitled to get the reliefs prayed for under Writ Jurisdiction?

I) Has the Petitioner leased Venture Estate for a period of 53 years from the 3rd Respondent?

- 31) The Petitioner had leased Venture Estate from the 3rd Respondent by the indenture of lease No.25 dated 20th May 1993 which is amended by the amendment to the lease No.1534 dated 12th October 1995.
- 32) The said indenture of lease No.25 and the amendment to the said lease is marked and produced as X6 and X6(A).
- 33) By the said indenture of lease, the said Venture Estate is leased out to the Petitioner for a period of 53 years from the date of attestation of X6 and X6(A).
- 34) The aforesaid matter is not disputed by any party. Therefore, it is abundantly clear by X6 and X6(A), the 3rd Respondent had leased Venture Estate to the Petitioner for a period of 53 years.

II) Is the Sri Lanka Sustainable Energy Authority empowered by Act No.35 of 2007 to acquire any land for the purpose of developing hydro power projects?

- 35) The Sri Lanka Sustainable Energy Authority Act had been certified on 18th September 2007 and published in the Gazette notification dated 21st September 2007.
- 36) Section 4(a) of the said Act had referred to the main object of the purpose of the said Act. I reproduce the said Section as follows;

“4 The objects of the Authority shall be to-
a) Identify, assess and develop renewable energy resources with a view to enhancing energy security and thereby derive economic and social benefits to the country;”

37) Section 7(1) reads as follows;

“7(1) The Director-General shall within six months of the appointed date, cause a survey and a resource assessment to be commenced of all renewable energy resources in the country and prepare a renewable energy resources inventory and a renewable energy resource map in respect of each Development Area.”

38) In the said Section, the Director General of the Sri Lanka Sustainable Energy Authority (hereinafter referred as SLSEA) will survey and prepare an inventory of Renewable Energy Resource map in respect of each development area.

39) Section 12(1), 12(3) and Section 14 had authorized SLSEA to declare an area as a development area and had prohibited the owner from conducting any act to change the form of any renewable resource situated in such development areas. The said Sections are reproduced as follows;

“12(1) the Minister may, subject to the provisions of Subsection (3) and having taken into consideration the recommendations made by the Board that any area is suitable for the conservation and management of renewable energy resources or is suitable for the promotion of renewable energy development projects, by Order published in the Gazette, declare such area as an Energy Development Area (in this Act referred to as “Development Area”).”

“12(3) An Order made under subsection (1) declaring an area as a Development Area, shall define that area by setting out the meters and bounds of such Area.”

“14 Notwithstanding anything to the contrary contained in any written law, an owner or occupier of any land situated within a Development Area shall not, except with the written approval of the Authority and subject to any terms and conditions that may be imposed by the Authority for that purpose, do any act or permit any other person to do any act,

which may change the form of any renewable resource situated within such Development Area or cause the depletion of any such resource in such a manner or to such an extent, that the economic viability of developing that resource is substantially reduced.”

40) Section 15(1) reads as follows;

“15(1) Subject to as hereinafter provided and the rights granted to any person by a permit issued under section 18 or section 25, the absolute ownership of all renewable energy resources on or below the surface of the land or the air space of the land within a Development Area, is hereby vested in the Republic, notwithstanding any right of ownership or otherwise which any person may have to such renewable energy resources within that Area.”

41) In the aforesaid Section it is specified in the event a permit is issued under Section 18 of SLSEA, the land or the air space of the land within the developmental area is vested with the Republic.

42) To obtain a permit under Section 18, the applicant has to fulfil the conditions under Section 16 and 17 of the SLSEA Act. It is specified upon considering the documents under Section 17(4), provisional approval can be granted for a period of 1 year. Subsequently under Section 18(1) the Director General and the Committee can give the final approval to issue a permit for a period of 20 years for a hydro power energy project.

43) The said facts are related under Section 17(4) and 18(1) to 18(4) which is reproduced as follows;

“17(4) A provisional approval granted under paragraph (a) of subsection (1) shall be valid for a period of one year from the date on which such approval is granted and shall stand cancelled automatically, if the documents and other information requested for is not submitted prior to the expiry of the period of one year.”

“18(1) The Director-General shall upon receiving the documents and other information requested for, forth with place before the Committee such documents and information together with the registered application and his recommendations, to be considered by the Committee for the purpose of granting the final approval for the proposed project.”

*“18(2) It shall be the duty of the Committee not later than one month of the receipt of the documents and information sent by the Director-General under subsection (1), to make its decision on the same, by—
(a) approving the application and requesting the Director-General to forthwith communicate to the applicant their approval by the issue of a permit in the prescribed form and subject to such terms and conditions as may be prescribed; or
(b) refusing to approve the application and requesting the Director-General to forthwith communicate to the applicant of such refusal, stating the reasons for the same.”*

“18(3) The Committee shall record its reasons for arriving at its decision under subsection (2) in the register maintained by the Director-General under subsection (3) of section 16.”

“18(4) A permit issued on approval of an application under paragraph (a) of subsection (2) shall be valid for a period of twenty years, provided that the developer commences the project and begins to generate electricity within two years of being issued with the permit.”

- 44) On the aforesaid grounds, under the SLSEA Act an applicant can obtain an energy permit. It is abundantly clear upon granting the permit, the resource area where the development should commence belongs to the Republic and the Landowner has no right to challenge it under the provision of SLSEA Act.
- 45) On the said grounds I will consider in my following disputed facts whether there is a valid permit issued in favour of the 6th Respondent and or is the Petitioner entitled to claim the reliefs prayed for in the petition.

III) Has the 6th Respondent received a permit from the Sri Lanka Sustainable Energy Authority to develop a hydro power project within the resources stated in Venture Estate? And/or is the said permit in existence?

- 46) The crux of the issue between the Petitioner and the 6th Respondent and 1st to 5th Respondents are that the 6th Respondent has not obtained a provisional approval to get the permit for a hydro energy project.
- 47) However, on perusal of the documents filed by the 4th Respondent and the 6th Respondent, the initial application to obtain the hydro power energy project had been submitted by Mohamed Osman Jafer. After considering the application, the SLSEA had granted the provisional approval on the availability of the resource which was reflected in the application of Mohamed Osman Jafer.
- 48) Subsequently, Mohamed Osman Jafer had made a request to amend the name of the project component by 6R7 letter. The said request had been approved by the Director General of SLSEA by 4R5 letter. Further it is to be noted the approval given to Mohamed Osman Jafer had been extended after amending the name as Norwood Hydro (PVT) Ltd till 9th November 2011.
- 49) Later by 4R12 the said period was extended till 1st August 2013. And further extension was given by the Sri Lanka Electricity Board for a period of 6 months by 4R13.
- 50) On perusal of 4R14, on or around 31st July 2013 the 6th Respondent had written to the Director General of SLSEA to grant an extension for the provisional approval.
- 51) Furthermore, by 4R14(a) to 4R14(c) the National Water Supply and Drainage Board, Irrigation Department and Amabagamuwa Pradeshiya Sabha had given the authorization to the 6th Respondent to obtain the approval and continue the project.

- 52) The Central Environmental Authority by letter 14/11/2014 had granted its approval for the project of the 6th Respondent. Subsequently the SLSEA had issued a permit under Section 18 of the SLSEA Act which is marked and produced as 4R16.
- 53) Upon obtaining the permit 4R16 by the letter marked and produced 4R17 the 6th Respondent had requested the SLSEA to take steps to acquire the portion of the land where the development project should commence.
- 54) In terms of the aforesaid letter the Director General of SLSEA had written to the Secretary to the Power and Energy Ministry and taken steps to acquire the land on which the resource is situated.
- 55) The said facts are supported by 4R18 to 4R21 documents. Notice under Section 38(a) had been published by the Gazette notification dated 2nd October 2018 under the Land Acquisition Act.
- 56) In view of the aforesaid fact and documents the permit issued under Section 18 of the SLSEA Act is in existence. Thus, I do not see any act conducted under Section 38 of the Land Acquisition Act is illegal or fraudulent.

IV) If not, are the 1st to 5th Respondents entitled to acquire the resource area referred to in the 6th Respondent's permit for public purposes?

- 57) The Petitioner throughout had argued that the 6th Respondent had not obtained a provisional approval. It is to be noted that the initial provisional approval for the disputed hydro project had been granted to Mohamed Osman Jafer. The Petitioner in his oral and written submissions had argued that the provisional approval granted to Mohamed Jafer cannot be transferred to the 6th Respondent.

- 58) On perusal of 6R6 to 6R8 documents, the said Mohamed Jafer had requested that the provisional approval granted to him be amended to Norwood Hydro (PVT) Ltd. This had been done in the year 2010. There had been no objection or no one had challenged the said amendment and or there had not been any Police complaint or that any fraudulent activity had taken place.
- 59) Subsequently, SLSEA had extended the provisional approval up to 2013 by 4R12 and 4R13 documents.
- 60) Although the Petitioner had challenged that the said extensions were done fraudulently there are no documents or evidence that the SLSEA had acted fraudulently with the 6th Respondent and issued the said provisional approval and or extended the said provisional approvals.
- 61) This court cannot investigate into the said matters in a Writ Application. Therefore, on the face of it the documents produced by SLSEA has to be admitted before this court.
- 62) The next argument raised by the Counsel for the Petitioner is after extending the provisional approval by the said 4R12 and 4R13 documents the duty caste upon the 6th Respondent is to annually extend the provisional approval.
- 63) However, after extending up to 2013 the 6th Respondent had failed to extend the provisional approval. Therefore, the notice issued under P35 Gazette notification is not valid as there is no public purpose to acquire the disputed land plot from the Petitioner. To support that the Petitioner had sighted several decisions supporting that the Writ Jurisdiction can be extended to restrain an acquisition when there is no evidence that the said acquisition is done for public purpose.

- 64) I refer to the said judgements produced in the synopsis of the Petitioner. In the case of ***Fernandopulle V Minister of Land and Agriculture***¹ Samarakoon CJ has observed as follows;

"Are the Courts obliged to turn a deaf ear merely because some statutory officer is able to proclaim, "I alone decide". When I open my mouth let no dog bark?" If that be the position when the rights of the subject are involved, then the Court would have abdicated its powers necessary to safeguard the rights of the individual. I do not think that is the test. No doubt primarily the Minister decided urgency. He it is who is in possession of the facts and his must be the reasoning. But the courts have a duty to review the matter." In the case in hand, although the vesting order was made in 1990 no material has been placed to justify urgency; no valid public purpose has been established with cogent evidence for retaining the said land in the State. In the circumstances, a Writ of Certiorari is issued to quash the vesting order published in the Gazette No. 637/20 dated 22.11.1990 marked P4 in so far as it relates to the petitioner's land."

- 65) In the judgement of ***Horana Plantation Ltd V Minister of Agriculture***² held as follows;

"The proviso to section 38 is based on the urgency regarding a proposed acquisition and therefore the burden on establishing urgency is on the Acquisition Authority."

- 66) The main contention of the Petitioner is as per the aforesaid decisions if there is material to satisfy that there is no valid public purpose to acquire a land, Writ of Certiorari can be issued.
- 67) Thus, in the instant case the Petitioner has reiterated since there is no valid permit granted to the 6th Respondent there is no public purpose to

¹ 79 NLR 115 at 120

² [2012] 1 SLR 327 at 334

acquire the Petitioner's plot of land which has been leased from the 3rd Respondent.

- 68) I cannot agree with the said argument after the perusal of 4R16 permit issued to the 6th Respondent under Section 18 of the SLSEA Act. The Petitioner has failed to refer to 4R16 document and or that the 6th Respondent had been empowered to proceed with the Hydro Power Energy Project by 4R16 permit.
- 69) As per Section 18 of the SLSEA Act, upon issuing a permit under the aforesaid provision, the permit is valid for 20 years until or unless the said permit is canceled.
- 70) I would like to draw my attention to the argument raised by the Petitioner that the provisional approval issued to the 6th Respondent was not extended up to 2013. However, the permit under Section 18 of the SLSEA Act had been issued in the year 2015 after a gap of 1 year.
- 71) The provisional approval given to the 6th Respondent had not been extended. As I have evaluated the facts above, this Court cannot investigate as to why the provisional approval was not extended up to 2014.
- 72) However, before this court there is a valid permit issued by SLSEA by 4R16 document.
- 73) The Petitioner had not taken any steps to challenge that the document 4R16 is invalid or a fraudulent. Thus, before this court the said document stands as a valid document issued by SLSEA.
- 74) 4R12 and 4R13 provisional approvals had not been extended. However, by 4R16 document the permit had been issued and the Petitioner had failed to produce 4R16 and or had not challenged 4R12 and 4R13 from 2015.
- 75) This application had been filed in 2019 and relief had been sought by the Petitioner to invoke the Writ Jurisdiction to quash the X35(a) which is the

Gazette notification dated 2nd October 2018 to acquire the disputed land on which the resources are situated on the Petitioner's leased Estate.

- 76) Under the said circumstances my considered view is this court is not empowered to issue a Writ of Certiorari to quash X35(a) as the SLSEA had issued a valid permit under Section 18 of the SLSEA Act to the 6th Respondent.
- 77) As I have evaluated the facts above, the 1st to 5th Respondents have taken steps legally to acquire the disputed land on which the resource is situated referred to in X35(a) for a public purpose on a valid energy permit issued to the 6th Respondent.
- 78) Beside these facts, the Petitioner raised an argument stating he had made an application to get a provisional approval for a hydro power energy project. However, his application was rejected by the 4th Respondent.
- 79) On perusal of X9 to X15, the SLSEA had rejected the Petitioner's application due to affect given to an application which was made before the Petitioner according to the chronological order. Therefore, I do not see any merit to the said argument raised by the Petitioner claiming that his application was rejected without consideration
- 80) As I have evaluated the facts above, the dispute raised by the Petitioner which is the land area on which the resource is situated is not identified is immaterial. Subsequently the said land had been surveyed and identified and notice under Section 38 of the Land Acquisition Act had been issued under X35(a) Gazette notification.
- 81) In the said circumstances, it is my candid view that the 5th Respondent had issued a valid energy permit under Section 18 of the SLSEA Act. On that, the 4th Respondent had taken steps within the purview of the powers given to the 4th Respondent under the SLSEA Act to acquire the land which was identified as a resource area on Venture Estate.
- 82) For the reasons spelt out above the said acquisition is proceeding to acquire the said land for a public purpose under the SLSEA Act.

V) If not, is the Petitioner entitled to get the reliefs prayed for under Writ Jurisdiction?

- 83) The Petitioner had sought reliefs in this action under the grounds of Writ of Certiorari. In the book of ***Principles of Administration Law in Sri Lanka***³ by Dr. Sunil Cooray had the grounds on which Certiorari can be applied and obtained. He had defined on the ground of *ultra vires* a Certiorari Writ is granted only at the instance of a person aggrieved by the order sought to be quashed. In the case of ***Kandy Omnibus Co. Ltd V Roberts***⁴ Justice Sansoni had emphasized;

“Whether there has been unreasonable delay or not in making an application for a Writ of Certiorari depends on the circumstances of each case.”

- 84) Further, in the case of ***Podimahatthya V the Land Reform Commission***⁵ it was held;

“The administrative authority cannot act in a manner prejudicial to a person who has a right under the statute to retain the minimum fifty acres under the law. The Court can interfere where there is manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice. The conduct of the administrative authority must be legal and regular as one correlates the acts complained about to the power given under statute. It is an implied requirement that there should be a reasonable and conclusive decision. Mandamus will issue”

- 85) In the said judgments it is decided on whether an Administrative Authority has acted within the rules of reason and justice. In the instant application the Petitioner had sought to quash X35(a) Gazette notification which is

³ Sunil F.A Coorey, Principles of Administrative Law in Sri Lanka (3rd ed. Vol2),Page 776

⁴ 56 NLR page 293, 296

⁵ [1990] 2SLR 416 at 419

published to acquire the Petitioner's leased land for the purpose of producing energy to the grid under SLSEA Act.

- 86) I have already discussed that the Petitioner throughout the argument and submissions took up the position that the provisional approval granted for the energy grid in favour of the 6th Respondent is illegal. Further the Counsel for the Petitioner argued even in the event the provisional approval was granted up to the year 2013 it is not extended thereafter. Therefore, part of the Petitioner's land where the resources are situated cannot be acquire for a public purpose.
- 87) Giving a hearing to the Petitioner's argument and on perusal of 4R16 the argument raised by the Petitioner cannot be accepted as the SLSEA had already issued a permit under Section 18 of the SLSEA Act to the 6th Respondent. The Petitioner is silent when arguing to refer to the 4R16 document.
- 88) As I have spelt out in the reasons above, when there is a legally valid permit issued by the SLSEA to the 6th Respondent, the SLSEA is empowered to proceed with the acquisition of the resource area identified by the surveyor.
- 89) The SLSEA Act is very clear that all resource areas to generate power to the grid are the property of the Republic. In the said circumstances, and in considering the SLSEA Act my considered view is X35(a) is issued to acquire the resource area for the public purpose. Therefore, the cases cited by the Petitioner ***Gunathilake and others V Minister of Lands*** and ***Manel Fernando and another V D M Jayaratne Minister of Land*** decisions are immaterial in the instant action. It is manifest on the aforesaid grounds there is no violation caused or that the 1st to 5th Respondents have acted unreasonably or illegally to acquire the disputed land.
- 90) Beside these facts, it is to be noted that the 4R16 permit had been issued in 2015. The Petitioner was aware that the land acquisition procedure had

commenced thereafter. The Petitioner had never challenged the permit issued to the 6th Respondent by 4R16 and or the provisional approval issued and which had been extended from time to time.

- 91) The Petitioner had taken the stand that the 6th Respondent in collusion with the 4th Respondent had obtained the provisional approvals. To support that there are no valid documents or no investigations conducted to prove that stand.
- 92) In relation to the aforesaid facts, the Petitioner had not come within a reasonable period to institute this application neither had the Petitioner come with clean hands to obtain reliefs under the Writ Jurisdiction.

CONCLUSION

- 93) For the reasons spelt out above I dismiss the petition dated 3rd January 2019. Subject to tax cost.

Judge of the Court of Appeal

M Sampath K. B. Wijeratne, J. (CA)

I agree

Judge of the Court of Appeal