

**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.

CA (Writ) Application No: 287/2018

1. Kamani Sanot Devnath
2. Supriya Sanot Devnath

Both at
3rd Floor, Siddharth Building,
Dr. R.G. Thadani Marg
Plot No. 42, Worli Seaface,
Worli Mumbai – 18,
India.

(Also at No.13, Kohilawatta, Angoda)

PETITIONERS

Vs.

- 1) Nadeeshani Amerasinghe,
Divisional Secretary,
Divisional Secretariat,
Kelaniya.
- 2) Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Yasantha Kodagoda, P.C., J/ President of the Court of Appeal
Arjuna Obeyesekere, J

Counsel: Mahendra Kumarasinghe for the Petitioners

Manohara Jayasinghe, Senior State Counsel for the
Respondents

Argued on: 22nd October 2019

Written Submissions: Tendered on behalf of the Petitioners on 15th November 2019

Decided on: 20th December 2019

Arjuna Obeyesekere, J

The 1st Petitioner had been a Sri Lankan citizen and prior to her marriage had been known by the name of 'Lalani Kamani Perera'. She states that after her marriage, she came to be known as 'Kamani Sanot Devnath', and that she became a citizen of India on 23rd October 2012. The 2nd Petitioner is the daughter of the 1st Petitioner.

The Petitioners state that they, together with their Uncle purchased a property situated in Kelaniya in 1993, and thus became co-owners of the said property. A copy of Deed of Transfer No. 4360 executed by M.J.P. De Silva, Notary Public has been annexed to the petition marked 'P1'. The Petitioners state that their Uncle passed away on 11th March 1996 leaving a last will, annexed to the petition marked 'P2', by which the undivided share held by their late Uncle was bequeathed to the 1st Petitioner. The Petitioners state that at the time of his

death, their late Uncle as well as the 1st Petitioner were residing in India. The said last will had been proved in the High Court of Bombay and letters of probate, annexed to the petition marked 'P3' had been issued to the 1st Petitioner. The Petitioners are therefore the present owners of the said land.

The Petitioners state that a part of the aforementioned property had been acquired by the State in terms of the Land Acquisition Act No. 9 of 1950, as amended, for the expansion of the Kelaniya – Mudungoda Road. The Notice published under Section 7 of the Land Acquisition Act has been annexed to the petition marked 'P4'. The Petitioners state that following the publication of the said Notice, the Petitioners made a claim for compensation to the 1st Respondent, the Divisional Secretary, Kelaniya.

The Petitioners state further that by a letter dated 23rd April 2018 annexed to the petition marked 'P6', the 1st Respondent had informed the Power of Attorney holder of the 1st Petitioner that as the Petitioners were no longer citizens of Sri Lanka, the Petitioners are not entitled to receive compensation under the Land Acquisition Act. The 1st Respondent had annexed to 'P6', a legal opinion tendered by the Hon. Attorney General that in terms of Section 2(1) of the Land (Restrictions on Alienation) Act No. 38 of 2014 (the LRA Act), foreigners cannot hold property and for that reason, the Petitioners are not entitled to the payment of compensation. Thus, it was contended by the learned Counsel for the Petitioners that the 1st Respondent, relying on that legal advice, had decided not to award compensation to the Petitioners. He submitted further that the said legal advice is erroneous.

Dissatisfied by the decision of the 1st Respondent to deny the payment of compensation, the Petitioners have invoked the Writ jurisdiction of this Court, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the decision reflected in 'P6';
- b) A Writ of Mandamus directing the 1st Respondent to pay compensation to the Petitioners in respect of the land that was acquired.

There are two questions that arise for determination in this application.

The first question is whether the entitlement to receive compensation in terms of the Land Acquisition Act is limited to citizens of Sri Lanka. This Court has examined the provisions of the Land Acquisition Act and observes that the purpose of the Notice that is published in terms of Section 7(1) of the Act is three fold – the first is to inform the intention of the State to acquire the land referred to in the said Notice; the second is to inform that claims for compensation for the acquisition of such land may be made to the Acquiring Officer mentioned in the said Notice; the third is to direct every person interested in the land which is to be acquired to appear, personally or by an agent duly authorized in writing, before such Acquiring Officer on a date and at a time and place specified in the notice, to substantiate such claims.

The purpose of the inquiry that is held thereafter under Section 9 is to determine *inter alia* (a) the market value of the land which is to be acquired, (b) claims for compensation as may have been notified to the Acquiring Officer, and (c) the respective interests of the persons claiming compensation. The Land Acquisition Act does not limit the claims for compensation to citizens, but

instead considers only whether the person claiming compensation has an interest over the land. Thus, this Court is of the view that the provisions of the Land Acquisition Act do not confine the payment of compensation to citizens of Sri Lanka.

The second question that this Court must consider is whether the provisions of the LRA Act prevent the payment of compensation to persons who have renounced their Sri Lankan citizenship.

As the LRA Act deals with alienation of lands to foreigners, it would perhaps be appropriate to examine the evolution of the legal provisions containing restrictions on sale of land to foreigners. Part VI of the Finance Act No. 11 of 1963¹, as amended by Act No. 14 of 1982 and Act No. 22 of 1992, introduced a Property Tax equivalent to the value of the entire property where there is a transfer of ownership of a property in Sri Lanka to a person who is not a citizen of Sri Lanka², subject to the exceptions specified in the Act. Part VI of the Finance Act, No. 11 of 1963 (as amended) was repealed by the Finance Act No. 11 of 2002 and subsequently re-enacted by the Finance (Amendment) Act No. 8 of 2004, subject to certain amendments.

The rationale for its re-enactment is contained in the Special Determination of the Supreme Court in the Finance (Amendment) Bill³ and is re-produced below:

¹ Sections 58 to 66 in Part VI of the Finance Act, No. 11 of 1963, have been renumbered and reproduced as Sections 2 to 10 of the "Transfer of Property Tax Act" contained in the unofficial revised edition of the 1980 Legislative Enactments of Sri Lanka.

² Section 58 of the Act.

³ SC (SD) No. 23/2004.

"Land being a limited resource should primarily be available to the citizens of this country and the tax is imposed not only as a revenue measure but also to set right a disparity in economic terms between non-citizens who seek to invest in land and citizens who require land to set up a residence or to eke out a livelihood."

The LRA Act has gone a step further and imposes a complete restriction on the alienation of lands in Sri Lanka to foreigners, foreign companies and certain institutions with foreign shareholding. The preamble to the Act *inter alia* specifies that *"it is the National Policy to regulate the use of lands, in a sustainable manner, having imposed restrictions on the alienation of lands to foreigners, foreign companies and certain institutions with foreign shareholding."*

Section 2(1) of the Act reads as follows:

"Notwithstanding any provision to the contrary in any other written law, the transfer of title of any land situated in Sri Lanka, shall be prohibited if such transfer is—

- (a) to a foreigner; or*
- (b) to a company incorporated in Sri Lanka under the Companies Act where any foreign shareholding in such company, either direct or indirect, is fifty per cent or above; or*
- (c) to a foreign company, unless exempted as provided in section 3."*

Section 3(1)(d) stipulates as follows:

“The provisions of section 2 shall not apply to (d) any land the title of which is transferred by intestacy, gift or testamentary disposition to a next of kin (who is a foreigner) of the owner of such land, in accordance with the applicable law of succession of Sri Lanka”.

The LRA Act only restricts the alienation of property to a foreigner after the effective date of the Act, which according to Section 1(2) is deemed to have come into operation with effect from 1st January 2013.

As observed earlier, the Petitioners became co-owners of the land together with their Uncle in 1993, and thereafter became entitled to the share held by their Uncle in 2002. Thus, (a) the 1st Petitioner became the owner of the said property while she was a citizen of Sri Lanka; and (b) the 2nd Petitioner became a co-owner of the property at a time when there was no restriction on foreigners owning land.

The Petitioners have acquired the ownership of the said land prior to the LRA Act coming into operation, and hence this Court is of the view that the provisions of the LRA Act does not apply to the Petitioners. The LRA Act does not contain any provisions which deprive foreigners who purchased land in Sri Lanka prior to the Act coming into operation of their property rights nor does the LRA Act contain any restrictions on the payment of compensation to such persons. The subsequent renunciation of Sri Lankan citizenship by the 1st Petitioner and the enactment of the Land (Restrictions on Alienation) Act after the Petitioners acquired the said land, do not disentitle the Petitioners to the rights of ownership that they possessed over the land.

In the circumstances, this Court must hold that the opinion expressed by the Hon. Attorney General to the 1st Respondent is contrary to the legal position on this matter. This Court assumes that it is for this reason that the learned Senior State Counsel did not make submissions in support of the said legal opinion.

This Court is therefore of the view that the decision of the 1st Respondent not to pay compensation to the Petitioners on the premise that the LRA Act applies to them, is illegal, and is *ultra vires* the powers of the Acquiring Officer. This Court therefore issues a Writ of Certiorari quashing the decision reflected in 'P6'. This Court also issues a Writ of Mandamus directing the 1st Respondent to pay compensation to the Petitioners in terms of the law, provided the 1st Respondent has satisfied her entitlement to compensation in terms of the Land Acquisition Act. This Court makes no order with regard to costs.

Judge of the Court of Appeal

Yasantha Kodagoda, P.C., J/ President of the Court of Appeal

I agree

President of the Court of Appeal