

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

CA (Writ) application No: 147/2021

1. Palamandadige Rose Kumari Nishanthi
Fernando,
No. 95, De Alwis Place,
Kaluthara South.

2. Karavita Vidhanelage Chaminda Sarath,
No. 71/A/2, De Alwis Place,
Kaluthara South.

3. Weerasinghe Lenat Silva,
No. 71/B, De Alwis Place,
Kaluthara South.

4. Mohomed Nizar Fathima Nilupa,
No. 71/1, De Alwis Place,
Kaluthara, South.

5. Pandiyan Rajeshwari,
No. 64/A, De Alwis Place,
Kaluthara South.

PETITIONERS

-Vs-

1. Hon. S. M. Chandrasena,
Minister of Lands,
“Mihikatha Medura”, Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,
Battaramulla.

2. R. A. A. K. Ranawake,
Secretary, Ministry of Lands,
“Mihikatha Medura”, Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,
Battaramulla.
3. Shanika Thrimanna,
Divisional Secretary,
Kalutara Divisional Secretariat,
Gregory Road, Kalutara.
4. Ranepura Hewage Ruwinis,
32/A, P. B. Alwis Perera Mawatha,
Katubedda.
5. Thilina Wijethunga,
General Manager,
National Water Supply and Drainage Board,
Galle Road, Ratmalana.
6. National Water Supply and Drainage Board,
Galle Road, Rathmalana.
7. U. D. P. Mahesh Gunasinghe,
Manager (Kalutara Region),
National Water Supply and Drainage Board,
No. 15, Cooray Road, Kalutara.
8. Officer in Charge,
Special Crime Investigation Bureau, Office
of the Senior Superintendent of Police,
Kalutara.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Counsel: Saliya Pieris, PC, with Anjana Rathnasiri and Thilini Rankoth instructed by

Manjula Balasooriya for the Petitioners.

Chrishmal Warnasuriya with Dinali Nishshanka instructed by Mr. Iynullah
for the 4th to 7th Respondents.

Panchali Witharana, SC for the 1st, 2nd, 3rd and 8th Respondents.

Written submissions tendered on:

24.07.2025 by the Petitioner

20.05.2025 by the 1st, 2nd, 3rd and 8th Respondents.

17.02.2025 by the 4th to 7th Respondents.

Argued on: 20.11.2024, 11.08.2023, 30.05.2023, 15.03.2023

Decided on: 18.09.2025

S. U. B. Karalliyadde, J.

The argument of this matter has been concluded before His Lordships Justice M. T. Mohammed Laffar (ACT. P/CA) and me, and the Judgment was reserved by Justice Mohammed Laffar. Nevertheless, by the date of the judgment, Justice Mohammed Laffar had retired. With the consent of all parties, I deliver this judgment as a single-bench judgment.

The Petitioners in this Application are land owners of a portion of land called ‘Berawakandawatta’ that is the subject matter of this Application (Lot 1 in extent of

0.239 Hectares in the Preliminary Plan No. 1977 marked as P46). The Petitioners state that they became the owners of the said land by virtue of deeds marked as P9, P10, P20, P32 and P39. The 2nd to 5th Petitioners were served with quit notices on 25.02.2025 under Section 3 of the State Lands (Recovery of Possession) Act, No. 7 of 1977 (as amended), to vacate the land in question and hand over the possession to the National Water Supply and Drainage Board (6th Respondent). Thereafter, to recover the possession of the land, an application under Section 5 of the State Lands (Recovery of Possession) Act was made against the 2nd to 5th Respondents in the Magistrate's Court of Kaluthara (P49A to P49D).

The Petitioners later became aware that a notice under Section 2 of the Land Acquisition Act, No. 09 of 1950 (as amended) (the Act) had been published on 22.10.1979 (marked as P43). Thereafter, the then Minister of Lands and Land Development had made a declaration under Section 5 of the Land Acquisition Act published in the Gazette Extraordinary bearing No. 195/10 dated 01.06.1982 marked as P44C that the land called Berawakandawatta assessment No. 71 in the extent of 2 Roods and 21.8 Perches will be acquired for a public purpose. The Assistant Government Agent of Kalutara had thereafter published a notice under Section 7(1) of the Land Acquisition Act in the Gazette Extraordinary bearing No. 273/3 dated 28.11.1983 marked as P45 stating that any person who has a right or interest to make claims for compensation for the land depicted in the plan marked P46 that will be acquired for a public purpose. The said land has been vested with the 6th Respondent by virtue of a certificate issued under

Section 44 of the Act dated 15.09.1994 marked as P47 and registered in the Kalutara Land Registry (P48).

The grievance of the Petitioners is that, when they acquired title to the relevant plot of land by deeds marked as P9, P10, P20, P32 and P39, they searched the Land Registry folios but did not reveal that the said lands had been acquired by the State. The Petitioners contend that the documents marked as P43, P44C and P45 issued under the Land Acquisition Act do not indicate the nature of the public purpose for which the land is intended to be acquired, nor has any compensation been made to the Petitioners or their predecessors for such acquisition. Furthermore, no improvements have been made to that land after its acquisition by the State. The Petitioners further argue that, under Section 39A(1) of the Land Acquisition Act, the Minister can make a divesting order in respect of the said land and therefore the Petitioners made a request (P58) to the Minister to make a divesting order in favour of the Petitioners, but did not receive a reply until the date of filing this Application. Being aggrieved by the aforesaid factors, the Petitioners have invoked the Writ jurisdiction of this Court, seeking the following substantive reliefs, *inter alia*,

- (c) Grant and issue a Writ of Mandamus directing the 1st Respondent to make an order under Section 39A (1) of the Land Acquisition Act No. 9 of 1950 as amended, to divest the land claimed by the 1st Petitioner as morefully described in the schedule to Deed of Gift bearing No. 2162 dated 15/03/1995 marked P-9, to the 1st Petitioner;

- (d) In the alternative to prayer (c), grant and issue a Writ of Mandamus directing the 1st and/or 3rd and/or 5th Respondents to compensate the 1st Petitioner according to the present market value of the land and premises claimed by the 1st Petitioner as morefully described in the schedule to Deed of Gift bearing No. 2162 dated 15/03/1995 marked P-9;
- (e) Grant and issue a Writ of Mandamus directing the 1st Respondent to make an order under Section 39A (1) of the Land Acquisition Act No. 9 of 1950 as amended, to divest the land claimed by the 2nd Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 252 dated 02/07/2008 marked P- 10, to the 2nd Petitioner;
- (f) In the alternative to prayer (e), grant and issue a Writ of Mandamus directing the 1st and/or 3rd and/or 5th Respondents to compensate the 2nd Petitioner according to the present market value of the land and premises claimed by the 2nd Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 252 dated 02/07/2008 marked P-10;
- (g) Grant and issue a Writ of Mandamus directing the 1st Respondent to make an order under Section 39A (1) of the Land Acquisition Act No. 9 of 1950 as amended, to divest the land claimed by the 3rd Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 1380 dated 25/01/1996 marked P-20, to the 3rd Petitioner;

- (h) In the alternative to prayer (g), grant and issue a Writ of Mandamus directing the 1st and/or 3rd and/or 5th Respondents to compensate the 3rd Petitioner according to the present market value of the land and premises claimed by the 3rd Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 1380 dated 25/01/1996 marked P-20;
- (i) Grant and issue a Writ of Mandamus directing the 1st Respondent to make an order under Section 39A (1) of the Land Acquisition Act No. 9 of 1950 as amended, to divest the land claimed by the 4th Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 1758 dated 14/05/2006 marked P-32, to the 4th Petitioner,
- (j) In the alternative to prayer (i), grant and issue a Writ of Mandamus directing the 1st and/or 3rd and/or 5th Respondents to compensate the 4th Petitioner according to the present market value of the land and premises claimed by the 4th Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 1758 dated 14/05/2006 marked P-32;
- (k) Grant and issue a Writ of Mandamus directing the 1st Respondent to make an order under Section 39A (1) of the Land Acquisition Act No. 9 of 1950 as amended, to divest the land claimed by the 5th Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 8650 dated 16/08/2007 marked P-39, to the 5th Petitioner;

(l) In the alternative to prayer (k), grant and issue a Writ of Mandamus directing the 1st and/or 3rd and/or 5th Respondents to compensate the 5th Petitioner according to the present market value of the land claimed by the 5th Petitioner as morefully described in the schedule to Deed of Transfer bearing No. 8650 dated 16/08/2007 marked P-39;

The contention of the Petitioners is that the subject matter of this Application has not been used for a public purpose after taking its possession by the state, no improvements have been made in the land, and compensation has not been paid to any person interested in the land. Therefore, the position of the petitioners is that in the instant Application, all the requirements stipulated under Section 39A(2) of the Act to make a divesting order under Section 39A(1) are satisfied. Section 39A(1) of the Act reads as follows,

“Notwithstanding that by virtue of an Order under section 38 (hereafter in this section referred to as a "vesting Order") any land has vested [§ 2, 8 of 1979.] absolutely in the State and actual possession of such land has been taken for or on behalf of the State under the provisions of paragraph (a) of section 40, the Minister may, subject to subsection (2), by subsequent Order published in the Gazette (hereafter in this section referred to as a "divesting Order ") divest the State of the land so vested by the aforesaid vesting Order.”

Prior to making a divesting order under Section 39A(1) of the Act, the pre-conditions set out under Section 39A(2) of the Act must be satisfied. Section 39A(2) reads thus,

“The Minister shall prior to making a divesting Order under subsection (1) satisfy himself that-

(a) no compensation has been paid under this Act to any person or persons interested in the land in relation to which the said divesting Order is to be made;

(b) the said land has not been used for a public purpose after possession of such land has been taken by the State under the provisions of paragraph (a) of section 40;

(c) no improvements to the said land have been effected after the Order for possession under paragraph (a) of section 40 had been made; and

(d) the person or persons interested in the said land have consented in writing to take possession of such land immediately after the divesting Order is published in the Gazette.”

Firstly, this Court observe that to invoke Section 39A(1) of the Act, the actual possession of the land must be taken on behalf of the State. This fact was established in the case of *Kingsley Fernando v. Dayaratne and Others*,¹ where S.N. Silva J. (as he then was) held that,

“... section [39A(1)] applies only when the State has absolute title to and possession of the land that has been acquired. The former owner has by then lost

¹ (1991) 2 Sri. L.R. 129 at page 136

the ownership and possession of the land. His legal claim is for the payment of compensation” (emphasis added)

The Petitioners admit that they are in possession of the land. The 1st to 3rd and 8th Respondents assert that the 6th Respondent has already utilised it for a public purpose. However, neither the 1st to 3rd and 8th Respondents nor the 6th Respondent has proved for the satisfaction of this Court that they have utilised the land in question. However, after pursuing the documents produced, this Court can be satisfied that the 6th Respondent has failed to take possession of the subject matter of this Application (P57 and R15). Considering the fact that the State has failed to take possession of the land, it is the view of this Court that Section 39A has no application to the matter at hand.

In the case of *Kingsley Fernando v. Dayaratne and Others* (Supra) it was further held that even if the pre-conditions set out in Section 39A(2) is satisfied, a person does not have a statutory right to demand a reversal of the acquisition process by invoking Section 39A(1) of the Act as it only give the Minister a discretionary power to divest the land if the pre-conditions are satisfied. However, there are conflicting judgments in this regard in the Supreme Court (vide *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another*²). In the case of *Urban Development Authority v. Abeyratne and Others*,³ it was once again held that Mandamus does not lie to issue a divesting order under Section 39A, as a person does

² (1993) 1 Sri.L.R. 283

³ SC Appeal No. 85/2008 & 101/2008, SC Minutes of 01.06.2009

not have a legal right to seek a divesting order, as it is the discretion of the Minister whether to issue it or not. Examining all the above-stated cases, Janak De Silva J, in the case of *D.S. Ubeysinghe v. H.M. Gamini Seneviratne and Others*,⁴ held that.

“[T]he reasoning adopted in Urban Development Authority v. Abeyratne and Others (supra) is logical and compelling since in De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another (supra) the Supreme Court failed to consider:

- a. the provisions and the scheme of the Act,*
- b. the judgment in Gunasekera v. Minister of Lands & Agriculture (65 N.L.R. 119),*
- c. that a writ of mandamus covers a situation where there has been no exercise of power and compels the exercise of power,*
- d. that mandamus would lie when a statutory duty is cast upon a public authority with a correlative right to demand its discharge,*
- e. that section 39A (1) of the Act uses the word "may" which categorically implies a discretionary power in the Minister,*
- f. that a writ of mandamus has nothing to do with abuse of discretion.”*

(emphasis added)

⁴ CA(Writ) 21/2017, CA Minutes of 24.05.2019

This Court is in agreement with the view of his Lordship Janak De Silva in *D.S. Ubeyasinghe v. H.M. Gamini Seneviratne and Others* (supra). Therefore, following the cases of *Kingsley Fernando v. Dayaratne and Others* (Supra) and *Urban Development Authority v. Abeyratne and Others* (supra), this Court is of the view that a Writ of Mandamus does not lie to compel the Minister to issue a vesting order exercising his discretionary powers in terms of Section 39A of the Act.

The Petitioners state that their mother acquired Lots A and B of the land called 'Berawakanda' depicted in plan marked P1 by virtue of a Deed of Transfer dated 29.01.1983 marked as P8 in terms of a settlement entered in the Testamentary action bearing No. 24906/T in the District Court of Colombo. Thereafter, by way of P9, P10, P20, P32 and P39, the Petitioners have acquired title to the portions of the said Lot A and B. The Petitioners are seeking writs of Mandamus compelling the Minister of Lands, the 1st Respondent, to make a divesting order in terms of Section 39A of the Act for the portions of land they claim through the title deeds marked as P9, P10, P20, P32 and P39. In terms of the Plan marked as P46, the State has acquired 2 Roods and 21.8 Perches (101.8 Perches). The Petitioners have received 124.6 Perches in total by P9, P10, P20, P32 and P39. According to the Petitioners, the above-mentioned 124.6 Perches is part of Lot A (2 Roods and 17 1/3 Perches) and Lot B (1 Roods and 8 2/3 Perches) of the Plan marked P1. It is the view of this Court that the Petitioners have failed to satisfy this Court as to which portions were acquired by the State from Lots A and B of P1. In the Petition, the Petitioners have stated that the land they are in

possession of forms only a part of the land depicted in the Plan P46. Under such circumstances, it is evident that the Petitioners are attempting to obtain a divesting order only for an unidentified portion of the land that had been acquired by the State. In the case of *Kingsley Fernando v. Dayaratne and Others* (Supra), it was held that,

“... the divesting has to relate to the entire extent covered by the vesting Order.

This view is further supported by section 39A (4)(a) which provides that upon a divesting Order that land shall be deemed never to have vested in the State by virtue of the vesting Order. Hence what is contemplated is a complete reversal of the status quo ante and not a piece-meal divesting of particular portions of a land that is vested. The Petitioner has sought in this application only a divesting of a particular portion of the land that was vested. Therefore his application for a Writ of Mandamus cannot, in any event, succeed.”

Following the above case, in *Mendis v. Jayaratne, Minister of Agriculture, Lands and Forestry*⁵ it was held that Petitioner in that application who was seeking a divesting order under Section 39A for a portion of the land out of 90 Acres land that was acquired, held that the Petitioner is not entitled to a “piece-meal” divesting order of a particular portion of the land. Therefore, this Court is of the view that the Petitioners are not entitled to a divesting order under the Act for a portion of the land that has been acquired.

⁵ (1997) 2 Sri.L.R. 215

Both the learned Counsel appearing for the 4th to 7th Respondents and the learned State Counsel appearing for the 1st to 3rd and 8th Respondents drew the attention of the Court to the fact that the Petitioners do not have *locus standi* to maintain this Application. They contend that the purported deeds (P9, P10, P20, P32 and P39) relied upon by the Petitioners are illegal for the reason that they have been executed after the acquisition and by then the land had been vested in the State. Section 4A of the Act prohibits the sale or disposition of land, a notice for acquisition has been issued in contravention of the Act. Section 4A(1) of the Act reads thus,

“Where a notice has been issued or exhibited in respect of any land under section 2 or section 4, no owner of that land shall, during the period of twelve months after the date of the issue or exhibition of such notice,-

(a) sell or otherwise dispose of that land; or

(b) do any act which, directly or indirectly, depreciates the value of that land as at the date of such issue or exhibition.”

Failure to follow Section 4A(1) results in such sale or disposition being null and void. Section 4A(2) states that, *“Any sale or other disposal of land in contravention of the provisions of subsection (1) (a) of this section shall be null and void”*. The notice under Section 2 of the Act was published in 1979 (P43). The declaration of the Minister under Section 5 in 1982 (P44C), notice in terms of Section 7(1) on 23.11.1983 (P45) and the vesting certificate have been issued on 15.09.1994 (P47). Whereas Deed marked P8,

under which the Petitioners' mother acquired title, was executed on 29.01.1983, subsequent to the issuance of the notice under Section 2. Furthermore, the deeds marked P9, P10, P20, P32, and P39, under which the Petitioners acquired title, were executed from 1995 onwards. It is evident from the above-stated facts that even the deed which the Petitioners' mother acquired title to have been executed after issuance of the notice under Section 2 of the Act. Therefore, the Petitioners have acquired the property within the time period specified in Section 4A(1). In the case of *W. Palitha De Zoysa Gunasekara v. Hon. Minister of Lands*,⁶ where the Petitioner in that case obtained title to the land by way of a Deed of gift on 28.07.1998 and the Section 2 notice was published on 22.04.1998, Arjuna Obeyesekere, J., P/CA (as he then was) held that the Petitioner does not have the *locus standi* to have and maintain that application. Therefore, considering the above facts, this Court agrees with the contention of the learned Counsel appearing for the Respondents that the Petitioners do not have the *locus standi* to maintain this Application.

Another objection raised by both the learned Counsel appearing for the 4th to 7th Respondents and the learned State Counsel appearing for the 1st to 3rd and 8th Respondents is based on laches and the unexplained delay. Their contention is that there has been a delay for four decades to challenge the acquisition since 1983. The Petitioners have filed the instant Application on 12.03.2021. Other than stating that they only became aware of the fact that the land had been acquired by the State at a later

⁶ CA (Writ) Application No: 441/2020, CA Minutes of 27.04.2021

stage, the Petitioners have not explained the delay in filing the instant Application. In the case of *Issadeen v. The Commissioner of National Housing*,⁷ the Supreme Court held that,

“It is however to be noted that delay could defeat equity. Although there is no statutory provision in this country restricting the time limit in filing an application for judicial review and the case law of this country is indicative of the inclination of the Court to be generous in finding ‘a good and a valid reason’ for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications.”

It is also the view of this Court that the Petitioners have misrepresented the facts presented before this Court. In the Petition, the Petitioners assert that they were not aware of the fact that the land had been acquired by the State until a subsequent point in time. However, the Learned Counsel appearing for the 4th to 7th Respondents drew the attention of this Court to the letter dated 25.03.1991 marked as R9(b) written by the 1st Petitioner’s husband to the 1st Respondent and the letter dated 14.08.1999 marked as R10 written by the 1st Petitioner addressed to the Chairman of the 6th Respondent, concerning the subject matter of this Application. In their counter affidavits, the Petitioners deny the existence of these letters for the reason that they are not in their possession nor have they written them. Regardless of the letter marked as R9(b), the

⁷ [2003] 2 SLR 10

letter marked as R10 has been issued by the 1st Petitioner. Therefore, this Court is of the view that the Petitioners have suppressed the fact that they were aware of the acquisition at an early stage and thereby have not come before this Court with clean hands. In *Namunukula Plantations Ltd v. Minister of Lands*,⁸ it was held that,

“It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on, the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.”

Considering all the above-stated facts and circumstances, this Court is of the view that the Petitioners are not entitled to the Writ of Mandamus as prayed for in the Petition.

Accordingly, this Writ Application is dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

⁸ 2012 1 Sri LR 365