

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 Writ of Mandamus under and in terms of Article 140 of the Constitution of The Democratic Socialist Republic of Sri Lanka 1978.

C.A. (Writ) Application
No.0074 / 2025

A.W.K.A. Gunasekera alias Ashley Gunasekera
No.278, Batadombatuduwa Road,
Alubomulla, Panadura.

PETITIONER

Vs.

1. Divisional Secretary-Colombo,
Divisional Secretariat,
Dam Street,
Colombo 12.

2. Urban Development Authority,
6th, 7th and 9th Floors,
"Sethsiripaya"
Battaramulla.

RESPONDENTS

Before : Dhammika Ganepola, J
Adithya Patabendige, J

Counsel : Rajeev Amarasuriya with Hana Haffee instructed by Eranda S.S. Wanasinghe for the Petitioner.
Yuresha Fernando D.S.G for the 1st Respondent.
2nd Respondent is absent and unrepresented.

Argued on : 02/07/2025

Written submissions tendered on : 14/08/2025

Decided on : 26/08/2025

Adithya Patabendige, J

This is an application to obtain a mandate in the nature of a writ of Mandamus, compelling the 1st Respondent to take necessary steps to pay compensation for the amount of Rs. 75,254,000 to the Petitioner, in accordance with Section 17 of the Land Acquisition Act, for the acquisition of land bearing assessment No.478/6, Sama Vihara Road, Bloemendhal.

The facts giving rise to this application, as averred by the Petitioner, are summarised as follow;

The land in question was once owned by the brother of the Petitioner , Eardly Gunasekera, who passed away issueless. Therefore, the title to the said land devolved to the Petitioner upon his demise.

According to the Government Gazette dated 13th May 1977, marked as P-5, the Municipal Commissioner, acting as the acquiring officer under the provisions of the Land Acquisition Act, acquired the said land. However, compensation had not been paid to the Petitioner. Accordingly, the said land was divested in favour of the Petitioner by the Government Gazette No. 779/13 dated 13th August 1993, marked as P-6.

The Petitioner stated that the land had been encroached upon by a Buddhist monk, Venerable Wimalananda Thero and did a partial construction of a temple named Sama Viharaya on the property. This occurred while the land was vested by the state during the period from 13th May 1977 to 13th August 1993. Owing to the resultant dispute, a civil proceeding was instituted before the District Court of Colombo, by the case bearing No.17090/L, marked as P-7, which was ultimately determined in favour of the Petitioner .

Subsequently, the land was reacquired under Section 38 of the Land Acquisition Act , by way of an order published in Gazette No. 1889/33 dated 20th November 2014. The Petitioner then challenged this acquisition by filing a writ application in the Court of Appeal, bearing No. CA/Writ No 387/2020 marked as P-16.

Whilst the said writ application was pending, a notice in terms of the Section 7 of the Land Acquisition Act had been published in the Gazette No. 2253/12 dated 09th November 2021, marked as P-17 along with the petition of the Petitioner.

Following this inquiry held under Section 7 of the Land Acquisition Act, the 1st Respondent awarded the Petitioner a sum of Rs. 75,254,000 as compensation, in terms of Section 17 of the Act, according to the document marked as P-20 dated 16th June 2022. Having consented to the said award of compensation, the Petitioner had withdrawn the writ application marked as P-16 by a motion dated 24th September 2024 marked as P-21 along with the petition of this writ application.

Although the compensation for the acquisition of the land has been finalized, the 1st Respondent has failed to pay it to the Petitioner. Therefore, he sent three letters, marked as P1 to P-3, along with the petition of this writ application, to the 1st Respondent, requesting the release of the compensation as stipulated under Section 17 of the said Act.

In response to the above letters, 1st Respondent has requested the 2nd Respondent, to whom the above land has been divested, to pay the compensation finalized under Section 17 of the said Act. However, the Petitioner has not been paid the compensation.

Being aggrieved by the said process and the undue delay in the payment of compensation, the Petitioner has filed instant writ application to compel the 1st Respondent to pay the compensation to which he is entitled for the acquisition of his land.

When this matter was taken up for argument on 2nd of July 2025, the Learned Deputy Solicitor General, who had previously represented both Respondents, informed Court that she is only appearing for the 1st Respondent and that the file had been returned to the 2nd Respondent. She further informed that she is ready to abide by the decision of this Court.

Even though all the Respondents were duly notified, none of them filed their respective objections in relation to this writ application.

Upon consideration of the submissions made and documents filed, the following facts remain undisputed:

1. The land was first acquired under the Land Acquisition Act in 1977.
2. The land was divested in favour of the Petitioner in 1993.
3. The land was reacquired under the same Act in 2021.
4. A compensation of a sum of Rs. 75,254,000 was awarded with the consent of the Petitioner.
5. The land was subsequently divested to the 2nd Respondent.

The only issue to be decided in this application is the payment of compensation.

As per the document marked as P-20, the acquiring officer, after an inquiry under section 17 of the said act, arrived at a conclusion to award a sum of Rs. 75,254,000 to the Petitioner who has also consented to the said award. Therefore, it is the duty of the 1st Respondent as the acquiring officer under the Land Acquisition Act, to pay the compensation to the person entitled to it.

Considering the document marked as P-23, this court is of the view that divesting the acquired land to the 2nd Respondent is an internal arrangement between two state entities, and a dispute between these governmental institutions should not result in the victimization of a citizen of the country.

On the other hand, this land was initially acquired in 1977 and subsequently divested to the Petitioner in 1993. During this period, land was encroached upon, and he had to resort to litigation to protect his title and regain possession. Once again, this land was acquired in 2021, but he has not yet received the compensation to which he is entitled.

Considering the age of the Petitioner and other relevant factors, the 1st Respondent should have paid the compensation expeditiously. However, this has not been done. Therefore, the Petitioner has been forced to seek reliefs from this Court. This inefficient and irresponsible attitude of the authorities, especially the acquiring officer, has caused unnecessary hardship to the Petitioner.

In view of the above, it is abundantly clear that the 1st Respondent failed to fulfill his public duty.

Considering the aforementioned circumstances of this case and the reasons given above, I am inclined to issue a writ of Mandamus as sought in paragraph (b) of the prayer of the petition dated 30th January 2025.

I make no order for costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL