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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writs of *Certiorari*, *Mandamus* and Prohibition.

Semba Kutti Mala Damayanthi Gunaratne,
No. 45, Mahawatta Road,
Embuldeniya, Nugegoda.

Appearing by
M.M.D.S. Gunaratne
Her duly appointed Attorney
No. 45, Mahawatta Road,
Embuldeniya, Nugegoda.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/285/2022

1. W.A.C. Perera,
   Secretary,
   Ministry of Tourism and Lands,
   6th Floor,
   No. 21,
   Rakshana Mandiraya,
   Vauxhall Street,
   Colombo 02.

2. Hon. H. Fernando,
   Minister,
   Ministry of Tourism and Lands,
   6th Floor,
   No. 21,
   Rakshana Mandiraya,
   Vauxhall Street,
   Colombo 02.

3. Srimathie Senadheera,
   General Manager,
   Sri Lanka Land Reclamation and Development Corporation,
   No. 3, Sri Jayawardenapura Mawatha,
   Walikada.

4. H. Tilakawardena,
   Acquiring Officer,
   Greater Colombo Flood Control Project,
   Sri Lanka Land Reclamation and Development Corporation,
   No. 3, Sri Jayawardenapura Mawatha,
   Walikada.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Laknath Seneviratne for the Petitioner
Abigail Jayakody S.C. for the Respondents

Argued on: 16.09.2025.

Written Submissions: For the Petitioner on 12.11.2025.
For the Respondents on 17.11.2025.

Decided on: 30.01.2026.

Mayadunne Corea J

The Petitioner by this Application sought, *inter alia*, the following reliefs:

> *"(b) a Writ of Certiorari quashing the vesting of the lands concerned*
>
> *(c) a Writ of Mandamus directing the 2nd Respondent to divest and/or re-transfer the land more fully described in directing the 2nd Respondent to take all necessary steps to divest the said portion of the allotments of land called "Karandagaha Kumbura" bearing assessment No. 233, Pannipitiya Road, situated at, Thalangama South within the Pradeshiya Sabha limits of Kaduwela (presently within the Municipal limits of Kaduwela) in the Palle Pattu of Hewagam Korale in the District of Colombo, respectively depicted as Lot 3 in Plan prepared by K.D.W.D. Perera, Licensed Surveyor, bearing No. 243/2004 dated 05.12.2004 and Lots 3 and 4 together with the right of way in Plan prepared by K.D.W.D. Perera, Licensed Surveyor bearing No. 304/2005 dated 27.10.2005 in the extent of approximately 39.7 perches (39.7P) to the Petitioner*
>
> *(d) a Writ of Mandamus directing the 2nd Respondent and/or one or more of the remaining Respondents to pay the Petitioner compensation in respect of the 9 perches of land that has been acquired for purpose*
>
> *OR IN THE ALTERNATIVE*
>
> *(e) a Writ of Mandamus directing the Respondents to execute a deed of transfer in favour of the Petitioner in respect of the land more fully described in the Petition of land called "Karandagaha Kumbura" bearing assessment No. 233, Pannipitiya Road, situated at, Thalangama South within the Pradeshiya Sabha limits of Kaduwela (presently within the Municipal limits of Kaduwela) in the Palle Pattu of Hewagam Korale in the District of Colombo, respectively depicted as Lot 3 in Plan prepared by K.D.W.D. Perera, Licensed Surveyor, bearing No. 243/2004 dated 05.12.2004 and Lots 3 and 4 together with the right of way in Plan prepared by K.D.W.D. Perera, Licensed Surveyor bearing No. 304/2005 dated 27.10.2005 in the extent of approximately 39.7 perches (39.7P)*
>
> *(f) a Writ of Prohibition preventing the Respondents from transferring and/or conveying the land more fully described in Petition to any person other than the Petitioner*"

The facts of the case briefly are as follows. In the year 2008, the Petitioner became the owner of allotments of land called "Karandagaha Kumbura" by virtue of two deeds of transfer. These allotments of land (a total of 48.7 perches) had been acquired by the state by Gazette Extraordinary No. 1725/11 dated 27.09.2011 for the purposes of developing a flood development project. However, the Petitioner states that only 9 perches out of a total of 48.7 perches had been utilised for the said purpose. Thereby, the Petitioner had requested the Chairman of the Land Reclamation and Development Corporation to divest the land, and the Petitioner had been assured by the authorities that the allotments of land would be utilised in its entirety.

Nevertheless, upon a recent visit to the land in 2021, the Petitioner discovered that the remaining portion of land is being used as a jogging track and recreation space instead of being utilised for the original purpose of water retention. Thereby, the Petitioner wrote to the 2nd Respondent requesting that the land in extent of 39.7 perches be divested as the improvement effected were contrary to the purpose of acquisition. The 3rd Respondent, by letter dated 08.02.2022, replied that since the entirety of the land had been utilised for the purposes of water retention and the construction of a recreational area, the land cannot be divested back to the Petitioner.

The Petitioner's contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The Petitioner did not receive any compensation in respect of the allotments of land acquired by the state.
- The land had not been utilised for the purposes for which it was acquired. Thereby, that the land must be divested in terms of section 39A of the Land Acquisition Act, No. 9 of 1950.
- The refusal of the Respondents to divest the land is arbitrary, capricious, ultra vires, unreasonable, irrational, in breach of legitimate expectations, and in violation of rules of natural justice.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner's Application is misconceived in law.
- The Petitioner has misrepresented material facts.
- The Petitioner has failed to pursue alternative remedies available.

- The reliefs prayed for by the Petitioner are futile.
- The Petitioner has failed to come to Court with clean hands.

Analysis

I will consider the Petitioner's Application along with the objections raised by the Petitioner.

Acquisition of the Petitioner's land

It is common ground that the Petitioner's land in dispute had been acquired by Gazette Extraordinary No. 1725/11 dated 27.09.2011 for development purposes of the greater Colombo flood control project. The said Gazette is marked and tendered as P3. I have considered the said Gazette. The Gazette had been published pursuant to the proviso to section 38(a) of the Land Acquisition Act. It is observed that section 2 notice under the Land Acquisition Act has been published (3R3) and decision under section 17 had been taken and published (3R4). As per the said section 17 decision, a compensation award has been made in favour of the Petitioner (3R4). Prior to arriving at the compensation award, a valuation report had been called from the Valuation Department, and valuation has been made which is marked and tendered as 3R5. The said valuation report is dated 05.04.2019.

Upon the publication of notice pursuant to the proviso to section 38(a), the land has been vested with the state and for all purposes the Petitioner's right to the ownership to the land had ceased to exist from 27.09.2011. The said acquisition Gazette has not been challenged by the Petitioner.

The Respondents contend that the acquired land was marshy land and the Respondents have developed the said land for the purposes of water retention and they have constructed a water retention basin at a considerable cost. It is the contention of the Respondents that the entire land acquired falls within the maintenance area of the said water basin. Further, it was contended while retaining the said land within the water basin, the said land has been developed with a walking track and a recreational area for the public. The Petitioner contends that she had sought approval for a construction. However, the Petitioner has not tendered to this Court any approval for a construction. The Petitioner has tendered documents marked P4i to P4iii which pertains to several correspondences between the Urban Development Authority and the Petitioner.

However, the Petitioner has failed to establish that the said approvals have been granted and it is also observed that the said correspondence is dated in the years 2009 and 2010, while the land has been acquired by P3 in 2011, hence the said correspondence is before the acquisition of the land. It is also pertinent to observe that as per P4A, in 2014, the Petitioner had tendered a document pertaining to the inquiry pursuant to section 7 of the Land Acquisition Act. Considering the said document, it appears, that claim inquiry pursuant to section 7 of the Land Acquisition Act too has taken place as far back as 2014. Thereafter, the Petitioner alleged that in 2021 the Petitioner had visited the acquired land and found that the said land had been developed, while part of it has been taken to expand the canal and for the water retention, another part had been used to construct a walking track and the rest remains as a recreational area.

It is the contention of the Petitioner that the Petitioner had not received any compensation for the acquisition of land though she had been identified as the rightful owner. It is also contended that the Petitioner had not been paid the compensation for the land that was acquired in its entirety, but she contends that the land in entirety that was acquired has not been utilized for water retention purposes. This has prompted the Petitioner to write a letter marked and tendered as P6 in 2022 to the Minister of Lands requesting to divest any remaining portion of the allotment of land so acquired which is not utilized for the purposes of water retention. However, it is alleged that the 3rd Respondents' general manager has replied to the Petitioner explaining the Respondent's inability to divest the land on the premise the subject land is within the water basin and as the rest has been developed as a recreational area for the public (P7). The Petitioner also tendered a document marked as P8 to established that she hasn't been paid compensation for the said land. I have considered the said document and find that the said document is pertaining to a request to divest part of the acquired land. However, the said letter also demonstrates that an extent of 42.83 perches in lot 3, in P plan 9304 is claimed by the Petitioner and the Petitioner has not accepted the compensation for the said portion. The Petitioner's main grievance is that the land has been acquired, the Petitioner has not been paid any compensation, and therefore she seeks the land to be divested.

Has the acquired land been utilized by the Respondents?

It is not disputed by parties that part of the land acquired has been utilized for water retention. While the Petitioner submits that the rest of the land has been developed by constructing a walking path and a public recreational area, the Respondents contend that the said land is developed and the rest of said land falls within the water basin and flood area, however, the said area is also developed within the said water basin to consist of a walk path and a public recreational area. Hence, they argue that it has been used

for public purpose. Considering these two arguments, this Court finds that the land acquired is now developed by the Respondents. However, while both parties concede that part of the acquired land is utilized for water retention, the rest of the land which is still within the water basin is developed to create a walking path and a public recreational area. This establishes the fact that the land that has been acquired has been developed by the Respondents. The Petitioner's main contention is that the land that is now used for the constructed walking path and recreational area should be divested as it is not been used for water retention, a contention denied by the Respondent. Hence, the Petitioner seeks a Writ of Mandamus and also contends that they are legally entitled for the said Writ of Mandamus compelling the Respondents to divest the part of the land that contains the walking path and the public recreational area. It is also contended that the 2nd Respondent has a public and statutory duty to divest the said land.

The Petitioner also contends that the land was acquired for the public purpose namely for the purpose of water retention in instances of flooding in the greater Colombo area. It is also argued by the Petitioner, that though part of the land has been acquired for this purpose, part of the land has been developed with a walking path and a public recreational area, which the Petitioner contends is not the public purpose for which the land was acquired. While this contention is contested by the Respondents who strenuously argued that part of the land is taken for water retention purposes and rest of the land which is needed for the same purpose as it is within the water basin has been developed with a walking path and a recreation area.

As per the submissions of the Respondent, it appears that the said area is developed while retaining it as a water retention are as it is within the water basin. Further, it is also contended that the said land is anyway utilized for a public purpose. In view of the above contention, the land that is not directly used for water retention cannot be divorced from the purpose for which it was acquired, as it is used for the retention of spill over water as the said area is directly within the water basin, although it is developed into a walking path and a recreational area. Hence, it appears that the said area is utilised for a dual purpose.

In any event, it is not disputed that the said area is used for a public purpose. Even though, as described above, this question will not arise in the instant case as the said land appears to be used for a dual purpose. The question arises as to whether a land acquired for a particular public purpose can be used for another public purpose due to the changing times, circumstances and rapid urban development.

It is pertinent to note that our Court has held that land acquired for public purpose can be used for another public purpose.

In the case of **S*.D. Amarasekera v. Hon. Patali Champika Ranawaka* CA Writ 277/2015 decided on14.12.2021**, the Court held that "*the fact that the land was acquired for a particular public purpose does not prevent the land being used for another public purpose*", and cited with approval the case of ***Gunawardena v. D.R.O. Weligama Korale* 73 NLR 333**, where it was observed that:

> "*Even assuming that after the order made under section 38 the Crown had decided to utilise the land for some other public purpose, I do not think that it is open to a person whose land has been acquired and the title to which has been vested in the Crown to maintain that the acquisition proceedings are bad… I can however see no objection to the Crown utilising the land for a different public purpose than that for which it was originally intended to be acquired. Circumstances may arise when it may become necessary for the Government to abandon the original public purpose contemplated and utilise the land for another public purpose*."

Further, in the case of ***Kingsley Fernando v. Dayaratne and others* (1991) 2 SLR 129**, it was held that:

> "*In any event the fact that land was acquired for a particular public purpose does not prevent the land being used for another public purpose*."

Given the rapid development of urban areas due to rapid urbanization I am in agreement with the said decisions.

Let me now consider the Petitioner's next contention, namely the land not directly used should be divested. In my view, there is no merit in the objection that a land acquired for a particular public purpose shall not be used for another public purpose as long as it is used for a public purpose.

<u>The Petitioner's request to divest the land</u>

I will now consider the provisions pertaining to the divesting of acquired land under the Land Acquisition Act. Section 39A of the Land Acquisition Act deals with divesting of lands. The said section reads as follows.

> *"(1) 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.

(2) 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."

Prior to considering a divesting order under section 39A(2), the Minster has to satisfy himself that no compensation has been paid pertaining to the land sought to be divested. As per the submissions of the Counsel for the Petitioner, and as per the documents tendered by the learned State Counsel, it is clear that the land acquisition process had come to its conclusion, with the determination under section 17 and compensation calculated in favour of the Petitioner. The Respondents contend that the said compensation was awarded to the Petitioner, but the Petitioner has not accepted the said money. It is their contention that in this instance, it is not that the Respondents have not paid compensation but the Petitioner has failed to accept compensation for the acquisition of the land.

It appears that part of the land has been used for water retention and the Respondents contend that the rest is retained for the same purpose as it is within the water basin. However, it has been developed to have a walking path and a public recreational area. Hence it is argued that the land is developed by the Respondent and used for the public purpose. In this instance it is pertinent to note that subsection (2) of section 39A contemplates that upon a request to divest the minster has to consider whether the land acquired has not been used for a public purpose after possession has been taken. Hence, the argument that the land is being used for a public purpose is not in dispute also that improvements have been made to the land after the order of possession had been made

is not in dispute. Hence, in my view, the Petitioner has failed to establish any of these grounds to qualify under subsection (2) to obtain an order for divesting.

Availability of a Writ of Mandamus

It is also pertinent to note that there are two schools of thought as to the availability of the Writ of Mandamus pertaining to divesting of land under section 39A. While one school of thought is that a Writ of Mandamus will lie, the other school of thought is that since it is a discretion of the minister, a Writ of Mandamus will not lie against the minister in using the said discretion. Justice Janak De Silva in the case of ***Jinapala Senarath Yapa v. Dayananda Rathnayake and others*** **CA Writ 354/2016 decided on 23.01.2020**, explained as follows:

> "*S.N. Silva J. (as he was then) in* Kingsley Fernando v. Dayaratne and Others *[(1991) 2 Sri.L.R. 129] held that section 39A of the Act does not give a right to the former owner to seek a divesting order even where the pre-conditions are satisfied but only vests a discretionary power in the Minister to make a divesting order provided the pre-conditions are satisfied. However, there is a divergence in the approach of the Supreme Court to this issue. In* De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another *[(1993) 1 Sri.L.R. 283] Fernando J. held that a writ of mandamus will issue directing the Minister to divest land acquired by the State if the four conditions in section 39A of the Act are fulfilled. This was quoted with approval and followed by the Supreme Court in* Rashid v. Rajitha Senaratne, Minister of Lands and Others *[(2004) 1 Sri.L.R. 312] and* Mahinda Katugaha v. Minister of Lands and Land Development and Others *[(2008) 1 Sri.L.R. 285].*
>
> *However, the Supreme Court in* Urban Development Authority v. Abeyratne and Others *[S.C. Appeal No. 85/2008 & 101/2008; S.C.M. 01.06.2009] took a different view and held that the exercise of discretionary power vested with the Minister by section 39A of the Act is not amenable to judicial review in an application for a writ of mandamus. Similar line of thinking is found in* Wijewardena v. Minister of Lands and Others *[S.C. Appeal 56/2008; S.C.M. 24.11.2015] where the Supreme Court again took the view that section 39A of the Act merely vests a discretionary power in the Minister to make a divesting order in a case where the pre-conditions referred to in that section are satisfied and that a former owner cannot demand such exercise of power.*
>
> *I have closely examined the different reasons given by the Supreme Court in the above cases and hold that the reasoning adopted in* Urban Development Authority v. Abeyratne and Others *(supra) is logical and compelling*…"

In the said judgment which the Court opines that a Writ of Mandamus would not apply, the Court had analysed as to why the Writ will not apply and this Court is inclined to follow the judgment of his Lordship Justice Janak de Silva in *Jinapala Senarath Yapa* (supra). Hence, in my view when the Minister is given a discretion, the Court would be reluctant to issue a writ of Mandamus on using the said discretion. Therefore, in my view, the Petitioner's main Application for a Writ of Mandamus compelling the Minister to divest the said land has to fail.

In any event as I have observed, for the Minister to exercise that discretion, the grounds enumerated under section 39A(2) are not in favour of the Petitioner. Hence, in my view, I am unable to agree with the Petitioner's contention that the circumstances set out by the Petitioner cast a public duty and/or statutory duty on the 2nd Respondent to divest the land described in the Petition of the Petitioner.

Objections of the Respondent

Suppression of material facts and lack of uberrima fides

It is the Petitioner's contention that the land in dispute had been acquired in compliance of the provisions of the Land Acquisition Act. It is pertinent to note that as I have referred above, the section 2 notice for acquisition had been published and a valuation report had been compiled by the Valuation Department pursuant to section 17(3) of Land Acquisition Act. A final decision had been taken under section 17 to award compensation to the Petitioner. The Petitioner has failed to disclose any of this material and has failed to plead, the same in their Petition. In fact, the Petitioner has pleaded that although the land has been acquired, the Petitioner has not been paid compensation. It is also pertinent to note that as per the contention of Petitioner, the Petitioner's land had been acquired pursuant to the provision of section 38(2) of the Land Acquisition Act and no compensation had been paid to the Petitioner. The Petitioner has failed to disclose the publication of notice under section 2, of the land acquisition act, the publication of the decision and the award pursuant to section 17 of the act and most importantly the fact that after the publication of compensation it was the Petitioner who had not accepted the said money. In my view, this amounts to a serious suppression of material facts and a serious misrepresentation by the Petitioner. A Petitioner who seeks the discretionary remedy of a Writ should come with clean hands and is duty-bound to disclose all material facts pertaining to the issue in hand to the Court. A Court can come to a proper adjudication based on the facts given to Court. Hence, to use the said discretionary power, the Court must be aware of all material facts for proper adjudication, and the Petitioner who invokes the jurisdiction of the Court and invites the Court to use this discretionary power is, therefore, duty-bound to disclose all

material facts without suppression and he should do so with clean hands. In my view, in this instance, the Petitioner has failed to disclose and has suppressed and misrepresented facts and failed to come to this Court with clean hands. Hence, with her own conduct the Petitioner disentitles herself from obtaining the reliefs prayed for.

In the case of ***W. S. Alphonso Appuhamy v. Hettictrachchi*** **(1973) 22 NLR 77** it was

> "*Held further, that when an application for a prerogative writ or an injunction is made, it is the duty of the petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the petitioner must act with uberrima fides."*

Further, in ***Namunukula Plantations Limited v. Minister of Lands and others*** **(2012) 1 SLR 376** it was inter alia held that

> *"It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of 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 facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence*."

Thus, the above finding disentitles the Petitioner from obtaining any relief including the alternative reliefs prayed for.

<u>The prayers of the Petitioner</u>

The Petitioner is seeking a Writ of Certiorari to quash the vesting of the land. It is pertinent to note that it is common ground that part of the land has been used for water retention and the rest which is within the water basin for public purpose. Hence, the land acquired has been used for the public purpose and the Petitioner's prayer (b) has to fail. In any event, this Court observes that the land was acquired in the year 17.09.2011 (P3). The Petitioner is attempting to quash the said acquisition by this Writ Application filed in the year 2022, i.e., 11 years after the land was acquired. The Petitioner has failed to explain this delay to challenge this acquisition. It is trite law that unexplained delay defeats the reliefs sought by a party in a Writ Application. The

importance of invoking the jurisdiction of the court without delay is explained in the case of ***Biso Menika v. Cyril De Alwis*** **(1982) 1 SLR 368**, as follows;

> "*The proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleep over his rights without any reasonable excuse the chances of his success in a writ application dwindle and the court may reject a writ application on the ground of unexplained delay…*"

The Petitioner has sought a Writ of Mandamus compelling the Respondent to retransfer the land. In my judgment above, I have discussed why a Writ of Mandamus will not lie in this instance. The Petitioner has also sought a Writ of Mandamus, directing the 2nd Respondent and any one or more of Respondents to pay the Petitioner compensation. It is observed that the Petitioner is seeking compensation only in respect of 9 perches of land. However, as I have observed above, and as the learned State Counsel has demonstrated, compensation for the land in its entirety has been awarded and it is the Petitioner who has failed to claim the said compensation. In the absence of the Petitioner claiming the compensation awarded to her, the Petitioner in the given circumstances has failed to establish that the Respondents have failed to perform a public duty owed towards the Petitioner. I find that there is no refusal by the Respondents to pay compensation. Hence, as per the material submitted, the Petitioner has failed to establish that the Respondents have refused to exercise the powers to perform the duty that is owed to her. Hence, prayers (c) and (d) have to fail.

Since I have already held that the Petitioner's Application has to fail, I hold that the alternative remedies too have to fail. However, it is pertinent to observe that under alternative remedies the Petitioner has prayed for a Writ of Prohibition to prevent the Respondents from transferring and/or conveying the said land to any said person other than the Petitioner. The Petitioner has failed to adduce any material to substantiate this argument. Hence, I find the Petitioner has failed to establish that the Respondents are in the process of engaging in an illegal act of acting *ultra vires* their powers. It is also pertinent to note that in the Petition or even at the hearing, the Counsel failed to bring to the attention of the Court to any ground demonstrating that the Respondents were intending to alienate any portion of this land to a third party.

Conclusion

I have considered the submissions of the Counsel and the material submitted to the Court. Accordingly, for the aforesaid reasons, I am not inclined to grant the reliefs prayed for by the Petitioner and I proceed to dismiss this Writ Application without costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal