

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 mandates in the nature of Writs of Certiorari, Mandamus and Prohibition.

1. Hewa Gajanayakage Chandrasena
2. Hewa Gajanayakage Saman Gunaasena

Both of B/1, Sayanagaara Nivasa, Uhana Road, Ampara.

Petitioners

Case No. CA (Writ) 196/2007

Vs.

1. B. M. M. M. Basnayake
Divisional Secretary,
Divisional Secretariat, Ampara.
2. P. K. P. Sugathadasa
Asst. Divisional Secretary,
Divisional Secretariat, Ampara.
3. Boralessa
Commissioner General of Lands,
Land Commissioner's Department,
No. 7, Gregory's Avenue, Colombo 7.
4. Housing Development and Finance
Corporation Bank
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.
5. Sunil Kannangara
District Secretary,
District Secretariat, Ampara.
6. Hon. Attorney General
Attorney General's Department, Colombo
12.
7. HDFC Real Estate Development Limited
C/O Housing Development and Finance
Corporation Bank, Sir Chittampalam A.
Gardiner Mawatha, Colombo 2.

8. Ratnasiri Wickramanayake
Prime Minister and Minister of Internal Administration
9. D. M. Jayaratne
Minister of Plantation Industries
10. Nimal Siripala De Silva
Minister of Healthcare and Nutrition
11. A. H. M. Fowzie
Minister of Petroleum and Petroleum Resources Development
12. Anura Bandaranaike
Minister of National Heritage
13. Jeyaraj Fernandopulle
Minister of Highways and Road Development
14. Maithripala Sirisena
Minister of Agricultural Development and Agrarian Services Development
15. Susil Premajayantha
Minister of Education
16. Karu Jayasuriya
Minister of Public Administration and Home Affairs
17. Arumugam Thondaman
Minister of Youth Empowerment and Socioeconomic Development
18. Rauf Hakeem
Minister of Post and Telecommunication
19. Dinesh Gunawardena
Minister of Urban Development and Sacred Area Development
20. Douglas Devananda
Minister of Social Services and Social Welfare
21. Ferial Ashraff
Minister of Housing and Common Amenities

22. P. Chandrasekeran
Minister of Community Development and Social Inequity Eradication
23. A. L. M. Athaullah
Minister of Water Supply and Drainage
24. Tissa Vitharana
Minister of Science and Technology
25. D. E. W. Gunasekera
Minister of Constitutional Affairs and National Integration
26. Abdul Risath Bathiyutheen
Minister of Resettlement and Disaster Relief Services
27. P. Dayaratne
Minister of Plan and Implementation
28. R. M. Dharmadasa Banda
Minister of Supplementary Crops Development
29. M. H. Mohomed
Minister of Parliamentary Affairs
30. G. L. Peiris
Minister of Export Development and International Trade
31. John Seneviratne
Minister of Power and Energy
32. Sumedha Jayasena
Minister of Child Development and Women's Affairs
33. Sarath Amunugama
Minister of Enterprise Development and Investment Promotion
34. Milroy Fernando
Minister of Public Estate Management and Development
35. Jeewan Kumaranatunga
Minister of Land and Land Development
36. Pavithra Wanniarachchi
Minister of Youth Affairs

37. Anura Priyadarshana Yapa
Minister of Media and Information
38. Tissa Karaliyadde
Minister of Indigenous Medicine
39. Athauda Seneviratne
Minister of Labour and Manpower
40. Gamini Lokuge
Minister of Sports and Public Recreation
41. Bandula Gunawardena
Minister of Trade, Marketing Development,
Cooperatives and Consumer Affairs
42. Mahinda Samarasinghe
Minister of Disaster Management and
Human Rights
43. Rajitha Senaratne
Minister of Construction and Engineering
Services
44. Mahinda Wijesekera
Minister of Special Projects
45. Milinda Moragoda
Minister of Tourism
46. Keheliya Rambukwelle
Minister of Foreign Employment Promotion
and Welfare
47. Piyasena Gamage
Minister of Vocational and Technical
Training
48. R. M. S. B. Navinne
Minister of Rural Industries and Self-
employment Promotion
49. Janaka Bandara Tennekoon
Minister of Local Government and
Provincial Councils
50. Felix Perera
Minister of Fisheries and Aquatic Resources
51. R. M. C. B. Rathnayake
Minister of Livestock Development

52. Rohitha Bogollagama
Minister of Foreign Affairs
53. Mahinda Yapa Abeywardena
Minister of Cultural Affairs
54. Prof. Wiswa Warnapala
Minister of Higher Education
55. Chamal Rajapaksa
Minister of Irrigation and Water Management
56. Kumara Welgama
Minister of Industrial Development
57. Dallas Alahaperuma
Minister Transport
58. Amarasinghe Dodangoda
Minister of Justice
59. Champika Ranawaka
Minister of Environment and Natural Resources
All C/O the Secretary, Cabinet Office,
Parliament of Sri Lanka, Parliament
Complex, Sri Jayawardenapura.
60. D. M. Jayaratne
Prime Minister and Minister of Buddha Sasana and Religious Affairs,
No. 135, Dharmapala Mawatha, Colombo 7.
61. Ratnasiri Wickramanayake
Minister of Good Governance and Infrastructure Facilities
62. D. E. W. Gunasekera
Minister of Human Resources
63. Athauda Seneviratne
Minister of Rural Affairs
64. P. Dayaratne
Minister of Food Security
65. A. H. M. Fowzie
Minister of Urban Affairs
66. S. B. Navinne
Minister of Consumer Welfare

67. Piyasena Gamage
Minister of National Resources
68. Prof. Tissa Vitharana
Minister of Scientific Affairs
69. Dr. Sarath Amunugama
Minister of International Monetary Cooperation
70. Milroy S. Fernando
Minister of Social Welfare
All of Senior Ministers Secretariat, No. 356B, Carlwil Place, Galle Road, Colombo 3.
71. Nimal Siripala De Silva
Minister of Irrigation and Water Resources Management,
No. 500, T. B. Jayah Mawatha, Colombo 10.
72. Maithreepala Sirisena
Minister of Health,
No. 385, Rev. Baddegama Wimalawansa Thero Mawatha, Colombo 10.
73. Susil Premajayantha
Minister of Environment and Renewable Energy,
“Sampathpaya”, No. 82, Rajamalwatta Road, Battaramulla.
74. Arumugam Thondaman
Minister of Livestock and Rural Community Development,
No. 45, St. Michael’s Road, Colombo 10.
75. Dinesh Gunawardena
Minister of Water Supply and Drainage,
“LakdiyaMedura”, New Parliament Road, Pelawatta, Battaramulla.
76. Douglas Devananda
Minister of Traditional Industries and Small Enterprise Development,
No. 780, Maradana Road, Colombo 10.

77. A. L. M. Athaullah
Minister of Local Government and
Provincial Councils,
No. 330, Union Place, Colombo 2.
78. Rishad Bathiyutheen
Minister of Industry and Commerce,
No. 73/1, Galle Road, Colombo 3.
79. Wimal Weerawansa
Minister of Construction, Engineering
Services, Housing and Common Amenities,
“Sethsiripaya”, 2nd Floor, Sri
Jayawardena Pura Kotte, Battaramulla.
80. Rauff Hakeem
Minister of Justice,
Superior Courts Complex, Colombo 12.
81. Basil Rajapaksa
Minister of Economic Development,
No. 464/A, T. B. Jayah Mawatha, Colombo
10.
82. Vasudeva Nanayakkara
Minister of National Languages and Social
Integration,
No. 40, Buthgamuwa Road, Rajagiriya.
83. S. B. Dissanayake
Minister of Higher Education,
No. 18, Ward Place, Colombo 7.
84. Prof. G. L. Peiris
Minister of External Affairs,
Republic Building, Colombo 1.
85. W. D. J. Seneviratne
Minister of Public Administration and Home
Affairs,
Independence Square, Colombo 7.
86. Sumedha G. Jayasena
Minister of Parliamentary Affairs,
No. 464B, Pannipitiya Road, Pelawatta,
Battaramulla.

87. Jeevan Kumaranatunga
Minister of Postal Services,
Postal Headquarters Building,
No. 310, 7th Floor, D. R. Wijewardena
Mawatha, Colombo 7.
88. Pavithra Wanniarachchi
Minister of Power and Energy,
No. 72, Ananda Coomaraswamy Mawatha,
Colombo 7.
89. Anura Priyadarshana Yapa
Minister of Petroleum Industries,
No. 80, Sir Ernest De Silva Mawatha,
Colombo 7.
90. Tissa Karaliyadde
Minister of Child Development and
Women's Affairs,
No. 175A, Nawala Road, Nugegoda.
91. Gamini Lokuge
Minister of Labour and Labour Relations,
2nd Floor, Labour Secretariat, Colombo 5.
92. Bandula Gunawardena
Minister of Education,
“Isurupaya”, Battaramulla.
93. Mahinda Samarasinghe
Minister of Plantations Industries,
No. 55/75, Vauxhall Lane, Colombo 2.
94. Rajitha Senaratne
Minister of Fisheries and Aquatic Resource
Development,
New Secretariat, Maligawatta, Colombo 10.
95. Janaka Bandara Tennakoon
Minister of Land and Land Development,
“MihikathaMedura”, Land Secretariat, No.
6/1200, Rajamalwatta Road, Battaramulla.
96. Felix Perera
Minister of Social Services,
“Sethsiripaya”, 5th Floor, Battaramulla.

97. C. B. Rathnayake
Minister of Private Transport Services,
No. 34, Narahenpita Road, Nawala.
98. Mahinda Yapa Abeywardena
Minister of Agriculture,
“GovijanaMandiraya”, No. 80/5,
Rajamalwatta Mawatha, Battaramulla.
99. Keheliya Rambukwella
Minister of Mass Media and Information,
“AsidisiMedura”, No. 163, Kirulapone
Mawatha, Polhengoda, Colombo 5.
100. Kumara Welgama
Minister of Transport,
No. 1, D. R. Wijewardena Mawatha,
Colombo 10.
101. Dallas Alahapperuma
Minister of Youth Affairs and Skills
Development,
“NipunathaPiyasa”, No. 354/2, Elvitigala
Mawatha, Narahenpita, Colombo 05.
102. Johnston Fernando
Minister of Cooperatives and Internal
Trade,
CWE Secretariat, No. 27, Vauxhall Street,
Colombo 02.
103. Chandrasiri Gajadeera
Minister of Rehabilitation and Prison
Reforms,
No. 35/A, Dr. N. M. Perera Mawatha,
Colombo 08.
104. Salinda Dissanayake
Minister of Indigenous Medicine,
No. 325, Ayurveda Building, Dr. N. M.
Perera Mawatha, Colombo 08.
105. Reginald Cooray
Minister of Minor Export Crop Promotion,
No. 80/5, GovijanaMandiraya,
Rajamalwatta Avenue, Battaramulla.

106. Dilan Perera
Minister of Foreign Employment Promotion and Welfare,
5th Floor, Central Bank Building,
Janadhipathi Mawatha, Colombo 01.
107. Jagath Pushpakumara
Minister of Coconut Development and Janatha State Development,
No. 493/1, T. B. Jayah Mawatha, Colombo 10.
108. T. B. Ekanayake
Minister of Culture and Arts,
8th Floor, Sethsiripaya, Battaramulla.
109. Mahinda Amaraweera
Minister of Disaster Management,
Vidya Mawatha, Colombo 07.
110. Gunaratne Weerakoon
Minister of Resettlement,
No. 146, Galle Road, Colombo 03.
111. Mervin Silva
Minister of Public Relations and Public Affairs,
No. 302, Galle Road, Colombo 04.
112. Mahindananda Aluthgamage
Minister of Sports,
No. 7/100, Independence Avenue, Colombo 07.
113. Dayasritha Tissera
Minister of State Resources and Enterprise Development,
No. 561/3, Elvitigala Mawatha, Colombo 05.
114. Ranjith Siyambalapitiya
Minister of Telecommunication and Information Technology,
No. 79/1, 5th Lane, Colombo 03.
115. Jagath Balasuriya
Minister of National Heritage,
8th Floor, Sethsiripaya, Battaramulla.

116. Navin Dissanayake
Minister of Public Management Reforms,
No. 29/2, D. P. Wijesinghe Mawatha,
Pelawatte, Battaramulla.
117. Priyankara Jayaratna
Minister of Civil Aviation,
No. 51E, 2nd Floor, Bristol Building, York
Street, Colombo 01.
118. Patali Champika Ranawaka
Minister of Technology, Research and
Atomic Energy,
No. 408, Galle Road, Colombo 03.
119. Lakshman Yapa Abeywardena
Minister of Investment Promotion,
25th Floor, West Tower, World Trade
Centre, Colombo 01.
120. Basheer Segudawood
Minister of Productivity Promotions,
No. 249, Stanley Thilakarathne Mawatha,
Nugegoda.
121. Jayaratna Herath
Minister of Botanical Gardens and Public
Recreation,
Office of the Cabinet Ministers, Republic
Square, Sir Baron Jayathilaka Mawatha,
Colombo 01.
122. Duminda Dissanayake
Minister of Education Services,
Office of the Cabinet Ministers, Republic
Square, Sir Baron Jayathilaka Mawatha,
Colombo 01.
123. Gamini Vijith Vijayamuni Zoysa
Minister of Wildlife Resources
Conservation,
Office of the Cabinet Ministers, Republic
Square, Sir Baron Jayathilaka Mawatha,
Colombo 01.

124. Lakshman Seneviratne
Minister of Sugar Industry Development,
Office of the Cabinet Ministers, Republic
Square, Sir Baron Jayathilaka Mawatha,
Colombo 01.
125. Nirmala Kothalawala
Project Minister of Highways,
Office of the Cabinet Ministers, Republic
Square, Sir Baron Jayathilaka Mawatha,
Colombo 01.
126. Rohitha Abeygunawardena
Project Minister of Ports,
Office of the Cabinet Ministers, Republic
Square, Sir Baron Jayathilaka Mawatha,
Colombo 01.
127. Ranil Wickramasinghe
Minister of Policy Planning, Economic
Affairs, Child, Youth and Cultural Affairs
128. John Amarathunga
Minister of Public Order and Christian
Affairs
129. Joseph Michael Perera
Minister of Home Affairs
130. Gamini Jayawickrema Perera
Minister of Food Security
131. Mangala Samaraweera
Minister of Foreign Affairs
132. S. B. Dissanayake
Minister of Rural Economic Affairs
133. A. H. M. Fowzie
Minister of Disaster Management
134. (Dr.) Sarath Amunugama
Minister of Higher Education and Research
135. Reginald Cooray
Minister of Aviation

136. Karu Jayasuriya
Minister of Buddha Sasana, Minister of Public Administration, Local Government and Democratic Governance
137. Lakshman Kiriella
Minister of Plantation Industries
138. Ravi Karunananayake
Minister of Finance
139. Janaka Bandara Tennakoon
Minister of Provincial Councils and Regional Development
140. Felix Perera
Minister of Special Projects
141. S. B. Navinne
Minister of Labour
142. Piyasena Gamage
Minister of Skills Development and Vocational Training
143. Mahinda Yapa Abeygunawardena
Minister of Parliamentary Affairs
144. Rauff Hakeem
Minister of Urban Development, Water Supply and Drainage
145. Patali Champika Ranawaka
Minister of Power and Energy
146. Rajitha Senaratne
Minister of Health and Indigenous Medicine
147. Duminda Dissanayake
Minister of Agriculture
148. Gamini Vijith Vijayamuni Soyza
Minister of Irrigation
149. Kabeer Hasheem
Minister of Highways and Investment Promotion
150. M. K. A. D. S. Gunawardana
Minister of Lands
151. Sajith Premadasa
Minister of Housing and Samurdhi

152. Wijayadasa Rajapaksha
Minister of Justice
153. Gayantha Karunathilaka
Minister of Mass Media
154. Navin Dissanayake
Minister of Tourism and Sports
155. Mahinda Amaraweera
Minister of Fisheries
156. Arjuna Ranatunga
Minister of Ports and Shipping
157. Rishad Bathiudeen
Minister of Industry and Commerce
158. U. Palani Digambaram
Minister of Plantation Infrastructure
Development
159. D. M. Swaminathan
Minister of Resettlement, Reconstruction
and Hindu Religious Affairs
160. Akila Viraj Kariyawasama
Minister of Education
161. Thalatha Atukorala
Minister of Foreign Employment
162. R. M. Ranjith Madduma Bandara
Minister of Internal Transport
163. P. Harrison
Minister of Social Services, Welfare and
Livestock Development
164. Chandrani Bandara
Minister of Women's Affairs
165. M. H. A. Haleem
Minister of Muslim Religious Affairs and
Posts
All C/O the Secretary, Cabinet Office,
Parliament of Sri Lanka, Parliament
Complex, Sri Jayawardenapura.
166. Bandara Mapa
Former Divisional Secretary of Ampara,
Divisional Secretariat, Ampara.

- 166A. M. M. Upeksha Kumari
Former Divisional Secretary of Ampara,
Divisional Secretariat, Ampara.
- 166B. Neil De Alwis
Divisional Secretary of Ampara,
Divisional Secretariat, Ampara.
167. T. M. M. Anzar
Assistant Divisional Secretary of Ampara,
Divisional Secretariat, Ampara.
168. R. P. R. Rajapakse
Former Commissioner General of Lands,
“MihikathaMedura”, Rajamalwatta Road,
Battaramulla.
- 168A. R. M. C. M. Herath
Commissioner General of Lands,
Land Commissioner General’s Department,
“MihikathaMedura”, No. 1200/6,
Rajamalwatta Road, Battaramulla.
169. Thusitha Wanigasinghe
District Secretary of Ampara,
District Secretariat, Ampara.
170. Ranil Wickramasinghe
Prime Minister
Minister of National Policies and Economic
Affairs
171. John Amarathunga
Minister of Tourism Development and
Christian Religious Affairs
172. Gamin Jayawickrema Perera
Minister of Sustainable Development,
Wildlife and Buddha Sasana
173. Nimal Siripala De Silva
Minister of Transport and Civil Aviation
174. Mangala Samaraweera
Former Minister of Foreign Affairs
- 174A. Thilak Marapana
Minister of Foreign Affairs

175. S. B. Dissanayake
Minister of Social Empowerment, Welfare and Kandyan Heritage
176. W. D. J. Seneviratne
Minister of Labour, Trade Union Relations and Sabaragamu Development
177. Lakshman Kiriella
Minister of Universities Education and Highways
Now: Minister of Higher Education and Highways
178. Anura Priyadarshana Yapa
Minister of Disaster Management
179. Susil Premajayantha
Minister of Technology, Technical Education and Employment
Now: Minister of Science Technology and Research
180. Thilak Marapana
Minister of Law and Order and Prison Reforms
Now: Minister of Development Assignments
181. Rajitha Senaratne
Minister of Health, Nutrition and Indigenous Medicine
182. Ravi Karunanayake
Minister of Finance
- 182A. Mangala Samaraweera
Minister of Finance and Mass Media
183. Mahinda Samarasinghe
Minister of Skills Development and Vocational Training
Now: Minister of Ports and Shipping
184. Vajira Abeywardena
Minister of Home Affairs
185. S. B. Navinne
Minister of Internal Affairs, North Western Development and Cultural Affairs

186. Patali Champika Ranawaka
Minister of Megapolis and Western Development
187. Mahinda Amaraweera
Minister of Fisheries and Aquatic Resources Development
188. Navin Dissanayake
Minister of Plantation Industries
189. Ranjith Siyabalapitiya
Minister of Power and Renewal Energy
190. Duminda Dissanayake
Minister of Agriculture
191. Wijayadasa Rajapakse
Minister of Justice and BuddhaSasana
- 191A. ThalathaAtukorala
Minister of Justice
Minister of Foreign Employment
192. P. Harrison
Minister of Rural Economic Affairs
193. Rauff Hakeem
Minister of Urban Planning and Water Supply
Now: Minister of City Planning and Water Supply
194. Rishad Bathiudeen
Minister of Industries and Commerce
195. Kabir Hashim
Minister of Public Enterprises Development
196. Ranjith Madduma Bandara
Minister of Public Administration and Management
197. GayanthaKarunathilaka
Minister of Parliamentary Reforms and Media
Now: Minister of Lands and Parliamentary Reforms

198. Sajith Premadasa
Minister of Housing and Construction
199. Arjuna Ranatunga
Minister of Ports and Shipping
Now: Minister of Petroleum Resources
Development
200. M. K. A. D. S. Gunawardana (Deceased)
Former Minister of Lands
- 200A. John Amaratunga
Minister of Lands
- 200B. Gayantha Karunathilaka
Minister of Lands
201. U. Palani Digambaram
Minister of Upcountry New Villages,
Infrastructure and Community
Development
202. Chandrani Bandara
Minister of Women and Children's Affairs
203. Thalatha Atukorala
Minister of Foreign Employment
204. Akila Viraj Kariyawasam
Minister of Education
205. M. H. A. Haleem
Minister of Posts, Postal Services and
Muslim Religious Affairs
206. D. M. Swaminathan
Minister of Rehabilitation, Resettlement
and Hindu Religious Affairs and Prison
Reforms
207. Chandima Weerakkody
Minister of Petroleum and Petroleum Gas
Now: Minister of Skills Development and
Vocational Training
208. Dayasiri Jayasekara
Minister of Sports
209. Sagala Ratnayake
Minister of Southern Development and Law
and Order

210. Harin Fernando
Minister of Telecommunication and Digital Infrastructure
211. Mano Ganeshan
Minister of National Dialogue and Official Languages
212. Daya Gamage
Minister of Primary Industries
213. Malik Samarawickrama
Minister of Development Strategies and International Trade
214. Faizer Musthapha
Minister of Local Government and Provincial Councils
215. Vijith Vijayamuni De Soysa
Minister of Irrigation and Water Resource Management
216. Field Marshal Sarath Fonseka
Minister of Regional Development
217. Sarath Amunugama
Minister of Special Assignments
All C/O the Secretary, Sri Lanka Parliament,
Sri Jayawardenapura Kotte.

Respondents

Before: Janak De Silva J.

N. Bandula Karunaratne J.

Counsel:

Manohara De Silva P.C. with Pubudini Wickremaratne and Hirosha Munsasinghe for the Petitioners

Manohara Jayasinghe SSC for the Respondents

Argued On: 13.05.2019

Written Submissions Filed On:

Petitioner on 07.01.2019

Respondents on 27.06.2019

Decided On: 29.05.2020

Janak De Silva J.

The Petitioners are residents of Ampara whose family has been in occupation of the land in issue for over three decades. They claim that the said land is over one acre in extent and since there was no proper irrigation system in place, paddy cultivation was carried out only once a year during the rainy season.

The name of the Petitioners mother S.M Karunawathie has been inserted as the owner of the said land in the relevant Agricultural Land Register in 1978 (A2) although this is questionable given that the land in dispute is state land.

In or about 1992, the Petitioner's mother S.M. Karunawathie applied for a permit for the said land (A3) and requested that it be divided among her four children including the two Petitioners. According to the decision of the Provincial Minister of Rehabilitation and Social Welfare of the Eastern Province, since the land in dispute is not a paddy land only married children were eligible to a grant of 25 perches of the said land. Accordingly, the Petitioners and a brother of theirs namely Hewa Gajanayakage Anura were eligible to receive permits.

Thereafter the 2nd Petitioner was informed by letter dated 27.06.1992 (A4A) that a survey was needed in order to divide the said land between S.M. Karunawathie and her three children and called upon them to pay the survey fees of Rs. 4500/= which was done (A4B). Thereafter, the land in dispute was surveyed and lots 498, 499 and 500 of Cadastral Map 280003 (A5) was allocated to the Petitioners and their brother Hewa Gajanayake Anura respectively (A6). Accordingly, the Petitioners and their brother, Hewa Gajanayake Anura had been issued with annual permits in respect of the said lands (A7A and A7B). The permits of the 1st Petitioner and Hewa Gajanayake Anura was extended annually until 2002 while the annual permit of the

2nd Petitioner was extended until 2003 (A8A to A8C). Thereafter, the Petitioners applied for a long term lease.

In 2003 the 1st Petitioner was informed by the 2nd Respondent that a decision had been made to grant to the Urban Development Authority (UDA) the land to which he was given an annual permit (A9). The Petitioners and their brother Hewa Gajanayake Anura appealed (A10 and A11) and later the UDA informed the 5th Respondent on 17.11.2004 (A12) that none of the lands in respect of which the Divisional Secretary of Ampara had issued permits have been acquired and/or recommended for acquisition by the UDA and that none of the state lands on the Ampara-Uhana main road would be required by the UDA. The land in dispute is situated on the Ampara-Uhana main road.

On 18.03.2005 a mobile service was held at the initiative of the Hon. Minister of Agriculture, Lands, Irrigation and Livestock to resolve land disputes within the Ampara Divisional Secretariat area. The Member of Parliament for the Digamadulla District informed the Petitioners to refer their problem to the said mobile service (A13).

The Petitioners and their brother attended the said mobile service and it was attended by the Deputy Minister of Lands, the Surveyor-General, 1st to 3rd Respondents and Grama Niladharis of all the relevant divisions. They were informed by the relevant officials that since their lands have not been taken over by the UDA, arrangements would be made to grant each of them plots of land 20 perches in extent out of the said land and that they would be given long term leases in respect of the said plots of land.

This decision is reflected in document A23 which states inter alia that 40 perches should be given for a business purpose to P.L.S. Perera and 20 perches each should be given for residential purposes to the Petitioners and their brother Hewa Gajanayake Anura. It is further stated that the remaining land out of the 15 acres should be used for a housing project and that grants should be made to the Petitioners in respect of the same lands they were occupying under the permits.

Thereafter, the 1st Respondent took further steps in pursuance of the said decision (A14 and A14A). The Petitioners paid for the said survey (A15). Cadastral Map (A16) and the Schedule of Parcels (A17) was prepared and lots 679 and 680 were to be given to the Petitioners.

It later transpired that a Cabinet Memorandum dated 07.09.2005 had been submitted by the 21st Respondent, Ferial Ashroff, Minister of Housing and Common Amenities recommending the lease and sale of land depicted in plan no. Am/AMP/2004/671 to the 7th Respondent, HDFC Real Estate Development Ltd., to implement a housing project in the Ampara town which the Cabinet approved (A30 and A31). The land in dispute is caught up in this decision.

The Petitioners have sought the following relief:

- (a) Writ of Certiorari quashing the decision of the Cabinet of Ministers contained in A31;
- (b) Writ of Certiorari quashing the decision of the 1st to 3rd and/or 5th and/or 6th Respondents or any one or more of them not to grant the Petitioners long term leases in respect of the said lands;
- (c) Writ of Mandamus compelling the 1st to 3rd and/or 5th and/or 6th and/or 8th to 59th Respondents or any one or more of them to act according to the decision contained in A23 and to grant them long term lease and/or a grant in respect of the said lands;
- (d) Writ of Prohibition prohibiting the 1st to 59th Respondents from evicting the Petitioners from the said lands and/or restricting their access to the said lands.

The foundation of the case of the Petitioners is that the decision A23 and the consequential steps taken as reflected in A14, A14A, A15, A16 and A17 created a legitimate expectation in them that they will be given long term leases/grants for the land in dispute.

The Respondents do not dispute the decision A23. They however state that the said decision was given by the Deputy Minister of Lands despite the fact of him being informed that steps had already been taken to hand over the land in issue to the National Housing Development Authority for a housing project for which the Respondents were awaiting Cabinet approval.

This position is not supported by the facts in this case as the mobile service was held on 18.03.2005 whereas the Cabinet Memorandum (A30) is dated 07.09.2005. Therefore by the time the Cabinet took a decision on the Cabinet Memorandum (A30) on 29.09.2005 (A31) the decision in A23 had been made. Yet nowhere in the Cabinet Memorandum (A30) is any mention made of the mobile service held on 18.03.2005 or the decision (A23) pertaining to the Petitioners made at the said service.

The arbitrariness of the Cabinet Memorandum (A30) and the decision thereon (A31) becomes visible upon a consideration of the subsequent developments. By letter dated 26.04.2007, the 27th Respondent informed the 59th Respondent that the aforesaid housing project is to be implemented in the Karangawa area which is situated within the limits of the Buddhangala National Park and that the Cabinet approval had been obtained without disclosing necessary and correct information. Furthermore, by letter dated 05.09.2007 (CA5) the Director General of Wildlife Conservation informed the 27th Respondent that a portion of state land situated within the Ampara National Park was to be used for the aforesaid housing project for which the approval of the Department of Wildlife Conservation has been sought. It is further stated that approval was refused by the Department of Wildlife Conservation for environmental conservation reasons.

In *Council of Civil Service Unions v. Minister for the Civil Service* [(1985) A.C. 374, 408-9] Lord Diplock stated that for a legitimate expectation to arise, the decision:

“must affect [the] other person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.” (emphasis added)

The terms of the representation by the decision-maker must entitle the party to whom it is addressed to expect, legitimately, one of two things:

- (a) That a hearing or other appropriate procedure will be afforded before the decision is made. (Procedural Legitimate Expectation); or
- (b) That a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied. (Substantive Legitimate Expectation)

In Sri Lanka the concept of procedural legitimate expectation has been recognized consistently. [Sundarkaran v. Bharathi and Others [1989] 1 Sri. L. R. 46, Desmond Perera v. Karunaratne, Commissioner of National Housing [1994] 3 Sri. L. R. 316(CA); [1997] 1 Sri. L. R. 148(SC), Laub v. Attorney-General [1995] 2 Sri. L. R. 88, Multinational Property Development Limited v. Urban Development Authority [1996] 2 Sri. L. R. 51].

The courts have accepted that procedural protection should be given where an individual has a legitimate expectation of procedural protection such as a hearing or a consultation before a decision is made. It is also accepted that where an individual has a legitimate expectation that a benefit of a substantive nature will be granted, or if already in receipt of the benefit, that it will be continued, then fairness too dictates that expectation of the benefit should give the individual the entitlement to be permitted to argue for its fulfilment. The controversy is whether in such situations the individual has a legitimate expectation that the benefit will be granted or continued. This is the question of substantive legitimate expectation.

The traditional objection to the doctrine of substantive legitimate expectation is two-fold:

- (a) Ultra Vires by fettering the discretion
- (b) The principle of legality

The arguments in favour of permitting substantive legitimate expectation are based on the principle of legal certainty. It is said that where a public body makes a promise it is in the interests of good administration that it should act fairly and should implement its promise.

Prior to the Court of Appeal decision in *R. v. Secretary of State for the Home Department, ex p Hargreaves* [(1997) 1 W.L.R. 906] the weight of authority was in favour of the developing doctrine of substantive legitimate expectations. There was direct support in *R. v. Secretary of State for the Home Department, ex p. Ruddock* [1987] 1 W.L.R. 1482 and *R. v. Ministry for Agriculture, Fisheries and Floods, ex p Hamble (Offshore)* [1995] 2 Al E.R. 714 while indirect support could be found in *R. v. Secretary of State for the Home Department, ex p Khan* [1984] 1 W.L.R. 1337.

However, in *R. v. Secretary of State for the Home Department, ex p Hargreaves* [(1997) 1 W.L.R. 906] the court cast a shadow over the doctrine of substantive legitimate expectation by suggesting that it was not for the court to determine the fairness of a Minister's decision not to accommodate a reasonable expectation which a policy would thwart, as this amounted to an intrusion into the merits of the decision. It was suggested that on matters of substance *Wednesbury* is the correct test, and that the doctrine of legitimate expectation, based on fairness, cannot be extended from procedural to substantive matters. It was for the decision-maker to undertake the balancing act: to decide whether the expectation should be protected or whether the public interest is strong enough to override the expectation. The court would only quash the decision to apply the new policy instead of the old, if it could be shown that the decision maker's judgement to do was irrational, *Wednesbury* unreasonable; it could not be quashed on the basis of fairness. The court in *R. v. Secretary of State for the Home Department, ex p Hargreaves* (supra) overrode *R. v. Ministry for Agriculture, Fisheries and Floods, ex p Hamble (Offshore)* (supra) in so far as court said that a balancing exercise should be undertaken by the court.

In *R. v. North and East Devon Health Authority, ex p. Coughlan* [(2000) 2 W.L.R. 622] the question was considered in detail by the Court of Appeal and it was stated that the starting point is to ask what the individual's legitimate expectation was, and suggested that where there is a dispute as to this it is to be determined by the court, with there being at least three possible outcomes with the court taking a different role in respect of each category.

- (a) The Court may decide the public body only needs to bear in mind its previous policy or assurances, giving it the weight, it thought fit, but no more, before deciding to change course. The Court will then only review the decision on conventional *Wednesbury* grounds.
- (b) The Court may decide that the representation gives rise to a legitimate expectation of procedural benefit and if so, the Court will require the opportunity for consultation to be given unless there is an overriding reason to withdraw from it.
- (c) The Court will in a proper case, decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the legitimacy of the expectation is established, it is for the Court to determine whether there is sufficient overriding interest relied upon for the change of policy or to justify departing from the promise. The Court is undertaking a balancing exercise between the public interest and the individual's interest. This category is a clear acceptance of the doctrine of substantive legitimate expectation. The Court defined the type of case of an enforceable expectation of a substantive benefit as being where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract. Promises rather than policies are more likely to fall within this category.

In Sri Lanka substantive legitimate expectation has been recognized in a few instances. [*Dayaratne and others v. Minister of Health and Indigenous Medicine and Others* [1999] 1 Sri. L. R. 393, *Mowlood v. Pussadeniya* [1987] 2 Sri. L. R. 287].

However, Weerasuriya J. in *Sirimal and others v. Board of Directors of the Co-operative Wholesale Establishment and others* [(2003) 3 Sri.L.R. 23 at 29] set out the position as follows:

"Therefore, when there is a substantive legitimate expectation in need of protection, it is for the decision maker and not the Court to judge whether that expectation should be protected or whether broader public interest is so strong as to override the expectation. The Court would only intervene if the decision maker's judgment was perverse or irrational. Thus, the present position is that the substantive protection of legitimate expectation has to be sought on the more traditional approaches of the English Law namely (a) procedural protection and (b) protection in terms of 'Wednesbury' unreasonableness."

This decision appears to shut out the third category discussed in *R. v. North and East Devon Health Authority, ex p. Coughlan*(supra). This court is bound by the Judgment of the Supreme Court unless it is one made *per incuriam* [*RamanathanChettiar v. Wickremarachchi and others* (1979) 2 Sri.L.R. 395].

However, in terms of Article 140 of the Constitution, this Court will issue writs "according to law" which has consistently been interpreted to mean English Common Law [*Wijesekera v. Assistant Government Agent, Matara* (44 NLR 533 at 538), *Nakuda Ali v. Jayaratne* (51 NLR 457 at 461), *Colombo Commercial Co. Ltd. v. Shanmugalingam* (66 NLR 26 at 32), *Mendis, Fowzie v.Goonewardena, Silva* ((1978-79) 2 Sri.L.R. 322 at 356, 363), *Mohidéen v. Goonawardene* (1986) 2 C.A.L.R. 487 at 493, *Sirisena Cooray v. Tissa Dias Bandaranaike* (1999) 1 Sri. L. R. 1 at 14-15].

To that extent the dicta of Weerasuriya J. in in *Sirimal and others v. Board of Directors of the Co-operative Wholesale Establishment and others*(supra) is *per incuriam* as *R. v. North and East Devon Health Authority, ex p. Coughlan*(supra) was not considered. Accordingly, in my view the third category identified in in *R. v. North and East Devon Health Authority, ex p. Coughlan*(supra) which allows for substantive legitimate expectation to be protected and enforced by court is, subject to the criteria identified therein, part of our law.

In fact I came to the same conclusion in *Galle Festival Guarantee Ltd. vs. Galle Municipal Council* [C.A. (PHC) No. 155/2010; C.A.M. 01.03.2019] which was cited with approval (at page 46) by Prasanna Jayawardena P.C. J. in *Ariyaratne and Others v. N.K. Ilangakoon, Inspector-General of Police and Others* [S.C. (FR) No. 444/2012; S.C.M. 30.07.2019] wherein his Lordship went on to examine more closely the application of the substantive legitimate expectation in Sri Lanka and held (at page 53):

"To sum up, I am of the view that, in cases where a court is deciding a claim that a petitioner's substantive expectation has been negated by a public authority's change of policy or change of decision which is said to have been adopted in the public interest, the court should adopt a two-step approach. First, to examine whether the constituent elements of the claimed substantive legitimate expectation are in line with the principles referred to earlier which describe the usual characteristics of a substantive legitimate expectation that a court may be inclined to protect and enforce. If those constituent elements or such of them as are deemed appropriate in the facts and circumstances of the case are present, the second step would be to apply a 'test' on the broad lines of that set out in DAYARATHNA. To be more specific, when doing so: the court should weigh the character and substance of the expectation and the prejudice caused to the petitioner by its frustration, on the one hand, against the importance of the public interest which led to the public authority's change of heart, on the other hand; and then decide whether that exercise of weighing the competing interests leads to the conclusion that the petitioner's expectation is of such weight and consequences of its frustration are so prejudicial to him when compared to the public interest relied on by the public authority, that the public authority's decision to change its policy and negate the expectation was disproportionate or unfair or unjust and amounted to an abuse of power which should be quashed; or whether the decision to change the policy should stand because the public authority has acted proportionately, fairly and justly when it decided that the petitioner's substantive legitimate expectation could not be granted since public interest demanded a change of policy".

The learned Senior Counsel contended that the Petitioners could not have had a legitimate expectation once they were informed by A9 that the land in issue was to be allotted to the UDA and the fact that the annual permit was not extended after 2002. However, the legitimate expectation claimed by the Petitioners are in fact rooted in the decision A23 taken with the participation of the Deputy Minister of Lands at a mobile service held to resolve land issues within the Divisional Secretariat Division of Ampara. It is not a representation made to the people at large but only to the Petitioners. Furthermore, it specifically states that the extent of the whole land is 15 acres and that after giving 40 perches for a business purpose to P.L.S. Perera and 20 perches each for residential purposes to the Petitioners, their brother Hewa Gajanayake Anura, the remaining land out of the 15 acres should be used for a housing project and that grants should be made to the Petitioners in respect of the same lands they were occupying under the permits.

In my view the representation made to the Petitioners come within the meaning of legitimate expectation that the law will protect. The whole purpose of the Minister of Lands initiating mobile services to solve land disputes with the participation of the Deputy Minister of Lands will be rendered redundant if people cannot rely on representations and decisions taken at such mobile services. I hold that the decision taken A23 created a legitimate expectation in the Petitioners that they will be given grants. No argument was made that such representation was ultra vires for any reason. The Cabinet decision was taken much later in September 2005.

Since the legitimate expectation so created in the Petitioners were negated without giving them a hearing, the Cabinet decision contained in A31, in so far as it affects the rights of the Petitioners are concerned, is quashed by a writ of certiorari.

That leaves the question of the writ of mandamus to be considered. The legitimate expectation sought to be enforced by a writ of mandamus in my view falls within public duty. The representation sought to be enforced was made only to the Petitioners and their brother (who is not a party to this application). Given that the decision A23 recognizes that the balance portion of 15 acres may be used for the housing project, this is a fit and proper case to recognize and protect the substantive legitimate expectation entertained by the Petitioners by

granting a writ of mandamus compelling the 1st to 3rd and/or 5th and/or 8th to 257th Respondents or any one or more of them to act according to the decision contained in A23 and to grant them long term lease and/or a grant in respect of the said lands.

For the avoidance of doubt, this decision in no way recognizes the validity of the Cabinet decision marked A31 given that certain approvals required for the implementation of the housing project has not been given for the reasons set out above. This Court has limited the relief to the rights of the Petitioners since they were seeking to protect their individual rights and not the larger public interest.

Writs of certiorari and mandamus issued.

The parties shall bear their costs.

Judge of the Court of Appeal

N. Bandula Karunaratna J.

I agree.

Judge of the Court of Appeal