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

In the matter of an application for mandate 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.

C.A. (Writ) Application
No: 0586 / 2007

1. Chithra Weerakkoon
   No. 10, Swarnadisi Pedesa,
   Koswatte, Nawala.

2. D.M.W. Kannangara
   No. 12, Waragodawatte,
   Waragoda, Kelaniya.

PETITIONERS

Vs

1. Hon. Jeewan Kumarathunga
   Minister of Lands,
   Ministry of Lands,
   'Govijana Mandiraya'
   No. 80/05, Rajamalwatte Road,
   Battaramulla.

1.A Hon. K.D. Lalkantha
Minister of Agriculture, Livestock, Land,
and Irrigation in Sri Lanka,
Ministry of Land and Land Development,
Mihikatha Madura,
Land Secretariat,
No. 1200/6, Rajamalwatta Rd,
Battaramulla.

2. Divisional Secretary
Bandaragama Divisional Secretariat,
Bandaragama.

3. Secretary
Ministry of Lands,
'Govijana Mandiraya',
No.80/05, Rajamalwatte Road,
Battaramulla.

4. Bandaragama Pradeshya Sabha,
Bandaragama.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : K.V.S. Ganesharajan with Vithusha Loganathan instructed by M. Mangaleswary Shanker for the Petitioner.
Kamran Aziz with Faharma Latheef instructed by Sivananthan and Associates for the 4th Respondent.
K.D. Sampath, S.C. for the 1st to 3rd Respondents.

Argued on : 25.08.2025.

Written Submissions: 01.10.2025 by the Petitioner.
Tendered On 30.09.2025 by the 4th Respondent.

Decided on : 29.10.2025.

Adithya Patabendige, J.

The Petitioners have filed the instant application against the 1st to 3rd Respondents seeking a mandate in the nature of *writ of mandamus* compelling the 1st Respondent to divest the land described in the schedule to this application (hereinafter referred to as *"the land"*), in terms of Section 39 (A) of the Land Acquisition Act (hereinafter referred to as *"the Act"*). The said land, known as, *"Godapragahawatte"* was previously owned by the Petitioners.

The Respondents, having tendered their statements of objections, objected to the said application, and sought its dismissal. During the pendency of proceedings, the 4th Respondent, *Bandargama Pradeshiya Sabha,* moved to intervene. This Court initially refused the said application for intervention. Being aggrieved by that order, the 4th Respondent preferred an appeal to the Supreme Court, which thereafter directed this Court to allow the intervention.

When this case was taken up for arguments, submissions were made by the learned Counsel on behalf of the Petitioner and the 4th Respondent. Learned State Counsel, who appeared for the 1st to 3rd Respondents, informed that he relied on the submissions made on behalf of the 4th Respondent. Subsequently, written submissions were tendered by the Petitioner and the 4th Respondent.

During the course of the arguments, learned Counsel for the Petitioners informed Court that the Petitioners were willing to accept the current market value of the land as compensation in lieu of the divestiture of the land in question.

The facts giving rise to this application can be narrated as follows.

By order dated 15/04/1976, the 1st Respondent, acting under Section 38(A) of the Act, directed the 2nd Respondent to take immediate possession of the land for the purpose of establishing a bus stand. The said order was duly published in the *Government Gazette* dated 15/04/1976 marked "P4".

Pursuant to the said order, possession of the land was taken by the Assistant Government Agent on 27/07/1976, as evidenced by the document marked, "4R5". Thereafter, a notice under Section 7 of the Act was published in the *Government Gazette* dated 15/07/1978, marked "P5" along with the petition.

While the acquisition proceedings were pending, a Partition Action bearing No.01/P was in progress before the District Court of Horana, and the interlocutory decree was entered allotting 4020/4400 shares of the land to the Petitioners. Consequent to the said interlocutory decree, the Petitioners made a written request to the 2nd Respondent to expedite the payment of compensation in respect of the said acquisition of the land by letter dated 22/04/1994 marked "P6".

The Acquiring Officer thereafter made an award under Section 17 (1) of the Act marked "P12" by the Petitioner and "4R8 (a) and (b)" by the 4th Respondent. Being dissatisfied with the said award, the Petitioners appealed to the Land Acquisition Board of Review, which awarded a sum of Rs. 184,000 to the 1st Petitioner and a sum of Rs. 30,600 to the 2nd Petitioner.

According to the document marked "4R9", it appears that the 2nd Petitioner had accepted the quantum of compensation awarded in Case No. KT. 438 on 08/02/2002. However, the particulars of the said case have not been furnished by any of the parties to this Court.

It is apparent from documents marked P14, P16, P17, P18, P20, P21, P25, P26, P28, P32, and P32(A) that the Petitioners repeatedly made representations to the relevant authorities, requesting either the payment of compensation or the divestiture of the unutilized portion of the acquired land.

It further appears that, in response to the aforesaid letters, the divestiture of the unutilized portion of the land had been recommended by several public authorities. The letters marked P10, P11, P15, P19, P21, and P22, clearly demonstrate that the matter had been under administrative consideration for a considerable period of time.

Pursuant to a request made by the Ministry of Agricultural Development, Mr. Prasanka de Silva, the Government Surveyor, surveyed the land and prepared the Plan marked "P33". There is no dispute between the parties that the land in question is accurately depicted in the said plan. Upon a perusal of the said plan, it is evident that Lot C represents the unutilized portion of the acquired land.

It is common ground that the land in question was acquired for the purpose of establishing the bus stand of Bandaragama. However, it appears that the Urban Development Authority subsequently decided to relocate the bus stand to a different site. Despite this change of circumstances, by letter dated 22/12/2006, marked "P31", the 2nd Respondent recommended

to the 3rd Respondent not to divest the said land, citing requests made by the Members of the Bandaragama Pradeshiya Sabha, the Provincial Council Members, members of the business community and the area organizer of the Sri Lanka Freedom Party opposing the divestiture.

However, the Secretary to the Ministry of Transport, under which the Sri Lanka Transport Board functions, informed the Secretary to the Ministry of Lands that the Ministry of Transport had no objection to the divestiture of unutilized portion of the land. The said letter dated 11/10/2004, marked "P19" along with the Petition.

It appears from the document marked "4R13", that the 4th Respondent paid the compensation on 05/09/2007, subsequent to the filing of this application, which the Petitioners had refused to accept. It is further noted that a meeting was convened at the Ministry of Agriculture, Livestock, Lands and Irrigation on 19/07/2004 with a view to resolving this matter as evidenced by the document marked "P15". This letter "P15" specifically stated that the land in question had not been officially handed over to the 4th Respondent as at 19/07/2004. None of the Respondents disputed the contents of the letter "P15" in their statement of objections.

Attention is invited to paragraphs 3, 5 and 6 of the said letter marked "P15" and it states as follows;

3). එහෙත් මේ වනතෙක් වන්දි ගෙවීමක් සිදුකර නොමැති අතර ඉඩමෙහි කොටසක ප්‍රාදේශීය සභාවේ වෙළඳ කුටි ඉදිකර බදු දී ඇති බව ප්‍රාදේශීය ලේකම් වාර්තා කර ඇත. මෙතෙක් නීත්‍යානුකූලව ඉඩමේ අයිතිය ප්‍රාදේශීය සභාවට පවරාදී නොමැත.

5). මේ සඳහා ප්‍රාදේශීය ලේකම් ඉඩම් හිමියන් (ප්‍රාදේශීය සභාවෙන් සහභාගී නොවීය.) සහභාගී කරවා මෙම අමාත්‍යාංශයේ දී 2004.07.19 දින සාක්ච්ඡාවක් පැවැත්වූ අතර, මෙම ඉඩමේ වෙළඳ කුටි ඉදිකර ඇති ඉඩම් කොටස බණ්ඩාරගම ප්‍රාදේශීය සභාවට පවරා දීමටත්, හිස්ව ඇති බිම් ප්‍රමාණය ඉඩම් හිමියන් වෙත අවසතු වූ කිරීමට සුදුසු බවත් එම අවස්ථාවේදී යෝජනා විය.

6). ඒ අනුව කඩ කාමර ඉදිකර ඇති ඉඩම් ප්‍රමාණය ප්‍රාදේශීය සභාවට පවරාදීමටත් එම ඉඩම් ප්‍රමාණය වෙනුවෙන් ගෙවිය යුතු වන්දි /පොලී මුදල් ප්‍රාදේශීය සභාවෙන් ගෙවීමටත් ක්‍රියා කළ යුතුය. ඒ සඳහා බණ්ඩාරගම ප්‍රාදේශීය සභාවේ සභාපති වෙත අවශ්‍ය උපදෙස් ලබා දෙන ලෙස කාරුණිකව දන්වමි.

According to the said letter, it appears that the possession of the land had not been legally handed over to the 4th Respondent by the Acquiring Officer. It is also observed that the 3rd Respondent on several occasions had informed the 2nd Respondent to address the grievances

of the Petitioners and to expedite either the compensation process or the divestiture of the unutilized portion of the land.

It is abundantly clear that, apart from the building constructed by the 4th Respondent, an unutilized portion of the land had been identified in the meeting held on 09/07/2004. At that meeting, attended by the Petitioners, the 2nd Respondent, and officials of the Ministry of Lands, it was recognized that only the building of the 4th Respondent which was used as shopping stalls (වෙළඳ කුටි) existed on the property as of that date. The bus stand had already been relocated to another site, and notably, there were no other constructions such as a Buddha statue or public lavatories on the land as of 09/07/2004.

According to the document "4R5", possession of the land after the acquisition was taken on 15/04/1976. As stated earlier, the purpose of the acquisition was to establish a bus stand. However, it is evident from the document marked "P21" that the said bus stand had been relocated to another site prior to 03/07/1994, and by letter dated 05/07/1994, the relevant authorities sought advice regarding the divestiture of the land.

It further appears from "P21", that, even after 18 years from the date of acquisition, the Acquiring Officer had failed to pay compensation to the lawful owners. The said document also indicates that the bus stand was not intended to be a permanent structure, as it had already been relocated elsewhere. The same letter further reveals that possession of the land had subsequently been handed over to the 4th Respondent on 07/02/1996, and a two-storey shopping complex had thereafter been constructed on a portion of the said land.

Even though the notice under Section 2 was published as far back as 18/02/1975, the Acquiring Officer failed to pay compensation until this application was filed in the year 2007. The Petitioners, after a lapse of more than three decades, were compelled to seek judicial intervention to obtain relief in respect of the said acquisition. During the entire period, the relevant public officials, including the 1st to 3rd Respondents, had merely exchanged letters without providing a viable solution to the Petitioners.

The Petitioners, by their letter dated 16th August 2004 marked "P16", had objected to the handing over of possession of the land to the 4th Respondent without the payment of compensation. In the said letter, the Petitioners had requested that the land be divested in their favour as compensation had not yet been paid in respect of the acquisition. They had further stated that upon the issuance of a proper divesting order, they would raise no objection to a fresh acquisition of the land and the payment of compensation in accordance with the law.

Although paragraph 15 of the petition, wherein the letter marked "P16" is referred to, has been expressly admitted by the 1st to 3rd Respondents in their statements of objections, they have refrained from disclosing whether any reply had been sent to the said letter. The 4th Respondent, in paragraph 40 of its statement of objections, has categorically stated that it was unaware of the contents of the paragraph 15 of the petition. This Court observes that such conduct on the part of the Respondents raises serious questions as to the manner in which the Petitioners' representations were dealt with.

The 1st Respondent, being the Minister of the Lands, vested with the power to decide matters relating to the acquisition and divestiture of lands has a bounden duty to take appropriate steps to redress the grievances of the Petitioners or at least to give necessary instructions to the 2nd and 3rd Respondents to address the issues of the Petitioners. The complete failure to respond to the Petitioners' letter reflects irresponsible and lethargic attitude of him and which caused unnecessary hardship to citizens seeking protection of the law.

Furthermore, the letter marked "P15", signed by the Deputy Director (lands) on behalf of the Secretary to the Ministry of Lands specifically stated that the possession of the land had not been properly handed over to the 4th Respondent. This fact casts doubt on the propriety of the 4th Respondent's continued occupation. It is therefore a matter of concern how the 1st to 3rd Respondents have decided to align with the 4th Respondent despite the absence of lawful transfer of possession.

As observed earlier, the letter marked "P31", written by the 2nd Respondent demonstrates that, disregarding several letters and recommendations made by the 3rd Respondent, the 2nd Respondent had recommended the handing over of the land to the 4th Respondent, acting purely on the requests of politicians and the business community, and without due regard to the lawful rights of the citizen concerned. Such conduct reveals a clear departure from the statutory duty imposed upon public authorities.

Such conduct, this Court observes, undermines public confidence, and erodes the trust reposed by citizens in public authorities to act fairly, lawfully, and in good faith.

It is apparent from the conduct of the Respondents especially 2nd and 3rd Respondents, that they completely disregarded the rights of the Petitioners to enjoy their property rights whether movable or immovable. In the case of ***Manawadu v The Attorney General (1987) 2 SLR 30,*** Chief **Justice Sharvananda** held that;

*"Among the important rights which individuals traditionally have enjoyed is the right to own property. This right is recognised in the Universal Declaration of Human Rights (1948). Article 17 (1) of which states that everyone has the right to own property and Article 17(2) guarantees that no one shall be arbitrarily deprived of his property. The contention of State Counsel negates this right. An intention to provide for arbitrary infringement of human rights cannot be attributed to the legislature unless such intention is unequivocally manifest. When Parliament is enacting a statute, the courts will assume that it had regard to the Universal Declaration of Human Rights and intended to make the enactment accord with the Declaration and will interpret it accordingly (**Vide Lord Denning in R v. Chief Immigration Officer**)".*

It is not in dispute that the Petitioners were the original owners of the land in question. However, even after 40 years since the acquisition of their land, the responsible public officers have failed to discharge their statutory duties. Such lethargic, inefficient, and irresponsible conduct on the part of the Respondents has caused considerable hardship and injustice to the Petitioners.

The prolonged failure of the Respondents to pay compensation for the acquisition of the Petitioners' land amounts to an arbitrary deprivation of property. The Respondents, being public officers, were under a statutory and moral duty to ensure that compensation was paid without unreasonable delay. Their persistent inaction for over four decades constitutes a grave violation of the Petitioners' right to property, contrary to the principles enshrined in the Universal Declaration of Human Rights.

In the case of ***De Silva v Athukorala, Minister of Lands, Irrigation and Mahaweli Development and Another (1993) 1 SLR 283*** at page 293 **Justice Mark Fernando** states as follows.

*"The argument that an executive discretion of this nature is unfettered or absolute, that the repository of such a discretion can do what he pleases, is not a new one. But it is one which has been unequivocally rejected. The discretion conferred in 1979 must also be considered in the background of the constitutional guarantees which sought to make Rule of Law a reality, and in particular Article 12. An example was suggested to the learned Deputy Solicitor General: where after an acquisition of one hundred contiguous allotments of land, for an irrigation project, or for a road, the project had to be abandoned, for technical, financial or political reasons, the Minister then exercised his discretion under Section **39 A** to divest some*

allotments, while retaining others (in circumstances in which no rational distinction could be made between the two categories), perhaps influenced by personal or political considerations. It is readily conceded that such a decision could be challenged in an application under Article 126. That alone is enough to establish that the discretion under Section 39A is not unfettered; and here, that the discretion under 39A is not unfettered; and here, out of seven lands acquired in one acquisition proceeding, the first lot has been divested, but not other lots which are equally unaffected by the proposed shopping complex, and no grounds have been urged to justify that discrimination.…"

In the case of ***Sugathapala Mendis v Chandrika Kumaranathunga (2008) 2 SLR 339***, the land acquired for a public purpose was sold to a private entrepreneur to set up a Golf Resort. **Justice Thilakawardane** held at page 352 as follows:

"The principle that those charged with upholding the Constitution – be it a police officer of the lowest rank or the President – are to do so in a way that does not violate the "Doctrine of Public Trust" by state action/inaction is a basic tenet of the Constitution which upholds the legitimacy of Government and the Sovereignty of the People. the "Public Trust Doctrine" is based on the concept of the powers held by organs of Government are, in fact, powers that originate with the People, and are entrusted to the Legislature, the Executive and the Judiciary only as a means of exercising governance and with the sole objective that such powers will be exercised in good faith for the benefit of the People of Sri Lanka. Public power is not for personal gain or favour, but always to be used to optimize the benefit of the People. To do otherwise would be to betray the trust reposed by the People within whom, in terms of the Constitution, the Sovereignty reposes. Power exercised contrary to the Public Trust Doctrine would be an abuse of such power and in contravention of the Rule of Law. This court has long recognized and applied the Public Trust Doctrine, establishing that the exercise of such power is subject to judicial review. (Vide. ***De Silva v Athukorala (1993) 1 SLR 283 at 296 – 297; Jayawardane v Wijethilake (2001) 1 SLR 132 at 149,150****)."*

When considering the powers of the Minister under Section 39 A of the Act, ***Justice Mark Fernando*** in ***De Silva v Athukorala (supra) at page 297*** *observed* as follows.

"I hold that the true intent and meaning of the amending Act was to empower the Minister to restore to the original owner land for the acquisition (or retention) of which there was originally (or subsequently) no adequate justification, upon the fulfilment of the stipulated conditions. It was a power conferred solely to be used for the public good, and not for his

personal benefit; ***it was held in trust for the public****; to be exercised reasonably and in good faith, and upon lawful and relevant grounds of public interest."*

In this application, as observed earlier, the land in question was acquired for the purpose of establishing a bus stand in 1976 and as per the letters issued by the Secretary or on behalf of the Secretary to the Ministry of Lands, the bus stand was relocated to another site. The Petitioners repeatedly requested the compensation for the above acquisition from the 1st to 3rd Respondent, but it was failed.

Thereafter, the Petitioners requested to divest the unutilized portion of the land, which was approved by the Secretary to the Ministry of Transport and officials of the Ministry of the Lands, but it has not been implemented by 1st to 3rd Respondents. The land was initially acquired for the establishment of the bus stand. However, none of the Respondent failed to give a plausible explanation how the shopping complex was constructed by the 4th Respondent without legally handing over the said land.

On the other hand, the conduct of the 2nd Respondent, disregarding lawful recommendations and yielding to extraneous influence, stands in clear violation of Public Trust Doctrine.

In this application, the Petitioners seek to compel the 1st Respondent Minister to make a divesting order in terms of Section 39A (1) of the Land Acquisition Act.

Section 39A states as follows;

39A (1) Notwithstanding that by virtue of an Order under section 38 (hereinafter in this section referred to as a " vesting order" any land has vested 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 (hereinafter 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.*

The Minister shall satisfy himself of the four conditions set out above before making a divesting order.

Considering the instant application, it is apparent that, up to the filing of this application in the year 2007, compensation had not been paid. According to the Survey Plan No. KA/BND/07/19 dated 23/03/2007 marked as "P33" prepared by the Surveyor General, all boundaries were shown by the Grama Niladhari of No.653 Bandaragama and an Investigation Assistant Roshan Amila. It further proves that lot No.C had not been improved or used for any public purposes.

Notably, 1st to 4th Respondents do not deny the contents of the said Plan. Not only that, this plan stated remaining lots (other than the land in question), as proposed to allocate for the 4th Respondent. It means the said portions of the land had not been given to the 4th Respondent as at 23/03/2007. Therefore, any construction done by the 4th Respondent shall be considered as unauthorized constructions.

Considering the above, my considered view is that the Petitioners in this application have satisfied the conditions of Section 39A (2) of the Act.

Another argument advanced by the learned Counsel who appeared for the 4th Respondent is a portion of the acquired land cannot be divested in terms of Section 39A of the Act. As **Justice Sarath Silva** (as he then was) said that ***piecemeal divestiture*** is impossible in terms of Section 39A of the Act. (Vide. ***Kingsley Fernando v Dayaratne and others (1991) 2 SLR 129, Mendis v Jayarathne (1997) 2 SLR 215, Mawathgama Pradeshiya Sabhawa v Hon. Janaka Bandara Thennakoon CA Writ 285/2008 dated 30/08/2013***).

However, it is to be noted that divestiture of a portion of the Acquired Land was accepted in ***De Silva v Athukorala (supra), G.K. Keragala and another v Divisional Secretary,***

Bandaragama and Four others (2005) BLR 43*, *Rathnayake v Hon. Janaka Bandara Thennakoon CA Writ 302/2014 dated 20/02/2020.

This Court is mindful of the dicta in ***Kingsley Fernando v Dayarathne*** (supra) and other Judgements which expressed reservation about ***piecemeal divestiture*** on the basis that Section 39 A should be applied to the entirety of an acquisition. However, it is my considered view that the above decisions must be understood in their factual context.

The other line of authorities, particularly the ***Silva v Athukorala*** (supra) has recognized that where the intended public purpose has ceased in respect of portion of the acquired property, Section 39A empowers the Minister to divest such unutilized portion.

Moreover, where only a portion of the acquired land has been utilized for a public purpose, and the balance has remained unutilized for decades, the principle of fairness demand that such unutilized portion be divested. Section 39 A (2) of the Act does not prohibit the Minister from making a divesting order in respect of a portion of the acquired land, provided that the statutory conditions set out in Section 39 A (2) of the Act are satisfied.

In this application, the evidence demonstrates that compensation had not been paid, the intended public purpose had ceased long ago, and the land or at least substantial portion of it had remained unutilized for decades. Despite repeated requests and recommendations by the relevant officials, the 1st Respondent took no steps to make a lawful determination to issue an appropriate order. Such prolonged inaction constitutes a failure of statutory duty and a breach of the obligation owed to the Petitioners under the **Principle of Fairness,** and the **Doctrine of Public Trust**.

In view of the foregoing reasons, it is my considered view that the 1st Respondent has failed to discharge the public duty and public trust imposed upon him under Section 39 A of the Land Acquisition Act. The said provision entrusts the Minister with a clear statutory responsibility to act when the conditions for divestiture are satisfied.

Hence, I issue a Writ of Mandamus directing the 1st Respondent, the Minister of Lands to divest the **Lot C** of Surveyor General's plan No. KA/BND/07/19 dated 23/03/2007 marked as "P33".

It is observed that compensation has already been determined in respect of the entirety of the acquired land. In the event of divestiture, the Respondents shall be entitled to deduct a

proportionate value from the compensation already determined, corresponding to the extent of land so divested.

However, there is no legal impediment for the state to re-acquire the divested portion in the future, provided that compensation is paid to the owners on the basis of the current market value at the time of such re-acquisition.

I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL