

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

In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Dona Theresa Gunawathi Senarathne alias Senarathne Mudiyanselage Dona Thilaka Gunawathie Hamine, No. 23, “Wijayagiri”, Poregedara, Padukka.

CA (Writ) App. No. 40/2023

PETITIONER

Vs.

1. Hon. Harin Fernando,
Minister of Tourism and Land,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6,
Rajamalwatta Avenue,
Battaramulla.

- 1A. Kuragamage Don Lalkantha,
Minister of Lands,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6, Rajamalwatta Avenue,

Battaramulla.

2. Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.
3. Nimesh Herath,
Chairman,
Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.
- 3A. L.B. Kumudu Lal,
Chairman,
Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”,
Battaramulla.
4. Homagama Pradeshiya Sabha,
Court Road,
Homagama.
5. Sampath Chaminda Jayasinghe,
Chairman,
Homagama Pradeshiya Sabha,
Court Road,
Homagama.
6. B.A.D. Chinthaka,
Divisional Secretary,
Homagama Divisional Secretariat,
Court Road,
Homagama.
7. G.D. Keerthi Gamage,
Commissioner General of Land,

Department of Land Commissioner
General,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

- 7A. Chandana Ranaveera Arachchi,
Commissioner General of Land,
Department of Land Commissioner
General,
“Mihikatha Medura”,
Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.
8. Hon. Attorney General,
Attorney General’s Department,
Hulfsdorp,
Colombo 12.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Upendra Walgampaya instructed by Niluka Dissanayaka for the Petitioner.

Amasara Gajadeera, S.C. for the 1st to 3rd and 6th to 8th Respondents.

Argued on: 20.11.2025

Delivered on: 19.01.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner had been the owner of the land morefully described in the Schedule identified as ‘*Millagahawatta Amunuwela*’ in extent of One Acre and Twenty-Two Perches, which is depicted in the plan marked and annexed to the Petition as **P5**. The 1st Respondent, having published notice under Section 2 of the Land Acquisition Act, No. 9 of 1950 (as amended) (hereinafter referred to as the “LA Act”) took immediate possession thereof for a public purpose after publishing the Section 38A notice marked and annexed to the Petition as **P6**.

The said immediate possession was taken as far back as 19.03.2001. Nevertheless, the said land has not been utilized by the respondent for the public purpose for which it was acquired to date (till the Petition was instituted). In addition to that, no compensation has been paid. Therefore, the Petitioner, who was 87 years old at the time this Petition was made, sought a divesting order in terms of Section 39A of the LA Act by this Application.

After formal notice was issued, the Respondents filed their respective Objections. It was their objection that the land is still to be utilized for public purposes, particularly that a shopping complex is supposed to be set up on the land, and therefore the application should be dismissed. After counter affidavits were filed, the matter was argued before me and His Lordship Justice Karalliyadde. However, due to his untimely death, the parties and counsel agreed to have the judgement prepared and delivered by me. Hence, this judgement.

Arguments

The thrust of the main contention advanced by Mr. Walgampaya, Counsel for and on behalf of the Petitioner is that though the land had been acquired by the Respondents, and the entire acquisition process took place in due course after publishing the Section 2 notice in 2000, in 2001 itself as reflected in **P6**, the immediate possession of the land in suit had been taken on behalf of the Government. However, since then, the said land has not been put to any use or it has not been utilised for its intended public purpose for which it was acquired or any other public purpose; it remains without been utilised, and no compensation has been paid thus far. Accordingly, Mr. Walgampaya argued that all the ingredients stipulated in Section 39A of the Land Acquisition Act have been satisfied by the Petitioner to obtain a divesture or direction to divest the said land to her as the original owner thereof.

Further, it was argued for and on behalf of the Respondents, that State policy is not subject to judicial review; therefore, this Application is liable to be dismissed.

Private land acquired

Before I come to consider the arguments, I wish to mention the following undisputed facts, as the parties have placed their arguments based on these undisputed facts, as well as to avoid repetition in the body of my judgement.

The Petitioner became the owner of a part of Millagahawatta, as depicted in the Plan marked as **P1** annexed to the Petition. The relevant portion is also depicted as Lot 1B of Plan No. 527A, and the Petitioner became the owner thereof by virtue of the Deed marked as **P2**.

Thereafter, the predecessor of the 6th Respondent published a notice dated 15.11.2000 under Section 2 of the LA Act, which is marked as P4 annexed to the Petition. It is also undisputed that the predecessor of the 6th Respondent has taken over immediate possession of the land thereof in terms of Section 38A proviso of the LA Act in respect of Lot Nos. 1, 2, 3 and 4 as depicted in the Plan marked as P5, and the relevant Gazette notification is annexed to the Petition as P6.

Subsequently, the Petitioner was also informed of the taking over of immediate possession by the document marked as P7 annexed to the Petition. Thereafter, the Surveyor General had informed the Petitioner, by letter marked as P8, to point out the boundaries for the purpose of preparing the final plan required for the publication under Section 5. However, following the preliminary survey, the Surveyor General prepared Plan P9, wherein Lot Nos. 1, 2, 3, 4 and 5 were identified as lots acquired from the Petitioner.

Thereafter, the Petitioner received a notice under Section 9, marked as P10 and dated 26.10.2009. Consequently, an inquiry was conducted by the predecessor of the 6th Respondent in terms of Section 10, as reflected by documents marked P11 and P12. By letter marked as P13, the Petitioner was requested to participate in the said inquiry to claim compensation under the LA Act.

Subsequently, the Petitioner was informed that she had been awarded a sum of Rs. 872,000/- (Eight Hundred and Seventy-Two Thousand Rupees) as compensation, by letter dated 31.05.2012, marked P16. Thereafter, the Petitioner appealed to the Appeal Tribunal established under the Land Acquisition Act; however, the said appeal was dismissed.

Nevertheless, so far, no compensation has been paid to date, and further, no steps have been taken by any of the Respondents to utilize the land for the purpose for which it was acquired. Therefore, the Petitioner pursued an application for a divestiture, by letters marked P20, P27(a) and P28. In

the meantime, the 6th Respondent, by letter marked **P31**, informed the Petitioner that if a proper application was made, her application for divestiture would be considered.

However, since no further action was taken thereafter, the Petitioner has instituted the above-styled Application before this Court seeking relief.

In light of the above undisputed facts, I now proceed to consider the arguments advanced by both parties to determine whether divestiture is justifiable in terms of the law.

The Petitioner seeks a divesture on the basis that though the Section 2 notice for the said acquisition had been issued and published as way back as in 2000, and thereafter in 2001, pending the formal acquisition, the immediate possession of the land in suit was taken by the predecessor of the 1st Respondent by the notice published under the Gazette marked and annexed to the Petition as **P6**; in so far, the land had not been used for the purpose for which it was acquired. In addition to that, no compensation has been paid to the Petitioner although it was decided to be paid.

The Petitioner seeks the said divesture in terms of Section 39A of the LA Act; therefore, I will now consider it under each and every ground on whether the Petitioner is entitled to succeed her claim for divesture.

No compensation paid

The said land had been acquired for the purpose of the expansion of the Meegoda Homagama Town, and the setting up of a shopping complex. In that behalf, the predecessor of the 6th Respondent had published a notice marked as **P4**. Thereafter, by **P6**, possession thereof has been taken over immediately under Section 38A of the LA Act.

Subsequently, though compensation has been claimed by the Petitioner, no compensation has been paid as reflected by the documents marked and annexed to the Petition. Though the compensation was decided by the Acquisition Officer in terms of Section 17(1), the Petitioner has appealed against the said compensation to the Land Acquisition Board of Review; the said appeal has also been rejected. Accordingly, the Petitioner had other no option and thus, sought to invoke the jurisdiction of this Court by this Application.

As such, it is my view that although the land has been acquired, so far, no compensation has been paid to the Petitioner; therefore, the first ground on which the Petitioner seeks the divesture is satisfied.

Purported public purpose

The second matter that should be considered is whether the land has been utilised for the public purpose for which it has been acquired. As clearly indicated by the documents and conceded by the Respondents, thought the land had been acquired for the above-mentioned public purposes, so far it has not been utilised for that purpose or any other public purpose; it still lies in idle as the public purpose for which it was acquired for appears to be abandoned. As such, the Petitioner has made several applications to the relevant authorities, including the 1st, 2nd, and 3rd Respondents as borne out by the documents marked as P11 to P15 and P20 to P27(a) and P28 for a divesture. Therefore, I hold that the second ground for a divesture is also satisfied.

No improvements

In addition to that, the Petitioner has established that the land has not been utilised and no improvement is effected, as reflected in P24(a) to P24(d), the photographs wherein the land is

depicted with shrubs and hedges. As such, the Petitioner has made the appeal **P20** to the 2nd Respondent for a divesture.

However, in response to the said request, one of the Assistant Secretaries of the Ministry of Lands has recommended the same by the document dated 28.03.2023, which is not marked. In fact, the Homagama Divisional Secretary (predecessor of the 6th Respondent) has written a letter dated 13.12.2022 to the Director of the 2nd Respondent, seeking his permission for a divesture; the said letter is marked as **P31** annexed to the Petition. Accordingly, it is very clear that the public purpose for which the land was acquired is abandoned, which even the predecessor of the 6th Respondent has identified and recommended a divesture and sought permission by **P31**. Thus, the said letter is annexed to the Petition along with the counter affidavits.

As such, it is my view that the Petitioner has satisfied all the relevant three ingredients, and therefore, is entitled to a divesture.

In the circumstances, I wish to rely on the following dictum of Justice Mark Fernando's judgement in *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another*¹ to support the reasoning above, as the circumstances in the said case are very similar to the circumstances in the present case;

"The Act contemplates a continuing state of things; it is sufficient if the lack of justification appears at any subsequent point of time; this is clear from paragraph (b) of section 39A(2): if the land has not been used for a public purpose after possession has been taken, there is

¹ [1993] 1 Sri L.R. 283

then an insufficiency of justification; and the greater the lapse of time, the less the justification for the acquisition.”²

It was also asserted in the Petition, as well as raised in the Arguments, that if the land had remained with the Petitioner, she would have cultivated it and earned the harvest since it is arable land. Since immediate possession was taken in 2001, she has lost all that. Alternatively, she could have used it for commercial purposes or sold it for her benefit.

All those alternative arguments have not been countered by the Respondents or even challenged. Therefore, it is my view that the economic rights that the Petitioner could have enjoyed were deprived by the acquisition and immediate possession of the land; thus, such economic loss should be considered in view of the following dictum of Justice Somawansa in the case of *Mahinda Katugaha v. Minister of Lands and Land Development and Others*³;

“It is my considered view that before the 5th respondent leased the appellant's lands to the 4th respondent for a purported private hospital and resort project which is a profit making venture of a commercial nature the 5th respondent should have offered the appellant's land to the appellant himself to develop the land for the public purpose, for development of public utilities. In fact the appellant had submitted an affidavit with his counter objections in the Court of Appeal wherein he and several persons who claimed to be owners of the land acquired and leased to the 4th respondent had stated that they can develop the land for a public purpose and that they have the money to do so. Though counsel for the 4th respondent contends that this proposal is unacceptable on the face of it as no mention is

² *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another* [1993] 1 Sri L.R. 292

³ *Mahinda Katugaha v. Minister of Lands and Land Development and Others* [2008] 1 SLR 285

made of what the project is or how the financing is to be had, it appears to me that it would have been just and fair if the appellant was given the opportunity to place before the 5th respondent the proposal for development of public utility before leasing out the appellant's land to a profit-making private venture of a commercial nature."

However, in this case, I cannot award damages as it is not in issue. Still, if the Petitioner desires to do so, she can assert her rights in the correct Court.

State policy

Further, the learned State Counsel advanced an argument that State policy is not subject to judicial review. It must always be remembered that State policy is always embodied in an Act of Parliament, which is an accepted norm in a constitutional democracy, and State policy so reflected is jealously enshrined in Section 39A. If the State policy is to be different, the government of the time should change it, because they are empowered to do so; however, for that purpose, they must follow the procedure provided by law. In this scenario, neither the State nor the government has changed the policy reflected in Section 39A.

In addition to that, I must hold that the government is not the State; the government is only a part of the State⁴. The concept of the State is a broader one, and State policies are mainly enshrined in the Constitution. If, in the name of State policy, any form of government becomes destructive of what is enshrined in the Constitution, it is the right of the people themselves to change the government, as declared in the Declaration of Independence of America on the 4th of July 1776.

⁴ Laura S. Jensen (2008). Government, the State, and Governance. *Polity*, 40(3), 379-385; Ginsburg, T. (2017), 'Written constitutions and the administrative state: On the constitutional character of administrative law' in Susan Rose-Ackerman, Peter L. Lindseth, and Blake Emerson (eds), *Comparative Administrative Law* (Edward Elgar Publishing 2017)

Based on those fundamental principles, constitutional democracies adopt and promulgate their Constitutions as the *grundnorm* of the State⁵.

Therefore, policies enshrined therein, and other general norms such as the provisions of the Land Acquisition Act, including divestiture, are only hanging from the *grundnorm*, deriving their sustaining power from it. If the *grundnorm* collapses, the entire system will collapse.

Therefore, it must always be remembered that governments are instituted among men to secure the ends of life, liberty, and pursuit of happiness, which include the right to property that the members of the State enjoy, and which is clearly recognized under State policy. Accordingly, the rights of the ordinary members of society cannot be trampled upon by the iron boots of any government in the name of State policy. As such, the argument advanced is baseless and has been made without an understanding of first principles.

Conclusion

Based on the reasons adumbrated above, I grant reliefs as prayed for in prayers (b) and (c) of the Petition, and further order Rs. 105,000/- (One Hundred and Five Thousand Rupees) as cost of litigation payable by the Respondents jointly and severally to the Petitioner.

JUDGE OF THE COURT OF APPEAL

⁵ R.W.M. Dias (1985), *Jurisprudence* (5th Edition, Butterworth & Co Publishers Ltd 1985), Chapter 17 “The Pure Theory”, 358-373.