

**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.*

Sanjaya Thavanesan,  
No. 20/2,  
28<sup>th</sup> Lane,  
Flower Road,  
Colombo 03.

**CA (Writ) App. No. 735/2025**

**PETITIONER**

**Vs.**

1. Harin Fernando,  
Minister of Tourism and Land,  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6,  
Rajamalwatta Avenue,  
Battaramulla.
2. H.M.B.P. Herath,  
Secretary,  
Ministry of Tourism and Land,  
“Mihikatha Medura”,  
Land Secretariat,  
No. 1200/6,  
Rajamalwatta Avenue,

Battaramulla.

3. Sri Lanka Land Development Corporation,  
No. 03,  
Sri Jayawardenepura Mawatha,  
Welikada,  
Rajagiriya.
4. The Chairman,  
Sri Lanka Land Development Corporation,  
No. 03,  
Sri Jayawardenepura Mawatha,  
Welikada,  
Rajagiriya.
5. The Divisional Secretary,  
Divisional Secretariat- Kelaniya,  
No. 23/5D, Bangalawatta Road,  
Kadawatha.
6. Dr. Bandula Gunawardene,  
Minister of Transport and Highways,  
7<sup>th</sup> Floor,  
Sethsiripaya Stage II,  
Battaramulla,  
Sri Lanka.
7. The Secretary,  
Ministry of Transport and Highways,  
7<sup>th</sup> Floor,  
Sethsiripaya Stage II,  
Battaramulla,  
Sri Lanka.
8. W.A.D.S. Gunasinghe,  
General Manager Railways,  
Sri Lanka Railways Department,  
Sri Lanka Railway Headquarters,  
PO Box 355, Maradana,  
Colombo 10.

9. Hon. Attorney General,  
Attorney General's Department,  
Hulfsdorp,  
Colombo 12.

**RESPONDENTS**

**Before:** S. U. B. Karalliyadde, J

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

**Counsel:**

Avindra Rodrigo, P.C. with Ashiq Hassim, Shamalie Jayathunga and Nishika Fonseka  
instructed by W.A. Ashan Indika for the Petitioner.

Jemial Sourajah, S.C. for the Respondents.

**Argued on:** 15.09.2025

**Delivered on:** 09.10.2025

## **Judgement**

### **Introduction**

According to the Petition, the Petitioner had become the owner of the land (the three plots of land) sought to be divested in this application as far back as in 2006. However, the three plots of land had been acquired by the Government. As such, the Section 2 notice had been issued in 1979 for the acquisition of a public purpose, followed by the decision to take immediate possession of the land by the Government in terms of Section 38(a) of the Land Acquisition Act, No. 9 of 1950 (as amended) (hereinafter referred to as the “LA Act”) .

After taking over the possession, the Government has not utilized the land (the three plots of land) for the public purpose for which it had been acquired. Therefore, the Petitioner has sought a divesting order from the 1<sup>st</sup> Respondent on the basis that the public purpose for which the land was acquired had been abandoned by the Government; no improvement has been made by the Government on the land upon acquisition, and no compensation for the acquisition had been paid to the Petitioner. In those circumstances, the Petitioner had sought an order for a divestiture in terms of Section 39A of the LA Act from the Minister; failing which the Petitioner has filed this application, and has sought *inter alia* the following reliefs;

*“(d) grant and issue a mandate in the nature of Writ of Mandamus compelling and/or directing the 1<sup>st</sup> Respondent to make order divesting unto the Petitioner, in terms of Section 39A of the Land Acquisition Act. The subject land of the Petitioner described in the Schedule to Deed of Gift No. 80 dated 07.11.2006 attested by Sandun Gamage N.P (P1) and depicted in Plan No. 677 dated 03.10.1968 prepared by S.Lokanthan, L.S (P2) and/or*

*in Preliminary Village Plan Nos. 140 (P23A), 2792 (P23B) and 2793 (P23C) in so far as it reflects and relates to the land of the Petitioner;”*

The Respondents, after formal notices, have filed limited objections, and according to the objections, the Petitioner cannot maintain this application as formulated, since he became the owner or entitled to the land long after the acquisition. This was argued before us on 15.09.2025; hence this judgement.

### **Arguments**

The thrust of the main contention of Mr. Rodrigo, the learned President’s Counsel for the Petitioner, is that the Petitioner seeks a *Writ of Mandamus* for a divesting order from the 1<sup>st</sup> Respondent, in terms of Section 39A of the LA Act on three grounds; namely, nonpayment of compensation in respect of the plots of land that the Petitioner is seeking to divest, the plots have not been utilized for 46 years after the issuance of the Section 2 notice by the Respondents, and no improvement has been effected by the public authority who has acquired the land for a particular public purpose.

Elucidating on the same contention, Mr. Rodrigo contended that no compensation has been claimed either by the Petitioner, and no compensation has been paid in respect of which the Petitioner seeks a divesting order; additionally, after the acquisition for a particular public purpose by the Government, no improvement whatsoever has been effected on the acquired land. Therefore, the Petitioner is entitled to the main relief prayed for in the Petition.

However, on the other hand, Ms. Sourajah, the learned State Counsel, contended that compensation was not claimed by the Petitioner or his predecessor, as they have slept over their rights at the correct stage. She contends that he should have claimed compensation when the claim for compensation was called for in terms of Section 9 of the Land Acquisition Act.

The next contention of Ms. Sourajah is that except for Lot No.1 and Lot No.44, compensation has been claimed and paid by the Government for Lot No.8. Therefore, the Petitioner cannot seek any divesting order now, although the Petitioner may not have received compensation.

The next contention of Ms. Sourajah is that the Petitioner became entitled to the 3 plots of land somewhere in 2006, whereas the acquisition had taken place long before that. Therefore, the Petitioner cannot now ask for a divesting order for not paying compensation. Further, she contended that namely, not utilizing the land for the purpose for which it was initially acquired, and non-effecting of improvement, do not arise in this application if the Court decides the compensation issue in favour of the Petitioner.

However, she conceded that compensation had not been claimed by the Petitioner or the predecessors-in-title in respect for the three plots of land sought to be divested.

In reply, Mr. Rodrigo contended that in terms of paragraphs 24, 25, and 26 of the Objections, the Respondents have clearly admitted that no compensation has been paid in respect of the three plots of land. Therefore, he argued that his client is entitled to a divesting order.

### **The Petitioner's claim**

The Petitioner became entitled to the three plots of land by virtue of the Deed of Gift executed on 8<sup>th</sup> November 2006, marked as **P1**. The said parcels of land are depicted in **P2**, which is in extent of 2 Acres 1 Rood and 19 Perches. The devolution of title is also indicated in the titled report marked as **P3** along with the Petition. The said land is also registered in the folios marked as **P3(a)** along with the Petition. The relevant lands are also depicted as Lot No.44 of the Preliminary Village Plan No. 140, Lot No.8 of Preliminary Village Plan No. 2792, and Lot No. 1 of Preliminary Village Plan No. 2793, attached to the letter annexed to the Petition as **X4A** to **X4C**, which had been obtained from the Sri Lanka Engineering Department.

## Acquisition

It is an undisputed fact that the same parcels of land had been acquired under the LA Act by the Respondents for a public purpose. The said acquisition had commenced as way back as in 1979, as borne out by the document marked as **P27**. However, the Petitioner later found that the public purpose for which the land was acquired is abandoned. Therefore, the Petitioner moves this Court to obtain the reliefs as prayed for in the Petition, seeking a *Writ of Mandamus* directing the Respondents to divest the land in terms of Section 39A of the LA Act on three grounds: One is that the land has not been utilized for which it was acquired for 45 years ago. Second matter is that no compensation has been paid to the Petitioner as the owner of the said land, and the third matter is that the Government has leased it out to a private party without effecting any improvements on the lands. Accordingly, the Petitioner has sought a *Writ of Mandamus* directing the Respondents to divest the same in terms of Section 39A of the LA Act.

Now I will consider whether the Petitioner is entitled to have a divesting order in relation to the above-mentioned grounds. As mentioned above, the Petitioner is the owner of the land as depicted in document marked as **P1** to the Petition. The chain of title is also indicated in **P2**, a title report given by a lawyer for the Petitioner. The said land and its relevant deeds have been registered according to the document marked as **P3**.

Since the Petitioner is unaware of the notices published in terms of the LA Act, he has written to the relevant ministry to obtain information under the Right to Information Act, No. 12 of 2016 (RTI Act). Accordingly, 3<sup>rd</sup> Respondent has responded to the said request and given the relevant information. According to the relevant information, the notice under Section 2 had been published on 11<sup>th</sup> February 1979. Thereafter, the possession of the land had been taken over by the Minister, who has given directions to the acquiring officer to take immediate possession under Section 38(a)

of the LA Act, and the same decision has been published by Gazette No. 67/16 dated 21.12.1979, annexed as **R15** and **R16** marked by the Respondents with their limited objections.

The Section 5 notice is thereafter issued; accordingly, the land has been identified and published in Gazette No. 949/19, dated 14.11.1996 (**R3** marked by the Respondents with their limited objections). In addition to that, the Section 7 notice was also published by Gazette No. 1072/9, dated 25.03.1999 (same is marked as **R6** by the Respondents), calling for claims in respect of the lands so taken possession, and the relevant information so given with the covering letter is marked as **P27** annexed to the Petition. The relevant plots of land claimed by the Petitioner is depicted in the Plans bearing No. 98/SLLRDC dated 27.10.2012, and No.107/SLLRDC dated 07.05.2013, both prepared by Mr. P.A.S Fernando, and the information thereof was given by the Sri Lanka Land Development Corporation to the Petitioner (the 3<sup>rd</sup> Respondent). The relevant plans are annexed to the Petition along with the document marked as **P30**.

However, since the parcels of land has now been given to a private party, the Petitioner has requested to divest the lands by **P34** in terms of Section 39A of the LA Act. It is also established by the Petitioner that the land has been given to a private party to store certain pre-prepared concrete beams and columns, as established by the relevant correspondence between the Petitioner and the relevant government departments. The said documents are marked as **P5** to **P13**, and **P15** annexed to the Petition. The Respondents have not disputed the fact that the parcels of land are in possession of a private party.

It is an undisputed fact that first, the Section 2 notice has been issued as way back as in 1979, and the immediate forcible possession has taken place in the same year. Thereafter, the parcels of land had not been utilised for the public purpose for which it was acquired. In addition to the said abandonment, the land had not been utilised, or no improvement has been effected on the land so



acquired. In addition to that, it has been given to a third party as well. I will further elaborate on this.

### **No compensation**

In this application, it is the Petitioner's position that the Petitioner was not paid or awarded any compensation for the parcels of land acquired by the Government. Although acquisition proceedings commenced in 1979, the Petitioner became the owner of the land by virtue of the deed marked as **P1**, which was executed on 8<sup>th</sup> November 2006. The Petitioner's predecessors-in-title were his parents, who were in possession of the land in question, and in fact, they participated in the acquisition process and claimed some compensation, though compensation was never paid for the land acquired by the Government. Therefore, the Petitioner or the Petitioner's predecessors have not been paid compensation. As such, this is one of the grounds contemplated by Section 39A of the LA Act for a divestiture.

### **Non-utilisation of the lands**

The second matter to be considered for a divestiture is whether the land has been utilized for the particular public purpose for which it was acquired or any other public purpose after its acquisition. The land was acquired in 1979, exactly 45 years ago. However, though it was acquired to widen a certain rail road, this has not yet been executed, and the Government has abandoned the land without utilizing it for the said purpose or for any other suitable public purpose. Therefore, as argued for and on behalf of the Petitioner, and also to that extent conceded by the learned State Counsel, Ms. Sourajah, it is my view that the Petitioner is entitled to have a divesting order compelling the Respondents to divest in terms of Section 39A of the LA Act on the second ground as well.

## **No improvements effected**

Thirdly, the said land acquired by the Government in 1979 has now been leased out to a private entity for commercial purpose. Therefore, a land acquired for the particular public purpose cannot be utilized for a commercial purpose by the acquiring authority, which is totally irrational. Accordingly, on the third ground as well, the Petitioner is entitled to obtain a *Writ of Mandamus* for a divestiture.

Accordingly, it is clear that after taking immediate possession under Section 38(a) of the LA Act, the three parcels of land have been left without utilising it for any public purpose. In addition to that, it is common ground that no improvement has been made to date from the time the immediate possession took place in 1979, and presently, the land has apparently been given to a private party on a contract for a private venture, entered into with the 3<sup>rd</sup> Respondent and the private party. Accordingly, though it is stated in the course of the argument that it had been acquired for the purpose for utilising the three parcels of land for the Railway Department, nothing has happened so far, without even utilising it at least as a source for a junk yard of the Railway Department. Thus, it is my view that all three conditions required for a divestiture set out in Section 39A of the LA Act are satisfied.

I will now reproduce Justice Andrew Somawansa's dicta in the case of *Mahinda Katugaha v. Minister of Lands and Land Development and Others*<sup>1</sup> in similar circumstances;

*"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*

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<sup>1</sup> *Mahinda Katugaha v. Minister of Lands and Land Development and Others* [2008] 1 SLR 285

*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 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.”*

On the perusal of the notice published under Section 2, I found that there is no specific purpose for which the several parcels of land were proposed to be acquired, except for mere mention of a public purpose. Therefore, it is very clear that the use of a Section 2 notice is illegal; because it always requires the acquirer to mention a specific public purpose for which a land is to be acquired, as explained by Justice Mark Fernando in the cases of *Manel Fernando and Another v. D.M. Jayaratne*<sup>2</sup> and *De Silva v. Atukorale*<sup>3</sup> as well as in the above-mentioned case of *Mahinda Katugaha v. Minister of Lands and Land Development and Others* by Justice Andrew Somawansa. Further, a decision in terms of Section 38(a) had been made to take immediate possession of the three parcels lands that the Petitioner seeks to divest. The so-called immediate possession of the lands has taken place as way back as in the year 1979, as reflected in the documents filed by the Petitioner along with the Petition marked as **P27**, for which the Respondents have confirmed the same by filing **R15** and **R16** with their objections.

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<sup>2</sup> *Manel Fernando and Another v. D.M. Jayaratne, Minister of Agriculture and Lands and Others* [2000] 1 SLR 112

<sup>3</sup> *De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development and Another* [1993] 1 SLR 283

Therefore, it is very clear that all the ingredients set out in Section 39A of the LA Act for the issuance of a divestiture is established and satisfied.

Thus, the Petitioner has requested the Minister, by document marked as **P35**, for a divestiture, which the Minister appears to have been dilly-dallying on, having correspondence between him and various departments, including several Respondents cited in this case.

### **Conclusion**

Thus, it is my view that the *Writ of Mandamus* sought by the Petitioner compelling the 1<sup>st</sup> Respondent to issue a divesting order lies in this case, and accordingly, I grant the same. In addition to that, I wish to grant certain costs since the Respondents ventured to challenge these proceedings without painting the true picture to conclude on the Petitioner's right to a divestiture. Therefore, I wish to grant Rs. 52,500/- (Fifty-Two Thousand Five Hundred Rupees) as cost of litigation in this application.

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. Karalliyadde, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**