

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

In the matter of an Application for mandates in the nature of a Writs of Mandamus and Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A.(Writ)Application No. 95/2014

Devi Balasuriya,
No.356, Kumaratunga Mawatha,
Nupe,
Matara

PETITIONER

Vs.

1. Hewa Halpage Sumanadasa,
Vice Chairman,
Mulatiyana Pradeshiya Sabha,
Mulatiyana, Matara.
2. Sunil Elladeniyage,
Chairman,
Mulatiyana Pradeshiya Sabha,
Mulatiyana, Matara.
3. Garusinghe Jayaratne,
Secretary,
Mulatiyana Pradeshiya Sabha,
Mulatiyana, Matara.
- 3A. K.A. Nirmala Jayawardena,
Secretary,
Mulatiyana Pradeshiya Sabha,
Mulatiyana, Matara.

ADDED 3A RESPONDENT

3AA. A. H. M. Sriyalatha,
Secretary,
Mulatiyana Pradeshiya Sabha,
Mulatiyana, Matara.

ADDED 3AA RESPONDENT

4. Mulatiyana Pradeshiya Sabha,
Mulatiyana, Matara.

5. Susantha Attanayake,
Divisional Secretary,
Mulatiyana Divisional Secretariat,
Mulatiyana, Matara.

6. Mrs. E.A.C. Widanagamachi,
District Secretary,
District Secretariat, Matara.

6A. Mr. Pradeep Ratnayake,
District Secretary,
District Secretariat, Matara.

ADDED 6A RESPONDENT.

7. Mr. B. Ranaweera,
Additional District Secretary,
District Secretariat, Matara.

7A. S.K. Wellahewa,
Additional District Secretary,
District Secretariat, Matara.

ADDED 7A RESPONDENT.

8. The Southern Provincial Land Commissioner,
Fort, Galle.
 9. The Road Development Authority,
1st Floor,
Sethsiripaya, Battaramulla.
 10. D.S. Thanthirige,
The Chairman,
Provincial Road Development Authority,
No.19, Lower Dikson Road,
Galle.
 - 10A. A.S. Wijesinghe,
The Chairman,
Provincial Road Development Authority,
No.19, Lower Dikson Road,
Galle.
- 10A SUBSTITUTED-RESPONDENT**
11. W.K. Vipula,
Executive Engineer,
Road Development Authority,
Deniyaya.
 12. Hon. Minister of Local Government and Provincial Councils,
No.330, Union Place,
Colombo 2.

RESPONDENTS.

BEFORE : **ACHALA WENGAPPULI, J.**

COUNSEL : Sanjeewa Jayawardane P.C. for the Petitioner.
A.M.J. Hemantha for the 1st to 4th Respondents.
Vikum de Abrew S.D.S.G. with N.Perera S.C. for the 5th to 9th and 11th Respondents.

WRITTEN SUBMISSIONS

TENDERED ON : 05.03.2019 & 08.11.2019 (by the Petitioners)
05.03.2019 (by the 1st to 4th Respondents)
29.03.2019 & 18.10.2019 (by the 5th to 9th & 11th Respondents)

DECIDED ON : 04.09.2020

ACHALA WENGAPPULI, J.

The Petitioner, by invocation of the jurisdiction of this Court conferred under Article 140 of the Constitution, seeks issuance of Writs of Certiorari, Prohibition and Mandamus, coupled with interim relief connected to the said Writs against the Respondents.

In seeking the issuance of Writs of Certiorari, the Petitioner seeks primarily to quash certain portions of multiple Notifications, that are published by the 1st to 4th Respondents, pursuant to the decisions of the 4th Respondent *Mulatiyana Pradeshiya Sabha* in Gazette Nos. 1766 (P21),

1774(P23), 1789 (P24) and 1733(P22) to the effect of vesting a part of her land "*forming the subject matter of this application as a road belonging to and/or vesting*" in the said Pradeshiya Sabha.

She had prayed further for the issuance of a Writs of Certiorari quashing the purported vesting of her land forming the subject matter as a road belonging to or vesting in the 4th Respondent quashing "*all underlying decisions relating to the same, any orders /decisions /recommendations made by the 1st to 4th Respondents and/or any one or more of them, pertaining to and/or effecting the Petitioner's land, subsequent to the aforesaid purported decision*" deeming her land as a road vested in and/or belonging to the Pradeshiya Sabha under any one or more of the impugned gazettes as referred to above.

The Petitioner, in seeking a Writ of Prohibition on the 1st to 4th Respondents, intends thereby to prevent them from "*deeming, treating, claiming, acquiring, classifying, demarcating, using, permitting*" to use her land as a road vested in or belonging to the Pradeshiya Sabha. In seeking a Writ of Mandamus on the 1st to 4th Respondents. The Petitioner wants the Respondents to abide by the order of the District Court in case bearing No. L 7611 and also compel them to duly complete the concreting of the Government Road (depicted as Lot No. 605 in plan No. 91/P1).

In describing the sequence of events which led her to seek relief under public law, it is stated by the Petitioner that she owns a tea plantation called *Kitulellawatte* alias *Galgodahena* containing in extent of 50 Acres 1 Rood and 20 Perches as set out in village plan No 91 of the Surveyor General. Her father who owned the said property had

relinquished over 200 acres of his lands to the Land Reform Commission including the 50 acres from the said *Kitulellawatte* alias *Galgodahena* Estate. The Petitioner became the owner of the said extent of plantation subsequent to the statutory determination made in terms of Section 19 of the Land Reform Law No. 1 of 1972.

It is stated that a village called *Gorakagahawatta* and a Crown land called *Vitiyalagodahena*, where a colony was set up by the Government, are situated on the northern periphery of her tea plantation and in order to facilitate a passage for the movement of villagers, lands over 3 Roods in extent was acquired by the State from the said tea plantation under provisions of Land Acquisition Act No. 28 of 1964. Subsequent to the said acquisition of land, an access road was constructed for the benefit of the villagers of the two villages. Said road is known as *Horedola-Vitiyalagoda* Road and is shown as Lot 605 of plan No. 91 (supplement No. 20)/P1. It was gazetted on 11.06.2003 in Gazette No. 1292/20 in terms of Section 38A of the Land Acquisition Act. Thus, the villagers of *Gorakagahawatta* and the colony of *Vitiyalagodahena* have access to the main *Makandura-Talahagama-Akuressa* Road across the Petitioner's estate. This road, with its construction over the Petitioner's estate, had in effect bisected it into two.

It is stated by the Petitioner, in addition to the said public road, yet another road exists and had facilitated the villagers of the *Vitiyalagodahena* colony in accessing the main *Makandura-Talahagama-Akuressa* Road. It was concreted by the 4th Respondent Pradeshiya Sabha and is located merely a 200 meters away from the said *Horedola-Vitiyalagoda* Road.

The starting point of the dispute on which she petitioned this Court is described by the Petitioner in the 32nd paragraph of her petition, where she states that on or about 27th July 1991, several persons have, illegally and without consent of the Petitioner have commenced construction of an "illegal and unauthorised roadway across her plantation, beginning from the latter part of the said *Horedola-Vitiyalagoda* Road leading to a completely different location on the northern boundary to the *Vitiyalagodahena* colony, which is also where the 1st Respondent is residing.

In view of the said act of transgression of her rights, the Petitioner instituted action before the *Matara* District Court seeking injunctive and declaratory relief against the defendants she had named therein. It is stated by the Petitioner, the Court, having made its observation after an inspection of the illegal construction, of a roadway proceeded to make order that the defendants in the said action are "*not entitled to use any road over the Petitioner's land, except the Government road*" (*Horedola-Vitiyalagoda* Road).

According to the Petitioner, the 1st Respondent and a group of persons including his brother, have thereafter made a second attempt to widen the said illegally constructed road on 04.02.2000 by uprooting about 300 tea bushes, cutting across earthen and stone bunds and thereby causing damage to her plantation.

The Petitioner states that only thereafter the 4th Respondent Pradeshiya Sabha, in order to legitimise the actions of its Vice Chairman, (the 1st Respondent) by attempting to initiate acquisition *post facto*. She received communication on 29.08.2001 and 03.10.2001, from the 2nd

Respondent and a Surveyor, intimating her that the said "illegal" roadway is to be surveyed for the purpose of acquisition. Despite her objections said survey was conducted on 16.10.2001 with the assistance of the 1st Respondent.

It is stated by the Petitioner that a settlement was discussed by the 1st Respondent in the case before the District Court, by which the Petitioner undertook to concrete the remainder of the *Horedola-Vitiyalagoda* Road, upon the latter giving up his purported claim over the "illegally" constructed road. The concreting of the road was to commence with the approval of the relevant Government officials including the Road Development Authority and on 27.01.2014, about 45 meters of the said road was concreted. In the same night some unknown persons have dug up the newly concreted road using a backhoe and destroyed about 22 meters of concrete. The Petitioner lodged a complaint to *Matara* Police over this incident.

It is said that in the backdrop of these several attempts to illegally construct a road way across the Petitioner's land, the 2nd Respondent, having included a part of the Petitioner's land under schedule 17 of the Gazette No. 1766 of 06.07.2012, provided three months for the interested persons to establish their title over it. In Gazette No. 1774 of 30.08.2012 a period of one month is provided in relation to the Petitioner's land included in schedule Nos. 13 and 32 while the Gazette No. 1789 of 14.12.2012 included her lands under parts of schedule Nos. 16, 36 and 55. The said Gazette stated that pursuant to the declarations in the Gazette Nos. 1766, 1774 and 1773, the 4th Respondent Sabha had resolved that the

lands included therein as lands belonging to the said Sabha, in the absence of any objection.

It is highlighted by the Petitioner that the Gazette Nos. 1766 and 1774 which contain three different descriptions to the roadmaps, which may include a portion of her land since each of these description includes a reference to *Kitulella* Estate (*Kitulellawatta*), which is her land.

The basis of the challenge mounted by the Petitioner on the said actions of the 1st to 4th Respondents was the illegality of the process as it violated the manner in which the 4th Respondent Sabha is empowered to act, particularly under Sections 24 and 26 of the Pradeshiya Sabha Act No. 15 of 1987.

It was stated by the Petitioner that the said Gazetting is *ab initio* and *ex facie* illegal upon the failure to follow the procedure for the declaration and acquisition of a Pradeshiya Sabha Road in terms of Sections 11, 24(1), (2), (3) and 26 of the said Act, including the rules and procedure of the said Sabha had not been followed.

In relation to violation of the provisions of Section 11, the Petitioner claims that in terms of the Regulations formulated by the Minister, a procedure for the presentation of an item before the 4th Respondent Sabha required a notification of such meetings to its members are fully set out, which procedural step in this instances had not been followed.

The Petitioner claimed that the 4th Respondent Sabha violated Section 24(1)(a) when it failed to demarcate the purported road, as required within the time frame stipulated by the Act and, in any event, the

said Sabha could not include the “illegal” road in the publications as it had not been maintained by the said Sabha.

In respect of the violation of the provisions of Section 24(1)(b), the Petitioner claims that the 4th Respondent Sabha, having failed to comply with the provisions of Section 24(1)(a) in its failure to demarcate the limits of such roads, had arbitrarily bypassed the provisions contained in Section 24(1)(b).

According to the Petitioner, statutory provisions contained in Section 24(3) of the said Act too had been violated by the 4th Respondent, in its failure to serve notice on the Petitioner in terms of the said section since the said section “*necessarily contemplates the serving of notices in terms of Section 24(1), and therefore, not only is Section 24(1) a necessary precursor to the process, but it is also a vital step in the process and is a necessary pre condition*” (emphasis original).

It is also claimed by the Petitioner that the 4th Respondent Sabha had failed to serve notices on her which is in direct violation of the provisions contained in Section 26 of the said Act.

The 1st to 4th, 5th to 7th, 8th, 9th and 11th Respondents have resisted the application of the Petitioner.

The 1st to 4th Respondents, in their objections have raised four preliminary objections based on laches, failure to come with clean hands, failure to follow Rule 3 of the Court of Appeal (Appellate Procedure) Rules 1990 and had sought to challenge the validity of a resolution of the 4th Respondent.

The 1st to 4th Respondents admit that the disputed roadway is depicted in Gazette "P21" as schedule 17 and admits that *Horedola-Vitiyalgoda* Road is used by the villagers for the past 4 to 5 decades and had been Gazetted under the Village Councils Ordinance in the Gazette No. 12,846 of 05.01.1962 (R2).

In relation to the disputed roadway, it is claimed by the Respondents that the 4th Respondent had passed resolution No. 18 (R6) and prior approval of the Minister of Local Government of the Southern Province (R7 and R8) was obtained and therefore they have published the Gazette notification (P21) "according to law". Since there was no objection, Gazette notification (P24) was published in terms of Section 24 of the Pradeshiya Sabha Act No. 15 of 1987. The Respondents further claims that "*the entire process was done according to law and according to the accepted norms and practices*".

The 5th, 6th and 7th Respondents claim that the Petitioner's application is misconceived, delayed, misrepresented facts and made without a proper basis.

Objections of the 8th Respondent indicate that he too maintains a similar position as the 5th to 7th Respondents.

The 9th and 11th Respondents claim that the Respondents have concreted 290 meters out of 335 meters of *Horedola-Vitiyalgoda* Road and admitted that 20 meters of concrete had been dug up and destroyed on 27.01.2014. The 9th and 11th Respondents too claim that the application of the Petitioner is delayed, misconceived, suppressed material facts and had

contained no basis for issuance of Writs of Certiorari, Prohibition and Mandamus.

In her counter affidavit, the Petitioner claimed that letter P25 was written on a different context as at that point of time she was made to understand that attempts were underfoot to acquire a portion of her land under Section 28 of the Act, but what is now placed in issue is the Gazettes P21 to P24 which purport to include a portion of her land, as part and parcel of roads vested in the 4th Respondent Sabha under Section 24.

The Petitioner further claims since the 1st to 4th Respondents have stated that they are unaware as to her ownership to the tea plantation called *Kitulellawatta* "clearly confirms and corroborates" her case that no notice in terms of Section 26 read with Section 24 could have been objectively served on her, despite her lawful ownership to Lot No. 621, called *Kitulellawatte* alias *Galgodahena*.

She also claimed that in 1984, the existing road beyond her estate (road between village *Gorokgahawatta* and the colony) was Gazetted and acquired in terms of Plan No. 210 /4/83/27 of 05.03.1985. It is stated that the said road connects to *Horedola-Vitiyalgoda* Road, at the northern boundary of her land and lies through her property providing access to villagers to *Makandura-Talahagama-Akuressa* main road at the southern boundary of her property.

On 22.11.2019, the parties invited this Court to pronounce its judgment on the comprehensive written submissions which they have already tendered.

The written submissions of the 1st to 4th Respondents indicate that the written submissions were tendered upon the direction of Court, after hearing the parties who made oral submissions. This is clearly an inaccurate statement since the docket indicated that the parties made oral submissions on 08.11.2018 and since then the matter was listed before several divisions of this Court.

It is also noted by this Court, although the 1st to 4th Respondents have raised several preliminary objections in their statement of objections, they were content to address only the core issues raised by the Petitioner on the legality of the impugned publications.

In view of the admission by the 1st to 4th Respondents, learned President's Counsel for the Petitioner had narrowed down his challenge of legality only to P21 and P24 since "*... Respondents have expressly admitted that the Petitioner's property has been referred to P21 and P24 only*".

In the circumstances, this Court proceeds to consider the contention of the Petitioner challenging the Gazette publications marked as P21 (Gazette No. 1766 of 06.07.2012) and P24 (Gazette No. 1789 of 14.12.2012), leaving out the P22 and P23 from its consideration.

Learned President's Counsel for the Petitioner sought to challenge the legality of the said two Gazette publications of the 4th Respondent Sabha under below mentioned grounds, based on the assertion that the said publications were made in violation of and contrary to the statutory provisions contained in Section 24 of the Pradeshiya Sabha Act No. 15 of 1987;

- a. the 4th Respondent had failed to demarcate by permanent marks the limits of the road and paths maintained by it and prepare plans of all such roads and paths within three years of the coming into force of the provisions of the Act as per section 24(1)(a),
- b. the letter R7, issued by the Chief Minister seeks to portray compliance in terms of Section 24(1) is issued *ultra vires*,
- c. there was no notice served personally on the Petitioner, in violation of the provisions of Section 26, where such notices had to be served "either upon such person, or by leaving it with some member of the household, or by affixing it to some conspicuous place,
- d. the 1st to 4th Respondents have acted in *mala fide*.

The 1st to 4th Respondents have tendered a resolution dated 08.06.2012 to this Court and marked as R6. Under item number 16 of the said resolution, the road "*Beragama Heredola Vitiyalagoda Kitulellawatta*" is mentioned. The road width is given as 22 to 16 feet. The Petitioner describes the public road that runs through her plantation only as *Horedola-Vitiyalgoda* Road.

Therefore, the identity of the roadway that led to the dispute that had been presented before this Court by the Petitioner, seeking public law remedies, had to be ascertained at the outset.

Reference to a *Horedola-Vitiyalgoda* Road can be found in the documents P3 (letter by Divisional Secretary dated 12.09.2013, P6(a) -a

letter addressed to Secretary to the Ministry of Lands in relation to acquisition - dated 17.05.2002), P20 (a letter addressed to Secretary, Road Development Ministry by the Provincial Secretary *Mulatiyana* dated 27.11.2009), P20(d) - (a letter addressed to Executive Engineer of Road Development Authority by Provincial Secretary *Mulatiyana* on 09.10.2011), P20(e) - (a letter by Administrative Officer to Executive Engineer, RDA dated 10.10.2013), P20(f) - (a letter by Provincial Scretary *Mulatiyana* to Executive Engineer, RDA on 21.12.2013).

The documents that are relied upon by the 1st to 4th Respondents also indicate that there is a public road known as *Horedola-Vitiyalgoda* Road. Reference to the said road could be found in R3 (a letter written by a predecessor of the 3rd Respondent addressed to Chairman of Regional Development Committee on 05.06.2009), R4 and R5 (letters addressed by two Grama Niladharies to the 2nd Respondent, where the road is described as "*Horedola Vitiyalagoda Kitulella Road*").

The description given to the said road by the Village Council in its publication in the Gazette No. 12,846 of 05.01.1962 as *Kitulella Horedola* Road. The Government Surveyor who surveyed the Petitioner's land and made a plan for the proposed acquisition had described the road as *Horedola Vitiyalagoda* Road in 1984 (P5) as the Petitioner did.

Initially the strip of land that had been acquired by the State was meant for the public purpose of providing access to the *Makandura-Talahagama-Akuressa* main road from the village of *Gorakaghawatta* and also from the colony established on the Crown land called *Vitiyalagodahena*. The acquisition from the Petitioner's land was made in 1979. The

document P5 indicate further acquisitions were made by the State from the private lands situated in *Ihaladeniya, Gorokgahawatta* for the purpose of extending the length of the said roadway in 1985. Its tracing (annexed to P5) indicate those lands are situated beyond the northern boundary of the Petitioner's land. It is therefore understandable by 2012, When the P21 Gazette was published the said road had served several more villages than it had originally served and therefore was described therein by adding those village names to its original name *Horedola Vitiyalagoda* Road by inclusion of the name of the tea plantation, namely *Kitulellawatta*, through which the said road was laid.

The description given to the already existing road by the Petitioner is *Horedola Vitiyalagoda* Road, while the resolution passed by the 4th Respondent Sabha refers to a "Beragama Horedola Vitiyalagoda Kitulellawatta road". The obvious difference between the two descriptions are the reference to *Beragama* and *Kitulellawatta*. The addition of "*Kitulella*", is due to the fact the road had been laid through the Petitioner's tea plantation called *Kitulellawatta*. The reference of "*Beragama*", is because of an additional village, to which access to main road had been provided through the said road. This extension to the road *Horedola Vitiyalagoda Kitulellawatta* Road was made after the lands that had been acquired by the State at a subsequent stage from other parties, as indicated by P5. In the document P5, a notice issued under Section 28 of the Land Acquisition Act No. 28 of 1964, in relation to four lots, and all four claimants are from *Beragama* village. Lot A had its southern boundary consists of "remaining portion of the land and *Kitulellewatta* claimed by *Devi Balasuriya*", the Petitioner. This is a clear indication that the road way which was laid

through the Petitioner's tea plantation was extended beyond her northern boundary continuing through the four lots that had been acquired to facilitate access to the villagers of *Beragama* to reach the main road.

Clearly the road that had been described in the resolution of the 4th Respondent Sabha dated 08.06.2012 (R6) refers to the road that existed over four decades and which had been constructed upon the strip of land that had been acquired from the Petitioner's estate under the provisions of the Land Acquisition Act.

Therefore, it is clear that these different descriptions are in relation to one and the same road although they had been differently described by the parties.

If the challenge of the Petitioner on the validity of the extension of time granted by the Chief Minister with the issuance of R7 is ignored for the time being, then the resultant position would be that it had authorised the 4th Respondent to act under Section 24 of the Act No. 15 of 1987 within the extended time period in respect of "Horedola Vitiyalagoda Road/*Beragama Horedola Vitiyalagoda Kitulellawatta Road*".

But the disputed roadway is not in respect of publicised road of "Horedola Vitiyalagoda Road/*Beragama Horedola Vitiyalagoda Kitulellawatta Road*" but in relation to a different roadway that had been cut and thereby branches off from the said *Horedola-Vitiyalagoda* Road at a particular point, allegedly towards the colony with a different terminal point near the residence of the 1st Respondent.

In order to consider the challenge mounted by the Petitioner as to the legality of the publication made by the 4th Respondent Sabha in

relation to the provisions contained in Section 24(1) of the Act No. 15 of 1987, this Court finds it necessary to reproduce the said sub section below to facilitate its said undertaking.

Section 24 states that;

"24(1) It shall be the duty of every Pradeshiya Sabha within three years of the coming into force of these provisions or within such further period as may in the special circumstances of any case be allowed by the Minister

- (a) to demarcate by permanent marks, the limits of the roads and paths maintained by the Pradeshiya Sabha and cause to be prepared plans of all such roads and paths; and*
- (b) to cause notices to be published in the prescribed manner setting out a list of such roads and paths."*

In view of the explicit statutory provisions contained in Section 24(1) of the Act No. 15 of 1987, a mandatory duty is imposed on the 4th Respondent Pradeshiya Sabha as it "shall";

- i. demarcate by permanent marks, the limits of the roads and paths maintained by the Pradeshiya Sabha and cause to be prepared plans of all such roads and paths,
- ii. to cause notices to be published in the prescribed manner setting out a list of such roads and paths.

The said Section also specifies the time period within which the 4th Respondent Sabha should comply with the above highlighted two initial steps as it states that "*within three years of the coming into force of these provisions or within such further period as may in the special circumstances of any case be allowed by the Minister.*"

In dealing with a situation where a Pradeshiya Sabha sought to construct a roadway upon a paddy field to facilitate access to the same, this Court, in *Kuruwita Pradeshiya Sabha v Ranasinghe & Others* - CA/PHC/57/2015 - decided on 28.06.2019, referring to the provisions of Section 24 of the Act No. 15 of 1987 has held that "... according to Section 24 sub section (5), it is very clear that until and unless the Pradeshiya Sabha complies with the above sections, thoroughfares could not be deemed to be vested to the relevant Pradeshiya Sabha" and thus emphasising that there must be compliance of all provisions of Section 24 before a particular road is deemed vested in a Pradeshiya Sabha.

In view of the said pronouncement, the question whether the 4th Respondent had complied with the said provisions in full had to be considered by this Court, in the light of the available material.

The first condition that had to be fulfilled by the 4th Respondent in this regard is to "*demarcate by permanent marks, the limits of the roads and paths maintained by the Pradeshiya Sabha and cause to be prepared plans of all such roads and paths*" including the disputed roadway. The Petitioner claimed that the 2nd Respondent intimated by P10 that it intends to "acquire" the disputed portion of her land and a survey is to be conducted. The 2nd Respondent in his letter dated 03.10.2001 informed the Petitioner

that under the powers vested in him under Sections 20 and 38 of the Act No. 15 of 1987, a survey is scheduled to be conducted for the purpose of acquisition of part of *Kitulellawatta* land.

Except for these two instances there is no reference in the objections filed by the 1st to 4th Respondents that any survey plan was prepared indicating the 4th Respondent had taken steps to “*demarcate by permanent marks, the limits of the roads and paths maintained by*” by the said Sabha and it had to “*cause to be prepared plans of all such roads and paths*” in compliance of Section 24(1)(a). These two letters relied on by the Petitioner that the survey was intended only in respect of acquisition of land under Sections 20 and 38 of the Act No. 15 of 1987. The 1st and 4th Respondents were content to state that they only “*admit the sending of the two letters marked P10 and deny the rest of the averments which are inconsistent to the contents of the said two letters.*”

Thus, it is clear that the 4th Respondent had failed to “*demarcate by permanent marks, the limits of the roads and paths maintained by the Pradeshiya Sabha and cause to be prepared plans of all such roads and paths*” as required by Section 24(1)(a) of the Act No. 15 of 1987.

The second condition that had to be fulfilled by the 4th Respondent is “*to cause notices to be published in the prescribed manner setting out a list of such roads and paths*”.

In paragraph 28 of the objections, the 1st to 4th Respondents state that “*... the Respondents admit the publication of the Gazettes marked as “P21” to “P24” and state that the “disputed roadway is depicted in Gazette bearing “P21” (vide pg 1131 Schedule 17) and “P24” (vide pg 2582 schedule 16)*” only.

In P21 Gazette this road had been described as *Beragama Horedola Vitiyalagoda Kitulellawatta* Road. In the Gazette P23, the said road was described as *Vitiyalagoda Mudunahena Kitulellawatta* Road. Gazette P24 describes it as *Beragama Horedola Vitiyalagoda Kitulellawatta* Road.

But the disputed road, according to the 1st to 4th Respondents "is referred to as *Kitulella Horedola* Road" as the Petitioner had described the said road in her Petition. However, it is noted by this Court that none of the Gazette publications referred to above contain the "*Kitulella Horedola* Road" in their respective schedules. The 1st to 4th Respondents have not clarified as to the difference in the descriptions.

In addition to the two conditions referred to above, as per the provisions of Section 24, the 4th Respondent had to comply with another condition as it required the roads that are to be vested in the Sabha should be published "*within three years of the coming into force of these provisions or within such further period as may in the special circumstances of any case be allowed by the Minister*".

In view of the contention that the 4th Respondent had failed to act under Section 24(1) within the statutorily stipulated three-year period since the provisions of the Act No. 15 of 1987 coming into force, the 1st to 4th Respondents have sought to rely on the document marked R7 by which the Chief Minister of the Southern Province had approved extra time period from July 2012 to December 2013 for the 4th Respondent to act under Section 24(1). This approval was granted in relation to the list of roads that are numbered as 1 to 22, which are included in a resolution passed by the 4th Respondent Sabha in an annexure to the said letter R7.

The Act No. 15 of 1984 was certified on 16.04.1987 and the 4th Respondent had published the notifications in the Gazettes P21 and P24 only in 2012. The 1st to 4th Respondents sought to rely on the permission granted by the Chief Minister by his letter R7 where in respect of the roads that are included in the resolution of the 4th Respondent Sabha, dated 08.06.2012 marked R6, in order to impress upon this Court that the said letter R7 satisfies the requirement of Section 24(1) which states such demarcations, plans and publications could be made “... or within such further period as may in the special circumstances of any case be allowed by the Minister-...”. In R7, the extended time applies to the roads that are listed in the resolution passed by the 4th Respondent where under item number 16 the road “*Beragama Horedola Vitiyalagoda Kitulellawatta*” is mentioned.

On its own admission by the 1st to 4th Respondents, the disputed roadway is referred to as “*Kitulella Horedola Road*” but the extended period was granted by the Chief Minister in respect of the road “*Beragama Horedola Vitiyalagoda Kitulellawatta*” not to “*Kitulella Horedola Road*”. Again no clarification from the 1st to 4th Respondents.

Thus, the only reasonable conclusion that could be reached in these circumstances, that the road known to the Petitioner and 1st to 4th Respondents as “*Kitulella Horedola Road*” had not been demarcated by permanent marks and limits, a plan of it had not been prepared and there is no publication of its name in the Gazette by the 4th Respondent. Therefore, the 4th Respondent is in clear violation of the provisions contained in Section 24(1).

In addition to these disqualifications, the provisions of Section 24 of the Act No. 15 of 1987 empowers the 4th Respondent to act under it only in respect of "roads and paths maintained by the Pradeshiya Sabha" indicating that the road or path must be in existence when the said Act came into operation.

The disputed roadway came in to existence at a very much later stage as it is clear from the plaint filed by the Petitioner where it is stated that the disputed roadway was forcibly cut over the Petitioner's tea plantation only on 27.07.1991, in order to facilitate access to the residence of the 1st Defendant in the said case. As such it is not a road or a path maintained by the 4th Respondent when the Act No. 15 of 1987 came into being, in order to attract provisions of Section 24. Such instances are dealt with under Section 27 of the said Act.

This Court notes that the 1st to 4th Respondents, by annexing photographs marked R1a to R1c, sought to portray that the said photographs show the "*Kitulella Horedola Road*". This position could not be accepted as the said "*Kitulella Horedola Road*" is referred to as a roadway that had almost been concreted having the road width of about 16 to 22 feet. But the roadway shown in the three photographs indicate that it is a narrow gravel road with pebble stones laid in some patches. It obviously relates to the disputed road that had been cut at a point from the "*Kitulella Horedola Road*", to which the 1st to 4th Respondents seek to impute the said name. The divisional secretary of *Mulatiyana* clearly indicate that the road that had been developed by concreting is the road built on the acquired strip of land under Land Acquisition Act (P20(d)) as stated by the Petitioner.

The fact that the disputed road as stated by the Petitioner is a different roadway to "Kitulella Horedola Road" is established by the letter P20(j) issued by the District Secretary/ Government Agent of Matara to Executive Engineer of the Road Development Authority by which he informs that concreting of the existing road would facilitate the "newly cut" road, which is of about 200 meters in length, which branches off the said concreted road. He further noted that there are no houses on either side of the said new road and it is not suitable for vehicular traffic. This "newly cut" road is an obvious reference to the one complained of by the Petitioner who challenged its construction in the Matara District Court. This Court therefore rejects the 1st to 4th Respondents position that the said photographs depict the concreted "Kitulella Horedola Road".

Thus, the only reasonable conclusion that could be reached under these circumstances is that the road known to the Petitioner and 1st to 4th Respondents as "Kitulella Horedola Road" had not been demarcated by permanent marks and limits by the 4th Respondent and a plan of it also had not been prepared. In addition, there is no publication of its name in the Gazette by the 4th Respondent. Therefore, the 4th Respondent's act of inclusion of the road "Beragama-Horedola-Vitiyalagoda-Kitulellawatta Road" in the list of roads that were published in schedule 17 of Gazette No. 1766 of 06.07.2012 (P21) and in schedule 16 in Gazette No. 1789 of 14.12.2012 (P24) respectively, was done contrary to the procedure laid down in clear statutory provisions contained in Section 24(1) of the Act No. 15 of 1987 and therefore done in *ultra vires* of Section 24(1).

Therefore, the inclusion of the road "Beragama-Horedola-Vitiyalagoda-Kitulellawatta road" in the said two Gazette notifications (P21 and P24) are hereby quashed by issuance of Writ of Certiorari.

In her petition, the Petitioner also sought a Writ of Certiorari in quashing the purported vesting of her land forming the subject matter as a road under the 4th Respondent Sabha as she seeks thereby to quash "*all underlying decisions relating to the same, any orders /decisions / recommendations made by the 1st to 4th Respondents pertaining or affecting her land as a road vested or belonged to the said Sabha*".

The Petitioner is entitled to the said relief since the 4th Respondent Sabha publication of the road in P21 and P24 is meant to serve as notice to the affected land owners who might have an interest with the roads that are included in these publications and in the absence of any objection by such land owner, deemed vested in the 4th Respondent Sabha, in view of the provisions of Section 24.

Section 23 of the Act No. 15 of 1987 declares that "*all thoroughfares within the Pradeshiya Sabha area, other than principal thoroughfares, except in so far as such thoroughfares are already vested by virtue of any other enactment, shall be deemed to be vested in the Pradeshiya Sabha of that area.*"

Section 24(5) states "*Upon publication of such notice under subsection (3) or (4), all such roads and paths or portions of such roads and paths as defined in such notices and depicted by such plans shall be deemed to be vested in the Pradeshiya Sabha.*"

It appears from the deeming provisions that had been inserted by the Legislature in these two sections confers a Pradeshiya Sabha with the

authority over the thoroughfares in its area, and in relation to the powers that had been specified in Part III of the Act No. 15 of 1987 where the "*Powers and Duties as to Thoroughfares*" of a Pradeshiya Sabha are clearly spelt out.

Since Section 24(5) had included "*all such roads and paths or portions of such roads and paths as defined in such notices*" it is reasonable to assume that the disputed portion of the roadway that had been cut through the Petitioner's tea plantation could also be considered as "deemed vested" in view of the unchallenged publication in P21 and P24.

This Court had already quashed the publication of P21 and P24 as *ultra vires* of the powers of the 4th Respondent, who failed to comply with the mandatory provisions contained in Section 24(1) of the Act. Since there is uncertainty over the description of the disputed roadway, whether it is a road, a path or a portions of a road or a path, the Petitioner is entitled to the protection of law in seeking out a Writ of Certiorari to quash any vesting of such disputed road, path or a portion of a road or a path.

It is also the complaint of the Petitioner, in support of her contention of illegality over the actions of the 1st to 4th Respondents under Section 24, that they have failed to serve notice of the publications in the manner provided for in Section 26, where it is stated "*Every notice required to be given under this part may be served either personally upon such person, or by leaving it with some member of his household, or by affixing it to some conspicuous part of his residence.*"

This is obviously not the case when the provisions of Section 24 is examined in its proper context. Sections 24(1)(b) and 24(4) contain the

words “cause notices to be published in the prescribed manner” while 24(3) refers to “... notice under subsection (1) is published in the Gazette, ...”. It is therefore clear that a Pradeshiya Sabha is expected to publish its notices that are required to be published under Section 24 in the *Gazette*. In this instance, the impugned publications of the 4th Respondent namely P21 and P24 are made in the *Gazette* and thus it is clear that there is no valid basis for the contention of the Petitioner that she should have been personally served with notice under Section 26. The word “may be” as it appears in Section 26 is significant in this context since Section 24 also speaks of notice. But the said section contains the manner in which such notices be made.

Lastly, this Court turns its attention to the Petitioner’s prayer for the issuance of Writ of Prohibition on the 1st to 4th Respondents. In seeking a Writ of Prohibition the Petitioner sought to prevent the 1st to 4th Respondents from deeming, treating, claiming, acquiring, classifying, demarcating, using, permitting to be used the Petitioner’s land or a portion thereof described in the schedule to the petition as a road vested in, belonging to the 4th Respondent Sabha under any of the said Gazettes as opposed to the Government already built on the lot depicted as lot No. 605 in Final Plan No. 91 (P1).

In relation to this issue the Court notes that it is evident from the material that the 1st and 2nd Respondents were motivated and had acted with some personal interest rather than on *mala fides*, as alleged by the Petitioner, in the construction of the “illegal” portion of the road through her tea plantation.

Since the publications P21 and P24 had already made *ultra vires* by this judgment, this Court is inclined to grant the said Writ of Prohibition against the 1st to 4th Respondents as prayed for by the Petitioner.

In view of the above reasoning, this Court makes the following orders;

- a. the act of the 4th Respondent in the inclusion of the road "Beragama-Horedola-Vitiyalagoda-Kitulellawatta Road" in the list of roads that were published in schedule 17 of Gazette No. 1766 of 06.07.2012 (P21) and in schedule 16 in Gazette No. 1789 of 14.12.2012 (P24) respectively, are quashed by the issuance of Writ of Certiorari,
- b. all underlying decisions relating to the Petitioner's land as described in the schedule to the instant petition and any orders/ decisions /recommendations made by the 1st to 4th Respondents pertaining or affecting the said land as a road vested or belonged to the said Sabha is also quashed by the issuance of a Writ of Certiorari,
- c. a Writ of Prohibition is issued to prevent the 1st to 4th Respondents from deeming, treating, claiming, acquiring, classifying, demarcating, using and permitting to be used the Petitioner's land or a portion thereof described in the schedule to the petition as a road vested in, belonging to the 4th Respondent Sabha under any of the said Gazettes P21 or P24 except the

roadway Government had already demarcated and built on the lot depicted as lot No. 605 in Final Plan No. 91 (P1).

The application of the Petitioner is allowed.

Parties will bear their costs.

JUDGE OF THE COURT OF APPEAL