

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

In the matter of an application for leave to Appeal  
against the Order/Judgment of the Civil Appellate  
High Court of the Southern Province holden in  
Galle.

Supreme Court Appeal No:  
**SC/Appeal/16/2022**  
Supreme Court L.A No:  
**SC/HCCA LA No. 236/2021**  
**SP HCCA/GA/LA /04/2020**  
District Court of Galle  
**Case No: LA/613**

Wijesekera Subhasingha Sathyananda,  
Divisional Secretary,  
Divisional Secretariat,  
Nagoda.

**PLAINTIFF**

Vs.

1. Land Reform Commission,  
PO Box 1526,  
No. C 82,  
Hector Kobbakaduwa Mawatha,  
Colombo 07.
2. Elpitiya Plantation Company now  
Known as  
Elpitiya Plantation PLC,  
No.73/3, Ward Place, Colombo 07.

Presently at  
Aitken Spence Tower,  
No. 315, Vauxhall Street,  
Colombo 02.

3. Sri Lanka State Plantations Corporation,  
No. 21, BCC Premises,

Miraniya Street,  
Colombo 01.

**DEFENDANTS**

**AND BETWEEN**

3. Sri Lanka State Plantations Corporation,  
No. 21, BCC Premises,  
Miraniya Street,  
Colombo 01.

**3<sup>rd</sup> DEFENDANT - PETITIONER**

Vs.

Wijesekera Subhasingha Sathyananda,  
Divisional Secretary,  
Divisional Secretariat,  
Nagoda.

**PLAINTIFF - RESPONDENT**

**AND**

1. Land Reform Commission,  
PO Box 1526,  
No. C 82,  
Hector Kobbakaduwa Mawatha,  
Colombo 07.
2. Elpitiya Plantation Company now  
Known as  
Elpitiya Plantation PLC,  
No.73/3, Ward Place, Colombo 07.

Presently at  
Aitken Spence Tower,  
No. 315, Vauxhall Street,  
Colombo 02.

**DEFENDANTS – RESPONDENTS**

**AND NOW BETWEEN**

2. Elpitiya Plantation Company now

Known as  
Elpitiya Plantation PLC,  
No.73/3, Ward Place, Colombo 07.  
Presently at  
Aitken Spence Tower,  
No. 315, Vauxhall Street,  
Colombo 02.

**2<sup>nd</sup> DEFENDANT – RESPONDENT – PETITIONER-  
APPELLANT**

Vs.

Wijesekera Subhasingha Sathyananda,  
Divisional Secretary,  
Divisional Secretariat,  
Nagoda.

**PLAINTIFF -RESPONDENT – RESPONDENT-  
RESPONDENT**

**AND**

1. Land Reform Commission,  
PO Box 1526,  
No. C 82,  
Hector Kobbakaduwa Mawatha,  
Colombo 07.

Presently of  
No. 475,  
Kaduwela Road,  
Battaramulla.

**1<sup>st</sup> DEFENDANT – RESPONDENT –  
RESPONDENT - RESPONDENT**

3. Sri Lanka State Plantations Corporation,  
No. 21, BCC Premises,

Miraniya Street,  
Colombo 01.

**3<sup>rd</sup> DEFENDANT – PETITIONER –**  
**RESPONDENT – RESPONDENT**

**BEFORE**

: S. Thurairaja P.C., J.  
Menaka Wijesundera, J. &  
M. Sampath K. B. Wijeratne J.

**COUNSEL**

: Samantha Vithana with Samudika de Silva for the  
2<sup>nd</sup> Defendant – Respondent – Petitioner.

Sabrina Ahmed, SSC for the Plaintiff–  
Respondent – Respondent.

A.D.H. Gunawardana with Shanaka  
Warnakulasooriya for the 1<sup>st</sup> Defendant–  
Respondent – Respondent.

**ARGUED ON**

: 07.05.2025

**DECIDED ON**

: 18.09.2025

**M. Sampath K. B. Wijeratne J.**

**Introduction**

This is an appeal from the judgment of the Civil Appellate High Court of the Southern Province holden at Galle. By their judgment delivered on April 27, 2021, the learned High Court Judges set aside the judgment of the learned District Judge of Galle delivered on February 24, 2020, on the ground that the learned District Judge erred in law and in fact by failing to consider the issues before Court from a correct legal perspective.

When the matter was supported for Leave to Appeal on March 4, 2022 against the judgment delivered by the Civil Appellate High Court, Galle, this Court granted Leave to Appeal on the questions of law No 1 to 5 stated in Paragraph 25 (at page 11) of the Petition and the 6<sup>th</sup> question of law which was formulated by this Court.

The said questions of law are,

*i. Have their Lordships of the High Court of Civil Appeal erred in law by misinterpreting a judgment of Perera v. Dinigri Manike reported in 63 NLR page 169?*

*ii. Have their Lordships of the High Court of Civil Appeal erred in law as they have not followed the judgment of Perera v. Dinigri Manike reported in 63 NLR page 169?*

*iii. Have their Lordships of the High Court of Civil Appeal erred in law to state that the claim of the 3<sup>rd</sup> Defendant- Petitioner -Respondent could have been considered in the District Court as the 3<sup>rd</sup> Defendant did not make any claim or failed to participate at the inquiry held before the Acquiring Officer of Nagoda in terms of the Section 9 (1) of the Land Acquisition Act No 9 of 1950?*

*iv. Have their Lordships of the High Court of Civil Appeal erred in law that the District Court of Galle has no jurisdiction to inquire into the claim and/or title of the 3<sup>rd</sup> Defendant as the 3<sup>rd</sup> Defendant did not make a claim at the inquiry held before the Acquiring Officer of the Nagoda? (sic)*

*v. Have their Lordships of the High Court of Civil Appeal erred in law as they have failed to appreciate the fact that the learned District Judge has correctly answered issues No. 35 (i), (ii) & (iii) raised in this case?*

*vi. Could the 3<sup>rd</sup> Defendant -Petitioner-Respondent be added as a party to the proceedings in the District Court in view of Section 18 of the Civil Procedure Code?*

## **Factual background**

The Minister of Land Development and Minor Export Agriculture, by Extraordinary Gazette Notification No. 1203/11 dated September 24, 2001, published under Section 5(1) of the Land Acquisition Act, declared that Lot No. 1, depicted in the Surveyor General's advance tracing No. GA/NGD/00/554 dated January 27, 2001, of the land called *Talgaswelawatte*, of an extent of 12.142 Hectares and situated in the village of Mapalagama (FVP 526) in the Divisional Secretary's Division of Nagoda, Galle District, was required for a public purpose and would be acquired under the provisions of the Land Acquisition Act.

Consequently, a notice under Section 7 of the Land Acquisition Act was published in Extraordinary Gazette Notification No. 1330/7 dated March 2, 2004, and in newspapers in all three languages, requiring persons interested in the same land to present their claims for compensation to the Divisional Secretary, the Acquiring Officer. The allotment of the said land to be acquired was described as the land depicted in FVP 526, Sheet No. 77. A copy of the plan is filed of record. The said notice also included the particulars of the claimant, Elpitiya Plantations Company. Subsequently, a correction to the said notice was published in Extraordinary Gazette Notification No. 1641/46 dated February 18, 2010. The only correction made was the updated address of the claimant, Elpitiya Plantations Company.

Consequent to the publication of the notices, the Divisional Secretary, as the Acquiring Officer, proceeded to hold an inquiry into the claims for compensation in terms of Section 9 of the Land Acquisition Act.

The scope of an inquiry under Section 9 is defined within the section itself. For clarity, I reproduce below the relevant portions of Section 9 applicable to the present appeal.

**“9 (1).** (...) *hold an inquiry into -*

*(a) the market value of that land or of the servitude which is to be acquired over that land;*

*(b) such claims for compensation as may have been notified to him within the time allowed therefor by that notice or in accordance with the aforesaid proviso;*

*(c) the respective interests of the persons claiming compensation; and*

*(d) **any other matter which needs investigation for the purpose of making an award under section 17.***

*(...) (2)*

*(...) (2A)*

*(3) The Acquiring Officer conducting an inquiry under subsection (1) may by a summons under his hand require -*

*(a) **any person** whose evidence is, in the judgment of such Acquiring Officer, likely to be material to the subject matter of the inquiry, to attend and give evidence (...)*

*(b) **any person** to produce at the inquiry, on such date and at such time and place as may be mentioned in the summons, for examination by such Acquiring Officer or (...), likely to contain such information as may be necessary to determine the interests of that person or of any other person in the land to which the inquiry relates or (...) and*

*(...) (4) – (6)” [Emphasis added]*

An inquiry into the claims was conducted by the Divisional Secretary of Nagoda, in his capacity as the designated Acquiring Officer, in terms of Section 9 of the Land Acquisition Act.

At the inquiry, only the Director (Revenue) of the Land Reform Commission (hereinafter referred to as the 'LRC') and the General Manager of Elpitiya Plantations PLC had given statements, which are filed of record. In his statement, the officer of the Land Reform Commission challenged the validity of Extraordinary Gazette Notification No. 181/12 dated February 27, 1982.

However, the validity of the Gazette notification cannot be challenged in a proceeding of this nature, namely, an inter-pleader action.

Be that as it may, the Director of the LRC, in his statement, challenged the validity of the Gazette notification on two grounds. The first ground is that the notice is said to have been published under Section '42එච්' read together with Section 27ඒ of the Land Reform Law; however, as there is no Section '27ඒ' in the Act, the notice is allegedly defective. When comparing the sections of the Act and the statements of the Director of the 'LRC' carefully, it is readily apparent that the letters '42එච්' and '27ඒ', though written in Sinhala, correspond to the English text '42H' and '27A'. The second ground is that compensation for the land acquired was not paid to the LRC by the SLSPC. However, Section 27A (1) of the Land Reform Law specifies that a vesting order of any estate land to a corporation should specify the terms and conditions "*(...)relating to consideration for the vesting of that land in such Corporation as may be agreed upon between the Commission and such Corporation.*" In my view, these words do not mean that consideration must necessarily be paid for the land vested to a corporation. Rather, all that is required is that the order contain "*conditions relating to consideration for the vesting of the land.*" Accordingly, Gazette Notification No. 181/12 dated February 27, 1982, contained conditions stating that **no consideration** is payable in respect of the land.

“මෙකී ඉඩම වෙනුවෙන් ගෙවිය යුතු මුදල පිළිබඳ කිසියම් පොරොන්දුවක් හෝ ගිවිසුමක් ඇතුළත් නොවේ.”

Therefore, in any event, the claim put forward by the LRC challenging the validity of the Gazette has no merit.



## **Decision Following the Acquiring Officer's Inquiry**

Consequent to the inquiry, the Acquiring Officer referred the dispute to the District Court of Galle in terms of Section 10 of the Land Acquisition Act, by plaint dated March 3, 2015. The LRC and Elpitiya Plantations Company, now known as Elpitiya Plantations PLC, were named as the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, respectively. The Acquiring Officer informed Court that both the LRC and Elpitiya Plantations PLC had submitted their claims to him in terms of Section 9 of the Land Acquisition Act, and that, having inquired into those claims, he was unable to determine the title to the land in order to award compensation. Accordingly, he requested the District Court to decide the dispute and determine the title<sup>1</sup>.

## **Proceedings Before the District Court**

The 1<sup>st</sup> Defendant, LRC, submitted its statement of claim to the District Court, seeking a declaration that it is the absolute owner of the subject matter and, therefore, entitled to receive compensation for the acquired land. The 2<sup>nd</sup> Defendant, Elpitiya Plantations PLC, filed a statement of claim seeking a declaration that it is entitled to compensation for the land acquired and that it is the lawful lessee who was in possession of the land.

Undoubtedly, the 2<sup>nd</sup> Defendant, Elpitiya Plantations PLC, is the lawful long-term lessee of the SLSPC. However, under the law of Sri Lanka, no distinction is drawn between short-term and long-term leases. As pointed out by Hutchinson C.J in the *Abdul Azeez v. Abdul Rahiman*<sup>2</sup> case, which was also reproduced in the *Carron v Fernando*<sup>3</sup> case, "A lessee under a valid lease from the owner is dominus or owner for the term of his lease. He is owner during that term as against all the world, including his lessor". Nevertheless, as against the lessor, the lessee's rights are confined to those arising under the lease.

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<sup>1</sup> Chapter XLIII of the Civil Procedure Code, Inter-pleader actions.

<sup>2</sup> *Abdul Azeez v Abdul Rahiman* 2(1909) Current Law Reports Vol. I.,275.

<sup>3</sup> *Carron v Fernando et al* (1933) 35 NLR 352.

## Implications of the introduction of Land Reform Law

With the introduction of the Land Reform Law, agricultural lands owned by any person in excess of the ceiling stipulated in the Land Reform Law were vested in the LRC by operation of law<sup>4</sup>. By the subsequent Amendment No. 39 of 1975, Part IIIA was introduced to the LRC Law, under which estate lands owned by public companies were also deemed to be vested in and possessed by the LRC. The effect of such vesting, as provided by Section 42A (2) of the Land Reform Law, is that the LRC obtained absolute title to such estate land as from the date of vesting. Sections 42H (a) to (e) specify the purposes for which the estate lands so vested in the LRC may be used. According to Section 42H (c), such land could be '*alienated to any corporation established or to be established under the State Agricultural Corporations Act or to the **Sri Lanka State Plantations Corporation** established under the Sri Lanka State Plantations Corporation Act.*'[Emphasis added]

The objective of the Sri Lanka State Plantations Corporation (hereinafter referred to as the 'SLSPC'), as per the Sri Lanka State Plantations Corporation Act No. 4 of 1958 as amended by amendment Act No 49 of 1979 (Section 5), was:

*"inter alia, of 'to manage agricultural and estate lands vested in, transferred or alienated to the Corporation by the Government or any other person or acquired by the Corporation, and to promote optimum productivity on such lands'"*<sup>5</sup>

Section 27A (1) of the Land Reform Law reads as follows;

*"27A (1) At the request of the Commission, the Minister may, where he considers it necessary in the interest of the Commission to do so, subject to sections 22, 23 and 42H, by Order published in the Gazette, vest, in any State Corporation specified in the Order, with effect from a date specified in that Order, any agricultural land or estate land or any portion of the land vested in the Commission under this Law, and described in the order, subject to such terms and conditions relating to consideration for the vesting of that land in such Corporation as may be agreed upon between the*

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<sup>4</sup> Vide Section 3(2) of the LRC law No 1 of 1972.

<sup>5</sup> Vide Section 6 of Sri Lanka State Plantations Corporation (amendment) Act No. 49 of 1979.

*Commission and such Corporation.”*

(2) - (4) (...)[Emphasis added]

The consequences of an order made under Section 27A (1) are set out in Sections 27A (2) and (3). The Minister of Agricultural Development and Research made the order relevant to this application in terms of Section 27A, read together with Section 42H, which was published in Extraordinary Gazette No. 181/12 dated February 27, 1982.

The order reads as follows:

‘ප්‍රතිසංස්කරණ කොමිෂන් සභාවේ අභිවාද්ධිය සඳහා එසේ කිරීම අවශ්‍යයි සලකා බැලීමෙන් පසුව එම කොමිෂන් සභාව විසින් කරන ලද ඉල්ලීමක් අනුව, 1975 අංක 39 දරණ පනතින් ද, 1981 අංක 14 දරණ පනතින් ද, 1981 අංක 39 දරණ පනතින් ද සංශෝධනය කරන ලද 1972 අංක 1 දරණ ඉඩම් ප්‍රතිසංස්කරණ නීතියේ අංක 42 එව් වගන්තිය සමග කියැවෙන ඒ වගන්තිය යටතේ මෙහි පහත උපලේඛනයේ සඳහන් වතු 1958 අංක 4 දරණ ලංකා රාජ්‍ය වැවිලි සංස්ථා පණත යටතේ පිහිටුවා ඇති ශ්‍රී ලංකා රාජ්‍ය වැවිලි සංස්ථාවට මෙයින් පවරා දෙනු ලැබේ.’

The entire estate of *Talgaswelawatte*, within the Administrative District of Galle and measuring 793.16 Hectares, is included in the Schedule to the said Gazette Notification. Consequently, in terms of Section 27A (1) of the Land Reform Law, the title to the entire *Talgaswelawatte* estate was transferred to the SLSPC, effective from the date of the order, together with all rights and liabilities of the LRC in respect of said estate <sup>6</sup>.

Although the 1<sup>st</sup> Respondent, LRC, argued that only the control and management of subject estate were vested in the 3<sup>rd</sup> Defendant, SLSPC, Sections 27A (2) and (3) clearly reflect the legislature’s intention that not only the rights but also the liabilities of the LRC in respect of estate lands, together with ownership of such lands, vest in the corporation to which an order under subsection (1) is made.

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<sup>6</sup> *Vide* Section 27A (2) and (3).

For clarity, I reproduce below Sections 27A (2) and (3), which read as follows:

**“27A (1) (...)**

*(2)An Order under subsection (1) shall have the effect of vesting in such State Corporation specified in the Order such **right, title and interest** to the agricultural land or estate land or portion thereof described in that Order; as was held by the Commission on the day immediately preceding the date on which the Order takes effect.*

*(3)Where any agricultural land or estate land or any portion thereof is vested in a State Corporation by an Order made under subsection (1), all the rights and liabilities of the Commission under any contract or agreement, express or implied, which relate to such agricultural land or estate land or portion thereof, and which subsist on the day immediately prior to the date of such vesting, shall become the **rights and liabilities** of such State Corporation.”*

*(3), (4) (...)” [Emphasis Added]*

### **The Statutory duty upon the Acquiring Officer**

As per the 2<sup>nd</sup> Respondent’s statement of claim and the petition filed by the 3<sup>rd</sup> Respondent in the High Court, by virtue of Gazette (Extraordinary) No. 720/2 dated June 22, 1992, the management and control of *Talgaswelawatte* were handed over to the Janatha Estate Development Board (hereinafter referred to as the ‘JEDB’). Thereafter, both the JEDB and the SLSPC (3<sup>rd</sup> Defendant) entered into Lease Agreement No. 346 dated May 4, 1995, attested by Daphne Peiris, Notary Public, by which the aforesaid land *Talgaswelawatte*, measuring 1,847 acres, 2 roods, and 10 perches, was leased to 2<sup>nd</sup> Defendant Elpitiya Plantations PLC for a period of 99 years, with effect from June 22, 1992. Accordingly, possession was handed over to Elpitiya Plantations PLC, which has been exercising the control and management of the estate up to date. Subsequently, an amendment was made to the original lease

agreement by Deed of Amendment of Lease No. 1566 dated December 11, 1995, attested by Manik Dias Amarathunge, Notary Public, by which the lease period was reduced to 53 years, ending on June 21, 2045.

As quoted above, pursuant to Section 9 of the Land Acquisition Act, the Acquiring Officer must hold an inquiry into the market value of the land or servitude to be acquired, the claims for compensation, and the respective interests of the persons making such claims, as well as any other matters that require investigation for the purpose of making an award under Section 17. In making such an award under Section 9, the Acquiring Officer must, *inter alia*, determine the persons entitled to compensation and the nature of their interests in the land. Consequently, the Acquiring Officer is duty-bound to ascertain both the entitlement to compensation and the nature of each claimant's interest in the land.

In terms of Section 9(3)(a) of the Land Acquisition Act, the Acquiring Officer conducting an inquiry is empowered to require the attendance of any person whose evidence, in his judgment, is likely to be material to the subject matter of the inquiry, by issuing summons for such attendance and to give evidence at the inquiry. He is also empowered to require any person to produce any document likely to contain information necessary to determine that person's interest, or the interest of any other person, in the land, or the amount of compensation payable for such interest.

At the conclusion of an inquiry held under Section 9, the Acquiring Officer shall prepare a report setting out the names of the persons who, in his opinion, are entitled to compensation, the nature of their respective interests, and the amount of compensation he proposes to award in respect of each such interest or refer the matter for determination by Court.

Section 10 reads thus;

*10 (1) At the conclusion of an inquiry held under section 9, the Acquiring Officer holding the inquiry shall either-*

*a) make a decision on every claim made by any person to any right, title or interest to, in or over the land which is to be acquired or over which a servitude is to be acquired and on every such dispute as may have **arisen between any claimants as to any such right, title or interest**, and give notice of his decision **to the claimant or to each of the parties to the dispute**, or*

*b) refer the claim or dispute for determination as hereinafter provided.*

*(2) – (5) (...) [Emphasis added]*

When Section 10(1) is read in isolation, one might gain the impression that the decision of the Acquiring Officer is only confined to the claims made before him. However, as I have already stated above, the Acquiring Officer conducting an inquiry is expected to summon any person whose evidence is likely to be material to the subject matter, and to require the production of any document likely to contain information necessary to **determine the interest of that person or of any other person** in the land.

Consequently, the Acquiring Officer is expected to diligently determine not only the rights of the claimants who have submitted claims, but also the rights of any other persons who, despite not having made a claim, hold an interest whatsoever in the land. As such, not only the claimants but also those with interests in the land should be considered 'parties' to the dispute, to whom the Acquiring Officer is required to give notice of his decision after the inquiry, in terms of Section 10(1)(a) of the Land Acquisition Act. Accordingly, any person having an interest in the land who ought to have been summoned by the Acquiring Officer, but was not, must be regarded as a necessary party to the dispute. In this context, it is relevant to dig into the legal definition of the word 'necessary party'. The Black's Law dictionary <sup>7</sup> provides the meaning of the word as follows.

*“In pleading and practice, those persons who must be joined in an action because, inter alia, complete relief cannot be given to those already parties without their joinder. Necessary parties are those who must be included in*

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<sup>7</sup> Black's Law Dictionary, Bryan A. Garner, 6<sup>th</sup> Edition at page 1030.

*action either as plaintiff or defendants, unless there is a valid excuse for their non-joinder. City of Hutchinson v. Hutchinson, Kansas Office of Kansas State Employment Service, 213 Kan. 399, 517 P 2d 117, 122. Those persons who have such an interest in controversy that a final judgment or decree cannot be made without either affecting their rights or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience. Royal Petroleum Corp vs Dennis 160 Tex 392, 332 S.W. 2d 313, 314."*

As a result, when a matter is referred to the District Court under Section 10(1)(b) of the Land Acquisition Act, such parties should be named as parties to the dispute referred by the Acquiring Officer for determination by Court. In the present case, the Director of the Land Reform Commission (LRC), in his statement before the Acquiring Officer, acknowledged the existence of Gazette (Extraordinary) Notification No. 181/12 dated February 27, 1982, by which *Talgaswelawatte* was vested in the Sri Lanka State Plantation Corporation (SLSPC). The General Manager of Elpitiya Plantations PLC stated that *Talgaswelawatte*, which was owned by the SLSPC, had been leased to Elpitiya Plantations PLC and produced the deed of lease in support. However, the Acquiring Officer failed to summon the SLSPC to the inquiry under Section 9(3)(a) and (b) of the Land Acquisition Act which was a fatal error committed by him. In fact, from the very outset of the inquiry, he was unable to correctly identify the parties having interests to the subject land, which led to all the subsequent issues.

After referring the dispute to Court, the District Judge of Galle, having accepted the plaint, issued summons to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. Consequently, the 1<sup>st</sup> Defendant filed a statement of claim dated November 30, 2015, filed on March 28, 2016 and the 2<sup>nd</sup> Defendant filed a statement of claim on March 20, 2017. Thereafter, the matter was fixed for inquiry. Prior to the commencement of the inquiry, the 3<sup>rd</sup> Defendant, SLSPC, filed a motion through an attorney-at-law requesting a date to file a proxy along with an application to intervene in the case<sup>8</sup>. However, only a proxy for the 3<sup>rd</sup> Defendant was filed<sup>9</sup>. Nevertheless, the Court allowed the 3<sup>rd</sup> Defendant to file a

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<sup>8</sup> *Vide* page 170 of the Appeal brief.

<sup>9</sup> *Vide* Journal entries dated May 16, 2019 and June 25 2019.

statement of claim which he did<sup>10</sup>. Now the question would be whether the 3<sup>rd</sup> Defendant is eligible to intervene in the District Court action without claiming his interests before the Acquiring officer. (note: this is because his intervention is already done without objection) The relevant statutory provision for the addition of parties is contained in Section 18(1) of the Civil Procedure Code, the pertinent part of which reads as follows:

*"18(1) (...) the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in that action, be added"*

Section 18(2) of the Civil Procedure Code provides that any order for amendment or alteration of parties shall state the facts and reasons which together form the grounds on which the order is made. However, in this instance, the learned District Judge has failed to comply with the requirements of Section 18(2).

Thereafter, the matter proceeded to inquiry before the District Court. At the inquiry, three admissions were recorded. The 1<sup>st</sup> Defendant framed issues numbered 1 to 17; the 2<sup>nd</sup> Defendant framed issues numbered 18 to 26 and 35; and the 3<sup>rd</sup> Defendant framed issues numbered 27 to 34, and 36 and 37.

Subsequently, the parties moved to try issue No. 25 framed by the 2<sup>nd</sup> Defendant and issue No. 36 framed by the 3<sup>rd</sup> Defendant as issues of law at the first instance<sup>11</sup>. Consequently, the parties were allowed to file their written submissions, to which the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants acceded. Although the proceedings dated December 6, 2019, state that the application was to decide issues No. 25 and 36 as preliminary issues, the written submissions of the 2<sup>nd</sup> Defendant refer to issues No. 35, 36, and 37, while those of the 3<sup>rd</sup> Defendant refer only to issues No. 35 and 36.

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<sup>10</sup> *Vide* Journal entry dated July 29, 2019.

<sup>11</sup> *Vide* proceedings dated December 6, 2019 at page 75 and 76 of the appeal brief.



In any event, issue No. 25 is not a question of law and therefore not an issue that could be decided as a preliminary issue. The learned District Judge, in his order dated February 24, 2020, proceeded to answer the three issues No. 35, 36, and 37. The learned District Judge took into account the fact that the 2<sup>nd</sup> Defendant, Elpitiya Plantations PLC, is the lessee under the lessor, the SLSPC (3<sup>rd</sup> Defendant). He also considered the explanation in the SLSPC's statement of claim regarding its inability to make a claim before the Acquiring Officer, stating that, since it did not have prior notice, it was unable to participate in the inquiry.

Despite this, the learned District Judge gave weight to the 2<sup>nd</sup> Defendant's submission that since the 3<sup>rd</sup> Defendant failed to prefer a claim before the Acquiring Officer, it is not entitled to prefer any claim in the District Court or to obtain any relief.

The learned District Judge heavily relied on the decision of Basnayake C.J. in the case of *Perera v. Dingiri Menike*<sup>12</sup>. Relying on that decision, the learned District Judge answered issues No. 35(i), (ii), and (iii), as well as issues No. 36 and 37, against the 3<sup>rd</sup> Defendant and dismissed the claim made by the 3<sup>rd</sup> Defendant. Consequently, the conflicting claims made by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, who interpleaded, were fixed for inquiry. At this juncture, it is pertinent to consider and compare the facts in *Perera v. Dingiri Menike*<sup>13</sup> (Supra) with the facts of the case at hand.

In the former case, the disputed claim put forward by the 9<sup>th</sup> Respondent had been a belated one, made even after the decree had been entered, claiming compensation in respect of a 2/3 share of an extent of 2 acres of land. The 9<sup>th</sup> Respondent moved that she be added as a Defendant, be permitted to file a statement of claim, and that an inquiry be held. The Court rejected the application of the 9<sup>th</sup> Respondent on the ground that her presence was not necessary for the determination of the dispute referred to the Court by the Government Agent.

In his judgment, Basnayake C.J. reproduced the following observations made by Withers J. in *Templer v. Seneviratne*<sup>14</sup>, which read as follows:

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<sup>12</sup> 63 NLR 169.

<sup>13</sup> (Supra).

<sup>14</sup> [1892] 2 C.L Reports 70.

*"According to clause 19 of Ordinance No. 2 of 1889, which governed the procedure herein, no person can intervene in any action **other than as provided by Clause 18 of Ordinance No 2 of 1889**. The intervention of the additional claimants could not **possibly be necessary** for the adjudication of the question raised between the Government Agent and the four claimants who had attended in pursuance of the notice."* [Emphasis added]

Basnayake C.J. also reproduced the following observations made by De Sampayo J. in *Assistant Government Agent, Kalutara v. Wijesekara*<sup>15</sup>, which reads as follows:

*"The Court's jurisdiction is limited by the Ordinance; it is either to make an award as to the amount of compensation where the claimants and the Government Agent are disagreed on that point, or to **decide the question of title to the land** where there is **any dispute among the claimants** or **where all the parties interested have not appeared before the Government Agent**. The proceedings are purely statutory and do not, I think, admit of legal exceptions or dilatory pleas, as in an ordinary action, where the case falls under the first head of inquiry."* (Emphasis added)

The above statements relied on by Basnayake C.J. themselves demonstrate that the Court has jurisdiction to decide the question of title to the land where all the parties interested have not appeared before the Acquiring Officer.

Furthermore, Basnayake C.J. has not completely ruled out the application of Section 18 of the Civil Procedure Code to proceedings of this nature, namely inter-pleader actions. In the course of the judgment, he went on to observe that<sup>16</sup>:  
*"... Section 18 of the Civil Procedure Code which can undoubtedly be resorted to in an appropriate case ..."*

Moreover, according to Section 12(1) of the Land Acquisition Act, proceedings in Court on a reference made under Section 10 shall be subject to the procedure provided by the Civil Procedure Code for civil suits. Therefore, in the absence of a specific exclusion, no Court can rule out or restrict the application of any of the provisions contained in the Civil Procedure Code.

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<sup>15</sup> 4 C.W.R. 257.

<sup>16</sup> At page 171.

It is important to note that in *Perera v. Dingiri Menike*<sup>17</sup> itself, Basnayake C.J. allowed the addition of the heirs of the deceased 5<sup>th</sup> Defendant, who had died after the matter was referred to Court even without the filing of an answer. Further, in *Government Agent, Sabaragamuwa v. Asirwatham et al*<sup>18</sup>, cited by Basnayake C.J., where the land that was the subject of proceedings under the Land Acquisition Act had been transferred by the claimant while the reference to Court was pending, the vendee was permitted to be added as a party. Hence, it is clear that the addition of parties is not alien to inter-pleader actions.

In light of the above analysis, I am of the view that the facts of *Perera v. Dingiri Menike*<sup>19</sup> are distinguishable from the present case and, therefore, do not constitute a judicial precedent applicable to this matter.

Above all, when the Charter of Justice of 1801 declared the Supreme Court to be a court of law and equity, it commenced the reception of equitable concepts into the system of justice. Therefore, this Court is mindful that it ought to consider not only the black-letter law contained in statutes, but also the equitable principles that mitigate the rigidity of the law when determining a case.

In this context also, the 3<sup>rd</sup> Defendant suffered significant prejudice, as the Acquiring Officer failed to follow the statutory procedure correctly. Consequently, although being the owner of the land, the 3<sup>rd</sup> Defendant was on the verge of being deprived of the proprietary rights to which he is entitled under the Land Acquisition Act, due to the absence of prior notice. Had the Acquiring Officer duly notified the 3<sup>rd</sup> Defendant, he could have appeared at the inquiry.

The legal maxim *ubi jus ibi remedium*, meaning “*where there is a right, there is a remedy*”, is applicable here. It is therefore the duty of this Court is to protect and restore the rights of the 3<sup>rd</sup> Defendant where they have been infringed. This Court cannot, even in equity, place the derivative rights of the 2<sup>nd</sup> Defendant lessee above the

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17 (Supra).

18 [1928] 29 NLR 367.

19 (Supra).

rights of the 3<sup>rd</sup> Defendant, who is the owner as well as the lessor of the subject estate.

Consequently, I hold that the learned District Judge erred in disallowing the claim made by the 3<sup>rd</sup> Defendant, SLSPC.

When the 3<sup>rd</sup> Defendant sought leave to appeal against the order of the learned District Judge dated February 24, 2020, disallowing the claim of the 3<sup>rd</sup> Defendant, SLSPC, the Civil Appellate High Court of the Southern Province holden at Galle granted leave to appeal and thereafter proceeded to hear the appeal.

The learned High Court Judges also distinguished the facts of *Perera v. Dingiri Menike*<sup>20</sup> on the ground that, in that case, the party sought to be added was a complete outsider who had not made any claim before the Acquiring Officer. In contrast, in the instant case, neither the 1<sup>st</sup> Defendant, LRC, nor the 2<sup>nd</sup> Defendant, Elpitiya Plantations PLC, both of whom made claims before the Acquiring Officer for compensation holds title to the subject land. The learned High Court Judges observed that the learned District Judge failed to consider the attributes of property rights, bearing in mind that the 2<sup>nd</sup> Defendant, Elpitiya Plantations PLC, is merely a lessee holding leasehold rights under the 3<sup>rd</sup> Defendant, SLSPC, who is the owner of the property. Therefore, despite this procedural defect, it is clearly apparent from the grounds stated above in this judgment that the SLSPC is a necessary party to the Acquiring Officer's inquiry.

Accordingly, the learned High Court Judges held that the learned District Judge erred in law and set aside the order of the learned District Judge and directed the District Judge to hold an inquiry based on the issues raised by all parties, including the 3<sup>rd</sup> Defendant, the SLSPC.

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20 (Supra).

In light of the analysis set out above, I answer the questions of law framed before this Court as follows:

i. **No.**

ii. **No.**

iii. **No.**

iv. **The learned Judges of the High Court of Civil Appeal rightly held that the District Court of Galle possesses jurisdiction to inquire into the claim and/or title of the 3<sup>rd</sup> Defendant, notwithstanding the fact that the 3<sup>rd</sup> Defendant had not made a claim at the inquiry conducted before the Acquiring Officer.**

v. **No.**

vi. **Yes.**

I affirm the decision of the learned High Court Judges dated April 27, 2021, and dismiss this appeal.

No costs.

**JUDGE OF THE SUPREME COURT**

**S. Thurai Raja, P.C., J.**

I Agree.

**JUDGE OF THE SUPREME COURT**

**Menaka Wijesundera, J.**

I Agree.

**JUDGE OF THE SUPREME COURT**