

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

SC Appeal No. 56/2008
SC (Spl) LA No. 100/2008

Anusha Wijewardena
34, Orchard Gate,
Bradly Stoke,
BS 32 OHW,
Bristol,
United Kingdom

By her Attorney
Simila Patuwatha Vithana
75/3-2, Isipathana Mawatha,
Colombo 5.

PETITIONER

Vs.

1. Minister of Lands,
Sampathpaya"
Battaramulla.
2. Minister of Lands
Govijana Mandiraya,
Battaramulla.
3. Divisional Secretary,
Kaduwela.
4. Director
Urban Development Authority,
"Sethsiripaya",
Battaramulla.

5. Sri Lanka Land Reclamation and Development Corporation,
P.O. Box 56,
No. 3, Sri Jayawardenapura Mawatha,
Welikada,
Rajagiriya.
6. Commissioner General of Agrarian Development
Department of Agrarian Development
42, Sir Marcus Fernando Mawatha,
P.O. Box 537,
Colombo 7.
7. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

AND BETWEEN

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RESPONDENTS-RESPONDENTS

BEFORE: Priyasath Dep P.C., J.
Priyantha Jayawardena P.C., J. and
Anil Gooneratne J.

COUNSEL: Gamini Hettiarachchi for the Petitioner-Petitioner
Anusha Navaratne A.S.G., for the Respondent-Respondent

ARGUED ON: 01.10.2015

DECIDED ON: 24.11.2015

GOONERATNE J.

This was a matter arising under the Land Acquisition Act. Petitioner sought a Writ of Mandamus from the Court of Appeal to divest the land in question and to revoke the vesting orders marked P17 and P19 issued under the Land Acquisition Act (as described in the Amended Petition filed in the Court of Appeal). To state very briefly the Petitioner's husband purchased the land on or about 1978 by a deed of transfer. This land was gifted to the daughter of the Petitioner's husband. The Petitioner in order to develop the land, sought permission from relevant authorities. However when a boundary dispute arose,

the Petitioner, only at that stage became aware that the land in question was acquired by the State. (as pleaded).

The material placed before us by way of oral and written submission it is apparent that the acquisition is challenged on the basis that the Petitioner had no sufficient notice, and that the land had not been utilized for a public purpose. Court of Appeal dismissed the Petitioner's application without costs. Aggrieved by the order of dismissal Petitioner sought Special Leave to Appeal from the judgment of the Court of Appeal and this court granted leave on 02.07.2008 on the following questions of law.

1. Did the Court of Appeal misdirect itself in law when it failed to appreciate that the Petitioner's land has been excluded at the time of the 1997 acquisition and the significance of such exclusion on the relief, claimed by the Petitioner?
2. Did the Court of Appeal failed to appreciate that the Petitioner's land was so excluded from the land acquired in 1997, that there is no legal impediment for a revocation and/or divestiture of the Petitioner's land?
3. Did the Court of Appeal misdirect itself in law in the interpretation of the law relating to revocation and/or divestiture?

4. Did the Court of Appeal misdirect itself in arriving at the conclusion that the divestiture piece meal was not available in law in the context of divestiture of lots 1, 2 and 3 in plain No. 5415 as published in gazette notification 1187/41 of 2001?

5. In terms of Section 4(a) of the Land Acquisition Act as amended, could the appellant be entitled for the relief, she claims?

The Petitioner describes his land as “Ambalangodella Kumbura” and “Kosgahawatta”. The acquisition notice of 1979 contained in Gazette Notification dated 22.10.1979 issued under Section 38 Proviso “A” of the Land Acquisition Act describes the land as ‘Diyawanna Wagura’. Petitioner’s learned counsel advanced an argument at the hearing that Petitioner sought approval to build on the land in dispute from various authorities and approval was granted from these authorities inclusive of the UDA. However at a subsequent point of time the Petitioner received a letter from the Urban Development Authority dated 10.01.2003 cancelling the permission granted.

Learned Counsel for the Petitioner also attempted to demonstrate to this court that there were two acquisition notices, issued. The acquisition in 1979 by Gazette date 22.10.1979 was issued under Proviso ‘A’ to Section 38 of the Land

Acquisition Act refer to Diyawanna Wagura and not Petitioner's lands called "Ambalangodella Kumbura" and Kosgahawatte'. As such Petitioner's lands are not included, but I observe that the above Gazette Notification is based on plan 5415 and Petitioner's land is included as lot 1 in the said plan. Petitioner pleaded that another Gazette Notification was issued, under Proviso 'A' to Section 38 of the said Act. This Gazette also refer to plan 5415. (P18). The Gazette issued under Section 7 of the said Act in respect of the 2nd Acquisition in 1997, purports to acquire more or less the same lands purportedly acquired in terms of this Gazette based on two separate plan Nos. 7404 & 7750. Plan 7750 excludes Petitioner's lands. This futile attempt is to demonstrate that on the second Acquisition in 1997, the notification under Section 38 Proviso 'A' includes Petitioner's land whilst Gazette with regard to notice as per Section 7 of the Act, refers to two other plans, (P21 & P22 annexed to the Petition in the Court of Appeal) which excludes Petitioner's land. It is on the above basis that the Petitioner urge that the matter warranted a divestiture.

At this point of my judgment, before I express my views on the subject, I prefer to be guided by the very fundamental principles governing mandamus. A Writ of Mandamus has been sought by the Petitioner, which is a

discretionary remedy of court. A Mandamus will not be granted to correct an erroneous decision as to fact 2 CLW 14:10 Times 65; 12 law Rec 176. The grant of a mandamus is a matter for discretion of the court. It is not a writ of right and is not issued as a matter of course 1 CLW 306. Further the court before issuing a Writ of Mandamus is entitled to take into consideration the consequences which the issue of the writ will entail. 34 NLR 33. A party applying for a Mandamus must make out a legal right and a legal obligation 1 NLR at 33.

The material placed before this court indicates that the land in dispute was acquired by Gazette Notification of 22.10.1979 (P17) under proviso 'a' to Section 38 of the Land Acquisition Act. The said Gazette Notification is based on preliminary plan No. 5415 (P18) and Petitioner's land is included in lot 1 of the said preliminary plan. The tenement list P18 shows that the claimant to the land is State. Prior to issuance of the above notification a notice under section 2 of the Lands Acquisition Act had been issued and exhibited. Subsequently by Gazette Notification No. 968/1 of 24.3.1997 (P19) under proviso 'a' to Section 38 of the Land Acquisition Act was published acquiring lots 1, 2, 3 & 4 of plan No. 5415. Both acquisitions are in respect of the same land and the extent is the same

(17.199 hectares. Vide P19 & 19(b). Learned Additional Solicitor General argued that sufficient notice had been given to the Petitioner as prior to publication of the Section 38 notice, Section 2 notice was published and exhibited. It was also emphasized that Section 39A merely vests a discretionary power in the Minister to make a divesting order in a case where the preconditions referred to in that section are satisfied. A former owner cannot in any account demand such exercise of power. This court has no reason to hold a different view from that which was expressed by the learned Additional Solicitor General.

The Petitioner's position was that she and her family members were always in possession of the land in dispute. The provisions of Section 39A could be invoked on land vested absolutely in the State when actual possession of such land has been taken for or on behalf of the State under the provisions of paragraph (a) of Section 40 of the Act.

Section 39A reads thus:

39A(1) Notwithstanding that by virtue of an Order under Section 38 (hereafter in this section referred to as a "vesting Order") any land has vested absolutely in the State and actual possession of such land has been taken for or on behalf of the State under the provisions of paragraph (a) of section 40, the Minister may, subject to subsection (2), by subsequent Order published in the Gazette (hereafter in this section referred to as a

“divesting Order”) divest the State of the land so vested by the aforesaid vesting Order.

(2) The Minister shall prior to making a divesting Order under subsection (1) satisfy himself that -

- (a) no compensation has been paid under this Act to any person or persons interested in the land in relation to which the said divesting Order is to be made.
- (b) the said land has not been used for a public purpose after possession of such land has been taken by the State under the provisions of paragraph (a) of section 40;
- (c) no improvements to the said land have been effected after the Order for possession under paragraph (a) of section 40 had been made; and
- (d) the person or persons interested in the said land have consented in writing to take possession of such land immediately after the divesting Order is published in the Gazette.

I wish to add that actual possession had not been taken over under Section 40(a) of the Act and Petitioners own showing of being in possession would not give rise to an application under the provisions of the Land Acquisition Act.

There is also another matter that cannot be ignored. Document 'X' indicates that land had been utilized to construct the 'Govijana Mandiraya' building. 'X' had been produced on a direction given by court.

Petitioner has also sought a Writ of Mandamus to revoke the vesting order marked P17 and P19 in respect of the land described in their schedules. Though these vesting orders were issued under proviso (a) to Section 38 it refers to the same land vested in the years 1997 (P19) and 1979 (P17). The extent and the boundaries are the same. Land is described as 'Diyawanna Wagura'. Petitioner's position with respect to same already dealt in this judgment.

It is evident that an order under Section 38 of the Land Acquisition Act gives a conclusive effect and all courts receive same as conclusive evidence of title of the state. This being a discretionary remedy of court, cannot afford a statutory right to a litigant, to demand the exercise of a power to revoke the vesting order. Court of Appeal has used its discretion correctly and dismissed the case of the Petitioner. The petitioner has not been successful in making out a legal right and a legal obligation to succeed in this matter. Five questions of law had been suggested at the leave stage. I would answer all five questions of law in the negative against the Appellant. Enactments for the compulsory acquisitions of

land have to be strictly construed and applied. There is no merit in this appeal. As such this appeal is dismissed without costs.

Appeal dismissed.

JUDGE OF THE SUPREME COURT

Priyasath Dep P.C., J.

I agree

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena P.C., J.

I agree.

JUDGE OF THE SUPREME COURT