

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

In the matter of an application under
Article 12(1), 12(2), 14(1) (g) and
14(1) (h) read with Articles 17 and
126 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka

Nadarajah Gunasekaram of Arasady
Veethy, Thayiddu East KKS and presently
of 105, Arasady Road, Kandarmadam.

PETITIONER

S.C.F.R. No.167/2013

Vs

1. a) Gotabaya Rajapaksa Secretary
(Since left the services)
And now

b) M.D.U. Basnayake – present holder
Ministry of Defence and Urban
Development
15/5, Baladaksha Mawatha,
Colombo 3.

2. a) Lieutenant General Jagath Jayasuriya,
(Former Commander of the Army)

b) Lieutenant General R.M.D. Ratnayake
Present Army Commander
Sri Lanka Army
Army Headquarters
Colombo 3.

- c) Lieutenant Gen. A.W.J.C. De Silva
RWP USP
Former Commander – Sri Lanka Army
Army Headquarters, Colombo 3.

- d) Major General Jagath Rambukpotha
Former Commander,
Army Headquarters – Colombo 3.
 - e) Major General A.W.J. Chrisantha de
Silva
Present Army Commander
Army Headquarters – Colombo 3.
3. a) Major General Mahinda Hathurusinghe,
Commander, Security Forces (Jaffna)
Since transferred
- b) Major General Udaya Perera
Commander Security Forces (Jaffna)
Since transferred
- c) Major General Jagath Alwis
Security Forces Head Quarters, Jaffna
Present Commander
- d) Major General Nandana Udawatta
Present Holder – Security Forces,
Jaffna
4. Divisional Secretary
Divisional Secretariat, Tellippalai.
5. Honourable Attorney General
Attorney General’s Department,
Colombo 12.
6. Land Commissioner,
Colombo.

RESPONDENTS

BEFORE:

B. P ALUWIHARE, PC, J.
UPALY ABEYRATHNE, J &
K. T. CHITRASIRI, J.

COUNSEL: A.Vinayagamoorthy with S.K.Purantharan for the Petitioner Nerin Pulle, DSG with Yuresha de Silva, SSC, for the Attorney General.

ARGUED ON: 03.05.2016

DECIDED ON: 03.08.2017

ALUWIHARE, PC, J:

The Petitioner has invoked the fundamental rights jurisdiction of this court as a public-spirited citizen on behalf of the people of Thayiddy and his own behalf and leave to proceed was granted for the alleged infringement of fundamental right enshrined in Article 12(1) and 14(1) (h) of the Constitution.

The Petitioner states that he was living on his property at Thayiddy with his wife. He asserts that he had been displaced in 1990 due to Military operations in the area. Since then he had been living in various places with his relatives as well as in camps. The Petitioner alleges that there are about 3000 people who had faced the same predicament in Thayiddy and are waiting to be resettled. The gravamen of the Petitioner's complaint is that even after cessation of hostilities, they have been displaced are prevented from occupying their property as Valikamam area is fenced out and notice boards erected prohibiting any one from entering the area.

Petitioner further asserts that, to the best of his knowledge there is no law or regulation declaring the area in which his property is situated as a "High Security Zone". Petitioner's position is that with the lifting of State Emergency under provisions of the Public Security Ordinance, it is illegal to declare any area as a "High Security Zone".

Thus, it was contended on behalf of the Petitioner that the actions and/or omissions of the Respondents have resulted in the delay and/or failure to permit them to resettle in their property and further they have deprived from engaging in their livelihood, resulting in an infringement of their fundamental rights.

Petitioner had filed three lists containing names of 225 persons who are seeking to be resettled from Thaiyaddy North, a list containing names of 430 such persons from Thaiyaddy South and another list containing 188 persons from Thaiyaddy East.

The 1st Respondent had averred that the need has arisen to acquire land for the proposed expansion of the Palali Airport and that in addition, owing to the strategic location of the Palali Airport and the Kankasanthurai Naval Base, the presence of the Armed Forces in the Cantonment area is essential. Nonetheless, the substituted 1st Respondent, the Secretary to the Ministry of Defence had in his objection stated that the Army has released 6,250 acres of land that was within the High Security Zone since the end of hostilities. Further the 1st Respondent had averred that on a direction by his Excellency the President, of the land that is to be acquired, steps had been taken to release 1000 Acres to the people who were displaced due to the war.

In view of the requirements referred to above, the 1st Respondent states the acquisition procedure in the area situated within the Cantonment had been set in motion way back in 2013, under the Land Acquisition Act (as amended) and the requisite notices under the said Act had been published in terms of Section 5 and Section 38(a) of the said Act.

In support of the said contention the 1st Respondent had produced Gazette Notification dated 26th April,2013 bearing No. 1807/23. In terms of the Gazette (P3) the extent of the land that is to be acquired is 2578.4475 hectares and include the village of Theiyyaddi South and certain lands in Vallikamam North and Vallikamam East.

The 1st Respondent's position is that with regard to the acquisition of land, procedure established under the Land Acquisition Act will be followed and the Petitioner would be afforded an opportunity to substantiate his claim in respect of the land in question.

The 1st Respondent states that he had acted in good faith and in compliance with the applicable statutory provisions. I have considered the material placed before Court in this matter and is of the view that the Petitioner had failed to establish that his fundamental rights enshrined under Article 12(1) and 14(1)(h) have been infringed.

The application is dismissed without costs.

JUDGE OF THE SUPREME COURT

UPALY ABEYRATHNE, J.

I agree.

JUDGE OF THE SUPREME COURT

K.T.CHITRASIRI, J.

I agree.

JUDGE OF THE SUPREME COURT.