

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

In the matter of an Appeal from the  
Judgment of the Court of Appeal in  
C.A. Case No. 578/2007(writ) in  
terms of Article 128 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.

Maturata Plantation Limited  
Presently at,  
Browns Building  
11<sup>th</sup> Floor,  
Dudley Senanayake Mawatha,  
Colombo 08.

**Petitioner**

**S.C Appeal 130/2011  
S.C. C.A. L.A. No. 55/2009  
C.A. Writ Application No. 578/2007**

**Vs**

1. Jeewan Kumarathunga,  
Minister of Lands and Land  
Development, Govijana Mandiraya,  
80/05, Rajamalwatta Road,  
Battaramulla.
  
2. I.S. Samarakoon,  
Divisional Secretary,  
Divisional Secretariat,  
Athuruliya.

**Respondents**

**AND NOW BETWEEN**

Maturata Plantation Limited  
Presently at  
Browns Building  
11<sup>th</sup> Floor,  
Dudley Senanayake Mawatha,  
Colombo 08.

**Petitioner-Appellant**

**Vs**

1. Jeewan Kumarathunga,  
Minister of Land and Land  
Development

**1<sup>st</sup> Respondent-Respondent**

1A. John Amarathunga  
Minister of Land and Land  
Development

1A1. Harin Fernando  
Minister of Lands,  
Govijana Mandiraya,  
No. 80/05,  
Rajamalwatta Road,  
Battaramulla.

**Substituted 1<sup>st</sup> Respondent-  
Respondent**

2. I.S. Samarakoon,  
Divisional Secretary,  
Divisional Secretariat,  
Athuruliya.

**2<sup>nd</sup> Respondent-Respondent**

- 2A. Thiththagalla Gamage

Sarath Kumara  
Divisional Secretary,  
Divisional Secretariat,  
Athuruliya.

2A1. Nirosha S. Gamage  
Divisional Secretary,  
Divisional Secretariat,  
Athuruliya.

**Substituted 2<sup>nd</sup> Respondent-  
Respondent**

**Before** : **P. Padman Surasena, J.  
S. Thurairaja, PC, J.  
K. Priyantha Fernando, J.**

**Counsel** : Dr. Romesh de Silva, PC with  
Shanaka Cooray for the Petitioner-  
Appellant.

R. Gooneratne, SC for the 2<sup>nd</sup>  
Respondent -Respondent.

**Argued on** : 13.06.2024

**Decided on** : 15.10.2024

**K. PRIYANTHA FERNANDO, J**

1. The Petitioner-Appellant (hereinafter referred to as the appellant) preferred the instant appeal to this Court seeking to have the Judgment of the Court of Appeal in allowing a divesting order dismissed, and to have a writ in the nature of a writ of *certiorari* issued in order to quash the said divesting

order on the basis that it is contrary to Section 39A of the Land Acquisition Act No. 09 of 1950.

Facts in brief

2. The appellant, *Matuarata Plantations Limited* states that, the land in question called '*Diddenipotha Estate*' is over 600 hectares in extent. It has originally been owned by a private party and thereafter, had been vested with the Land Reform Commission in terms of Land Reform Law No. 01 of 1972. Subsequently, a portion of the said 600 hectares land had been acquired by the State by virtue of an order of the Minister of Land, published in *Gazette (Extraordinary)* dated 18.09.1974, made in terms of proviso (a) to section 38 of the Land Acquisition Act. Thereafter, the said land has been handed over to the Sri Lanka State Plantations Corporation (SLSPC) in the year 1982.
3. Consequently, in terms of section 2(2) of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987, and as per *Gazette No. 720/02* dated 22.06.1992 the appellant was incorporated to take over the functions and carry on the business of the SLSPC.
4. Thereafter, by letter dated 14.06.2007, which was a letter to the Plantation Ministry by the Divisional Secretariat (2<sup>nd</sup> Respondent) that was copied to the appellant, the appellant had been notified that, a divesting order has been made in the *Gazette Extra Ordinary No. 1497/22* of 16.05.2007 in respect of 17 allotments of land in *Didenipotha Estate*, which constitutes a portion of 50 acres of the said Estate as the land has not been used for the purpose for which it was acquired.
5. Aggrieved by the said divesting order, the appellant company that is currently in possession of the entire estate, instituted action in the Court of Appeal praying for a writ of *certiorari* quashing the said divesting order made by the Minister of Lands (hereinafter referred to as the 1<sup>st</sup> respondent) in respect of the said portion of land.

6. The Court of Appeal by its judgment dated 02.03.2009 dismissed the said application. Aggrieved by the judgment of the learned Judges of the Court of Appeal, the appellant preferred an appeal to this Court. Leave was granted on the questions of law set out in (a),(c),(e) of Paragraph 9 of the petition dated 24.03.2009. Further, as per minute dated 30.08.2011, a further question is to be considered as “question (b)”.

### **Questions of Law**

#### Paragraph 9

- (a). Has the Court of Appeal erred when deciding that the conditions laid down in section 39A of the Land Acquisition Act are fulfilled ?
  - (c). Has the Court of Appeal erred when it did not consider the meaning of public purpose as set out under section 39A (2) of the Land Acquisition Act No. 09 of 1950 ?
  - (e). Has the Court of Appeal misdirected itself when it determined from the attendant circumstances that the government has not effected any improvements and the land has not been used for a public purpose and the person interested has consented in writing to take possession immediately after the divesting order when there is clear evidence to the contrary ?
  - (b). Has the Court of Appeal failed to consider the effect of the order made under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No. 23 of 1987 by which the petitioner company was incorporated ?
7. The main submission of the learned President’s Counsel for the appellant was that, the 1<sup>st</sup> respondent has not satisfied the

statutory requirements as mandated in terms of section 39A of the Land Acquisition Act before making the divesting order. The learned Counsel further submitted that, the learned Judges of the Court of Appeal have erred in stating that the conditions laid down in section 39A of the Land Acquisition Act has been fulfilled.

8. Section 39A of the Land Acquisition Act No. 09 of 1950 (as amended by Act No.13 of 1986) sets out that,

*“(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.”*

9. The learned President’s Counsel for the appellant submitted that, the said 50 acres of land which forms the subject matter of this action is in fact being used for a public purpose as contemplated by law, improvements have been made on the said land and more importantly, there is no proper evidence before Court that the person interested in the land have consented in writing to take possession of the land immediately after the divesting order is published in the *Gazette*.
10. The learned State Counsel for the respondents submitted that, the 1<sup>st</sup> respondent has duly made a divesting order in respect of the said land in terms of section 39A of the Land Acquisition Act.
11. It was the position of the learned State Counsel for the respondents that, the respondents have only proceeded up to section 9 of the Land Acquisition Act, and the claimants (original owners of the land) have not been paid compensation in respect of their land that was acquired. It was submitted that, since compensation has not been provided for the claimants in respect of the land that was acquired, and since the land has not been utilized for a public purpose, upon the request of the claimants to release the said land, a decision has been taken to abandon the acquisition of the said Land on the recommendation of the Advisory Board of the Ministry of Lands.
12. It is observed that the requirements set out in section 39A (2) of the Land Acquisition Act are cumulative requirements that are vital to be fulfilled before a divesting order is made in terms of section 39A (1) of the Land Acquisition Act.

13. When considering subsection (2)(d) of section 39A, it is observed that, before a land is to be divested, the persons interested in the land, (in this case the claimants or in other words the original owners in respect of whom the compensation has not been made after their land has been acquired by the State) are required to consent in writing that they would take possession of the said land immediately after the divesting order is published in the *Gazette*. Although the learned State Counsel at the hearing of this appeal urged that, the letter dated 14.07.2006 and the letter dated 14.06.2007 collectively implies the written consent of the claimants, this position is without merit. There is no iota of evidence to show that the claimants have consented in writing or to show that they are interested in the land.
14. I believe the specific requirement of written consent has been statutorily set out to ensure transparency. In the absence of any such written document conveying consent, it is my position that the respondents have failed to satisfy section 39A(2)(d) of the Land Acquisition Act.
15. As I have mentioned before, as section 39A(2) stipulates cumulative requirements, upon failure to satisfy section 39A(2)(d) of the Land Acquisition Act, no divesting order could be made in terms of section 39A(1) of the Land Acquisition Act.
16. Submissions were made on what amounts to a 'public purpose' and with regard to improvements that have been made. It is the submission of the learned President's Counsel for the appellant that improvements have been made as it is a tea plantation. However, in this instance where I have already decided that the requirements in terms of section 39A(2) have not been fulfilled, I do not wish to address these issues.
17. The questions of law set out in (a) and (e) of paragraph 9 of the petition is answered in the affirmative. In view of what has been decided, questions of law (b) and (c) need not be looked into.



18. The judgment of the learned Judges of the Court of Appeal is set aside. I issue writ in the nature of a writ of *certiorari* quashing the divesting order made by the 1<sup>st</sup> respondent. The appeal is allowed.

*Appeal is allowed*

**JUDGE OF THE SUPREME COURT**

**JUSTICE P. PADMAN SURASENA**

**I agree**

**JUDGE OF THE SUPREME COURT**

**JUSTICE S. THURAIRAJA**

**I agree**

**JUDGE OF THE SUPREME COURT**