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

In the matter of an application for Special Leave to Appeal made under and in terms of Article 128(2) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC Appeal No. 15/2019
SC SPLA Appl. No. 267/2016
Writ Appl No. 163/2013

1. M.S. Sithy Jawahira.
   189, Hirimbura Cross Road
   Karapitiya – Galle.

2. M.A.M. Riyas
   189A, Hirimbura Cross Road
   Karapitiya – Galle.

Petitioners-Appellants

Vs.

1. Janaka Bandara Tennakoon
   Minister of Land and Land Development,
   Govijana Mandiraya
   80/5, Rajamalwatte Avenue
   Battaramulla.

1(b) M.K.D.S. Gunawardena
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

1(c) John Amarathunga MP
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

2. Ravindra Hewawitharana
   District Secretary-Galle
   District Secretariat-Galle
   Galle.

2(a) A.S.T. Kodikara
District Secretary-Galle
District Secretariat-Galle
Galle

3. Anusha Batawala Gamage
Divisional Secretary- Galle Four Gravets, Divisional Secretariat- Galle

3(a) W.S. Sathyananda
Divisional Secretary- Galle Four Gravets, Divisional Secretariat- Galle

4. Urban Development Authority
6th and 7th Floors
'Sethsiripaya' – Battaramulla.

Respondents-Respondents
(SC Appeal 15/2019)

SC Appeal No. 16/2019
SC SPLA Appl. No. 268/2016
Writ Appl. No. 164/2013

1. Mohamed Jaleel Samsuluha
169, Hirimbura Cross Road
Karapitiya – Galle.

2. Mohamed Jaleel Noorul Fareesa
169, Hirimbura Cross Road
Karapitiya – Galle

3. Abdul Hameed Sithy Sanooba
121, Hirimbura Cross Road
Karapitiya – Galle.

4. Abdul Hameed Pathumma
121, Hirimbura Cross Road
Karapitiya – Galle.

5. Abdul Cader Sithi Pathumma
131, Hirimbura Cross Road
Karapitiya – Galle.

6. Mohomed Haniffa Fathumma Hanoon
181, Hirimbura Cross Road
Karapitiya – Galle.

Petitioners-Appellants

Vs.

1. Janaka Bandara Tennakoon
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

1(b) M.K.D.S. Gunawardena
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

1(c) John Amarathunga MP
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

And 03 others.

Respondents-Respondents
(in SC Appeal 16/2019)

SC Appeal No. 17/2019
SC SPLA Appl. No. 269/2016
Writ Appl. No. 166/2013

1. Mohamed Ilyas
117, Hirimbura Cross Road
Karapitiya – Galle.

2. Mohideen Bawa Sithy Nabeesa
129, Hirimbura Cross Road
Karapitiya – Galle.

Petitioners-Appellants

Vs.

1. Janaka Bandara Tennakoon
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

1(b) M.K.D.S. Gunawardena
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

1(c) John Amarathunga MP
Minister of Land and Land Development,
Govijana Mandiraya
80/5, Rajamalwatte Avenue
Battaramulla.

And 03 others.

Respondents (in SC Appeal 17/2019)

Before : Jayantha Jayasuriya, PC, CJ
S. Thurairaja, PC, J.
Yasantha Kodagoda, PC, J

Counsel : Faiz Musthapha , PC with Rushdie Habeeb for Appellants.
Manohara Jayasinghe , SSC for Respondent-Respondents.

Argued on : 23.03.2021, 04.06.2021 12.07.2021 and 29.11.2021

Written Submissions filed on : 07.07.2020 and 06.01.2022 by the Respondent-Respondents
04.12.2020 and 20.01.2022 by the Petitioners-Appellants

Decided on : 28.09.2022

Jayantha Jayasuriya, PC, CJ

This judgement is in relation to three appeals that were taken up together for argument. All three of these appeals arise from a single judgement of the Court of Appeal. Three writ applications filed in the Court of Appeal namely CA/Writ/163/2013, CA/Writ/164/2013 and CA/Writ/166/2013 had been taken up together with the agreement of all parties and a single judgment had been delivered by the Court of Appeal. Petitioners in all these three applications sought writs of Certiorari quashing an Order made by the Minister of Agriculture and Land under section 38(a) of the Land Acquisition Act. The impugned Order is dated 27 January 2000 and was published in the Government Gazette (Extra Ordinary) No 1117/20 dated 03 February 2000 (hereinafter referred to as 'section 38(a) order'). The said Order relates to fourteen lots of land more fully described therein and the petitioners in the three applications sought writs of Certiorari quashing the aforesaid Order under Section 38(a) of the Land Acquisition Act in relation to eight lots of land that were identified as Lots 4, 5, 7, 8, 9, 10, 13 and 14 in the Preliminary Plan PPG 3314. Petitioners in the said applications further sought writs of Mandamus compelling the Minister of Lands to divest the aforesaid lands. The Court of appeal by its judgment held that there is no merit in all three applications and dismissed all three of them. Petitioners (hereinafter called 'appellants') had been granted Special Leave to Appeal by this court on the following questions of law:

1. Did the Court of Appeal err in law in determining that it was necessary for the petitioners to establish *mala fides* on the part of the respondents?
2. Did the Court of Appeal err in law in determining that the public purpose has been disclosed as required under the law?
3. Did the Court of Appeal fail to take cognizance of the fact that there was no urgency to making of the said Order in terms of Section 38(2) of the Land Acquisition Act and as such the said Order is ultra vires in purview of the provisions of the said Act?

I will now proceed to consider the impugned judgment of the Court of Appeal in the context of the aforesaid three questions of law on which special leave was granted by this Court.

Did the Court of Appeal err in law in determining that it was necessary for the petitioners to establish *mala fides* on the part of the respondents?

Examination of the judgment of the Court of Appeal reveals that the main contention of the appellants before the Court of Appeal had been focused on the issue as to whether the failure to disclose the public purpose in the notice issued under section 2 of the Land Acquisition Act vitiates the entire acquisition process? In relation to this issue the appellants heavily relied on the judgement of this Court in **Manel Fernando and another v D.M.Jayarathne Minister of Agriculture and Lands and Others** [2000] 1 SLR 112. The Court of Appeal had considered this issue and had come to the conclusion that the facts of the application under consideration can be distinguished from the facts in **Manel Fernando** (supra). In the process of identifying the facts in relation to the three applications under consideration, the Court of Appeal had taken into account several factors including the exact content of the section 2 notice as well as a series of matters and events that had taken place after the said notice was issued. Such other factors taken into account by the Court of Appeal include the fact that the section 2 notice makes reference to an application of the Secretary of the Housing and Urban Development dated 05.01.1988 and the fact that the appellants had made a series of representations and appeals to several authorities after the acquisition process was initiated by the authorities. In the context of the appeals and the representations made by the appellants to administrative authorities, the Court *inter alia* observed that the appellants had failed to substantiate the following three factors in such appeals:

i. That the lands acquired were not suitable for the New Town Development in Karapitiya
ii. There is alternate or more suitable land available in the area for the said New Town Development work
iii. That the respondents acted in *mala fide* when they initiated the acquisition process.

It is apparent that the Court of Appeal had made this observation based on the real factual position and at no stage the Court of Appeal had held that there is a burden on the petitioners to establish *mala fides* if they were to succeed and obtain relief from the Court of Appeal. Therefore, I am of the view that the Court of Appeal had not erred and answer the first legal issue in the negative as the said Court had not concluded that proof of *mala fide* is a necessary factor for the appellants to have succeeded in the Court of Appeal.

In the context of the issue of *mala fides,* it is also pertinent to observe that one of the main initial submissions made on behalf of the appellants before this Court was that the impugned acquisition process is tainted with *mala fides and is discriminatory.* In fact the appellants, tendered additional material obtained on requests made under the Right to Information Act in support of such proposition. However, while the submissions were in progress and having considered all the material placed before this Court, including the further additional material submitted on behalf of the respondents with permission of Court, appellants retracted and abandoned the submission that the impugned acquisition process is discriminatory and tainted with *mala fides*. This Court observes that the initial assertion of the appellants based on *mala fides* lacks merit and the material tendered before this Court, does not reflect that the appellants were treated unequally or with malice based on ethnicity or any other factor.

I will now proceed to consider the other two legal issues on which, leave was granted by this Court.

Did the Court of Appeal err in law in determining that the public purpose has been disclosed as required under the law? ; and

Did the Court of Appeal fail to take cognizance of the fact that there was no urgency to make the said Order in terms of Section 38(2) of the Land Acquisition Act and as such is the said Order is ultra vires as per the provisions of the said Act?

In examining the aforesaid two questions of law, it is pertinent to observe that the notices issued under section 2 and proviso of section 38 (a) of the Act had been published on 22 June 1998 and on 03 February 2000, respectively. However, all the petitioners are in continued occupation of the respective lands and possession had not been handed over to the acquiring officer at any stage. Petitioners had invoked the jurisdiction of the Court of Appeal in the year 2013, fifteen years after the initial steps for acquisition. Taking into account the long time period that had elapsed from the initial steps on the impugned acquisition and the consideration of the appeal by this court and due to certain matters that were raised in the course of the submissions by the learned counsel for the appellants based on further material tendered to court by them in January 2021 this court directed the respondents to provide clarifications on matters identified by court. Such clarifications made on behalf of the respondents were tendered to court along with additional material in July 2021.

One of the main contentions on behalf of the appellants is that the notice issued under section 2 of the Land Acquisition Act is bad in law and therefore all subsequent steps that had been taken has no force of law.

It was submitted that the said notice fails to satisfy the legal requirements of a notice issued under section 2 of the Land Acquisition Act as determined by this Court. On behalf of the respondents, it was submitted that the impugned acquisitions were for a genuine public purpose and there is no material to establish that the authorities have acted illegally, unreasonably or failed to follow the procedure laid by law. Therefore, it was submitted that the Court of Appeal did not err when the appellant's applications for writs of certiorari and mandamus were refused. On behalf of the respondents it was further submitted that the law does not require reference to the specific public purpose in the section 2 notice and what is required is the availability of sufficient material to satisfy that a public purpose did in fact existed at the time such notice was published. In such an instance court should desist from granting discretionary remedies such as writs of certiorari or mandamus.

Both parties maintained aforementioned respective positions before the Court of Appeal too. The Court of Appeal in the impugned judgment had considered submissions made in this regard and had concluded that the absence of reference to the specific public purpose in the section 2 notice in the given situation does not warrant judicial intervention and refused the respondent's applications for writs of certiorari and mandamus.

Section 2 of the Land Acquisition Act reads as follows:

"(1) Where the Minister decides that land in any area is needed for any public purpose, he may direct the acquiring officer of the district in which that area lies to cause a notice in accordance with subsection (2) to be exhibited in some conspicuous places in that area.

(2) The notice referred to in subsection (1) shall be in the Sinhala, Tamil and English languages and shall state that land in the area specified in the notice is required for a public purpose and that all or any of the acts authorized by subsection (3) may be done on any land in that area in order to investigate the suitability of that land for that public purpose.

(3) After a notice under subsection (2) is exhibited for the first time in any area, any officer authorized by the acquiring officer who has caused the exhibition of that notice, or any officer acting under the written direction of the officer authorized as aforesaid, may enter any land in

that area, together with such persons, implements, materials, vehicles and animals as may be necessary, and-

(a) survey and take levels of that land,

(b) dig or bore into the subsoil of that land,

(c) set out the boundaries of that land and the intended line of any work proposed to be done on that land,

(d) mark such levels, boundaries and line by placing marks and cutting trenches,

(e) where otherwise the survey of that land cannot be completed and such levels taken and such boundaries and line marked, cut down and clear away any part of any standing crop, fence or jungle on that land, and

(f) do all other acts necessary to ascertain whether that land is suitable for the public purpose for which land in that area is required :

Provided that no officer, in the exercise of the powers conferred on him by the preceding provisions of this subsection, shall enter any occupied building or any enclosed court or garden attached thereto unless he has given the occupier of that building at least seven days' written notice of his intention to do so."

The aforesaid section appears in Part I of the Act, which is titled "Preliminary Investigation and Declaration of intended acquisition". Legislative scheme for land acquisition commences with the provisions in this part of the Act, the object being initially identifying and determining the suitability of a land to acquire for a public purpose. Under section 2 (2) the acquiring officer of the relevant district in which the land is situated is required to publish the stipulated notice upon receipt of a direction to that effect from the Minister. Required contents of such notice are further set out by sub section 2 of section 2 and the specific public purpose for which the land is to be acquired is not specifically identified as one such matter. The purpose of the publication of this notice is to authorize the relevant officers to conduct necessary investigations to determine the suitability of the land for the public purpose for which, the same is intended to be acquired. Subsection 3 of section 2 sets out the different acts that are authorized to be carried out for this purpose. However, this section requires a minimum of seven days written notice to the occupiers before any officer enters the land for such investigation. It is after such investigation, if the Minister considers that the land is suitable for the public purpose and needs to be acquired,

section 4(1) of the Act requires the Minister to direct the acquiring officer to inform the owners of the land on the intention to acquire the land for a public purpose and such notice gives a right to the owners of the land to raise any objections as provided under section 4(4) of the Act.

In **Manel Fernando** (supra) two petitioners invoked the jurisdiction of this court under Article 126 of the Constitution on the basis that their rights guaranteed under Article 12 were infringed. Petitioners in the said case alleged that the decision to acquire a land and the acquisition was arbitrary, capricious and unlawful. The court having examined all the material *inter alia* held that;

> *"The factual position immediately prior to the issue of the section 2 notice was as follows. The 2nd Respondent had made the 2nd Petitioner's occupation of the premises difficult, if not impossible; the 4th Respondent had then obstructed his efforts to sell his property. Thereupon, without any consideration by the Commissioner of Agrarian Services ("the Commissioner") of the need for a Govi Sevana Centre, or of the suitability of the Petitioner's land for such a Centre, without a request from him, and without even informing him, the 3rd Respondent had sought and obtained the 5th Respondent's approval for the acquisition; and only thereafter a proposal for acquisition had been prepared, and sent to the Commissioner, not for his approval but simply for transmission to the relevant Ministry. Not only did the 3rd and 4th Respondents act with remarkable speed - within days of the 2nd Petitioner advertising his property for sale - but both of them described the house as being unoccupied, without even a hint as to the circumstances in which the 2nd Petitioner had been forced to leave the premises,. There in no evidence that the Commissioner had decided that any land in the area - let alone the 2nd Petitioner's land - was needed for a Govi Sevana Centre or any other public purpose".*

The Supreme Court in the aforesaid case had further held that ;

> *"....the 1st Respondent had no material on which, objectively, it could reasonably have been concluded that the Petitioners' land was required for the stated public purpose of a Govi Sevana Centre; that he did not bona fide think that it was so required; and that he had misinformed the Hon. Prime Minister that the Commissioner had made a request for such acquisition. Further, although no formal order had been made under section 4 of the Land Acquisition Act, an inquiry was held into the 2nd Petitioner's objections to the acquisition, after which the inquiring officer (the Assistant Commissioner) had made a*

> *recommendation (which the Commissioner had subsequently approved), that the land should not be acquired: and that the 1st Respondent ignored or failed to consider. On the other hand, he placed undue reliance on the 5th Respondent's recommendation, which failed to take account of the relevant factors. I hold that in fact the Petitioners' land was not required for a public purpose, and that the acquisition was unlawful, arbitrary and unreasonable."*

The Court having held that the decision to acquire under given circumstances had violated the right guaranteed under Article 12, proceeded to examine the lawfulness of the notice issued under section 2 of the Act. In my view the Court had to embark on this process due to the facts unique to the application under consideration.

In the said matter two petitioners invoked the jurisdiction of court and the 2nd Petitioner was the initial owner of the land relating to which the impugned decision to acquire was made. It appears that the owner, the 2nd Petitioner had at some point of time prior to the issuance of section 2 notice decided to sell the property in question and in fact published an advertisement to that effect. Therefore the Court had proceeded to examine the question *"Can it be said that if an owner wishes to sell his property, he cannot object if the State thereafter decides to acquire it ?".* Also it appears that the 2nd Petitioner at some point of time had transferred the property in question to the 1st Petitioner and the Court had to decide whether the fact that the 2nd petitioner transferred the land to the 1st petitioner did affect the rights of the 2nd petitioner to obtain relief from court.

It is in this background, Court examined several factors and the 2nd petitioner was granted relief on the basis that the section 2 notice was a nullity.

In reaching this conclusion the court considered several factors including the fact that the section 2 notice was issued in contravention of section 2(2) of the Act and a decision to acquire was reached even without an investigation being conducted as envisaged under section 3 of the Act. The court also proceeded to examine sections 2 and 4 of the Act and recognised that section 2 notice enables relevant officials initiating the investigation on the suitability of the land to be acquired for the public purpose and section 4 of the Act provides an owner to raise any objections relating to a proposed acquisition. In the context of the object of section 4 notice, the court correctly observed;

"that object would be defeated, and there would be no meaningful inquiry into objections, unless the public purpose is disclosed".

However, the court proceeded further to express the view that;

"If the public purpose has to be disclosed has to be disclosed at that stage, there is no valid reason why it should not be revealed at the section 2 stage",

and expressed the view that ;

"the scheme of the Act requires a disclosure of the public purpose, and its objects cannot be fully achieved without such disclosure. A section 2 notice must state the public purpose – although exceptions may perhaps be implied in regard to purposes involving national security and the like".

Therefore, when the aforementioned views regarding the need to disclose the public purpose in a section 2 notice was expressed in **Manel Fernando** (supra), the court had considered this aspect in the context of the main issues the court was focusing on. Main issues the court had to resolve in the said case were, whether the decision to acquire the property and the order issued under section 38 proviso (a) of the Act violated the Rights of the initial owner and whether he is entitled to any relief despite the fact that the property concerned had been transferred to a third party at a subsequent stage. The Court of Appeal in **Joseph Fernando v Minister of Lands** [2003] 2 SLR 294 followed the decision in Manel Fernando in deciding whether a section 4 notice issued under the Land Acquisition Law should disclose the public purpose. In **Mahinda Katugaha v Minister of Lands** [2008] 1 SLR 285, the Supreme Court followed **Manel Fernando** (supra) on the issue of the requirement to disclose the public purpose in notices issued under the Land Acquisition Act. The Court did not proceed to consider the facts that were peculiar to the said case when adopting the dicta. However, it is important to note that in **Mahinda Katugaha** (supra) the land of which the possession was handed over to the authorities had not been utilized for any purpose for nearly ten years and when it was vested on the UDA the UDA had allocated portions of the land to a private party. Based on these facts the court observed that

> *"this per se indicates that there was no public purpose urgent or otherwise at the time the Section 2 notice was made and indeed at the time the purported order under the proviso (a) to section 38 was gazette"* (at p 292).

In my opinion therefore that the view expressed in **Manel Fernando** should be considered in the context of facts peculiar to each case and should not be interpreted as a mandatory requirement applicable in relation to all notices issued under section 2 of the Act. However, the absence of the disclosure of the specific public purpose in section 2 notice can be one factor that the Court may take into account in deciding whether a decision to acquire in a given situation is lawful or not.

Therefore, in my view the Court of Appeal did not err when it proceeded to distinguish the facts of the matter under consideration and the facts in **Manel Fernando** (supra) in deciding whether the notice issued under section 2 of the Act is bad in law.

In **Kapugeekiyana v Hon Janaka Bandara Tennakone, Minister of Lands and others**, [2013] 1 SLR 192, Supreme Court having observed that a letter issued by the relevant Divisional Secretary several years after issuing the section 2 notice, clearly states that the land is required for the public purpose of 'urban development' came to the conclusion that *'that this purpose as a proportionately sufficient explanation for the acquiring of the land under the provisions of the Act".* (at page 199).

Furthermore, in **Seneviratne and others v Urban Council Kegalle and others** [2001] 3 SLR 105, respondents relied on the following passage in "Judicial Review of Administrative Action" by De Smith 5th edition 1995, in submitting that the applicants were not entitled to any relief ;

> *"If the applicant has not been prejudiced by the matters on which he relies then the Court may refuse relief even though he has succeeded in establishing some defect. The literal or technical breach of an apparently mandatory provision in a Statute may be so insignificant as not in effect to matter. In these circumstances the Court may in its discretion refuse relief."*

Justice Asoka De Silva, President Court of Appeal (as he then was) in the aforesaid case agreeing with the submissions of the respondents held that the absence of any reference to public purpose in a section 2 notice *per se* does not warrant such notice to be quashed, if the public purpose was known to the petitioners.

In **"Judicial Remedies in Public Law"** by Clive Lewis, (2000 – 2nd edition page 342 discusses the absence of prejudice as a factor that could be taken into account by judicial proceedings where a party seeks a discretionary remedy, as relief. It is stated

> *"The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief:*

Material presented before the Court of Appeal and the material placed before this Court in these proceedings reveal that at the time the acquiring officer issued the notice under section 2 of the Act, he was in possession of an initial application dated 05.01.1988 of Secretary Housing and Urban Development together with a plan depicting the lands in relation to which the said notice was issued. Thereafter during the period of thirteen years between the said notice and the application in the Court of Appeal series of discussions had taken place between the petitioners and officials relating to the proposed acquisition based on several complaints and or representations made on behalf of the petitioners. In the course of these discussions, issues on the need of the properties concerned for the public purpose as well as the mode of compensation including alternate property had been considered. Authorities had proposed to provide alternative housing accommodation as well as alternative commercial accommodation. Furthermore, the material tendered before this court as well as the Court of Appeal reveal that the Urban Development Authority had initiated steps in the year 1979, declaring the relevant area as a development area. Thereafter necessary applications had been made to acquire land for development of Karapitya town. It was subsequent to such steps the acquiring officer had published the notices under section 2 of the Act. Subsequent project proposals and plans tendered by the respondents reveal that steps are underway to develop the relevant area providing many facilities to the benefit of the public. Furthermore, proposed acquisition is not confined to the properties the appellants are in possession but includes properties of others who had already vacated those properties having handed over the possession to the acquiring officer. In my view, there is sufficient material available to conclude that a public purpose did exist in the context of acquisition of lands under consideration and such purpose is apparent to all relevant parties.

Therefore, taking into account the circumstances under which the Supreme Court made its decision in **Manel Fernando** (supra), the facts of the present appeals and the decision in **Seneviratne and others** (supra) I am of the view that the Court of Appeal had not erred when the application for writs of certiorari and mandamus were refused on the basis that no prejudice has been caused to the petitioners in the given situation.

In the context of alleged *ultra vires* in the notice issued under section 38 proviso (a) of the Act, petitioners mainly rely on the fact that the petitioners are still in occupation of the respective premises and claim that therefore no urgency exist. They contend that the fact that they are in continued possession negates the existence of any urgency for the authorities to have taken over vacant possession in the year 2000. However as enumerated hereinbefore, petitioners despite directions issued by authorities at various stages had not vacated the premises while engaging in discussions with authorities pursuing an amicable settlement based on the representations they made to different authorities including a Cabinet Minister whose subjects and functions did not include land acquisition or urban development. Therefore in my view the appellants cannot now rely on the concessions extended by the authorities to remain in possession while discussions were on foot, to substantiate their claim of non existence of an urgency.

Respondents claim that even after a period of more than two decades the concerned development project had not been completed due to the conduct of the appellants.

It is also pertinent at this stage to observe that the appellants had urged this Court not to consider material submitted by the respondents while the hearing was continuing on the basis that the rights of the parties must be determined as at the date of the institution of proceedings. The appellants relied on **Ponnamma v Arumugam** 8 NLR 223 and **Siththi Makeeena and others v Kuraisha and others** [2006] 2 SLR 341. The Privy Council in **Ponnamma** (supra) reiterated the rule on the construction of statutes that the *"rights of the parties must be decided according to the law as it existed when the action was commenced"*. In my view proceedings before this court does not breach the said rule. Furthermore in **Siththi Makeena and others** (supra) the question the court had to decide was whether an application to add parties should be allowed or not and the court observed that this issue should be decided based on the nature of the dispute that existed between the parties at the time the proceedings were instituted.

In my view the court taking cognizance of the material submitted by the respondents while the arguments were in progress does not change the nature of the issues and law that existed at the time proceedings were instituted but provides an opportunity for the court to make a

determination in the proper context, specially in a situation of this nature where the appellants invoked the jurisdiction of the Court of Appeal after a lapse of a period of thirteen years from the time of the impugned order and altogether more than two decades had lapsed between the impugned order and the judgment of this court. The appellants were not denied the right to contest and respond to the material tendered by the respondents. It is also pertinent to observe that the events that had taken place between the impugned order and the judgment of this court is relevant in determining whether there is prejudice caused to the appellants, a factor that a court is entitled to take into account in deciding whether a writ should be issued or not. The material so tendered to court includes plans and sketches of the area where the development project is being carried out. Such material not only depicts the nature of the project, the area where the properties are located and the benefit to the general public when the project is complete. Furthermore, these sketches and plans assist to comprehend the extent to which the completion of the project is adversely affected due to the continued failure on the part of the appellants to hand over the vacant possession of the portions of land for a period of more than two decades.

Respondents further contended that the unavailability of the vacant possession of lands in question had hindered the progress of the development project causing financial losses. Furthermore, a letter authored by the Minister of Urban Development, Housing and Construction in October 1999 reveal that the lands in question were acquired to carry out phase II of Karapitiya Development Programme. The said minister had recommended the Minister of Land to take steps to obtain possession under section 38(a) proviso of the Act.

It is also pertinent to observe during the period between section 38(a) order and the filing of applications in the Court of Appeal, steps have been taken to determine compensation as required under the Act and such funds were deposited in court as provided under section 17 of the Act enabling the appellants to establish their respective claims and obtain compensation. However, the voluntary inaction on the part of the appellants had delayed them obtaining lawful compensation after establishing their respective claims. By the year 2013, the Urban Development Authority had transferred Rupees forty six million to the Divisional Secretary for the purpose of paying compensation in relation to the acquisition of properties concerned.

It is also pertinent to observe that on behalf of the appellants it was submitted that granting of writ by this court quashing the section 38(a) order at this stage would not cause any adverse impact to the acquisition process initiated two decades ago but will only require the authorities to take necessary steps as required in relation to a non-urgent acquisition as provided under the Act.

Therefore it is claimed that issuing a writ at this stage will not adversely impact on the progress of the project. I am unable to agree with this submission. In this regard, I observe that already the authorities had taken steps as provided under the Act and had deposited the compensation in court having assessed as provided under the law enabling the appellants to obtain such compensation after establishing their rights. Therefore, forcing the authorities to recommence the acquisition process without resorting to obtain possession based on section 38(a) notice issued twenty years ago in my view would cause serious obstruction and impede the progress of the project, which is already stalled over a long period of time.

In **"Judicial Remedies in Public Law"** (supra) it is observed;

> *"The courts now recognize that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards re-opening decisions, and lead to increased and unbudgeted expenditure". (at page 347)*

The Supreme Court in **Heather Therese Mundy v Central Enviornmental Authority** ***et al***, SC Appeal 58-60/2003, SC minutes of 20th January 2004, considered whether the Court of Appeal erred when the court refused to grant writs of certiorari and mandamus. One of the criteria the Court of Appeal took into consideration in refusing relief was whether the court has the discretion in deciding whether to grant or refuse the remedy, in situations where the wider public interest is at stake, even if the impugned decision affects certain individuals. The Supreme Court having considered all the facts and circumstances held that the *"refusal of relief by way of writ, in the exercise of the Court's discretion was justified"*. (at page 16). However, the Supreme Court proceeded to grant compensation to the appellants on the basis that their was a breach of rights under Article 12(1) and the principles of natural justice.

Taking all the matters that were discussed herein before into consideration, I am of the view that the absence of any specific finding by the Court of Appeal in the judgment on the existence of urgency does not warrant issuing a writ of certiorari at this stage quashing the section 38(a) order by this Court, taking into account the delay that had taken place in completing a project that would be of great benefit to the general public and the adverse impact of such delay on the overall cost to be incurred to complete the said project.

It is pertinent to place on record that while oral submissions were in progress, in this matter, proceedings were adjourned enabling the parties to consider whether an amicable settlement

could be reached on terms and conditions acceptable to all parties, without prejudice to their right to pursue these appeals. On behalf of the appellants their main concern was the amount of compensation and the nature of alternate accommodation offered. On behalf of the respondents their main concern was the long time period that had been spent for the acquisition and the adverse impact such delay has on the completion of the project. Therefore, on behalf of respondents it was submitted that they may consider calculating compensation as per the value of the properties at the time the appellants initiated proceedings in the Court of Appeal namely by the year 2013, in the event an amicable settlement is reached. However, as no settlement was materialized, all parties were granted the opportunity to make full submissions in support of their respective cases and this judgment is delivered accordingly. However, this judgment does not preclude the appellants from pursuing compensation and or any appeals as provided by law. Appellants may proceed to establish their respective rights in court and obtain compensation as the authorities had already taken steps to deposit funds in court, as provided under the law.

In view of the foregoing, I am of the view that there is no merit in these appeals and all three appeals are dismissed.

Chief Justice

S. Thurairaja, PC, J.

I agree.

Judge of the Supreme Court

Yasantha Kodagoda PC, J.

I agree.

Judge of the Supreme Court