

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

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

D D Gnanawathi Ranasinghe,
165/5, Park Road,
Colombo 5
Petitioner-Appellant(Deceased)

PHK Dharmasiri Ranasinghe
165/5, Park Road,
Colombo 5
Substituted Petitioner-Appellant

Vs

SC Appeal 87A/2006

SC (Spl) LA156/2006

CA Writ Application 1642/2003

1. Hon. Minister of Lands,
Ministry of Lands,
80/5, Govijana Mandiraya,
Battaramulla.
2. Divisional Secretary of Nugegoda,
“Highlevel Plaza”
Gangodawila,
Nugegoda
3. Chairman,
Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.
4. Urban Development Authority,
6th and 7th Floors,
“Sethsiripaya”
Battaramulla.

5. Chairman,
Sri Lanka Land Reclamation and
Development Corporation,
351, Kotte Road,
Rajagiriya.
6. Hon. Attorney-General,
Attorney-General's Department,
Colombo-12.

Respondent-Respondents

Before : Sisira J de Abrew J
Anil Goonerathne J
Nalin Perera J

Counsel : Faiz Musthapa PC for the Substituted Petitioner-Appellant
Rajeev Gunatilake SSC for the Respondent-Respondent

Written

Submissions

tendered on : 11.7.2017 by the Substituted Petitioner-Appellant
20.6.2017 by the Respondent-Respondent

Argued on : 7.6.2017

Decided on : 13.09.2017

Sisira J De Abrew J.

The Petitioner-Petitioner-Appellant (hereinafter referred to as the Petitioner-Appellant) claims that she and her children are the owners of the land in dispute.

The acquisition of the land in dispute commenced in 1980 by publishing a Section 2 of the Land Acquisition Act notice (hereinafter referred to as the Section 2 notice) and an order made under proviso to Section 38(a) of the Land Acquisition Act (hereinafter referred to as the order under Section 38(a) proviso). The order

under Section 38(a) proviso was published in Government Gazette No.102/6 dated 20.8.1980 marked as 1R2. Notice under Section 7 of the Land Acquisition Act (hereinafter referred to as Section 7 notice) too was published in Government Gazette No.179/8 dated 11.2.1982 marked as P6. The Petitioner-Appellant filed a Writ Application in the Court of Appeal) seeking a writ of certiorari to quash P6 and seeking a writ of mandamus against the 1st Respondent-Respondent-respondent (hereinafter referred to as the 1st Respondent) directing him to revoke in terms of Section 39(1) of the Land Acquisition Act (hereinafter referred to as the Act), any vesting order made in relation to the Government Gazette notification marked P6 or in the alternative, publish a gazette notification in terms of Section 39A of the Act divesting the Petitioner-Appellant's property. The Petitioner-Appellant further sought a writ of mandamus directing the 1st Respondent to pay compensation to the Petitioner-Appellant regarding the acquisition. The Court of Appeal, by its judgment dated 9.5.2006 dismissed the case of the Petitioner-Appellant. Being aggrieved by the said judgment, the Petitioner-Appellant has appealed to this court. This court by its order dated 16.10.2006, granted leave to appeal on the following questions of law.

1. Whether the Petitioner-Appellant is entitled, in law, to have the subject matter divested since the property had not been used for the public purpose for which it was acquired during the period of last 26 years.
2. Whether the 1st and the 2nd Respondents have failed to follow the proper procedure with regard to the payment of compensation.

Learned President's Counsel for the Petitioner-Appellant submitted that although the land had been acquired under the proviso to Section 38(a) of the Act, the land has not been used for any public purpose. He therefore contended that the

1st respondent should act under Section 39(1) of the Act. Section 39(1) of the Act reads as follows.

“Notwithstanding that by virtue of an Order under section 38 (hereinafter in this section referred to as a “ vesting order”) any land has vested absolutely in the State, the Minister may, if possession of the land has not actually been taken for and on behalf of the State in pursuance of that Order, by subsequent Order published in the Gazette revoke the vesting order.”

The governing part of the above section, in my view, is the following phrase: *“if possession of the land has not actually been taken for and on behalf of the State in pursuance of that order.”*

In my view if the possession of the land has **not** been taken for and on behalf of the State, the Minister has the power to make an order under Section 39(1) of the Act. But if the possession of the land has been taken over for and on behalf of the State, the Minister has no power to make an order Section 39(1) of the Act. I will now examine whether the possession of the land has been taken over by the State or not. The Petitioner-Appellant, in his petition and in his statement made to the Police, (P39) states that the possession of the land has not been taken over. But the 1st Respondent in his affidavit states that the possession of the land has been taken over by the Urban Development Authority (UDA) on 2.10.1980. The document marked 2R2 indicates that 44 people had been paid compensation for the acquisition of the land in question. If the possession of the land in question has not been taken over for and on behalf of the State, how did the State pay compensation to 44 claimants? This document indicates that the possession of the land has been

taken over for and on behalf of the State. When I consider all the above facts, I hold that the possession of the land has been taken over by the State. Therefore the Minister (the 1st Respondent) cannot revoke the vesting order in terms of Section 39(1) of the Act. Therefore the court cannot issue a writ of mandamus directing the 1st Respondent to revoke, in terms of Section 39(1) of the Act, the vesting order. For the above reasons, I hold that the Court of Appeal was correct when it refused to issue a writ of mandamus directing the 1st Respondent to revoke, in terms of section 39(1) of the Act, the vesting order.

Learned President's Counsel for the Petitioner-Appellant next contended that the 1st Respondent had a duty to issue a divesting order in terms of Section 39A of the Act. I now advert to this contention. Section 39A(1) and 39A (2) of the Act read as follows.

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 sub section (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.

39A(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.

According to Section 39A(2) of the Act, the Minister, prior to making a divesting order, should satisfy himself that the following conditions have been fulfilled.

1. 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;
2. 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;
3. no improvements to the said land have been effected after the Order for possession under paragraph (a) of section 40 had been made;
4. 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.

What happens if compensation has been paid to the claimants? Then the Minister is not empowered to make a divesting order in terms of Section 39A of the Act because in such a situation condition No.1 in Section 39A (2) has not been fulfilled.

At this stage it is relevant to consider the judicial decision in the case of Rashid Vs Rajitha Senaratne Minister of Lands and Another [2004] 1 SLR 312.

This Court observed the following facts in the above case.

“The petitioner was the owner of 1/16 share of a land and building, No. 2 New Bazaar Street, Nuwara Eliya. Proceedings for acquiring the said land commenced in 1983. A section 2 notice was published in respect of the land. This was followed by an order for the acquisition of the land under section 38 proviso (a)-of the Land Acquisition Act. The notice of the order did not specify the purpose of the acquisition; and the acquiring proceedings continued for 17 years. The land was not used for any purpose although possession of the land was given to the Urban Development Authority.

A notice under section 7 of the Act was published calling for claims to the land. The appellant claimed title and compensation to the land. As different decisions were being made by the acquiring officer, the appellant applied for a *writ of mandamus* to compel finality to the proceedings. That case was settled when the Surveyor-General made a plan NU/1839 dated 15.12.97 showing the premises acquired as 25:25 purchase *viz.*, premises No. 2 aforesaid.

In view of the continuing delay of proceedings the appellant applied *inter alia*, for a *writ of mandamus* to direct the Minister to make an order divesting the property under section 39A of the Act.

The application satisfied the pre-conditions in section 39A for divesting, but the Court of Appeal dismissed it stating that it could not be shown that the acquisition was *ultra vires*.”

This Court held:

“1. The Minister never claimed that the land was required for a particular public purpose.

2. *For the issue of mandamus to compel a divesting of the land under section 39A of the Act, it is unnecessary to establish that the acquisition was ultra vires.*

3. The appellant was entitled to a *writ of mandamus* for a divesting of No. 2 New Bazaar Street depicted in the Surveyor-General’s plan UN/1839 dated 15.12.97 and a *writ of certiorari* quashing the initial order of acquisition.”

In Rashid's case (*supra*) the applicant had satisfied the pre-conditions in Section 39A. But in the present case condition No.1 in Section 39A (2) has not been fulfilled. Therefore the principles enunciated in Rashid's case are not applicable to the present case.

The document marked 2R2 states that the State had paid compensation to 44 people. Therefore the Minister cannot make a divesting order in terms of Section 39A of the Act. When I consider the aforementioned matters, I hold that the Court of Appeal was correct when it refused to issue a writ of mandamus directing the 1st Respondent to issue a divesting order under Section 39A of the Act.

For all the aforementioned reasons, I answer the 1st question of law in the negative.

The Petitioner-Appellant also sought a writ of mandamus directing the 1st Respondent to pay her compensation. But the Court of Appeal refused to grant the said relief. Was the Court of Appeal right when it made the above order? I now advert to this question. Although Section 7 notice was published, the Petitioner did not make any claim for compensation. The inquiry under Section 17 of the Act was concluded in 1983 and compensation was paid to 44 people but the petitioner maintained silence with regard to her alleged claim. The document marked 2R2 indicates that compensation was paid to 44 people. Under these circumstances the above relief sought by the Petitioner-Appellant cannot be granted. For the above reasons, I hold that the Court of Appeal was correct when it refused to grant the above relief. For the aforementioned reasons, I answer the 2nd question of law in the negative.

For the aforementioned reasons, I affirm the judgment of the Court of Appeal and dismiss this appeal. Considering the facts of this case, I do not make an order for costs.

Appeal dismissed.

Judge of the Supreme Court.

Anil Gooneratne J

I agree.

Judge of the Supreme Court.

Nalin Perera J

I agree.

Judge of the Supreme Court.