

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

*In the matter of an appeal in terms of Article 128(2) of
the Constitution of the Democratic Socialist Republic of
Sri Lanka.*

Kalahe Palliya Guruge Laksri Kumara Dias
Gunasekara
Pinikahana,
Kahaduwa.

SC. SPL. LA. No. 61/2023

CA/ WRT/ 0080/2020

PETITIONER

Vs.

1. S. M. Chandrasena,
Ministry of Land and Land
Development,
Environmental and Wild Life
Resources,
Mihikata Medura,
Rajmal Watte Road,
Battaramulla.

1A. Harin Fernando,
Minister of Tourism and
Lands,
Mihikata Medura,
Rajmal Watte Road,
Battaramulla.

2. Somarathna
Widanapathirana,
District Secretary of Galle
District,
District secretariat,
Galle.
- 2A. Shantha Weerasinghe,
District Secretary of Galle
District,
District secretariat,
Galle.
3. Suseema Kariyawasam
Land Acquisition Officer,
Divisional Secretary,
Divisional Secretariat,
Elpitiya.
- 3A. Chathuranga Gunasekara,
Land Acquisition Officer,
Divisional Secretary,
Divisional Secretariat,
Elpitiya.
4. Y. Wickramasiri,
Secretary,
Department of Provincial
Education (Southern
Province),
Dakshinapaya,
Labuduwa,
Galle.

4A. Ranjith Yapa,
Secretary,
Department of Provincial
Education (Southern
Province),
Dakshinapaya,
Labuduwa,
Galle.

5. Hon. Attorney General
Attorney General's
Department,
Colombo 12.

RESPONDENTS

AND NOW BETWEEN

Kalahe Palliya Guruge Laksri Kumara Dias
Gunasekara
Pinikahana,
Kahaduwa.

PETITIONER-PETITIONER

Vs.

1. Harin Fernando,
Minister of Tourism and
Lands,
Mihikata Medura,
Rajmal Watte Road,
Battaramulla.

1. Shantha Weerasinghe,
District Secretary of Galle
District,
District secretariat,
Galle.
2. Chathuranga Gunasekara,
Land Acquisition Officer,
Divisional Secretary,
Divisional Secretariat,
Elpitiya.
3. Ranjith Yapa,
Secretary,
Department of Provincial
Education (Southern
Province),
Dakshinapaya,
Labuduwa,
Galle.
4. Hon. Attorney General
Attorney General's
Department,
Colombo 12.

RESPONDENT-RESPONDENTS

BEFORE : **P. PADMAN SURASENA, J.**
K. KUMUDINI WICKREMASINGHE, J.
JANAK DE SILVA, J.

COUNSEL : Manohara de Silva, PC, with Ms Nadeeshani
Lankatilleka for the Petitioner-Petitioner.

Ms. Ganga Wakishta Arachchi, DSG, for the Respondent-
Respondents.

ARGUED &

DECIDED ON: 26-06-2024

P. PADMAN SURASENA, J.

Court heard the submissions of the learned President's Counsel for the Petitioner-Petitioner as well as the submissions of the learned Deputy Solicitor General who appeared for the Respondent-Respondents.

Having considered the submissions, Court decided to grant Special Leave to Appeal on the following questions:

- 1) Whether the Court of Appeal has erred by holding at the support stage of the case itself (without waiting to consider and decide that issue at the end of the argument of the case) that the land claimed by the Petitioner-Petitioner in this case is a land which has not been acquired by the State and therefore the Petitioner-Petitioner is not entitled to maintain this case before the Court of Appeal?
- 2) Whether the Court of Appeal has erred in concluding at the support stage of the case itself that the Petitioner-Petitioner is guilty of laches without waiting to consider and decide that issue at the end of the argument of the case?

Learned President's Counsel for the Petitioner-Petitioner as well as the learned Deputy Solicitor General for the Respondent-Respondents agreed that this Court can proceed to forthwith hear and determine the afore-stated questions of law in terms of the proviso to Rule 16 of the Supreme Court Rules, dispensing with the compliance with the provisions of the Supreme Court Rules in regard to taking other relevant steps preparatory to the hearing of the case. Therefore, having

heard the submissions of both parties, we proceed to determine forthwith, the afore-stated questions of law.

At the outset, we observe that the Order impugned by the Petitioner-Petitioner is an order of the Court of Appeal refusing to issue notices on the Respondent-Respondents. The Court of Appeal has made this Order after the Petitioner-Petitioner had supported his Petition before the Court of Appeal with a view to satisfy Court that it should issue notices on the Respondents. It is at that stage that the Court of Appeal had come to the conclusion that the land relevant to this case claimed by the Petitioner-Petitioner is not a part of the land which had been previously acquired by the State.

We observe that the only basis upon which the learned Judge of the Court of Appeal had concluded that the Petitioner-Petitioner has failed to satisfy Court that his land is a part of the land which had been previously acquired by the State, is a slight difference in the name of the land. It is the conclusion of the learned Judge of the Court of Appeal that the name of the land claimed by the Petitioner-Petitioner is '*Welipennagahahena*' but, the name of the land which has been previously acquired by the State is '*Welipennagahawatta*'. Thus, according to the judgment of the Court of Appeal, the highlighted slight difference is only in the end part of the name of the land.

The learned President's Counsel for the Petitioner-Petitioner brought to our notice that the name of the father of the Petitioner-Petitioner has even been mentioned in the list of occupants of the land which the State had previously acquired. Thus, the perusal of those documents adduced in the case and the submissions made by the learned Counsel for both parties led us to the thought that at least some portion of the land claimed by the Petitioner-Petitioner may have stood as a part of the land previously acquired by the State. We are mindful that even a slight difference in the name of the land can sometimes make a dent in establishing the identity of the land in a suit. However, given the facts and circumstances of the instant case, we are of the view that the Court of Appeal should have further probed in to this, at a later stage of the case, in more detail before arriving at a final conclusion.

Having considered the above material, we are of the view that this is a fit case in which the Court of Appeal should have decided to issue notices on the Respondents after the Petitioner had

supported his Petition. The Court of Appeal should have decided to go into this matter with a view to consider the claims of the Petitioner-Petitioner in the Petition with regard to his claim that there are grounds for the relevant authority to divest at least some portions of the land referred to in the Petition. This could be done only after affording an opportunity for the Respondents to file their Statement of Objections; an opportunity for the, Petitioner-Petitioner to file Counter Affidavits if any; and then facilitating the conducting of the argument before arriving at a final conclusion thereafter. For those reasons, we answer the afore-mentioned question of law No. 01 in the affirmative.

As submitted by Mr. Manohara de Silva, PC, appearing for the Petitioner-Petitioner, the necessity for his client to agitate for a divesting order has arisen only after the Petitioner-Petitioner had found that the school authorities would no longer use some portions of the acquired land. It is those non-used portions that the Petitioner-Petitioner has claimed in his Petition that the authorities should now divest. Being mindful of the fact that this land was initially acquired for constructing a school, in light of the facts and circumstances of the case, we are of the view that such necessity for the Petitioner-Petitioner could well have arisen at a later stage as claimed by him. However, the Court of Appeal has failed to further probe into such possibility.

The Court of Appeal appears to have gone on the basis that the lapse of 42 years has amounted to laches on the part of the Petitioner-Petitioner as it is a writ application. However, as stated above, we observe that the Court of Appeal has failed to evaluate as to when the Petitioner's requirement for agitating for a divesting order had arisen and whether it was the said requirement which had resulted in the filing of this case before the Court of Appeal. As has been mentioned above, such requirement may well have arisen after sometime and in particular after the conclusion of the construction process of the school.

We also have considered the submission of the learned President's Counsel for the Petitioner-Petitioner that portions of the land now claimed by the Petitioner-Petitioner as portions which should be divested, are at a lower elevation than the rest of the acquired land on which the school buildings have been constructed. We observe that the Court of Appeal has failed to take in to consideration, these aspects. In view of the above, we are of the view that it was pre-mature for the Court of Appeal at that early stage of the Petitioner-Petitioner supporting his Petition for the issuance of notices on the Respondents, to have concluded that the Petitioner-Petitioner is

guilty of laches. In light of the facts and circumstances of the case, if such need arises, the Court of Appeal should have waited for the conclusion of the argument to decide that issue. In those circumstances, we proceed to answer the question of law No. 02 also in the affirmative.

For the above reasons, we proceed to set aside the order of the Court of Appeal dated 14-02-2023. We are of the view that this is a fit case in which the Court of Appeal should have issued notices on the Respondents. Therefore, We send this case back to the Court of Appeal with the directions: to issue notices on the Respondents; afford an opportunity for the Respondent-Respondents to file their Statement of Objections; afford an opportunity for the Petitioner-Petitioner to file Counter Affidavits (if any); then facilitate the conducting of the argument; and thereafter pronounce the judgment according to law.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

JANAK DE SILVA, J.

I agree.

JUDGE OF THE SUPREME COURT

NT/-