

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

***In the matter of an Application under Article
126 read with Article 17 of the Constitution
of the Democratic Socialist Republic of Sri
Lanka.***

**S.C. (F/R) Application
No. 162/2015**

Abdul Jabbal Mohammad Illyas,
No. 28, Haputale Road,
Welimada.

PETITIONER

Vs.

1. Hon. Gamini Jayawickreme Perera,
Minister of Food and Security,
No.27, CWE Secretarial Building,
Vauxhall Street,
Colombo 02.

1A. Hon. Rishard Bathiudeen,
Ministry of Industry and Commerce,
No. 73/1,
Galle Road,
Colombo 03.

1B. Hon. Wimal Weerawansa,
Ministry of Industry and Commerce,
No. 73/1,

Galle Road,

Colombo 03.

1C. Hon. Nalin Fernando,

Ministry of Trade, Commerce and

Food Security,

No. 492, RA De Mel Mawatha,

Colombo 03.

2. Janaka Sugathadasa,

Secretary,

Ministry of Co-operative and Internal Trade,

No.27, CWE Secretarial Building,

Vauxhall Street,

Colombo 02.

2A. T.M.K.B. Tennakoon,

Secretary,

Ministry of Industry and Commerce,

No.73/1,

Galle Road,

Colombo 03.

2B. K.D.N. Ranjith Ashoka,

Secretary,

Ministry of Industry and Commerce,

No.73/1,

Galle Road,

Colombo 03.

2C. V.P.K. Anusha Pelpita,
Secretary,
Ministry of Industry and Commerce,
No.73/1,
Galle Road,
Colombo 03.

2D. A.M.P.M.B. Atapattu,
Secretary,
Ministry of Trade, Commerce and
Food Security,
No.492, RA De Mel Mawatha,
Colombo 03.

3. D.D. Upul Shantha de Alwis,
Commissioner of Co-operative
Development
and Registrar of Co-Operative Society,
No. 330, Union Place,
Colombo 02.

3A. D. Jeevanadan,
Acting Commissioner of Co-operative
Development and Registrar of Co-operative
Society,
No.330, Union Place,
Colombo 02.

3B. S.L. Naseer,
Commissioner of Co-operative

Development and Registrar of Co-operative Society,
No.330, Union Place,
Colombo 02.

3C. Suvinda S Singappuli,
Commissioner of Co-operative
Development and Registrar of Co-operative Society,
No. 330, Union Place,
Colombo 02.

4. R.M. Somapala,
Assistant Commissioner of Co-Operative
Development, Uva Provincial, Department
of Co-Operative Development,
No. 199, Keppetipola Mawatha,
Badulla.

4A T.M.Samarakoon,
Assistant Commissioner of Co-
Operative Development, Uva
Provincial, Department of Co-
Operative Development,
No. 199, Keppetipola Mawatha,
Badulla.

5. Welimada Multi-Purpose Co-Operative
Society Ltd,
Welimada, Welimada Office,

No. 25,
Nuwara Eliya Road,
Welimada.

6. Sachithra Milani De Silva,
Perage Wattा,
Haputhale Road,
Welimada.

7. Hon. Attorney-General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: **S. THURAIRAJA, PC, J.**

**KUMUDINI WICKREMASINGHE, J. AND
MAHINDA SAMAYAWARDHENA, J.**

COUNSEL: Ruwantha Coorey instructed by Shanooz A. Mohomed for the Petitioner

V. Siriwardhena, PC, ASG for the 1C, 2D, 3A and 7th Respondents

W. Dayaratne, PC with Ms. R. Jayawardena for the 5th Respondent.

WRITTEN Petitioner on 27th July 2016 and 13th March 2023

SUBMISSIONS: 5th Respondent on 17th May 2024

ARGUED ON: 25th May 2024

DECIDED ON: 29th November 2024

THURAIRAJA, PC, J.

1. The Petitioner, namely, Abdul Jabbal Mohamed Illyas (hereinafter referred to as the "Petitioner") filed an application under Articles 17 and 126 of the Constitution, alleging an infringement of his fundamental rights guaranteed by Article 12(1) of the Constitution against the 1st to 6th Respondents. When the matter was taken up by this Court on 16th July 2015, leave to proceed was granted under Article 12(1) of the Constitution.

SUBMISSIONS OF THE PETITIONER

2. The subject matter pertaining to the Petitioner's complaint is a land located in Welimada, which, according to deed to transfer bearing No. 786 dated 12th October 2009, was transferred to the Petitioner. The said land was requisitioned by the Ministry of Co-operative and Internal Trade (hereinafter referred to as the "Ministry") in 1974 as per Section 10 of the *Co-operative Societies (Special Provisions) Act, No. 35 of 1970* (hereinafter referred to as the "Act"). The Petitioner's alleged violation of his fundamental rights is based on the contention that the said land is not being utilised for the purpose for which the land was requisitioned, namely, to serve the community as a co-operative society.
3. The land in question, No.18, Rerawa & Dandugaekubura, Welimada, was originally owned by one Mahudu Meera Saibo Mohamadu Mohideen, who had gifted the property to his son, Marikkar Mahudum Meera Saibo, by deed of gift bearing No. 786 dated 12th January 1969 (neither of whom are parties to this application).
4. Subsequently, on 22nd August 1974, the Ministry requisitioned the property as per the Act. A perusal of a letter issued by the Commissioner of Co-operative Development and Registrar of Co-operative Society dated 02nd October 1993¹ illustrates that, in 1982, the compensation was assessed by the Government Valuer to be paid to the

¹ Marked "5R4".

owner of the land on record, namely, Marikkar Mahadun Meera Saibo, at a monthly compensation amount of Rs. 600. As per the said letter, the accumulated compensation up to 02nd October 1993, Rs. 135,600 was due to Marikkar Mahudum Meera Saibo, who was the owner at the time of requisition.

5. On 01st March 2000, Marikkar Mahudum Meera Saibo gifted the said property to his son, Mahudum Meera Saibo Akbar Issadeen (who is also not a party to this case) by deed of gift bearing No. 594. Finally, Mahadun Meera Saibo Akbar Issadeen transferred the said land to the Petitioner by way of a deed of transfer bearing No. 786 dated 12th October 2009.
6. The Petitioner prays that the said land be re-divested to him by reason that the temporary purpose for which the land was requisitioned had ceased within a few years. He further contends that he has not been appropriately compensated for the initial requisition as per the assessment of the Government Valuer.

SUBMISSIONS OF THE RESPONDENT

7. The 5th Respondent, Welimada Multi-Purpose Co-Operative Society Limited (hereinafter referred to as the "5th Respondent"), states that the requisition of the property was carried out legally to establish a co-operative retail shop for public benefit as per Section 10 of the Act, and further submits that the property is, in fact, still being utilised for the above-stated original purpose.
8. According to the 5th Respondent, the reason that compensation has not been paid to the Petitioner is due to the fact that the existing owner at the time of the requisition, namely Marikkar Mahudum Meera Saibo, did not claim the said compensation from the Commission of Co-operative Development as evinced by letter dated 02nd October 1993. Therefore, the Petitioner too, by reason of failure to activate the procedural mechanism has not been paid the said compensation by the Commission.

9. Furthermore, the 5th Respondent states that the Ministry has not fully acquired the property but has requisitioned it for the limited purpose of running a co-operative shop. The requisition order, published in Gazette No. 125/5 dated 22nd August 1974,² remains in effect, and the property is still being used for its original purpose. The 5th Respondent further contended that derequisition could only occur by order published in the Gazette by the Minister in favour of the original owner at the time of requisition. As a result, the property cannot be derequisitioned to the Petitioner.

Objections of the Respondent

10. The 5th Respondent raised three preliminary objections:

- i. The Petitioner's application is filed out of time;
- ii. The Petitioner has suppressed material facts, namely that the Petitioner has previously sought relief from the Human Rights Commission in 2010, and a decision was made against him, and the same was not revealed to this Court;
- iii. The relief sought by the Petitioner was more appropriate for a writ application rather than a fundamental rights application under Article 126.

ANALYSIS

11. I wish to consider the first and the second preliminary objections together. According to the 5th Respondent, the Petitioner became the owner of the property on 12th October 2009, fully aware that the land had been requisitioned by the Ministry in 1974. The 5th Respondent therefore contends that the Petitioner is entitled only to compensation, not possession.

12. Article 126(2) of the Constitution states that a fundamental rights application must be filed within one month of any alleged infringement. The rationale behind this provision is to ensure that claims are brought promptly, thereby allowing the Court to adjudicate

² Marked "A7".

on matters where the rights of individuals are immediately threatened or violated by executive or administrative action. The one-month time limit prescribed by Article 126(2) has been regarded as mandatory by this Court in many instances. As Mark Fernando, J. noted in **Gamaethige v. Siriwardana**,³ "[t]he time period of one month prescribed by Article 126(2) has been consistently treated as mandatory."

13. The one-month time limit prescribed by Article 126(2) of the Constitution is a constitutional mandate and embodies the Latin maxim *vigilantibus non dormientibus jura subveniunt* (the law assists the vigilant, not the dormant). The Petitioner, having full knowledge of the alleged infringement as early as 2009, has slept on his rights, so to speak, until 2015.
14. Furthermore, the 5th Respondent brought to the notice of this Court that the Petitioner had complained to the Human Rights Commission in 2010 under the reference of **HRC/6429/06**, and on 25th February 2010, the Commission, after due inquiry, found no violation of the Petitioner's fundamental rights. Upon perusing the decision of the Human Rights Commission produced by the 5th Respondent,⁴ it is clear that the Petitioner was well aware of the infringement at the time the said land was purchased and has offered no adequate explanation to this Court as to the delay of five years.
15. In the instant case, the Petitioner has neither adduced any evidence to show that there has been an inquiry before the Human Rights Commission nor made any attempt to explain the prolonged delay in filing this application. In fact, as stated by the 5th Respondent, the Petitioner deliberately withheld the decision of the Human Rights Commission from the Court to circumvent the time bar.
16. I am inclined to agree with the submission of the 5th Respondent that the Petitioner's failure to act in good faith impairs the credibility of the Petitioner's version of events, and the Petitioner has, as a result, violated his contractual obligations.

³ *Gamaethige v. Siriwardana* [1988] 1 Sri LR 384.

⁴ Marked "5R1".

CONCLUSION

17. Considering the available materials, I find that there is suppression of material facts before this Court by the Petitioner, and further that the Petitioner has failed to file this application within the time period mandated by Article 126(2) of the Constitution. Therefore, I uphold the 1st and 2nd preliminary objections raised by the Respondent. Having upheld the 1st and 2nd preliminary objections, I make no determination on the 3rd objection.

18. Accordingly, this application is dismissed with costs. I order the Petitioner to pay Rs. 100,000 to the 5th Respondent. The said cost is to be paid within two months from the date of delivery of this judgment.

Application Dismissed with Costs.

JUDGE OF THE SUPREME COURT

KUMUDINI WICKREMASINGHE, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT