MANEL FERNADO AND ANOTHER
v.
D.M. JAYARATNE, MINISTER OF AGRICULTURE AND LANDS AND OTHERS

SUPREME COURT
FERNANDO, J.,
WADUGODAPITIYA, J. AND
GUNASEKARA, J.
SC APPLICATION NO. 797/97
20TH AGUST, 1999

Fundamental rights - Land acquisition - Sections 2 and 38, proviso (a) of the Land Acquisition Act - Arbitrary and unreasonable decision to acquire land - Article 12 of the Constitution - Pre-conditions for a valid notice under section 2 of the Act.

The 2nd petitioner, a Ceylon Tamil married to a Sinhala lady had purchased a land (which contained a house and small rubber plantation) at Horana. The 1st respondent purported to acquire that land under section 38 proviso (a) of the Land Acquisition Act. The 2nd petitioner received a letter dated 12.9.1997 from the 3rd respondent (Assistant Divisional Secretary) that the land had been acquired and that he should hand over possession on 18.9.1997.

The order of acquisition was preceded by a notice purporting to be under section 2 of the Act and exihibited on the land, stating that the land was required for a public purpose. The notice did not set out the nature of the public purpose. However, the 3rd respondent's affidavit to the court claimed that the land was required for establishing a Govi Sevana Centre. According to the available evidence the acquisition had in fact been engineered by the 2nd respondent (Gramasevaka) who had been harassing the 2 nd petitioner alleging that he was a terrorist. The 2nd respondent had also visited the 2nd petitioner's house with police officers. Due to such harassment the 2nd petitioner was compelled to take up residence elsewhere and to advertise the land for sale. But the 4th respondent, (Govi Niyamaka/Secretary Sri Lanka Freedom Party) waylaid prospective buyers and told them to refrain from purchasing the house as there were plans to acquire the property.

Thereafter, the 2nd respondent, with the approved of the 5th respondent (the SLFP M.P. for the area) set in motion acquisition proceedings by the publication of the section 2 notice. The said proceedings were completed notwithstanding an appeal by the Prime Minister against the acquisition

and a recommendation by the Commissioner of Agrarian Services, after an inquiry, that the acquisition should be abandoned.

In the meantime, on 28.01.1997 the 2nd petitioner entered into an agreement with the 1st petitioner to sell the land to the 1st petitioner. The 3rd respondent averred that such sale after the notice under section 2 had been exhibited contravened section 4A of the Act.

Held :

1. In fact the petitioner's land was not required for a public purpose, hence the acquisition was unlawful, arbitrary and unreasonable.

Per Fernando, J.

"The statutory power given in order to enable the state to acquire land needed for a public purpose cannot be used for any other purpose. That would be a gross abuse of power, particularly in this case, where the owner's wish to dispose of his land had been brought about by unlawful and improper harassment on account of race".

2. The 1st to 5th respondents infringed the fundamental rights of the 2nd petitioner, who was the owner at the relevant time, under Articles 12 (1) and (2).

3. The order under section 38, proviso (a) was also unlawful, arbitrary and unreasonable and that the 1st and 3rd respondents thereby infringed the fundamental rights of the petitioner under Article 12 (1).

4. The notice under section 2 was invalid and the provisions of section 4A were inapplicable for the reason that-

   (a) a section 2 notice must state the public purpose - although exceptions may perhaps be implied in regard to purpose involving national security and the like.

   Per Fernando J.

   "In my view the scheme of the Act requires a disclosure of the public purpose, and its objects cannot be fully achieved without such disclosure"

   (b) The section 2 notice sent to the 2nd petitioner was in Sinhala only despite the provisions of section 2 (2) and the fact that he was a Tamil. Section 2 (2) requires the notice to be in the Sinhala, Tamil and English languages. That amounts to non-compliancewith a material statutory provision.

(c) In view of the fact that the petitioner's land had already been determined to be suitable for acquisition it was section 4 and not section 2 which should have been resorted to.

APPLICATION for relief for infringement of fundamental rights.

Manohara de Silva for the petitioners;

S. Rajaratnam, SSC, for the 1st to 3rd, 5th and 6th respondents.

Cur. adv. vult.

November 8, 1999
FERNANDO, J.

The two Petitioners complain about the acquisition of an 80 perch allotment of land. They claim that the decision of the 1st Respondent, the Minister of Agriculture and Lands, to acquire that land, and the acquisition itself, were unlawful, arbitrary, capricious and mala fide; that the Respondents' attempt to take possession of that land, under the proviso (a) to section 38 of the Land Acquisition Act, was also unlawful, arbitrary, capricious and mala fide; and that their fundamental rights under Articles 12 (1) and 12 (2) have thereby been violated.

The Petitioners case was set out in detail in an affidavit filed by them. The only counter-affidavit was by the 3rd Respondent, the Assistant Divisional Secretary, Horana. The Petitioners stated that the 2nd Petitioner is a Ceylon Tamil from Balangoda married to a Sinhala lady. The 2nd Petitioner purchased that land (which contains a substantial house as well as a small rubber plantation) in September 1995 for Rs. 500,000. He raised the purchase price by using his lifelong savings, by pawning jewellery, and by obtaining loans. In October 1995 the 2nd Petitioner and the members of his family went into occupation. A few weeks thereafter the 2nd Respondent, the Grama Sevaka of Henagama, with a team of Police officers from the Horana Police Station came to the house and checked all their identity cards; the 2nd Respondent informed the 2nd Petitioner that he suspected that the 2nd Petitioner was

a terrorist; and one of the Police officers said that in the event of a soldier or Police officer being killed in action and his body being brought to the village, the first house that would be burnt would be the 2nd Petitioner's. Thereafter the 2nd Respondent came with Police officers on many occasions and harassed the 2nd Petitioner and the members of his family, making allegations that they were terrorists. On one occasion, when there was a visitor in the house, the 2nd Respondent had come with Police officers and stated, in the presence of the visitor, that any person, other than the members of the household, could enter the premises only with prior permission from the Police or himself. Humiliated, the visitor went away. All this compelled the 2nd Petitioner to take up residence elsewhere, although he continued to come to the house regularly to look after his rubber plantation and other cultivations. But as he was prevented, as aforesaid, from enjoying his property, he could not repay the loans he had taken, and he was therefore compelled to advertise the land for sale on 14.7.96 in the Sunday newspapers.

The 2nd Respondent did not file an affidavit denying any of those allegations. The 3rd Respondent merely said that he was unaware of those averments. I therefore accept those averments.

The 2nd Petitioner did not allege that the aforesaid conduct constituted an infringement of his freedom of choosing his residence within Sri Lanka.

THE DECISION TO ACQUIRE

The Petitioner's affidavit went on to state that some of the prospective buyers complained that the 4th Respondent, the Govi Niyamake of Henagama (Division 609A):

> "had waylaid them and said to refrain from purchasing the house as there were plans to acquire this property. At that time there were no plans whatsoever to acquire this property but the 2nd, 3rd and 4th Respondents connived and instigated a conspiracy to request the Government to acquire this property. A few days thereafter the 3rd Respondent sent letter dated 19.7.96 ["P6"] to

the 5th Respondent who is the member of Parliament and S.L.F.P. organiser of the area [requesting] his recommendation for acquisition."

The 4th Respondent did not file an affidavit denying the allegations against him. Apart from a general denial in his affidavit, even the 3rd Respondent did not specifically deny those allegations. His response was that:

".. a request was made *by the Grama Sevaka Division* [sic] of 609A, Henagama, to acquire the land in question... for the purpose of establishing a Govi Sevana Centre .... I annex hereto a communication dated 19.7.96 from the Samurdhi Govi Niyamake in respect of this matter marked as "3R1". Following this request which is for a public purpose, the 5th Respondent's recommendation was sought for the proposed acquisition by letter dated 19th July 1996 ("P6"). *At the same time*, the Commissioner of Agrarian Services too was notified of the request made by the Govi Niyamake, Henagama. (I annex hereto a copy of the said letter marked as "3R2".)..... the Commissioner of Agrarian Services *directed* that the land be inspected by an officer attached to the Department of Agrarian Services, Kalutara, who has forwarded his report dated 6th August 1996 [a copy marked "3R3" was produced].

Following this direction, the 2nd Petitioner was sent a notice under section 2 of the Land Acquisition Act ("P11A" and "P11B")....." [emphasis added]

It is clear that "Samurdhi Govi Niyamake" and "Govi Niyamake" refer to one and the same person - the 4th Respondent. It was he who wrote "3R1" of 19.7.96 to the Divisional Secretary, and when the 3rd Respondent wrote "P6" the same day to the 5th Respondent, it was to him that a copy was sent.

The reference to "Grama Sevaka *Division of* 609A, Henagama" is clearly a mistake for "Grama Sevaka of Division 609A, Henagama" - and that was the 2nd Respondent.

The 3rd Respondent was not truthful in claiming that, when the 5th Respondent's recommendation was sought, *"at the same time"* the Commissioner was notified of the *request* for acquisition. On the contrary, the Commissioner was informed only later, by letter "3R2" dated 6.8.96. and indeed, by that letter he was not informed of any *request* for acquisition, but of the 5th Respondent's *approval* of the acquisition (upon the 4th Respondent's representation that the land and premises were suitable for a Govi Sevana Centre). His views were not sought, and he was simply *told* to submit a proposal for the acquisition, through the Secretary of his Ministry, to the Secretary, Ministry of Lands. It also cannot be true that the report submitted on 6.8.96 was upon the *direction* of the Commissioner. No such direction was produced. In any event since the Commissioner was only informed by "3R2" dated 6.8.96 (which he would not in the ordinary course have received until after 6.8.96), there was no time for him to have made any direction which could have resulted in an inspection report dated 6.8.96.

It was not disputed at the hearing that the question whether the Petitioners' land was required and was suitable for a Govi Sevana Centre was a matter for the Commissioner. However, the available evidence shows that there was no request originating from the Commissioner, or with his knowledge or approval, and that he gave no direction for the inspection of the land.

Because of rumours that their land was to be acquired, the 2nd Petitioner's wife appealed to the Divisional Secretary, Horana, on 17.10.96. The reply came from the 3rd Respondent who stated that a request for acquisition received by him, had been submitted to the 5th Respondent, whose approval had been obtained; and that thereafter the preliminary proposal for acquisition had been prepared, and had been sent to the Commissioner for submission to the Secretary, Ministry of Lands. It was not suggested that it was the Commissioner who had initiated or prepared that proposal.

On 29.10.95, the 2nd Petitioner's wife submitted an appeal to the 1st Respondent, in which she made a brief reference to the 2nd Respondent's conduct. She also appealed to the 5th Respondent. She received no replies.

Thereafter a notice dated 2.11.96, purporting to be under section 2 of the Land Acquisition Act, was exhibited on the land. I will deal later with the several issues which arise in relation to that notice.

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 3rd Respondent by letter dated 20.11.96 forwarded to the 2nd Petitioner a copy of the section 2 notice; both the letter and the copy of the notice were in Sinhala, although the 2nd Petitioner was a Tamil. Since the 2nd Petitioner's wife had not received a response to her appeals, the 2nd Petitioner's mother appealed to the Hon. Prime Minister, who thereupon wrote to the 1st Respondent a letter dated 7.1.97 which speaks for itself:

"Acquisition of land at Henegama Village in Horana Divisional Secretary's Division

I have received an appeal from a dear friend of mine, Mrs. Polly Murugesu of 33C, Aponso Avenue, Dehiwela, requesting me to intervene on her behalf in what she alleges [is] discrimination and victimization.

Her son had bought a house situated within the Horana Divisional Secretary's Division. Your Ministry has issued a notice under section 2 of the Land Acquisition Act (Chapter 460) to acquire this house which the Grama Seva Niladhari of Horana 609 Grama Seva Niladhari Division has misrepresented as abandoned.

I am attaching a copy of the notice under section 2.

I am personally aware that Mrs. Murugesu had very difficult times during the disturbances in 1983. They had to leave Colombo and for sometime they were in Jaffna. They bought this house recently as houses in Colombo were beyond their reach. However, they were unable to live in Horana as people there were hostile to them. I believe that it is a crime to acquire this house which they are now planning to dispose of. I reliably understand that the residents of Horana have chased away people who have come to purchase the house informing that this house is to be acquired.

I certainly [indecipherable] you to take very urgent action on this matter and stop forthwith any acquisition proceedings, lest it will be misconstrued as an act of communal discrimination."

It appears that the Hon. Prime Minister wrote another letter dated 5.3.97 to the 1st Respondent, but that has not been produced.

By letter dated 18.4.97 the Assistant Commissioner of Agrarian Services, Kalutara, informed the 2nd Petitioner's wife

that the Commissioner had directed him to inquire into her objections to the acquisition. The 2nd petitioner averred that he and his wife attended the inquiry on 2.5.97; that they received a good hearing; and that the Assistant Commissioner informed the 2nd Petitioner that he would not recommend the acquisition as it would be unreasonable to acquire that property. The 3rd Respondent had no personal knowledge thereof and could not have controverted those averments. On the contrary, he stated that the Commissioner "has recommended to suspend the acquisition after inquiry", and produced the Commissioner's letter dated 23.10.97 ("3R6") to the Secretary, Ministry of Lands. In that letter the Commissioner confirmed that after inquiry into the acquisition of the land for the Govi Sevana Centre, the Assistant Commissioner had recommended against acquisition: thus in May itself the 1st Respondent must have known that the acquisition had not been recommended. The Commissioner also requested that the acquisition proceedings be suspended in accordance with section 50 of the Land Acquisition Act (which in fact provides for the *abandonment* of acquisition proceedings *before* the publication of an order under section 38).

Thus the pleadings and the letter "3R6" establish, beyond any reasonable doubt, that at no stage between October 1995 and October 1997 did the Commissioner propose or approve of the acquisition of the Petitioners ' land for a Govi Sevana Centre; and that the Assistant Commissioner did inform the 2nd Petitioner, at the conclusion of the inquiry held on 2.5.97, that he would not recommend the acquisition. Nevertheless, the 1st Respondent wrote to the Hon. Prime Minister a letter dated 14.5.97 stating that, *pursuant to the request of the Commissioner*, a notice under section 2 had been issued on 2.11.96. Not a single document emanating from the Commissioner has been produced which suggests that he had ever proposed or requested that acquisition, or viewed it with any favour whatsoever. On the contrary, the evidence is overwhelming that the only proposal or request for acquisition was by the 3rd and 4th Respondents. The 1st Respondent further

stated that the acquisition had been temporarily stayed at the request of Minister S. Thondaman, but that the 5th Respondent, upon inquiry, had said to go ahead; and that because the Hon. Prime Minister by letter dated 5.3.97 (which has not been produced) had requested that the acquisition be stopped, reference had again been made to the 5th Respondent who had wanted the acquisition to be proceeded with. In conclusion, the 1st Respondent stated that upon the recommendation of the Member of Parliament for the area in which the land was situated the land would be acquired.

The 3rd Respondent stated in his affidavit that the Hon. Prime Minister's letter dated 7.1.97 was referred to the 5th Respondent for his observations, "but the 5th Respondent Minister *directed* that the acquisition proceedings should continue."

I hold 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.

It is necessary to consider whether the fact that the 2nd Petitioner had decided in July 1996 to sell the property makes

any difference: Can it be said that if an owner wishes to sell his property, he cannot object if the State thereafter decides to acquire it? If, in the case of a willing seller, an acquisition would result in the payment of the market value of the land acquired with the same promptitude and convenience as upon a private sale, it might seem unduly technical to invalidate such an acquisition. But two questions arise.

First, was the 2nd Petitioner in the position of a willing seller, likely to receive prompt payment of the market value? Considering the circumstances which compelled him to decide to sell his property it is impossible to treat the 2nd Petitioner as a willing seller. Further, acquisition proceedings are known to involve delay, technicalities and expense, and seldom result in the prompt payment of market value or market rates of interest and that is perhaps why the Hon. Prime Minister remarked that "it is a crime to acquire this house which they are now planning to dispose of."

Second, does the Land Acquisition Act authorize the acquisition of a land, which is not in fact required for a public purpose, simply because the owner wishes to dispose of it? The statutory power given in order to enable the State to acquire land needed for a public purpose cannot be used for any other purpose. That would be a gross abuse of power, particularly in this case, where the owner's wish to dispose of his land had been brought about by unlawful and improper harassment on account of race.

In my view, the Petitioners' allegation that the 2nd, 3rd and 4th Respondents connived and conspired to procure the acquisition of this property has been established . Their conduct resulted in the 5th Respondent's recommendation and the 1st Respondent's decision to acquire.

I hold that the 1st to 5th Respondents have infringed the fundamental rights of the 2nd Petitioner, who was the owner at the relevant time, under Articles 12(1) and (2).

THE ORDER UNDER SECTION 38 PROVISO (a)

The 1st Respondent's letter dated 14.5.97 was not copied to the 2nd Petitioner or his wife. In the circumstances, I accept the 2nd Petitioner's statement that he "did not proceed with any legal or administrative action as [he had been] assured that the acquisition was not to be proceeded with." However, on 12.9.97 he received a letter (in Sinhala) dated 10.9.97 from the 3rd Respondent that the land had been acquired under the proviso (a) to section 38 of the Land Acquisition Act, and that he should hand over possession on 18.9.97. The 2nd Petitioner's mother, Mrs. Polly Murugesu, died on 15.9.97, and the 2nd Petitioner informed the 3rd Respondent by telegram (which the 3rd Respondent admitted) that he would not be able to attend due to his mother's funeral.

In the meantime, the 1st Petitioner had come into the picture. Being unable to repay the loans taken by him, the 2nd Petitioner had entered into an Agreement, dated 28.1.97, to sell the land to the 1st Petitioner; and the Deed of Transfer was executed on 14.9.97.

According to the 1st Petitioner, when the 3rd Respondent came to take possession on 18.9.97, she asked for his identity card. He refused to show it, and went away after inspecting the premises. Thereafter she was arrested and produced before the Horana Magistrate on a charge of obstructing a public officer under section 183 of the Penal Code. Replying to the 1st Petitioner's allegations, the 3rd Respondent did not deny that he had refused to show his identity card; and did not say in what way the 1st Petitioner had obstructed him.

The 3rd Respondent also averred that the 2nd Petitioner has contravened section 4A of the Act by selling the land after notices under section 2 had been issued and exhibited, and that makes it necessary to determine the validity of the section 2 notice.

By September 1997, the Assistant Commissioner's inquiry had been concluded. The 3rd Respondent did not claim

that he (or other relevant officers) did not know recommendations had been made. He did not state what circumstances made it urgent to take immediate possession of the land.

Apart from that, an order under proviso (a) can only be made after a notice under section 2, or section 4, has been exhibited. In this case, for the reasons set out below, I hold that there was no valid section 2 notice.

Accordingly, I hold that the order under section 38, proviso (a), and the attempt to take possession were also unlawful, arbitrary and unreasonable; and that the 1st and 3rd Respondents have thereby infringed the fundamental rights of the Petitioners under Article 12 (1).

THE SECTION 2 NOTICE

Sections 2, 4 and 4A of the Act provide as follows:

" 2(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 the area.

2(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.*

2(3) After a notice under subsection (2) is exhibited . . . . . [an authorized officer] may enter any land in that area . . . 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* . . ."

" 4(1) where the Minister considers that a particular land is suitable for a public purpose, . . . he shall direct the acquiring officers of the district . . . to cause a notice in accordance with subsection (3) to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land . . .

4(2) The Minister may issue a direction under the preceding provisions of this section notwithstanding that no notice has been exhibited as provided by section 2 . . .

4(3) The notice referred to in subsection (1) shall -
(a) be in the Sinhala, *Tamil* and Eglish languages; . . .
(b) . . .
(c) state that the Government *intends to acquire that land or servitude for a public purpose, and that written objections to the intended acquisition may be made* . . . .
(d). . ."

" 4A(1) where a notice has been issued or exhibited in respect of any land under section 2 or section 4, no owner of that land shall, during the period of twelve months after the date of issue or exhibition of such notice -

(a) sell or otherwise dispose of that land; or . . .
(b) . . . . .

4A(2) Any sale or other disposal of land in contravention of the provisions of subsection (1) (a) of this section shall be null and void . . ."

The first question is whether the public purpose should be disclosed in the section 2 and section 4 notices.

The minister cannot order the issue of a section 2 notice unless he has a public purpose in mind. Is there any valid reason why he should withhold this from the owners who may be affected?

Section (2)2 required the notice to state that one or more acts may be done "in order to investigate the suitability of that land for *that* public purpose": obviously, "*that*" public purpose cannot be an undisclosed one. This implies that the purpose must be disclosed. From a practical point of view, if an officer acting under section 2(3) (f) does not know the public purpose, he cannot fulfil his duty of ascertaining whether any particular land is suitable for that purpose.

Likewise, the object of section 4(3) is to enable the owner to submit his objections: which would legitimately include an objection that his land is not suitable for the public purpose which the state has in mind, or that there are other and more suitable lands. That object would be defeated, and there would be no meaningful inquiry into objections, unless the public purpose is disclosed. If the public purpose has to be disclosed at that stage, there is no valid reason why it should not be revealed at the section 2 stage.

In my view, 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.

The second matter is that the section 2 notice sent to the 2nd Petitioner was in Sinhala, despite the provisions of section 2(2), although he was a Tamil (cf also Article 22(2) (c)) of the Constitution. That amounts to non-compliance with a material statutory provision.

Finally, the purpose of section 2 is to ascertain whether land in any area, and if so which land, is suitable for a public purpose. If without resort to that provision a particular land has already been identified, then it is section 4 (and not section 2) which should be resorted to. In this instance, the 2nd Petitioner's land had already been determined to be suitable, and there was no purpose in issuing a section 2 notice.

The language of the section 2 notice issued in this case clearly disclosed that it was no more than a pretext. Besides non - disclosure of the alleged public purpose, it stated that "land in the area described below is required for a public purpose". The *"area"* described was just the 2nd Petitioner's property. The notice went on to authorize an officer "to enter any *land* in the aforesaid *area*" (i.e. any land within the 2nd Petitioner's property!), and "to ascertain whether *that land* is suitable for *the* public purpose for which land *in that area* is required". By the time that notice was issued, the 2nd Petitioner's land already had been identified for acquisition, and if that had been validly done, what should have been issued was a notice under section 4. The issue of a section 2 notice instead was a pretext.

I therefore hold that the section 2 notice was a nullity and the provisions of section 4A were inapplicable. The fact that the 2nd petitioner transferred the land to the 1st Petitioner did not in any way affect the former's right to relief in respect of the decision to acquire and the section 38 notice or the latter's right to relief in respect of the attempt to take possession.

RELIEF

I award the 2nd Petitioner a sum of Rs. 50,000 as compensation, and the Petitioners jointly a sum of Rs. 15,000 as costs, both payable by the State within one month.

WADYGIDAOUTUTA, J. - I agree.

GUNASEKERA, J. - I agree.

Relief granted.