

CLINTON PERERA

V

JAYARATNE

COURT OF APPEAL.
WIJAYARATNE, J. AND
SRIPAVAN, J.
CA 965/98.
JULY 28, 2004.

Writ of mandamus – Compel acquisition of land – Land Acquisition Act, sections: 2, 4, 5 and 38, – Private arrangement – Possession handed over – Can the State be compelled to acquire the land and pay compensation – Statutory duty? Decision of Minister to acquire for a public purpose is a condition precedent?

The petitioner seeks a *writ of Mandamus*, compelling the State to acquire his land and pay compensation. The position of the petitioner was that, the 1st respondent - Member of Parliament requested him to grant 3 acres of her land to be distributed among the low income groups of the people of the area. The petitioner states that, he built houses on the land and possession was handed over to the 1st respondent, but no steps have been taken by the respondents to acquire same and pay compensation.

Held:

- (1) It would appear that the condition precedent for the issue of *mandamus* is the presence of a statutory right for the performance of a statutory duty. In the absence of statutory provisions entitling the respondents to act under the provisions of the Land Acquisition Act, *mandamus* could not be issued.
- (2) No material was placed to establish that the land was handed over to the 1st respondent or a decision taken by the 2nd respondent – Minister – to acquire same for a public purpose. The decision of the 2nd respondent is a condition precedent to the invocation of S2, 4, 5 and 38 of the Land Acquisition Act.
- (3) Provisions of the Land Acquisition Act can be invoked only where the Minister of Lands decides that land in any area is needed for any public purpose. The matter in dispute is between the petitioner and the 1st respondent and is a private dispute which cannot be regularized by *Mandamus*.

APPLICATION for a writ of *mandamus*.

Cases referred to:

1. *Ratnayake and others v C. B. Perera and others* – 1982 2 Sri LR 451 at 456.
 2. *Weligama MPSC Ltd., v Chandradasa Daluwatte* – 1984 1 Sri LR 195.
 3. *W. K. C. Perera v Prof Daya Edirisinghe and others* – 1995 1 Sri LR 148.
- Mohan Peiris PC with Augusta Perera* for petitioner.
1st respondent absent and unrepresented.
A. *Gnanathasan*, Deputy Solicitor General for 2nd, 3rd and 4th respondents.

Cur. adv. vult.

August 6th, 2004

SRIPAVAN, J.

The petitioner, in this application alleges that on or about the 19th day of September 1995 he purchased 11 Acres of land called "Pinwatta" situated at Irrattakulam, Madampe for a consideration of Rs. 200,000/- with an idea of developing the said land and reselling the same in blocks. The petitioner also alleges that the 1st respondent requested him to grant 3 acres out of the said 11 acres of the petitioner's land to be distributed among the low income groups of people of the area. It was the contention of the petitioner that he verbally agreed with the request of the 1st respondent and accordingly 1st respondent promised that the petitioner should be adequately compensated for the said 3 acres, after the land was properly acquired.

The learned President's Counsel for the petitioner urged that houses were built in the 3 acre land but no steps were taken by the respondents to acquire same and to pay compensation to the petitioner. Counsel urged that the respondents were under a statutory duty to comply with the procedure established in terms of the Land Acquisition Act and that the respondents have failed and neglected to take steps in accordance with the law. Thus, the petitioner sought a Writ of Mandamus directing the 1st respondent:-

- (a) to take steps in terms of the Land Acquisition Act to have the said land acquired; and
- (b) to pay compensation thereon.

Learned DSG appearing for the 2nd, 3rd and 4th respondents

brought to the notice of Court a letter marked 4R1 dated 18th of August 1986, sent by the 1st respondent to the petitioner and submitted that the land in question was handed over by the petitioner to the 1st respondent and as such it was a voluntary agreement between the petitioner and the 1st respondent. Counsel contended that no statutory provisions exist to compel the 1st respondent to take steps under the Land Acquisition Act, in view of the circumstances set out in the petition. 30

The most important principle to be observed in the exercise of the jurisdiction by *mandamus* and which lies at the very foundation of the entire system of rules and principles regulating the use of this extraordinary remedy is that its function is to compel a public authority to do its duties. As Sharvananda, J. (as he then was) observed in the case of *Ratnayake and others v C. D. Perera and others* (1) "the essence of *mandamus* is that it is a command issued by the Superior Court for the performance of public legal duty. Where officers have a public duty to perform and have refused to perform, *mandamus* will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of public nature, and not merely of private character – that is to say for the enforcement of a mere private right, stemming from a contract of the parties". 40

Accordingly, it would appear that the condition precedent for the issue of *mandamus* is the presence of a statutory right for the performance of a statutory duty. In the absence of the statutory provision entitling the respondents to act under the provisions of the Land Acquisition Act, *mandamus* could not be issued. In *Weligama M.P.C.S. Ltd. v Chandradasa Daluwatta* (2) the Supreme Court refused to issue *mandamus* on the basis that the language of clause 7(1) of Circular No. 18/75 of 23.7.1975 issued by the Secretary of the Co-operative Employees Commission which stated that an interdicted employee was entitled to certain payments pending conclusion of the inquiry, did not permit reading into it the power to impose an obligation to make those payments during interdiction as such directions cannot be elevated to a regulation having statutory efficacy. 50 60

The learned President's Counsel strenuously contended that the

act or omission on the part of the first respondent could not be divorced from the statutory duty imposed on the 2nd respondent. Thus, Counsel argued that State has a responsibility to regularise the process and take appropriate steps in terms of the Land Acquisition Act to have the land acquired and to pay compensation to the petitioner.

In *W. K. C. Perera v Prof. Daya Edirisinghe and others*³ relied on by the learned President's Counsel, the Supreme Court held that the petitioner having satisfied the Rules and Examination criteria was entitled to the award of the Degree of Bachelor of Fine Arts on the results of the Final Examination held in 1990. However, in the present application no material was placed to establish that the land in question was handed over to the first respondent on a decision taken by the second respondent to acquire same for a public purpose. The decision of the second respondent is a condition precedent to the invocation of sections 2, 4, 5 and 38 of the Land Acquisition Act. The dispute if at all in the opinion of court is between the petitioner and the first respondent and is a private dispute which cannot be regularised by *mandamus*.

Counsel for the petitioner was unable to draw the attention of court to any statutory provision enabling the respondents to take steps under the provisions of the Land Acquisition Act, when in fact the land in question was handed over to the 1st respondent by the petitioner as evidenced by 4R1. The provisions of the Land Acquisition Act can be invoked only where the Minister of Lands decides that land in any area is needed for any public purpose. The provisions of the aforesaid Act cannot be misused to assist any private arrangement merely because the petitioner had entered into a verbal agreement with the first respondent who was a member of Parliament. The writ jurisdiction of this court cannot be invoked to compel the 2nd respondent to acquire the land in question. Accordingly, the relief sought by way of writ of *mandamus* is refused. There will be no costs.

WIJAYARATNE, J. - I agree.

Application dismissed.