

**LUKMANJEE AND ANOTHER
VS
SYLVESTER AND OTHERS**

COURT OF APPEAL,
IMAM, J.,
C.A 1460/2001
FEBRUARY 17 AND
MARCH 05 AND 10, 2004.

Writs of mandamus/ certiorari — Release of funds to pay balance compensation - Statutory duty - Land Acquisition Act, sections 17, 18(2) and 29— Constitution. Articles 138 and 140 - Is writ of mandamus available against acquiring officer? — Are strict pleadings insisted upon?

The petitioners sought a writ of mandamus/ certiorari against the respondents (National Housing Development Authority) to release the necessary funds to the acquiring officer for repayment of the balance compensation and interest due in full to the petitioners. The respondents contended that the petitioners are not entitled to a writ of mandamus against the acquiring officer, since he is acting as a servant/ agent of the Government of Sri Lanka. Further the pleadings are bad as what is asked for is a "writ" and not a writ of mandamus.

Held :

- (i) It is now settled law that strict pleadings are not insisted on and that the object of a pleadings is that both parties should know what the real issues between them are.
- (ii) Where Parliament has imposed a duty on particular persons acting in some capacity mandamus will not issue notwithstanding that those persons are servants of the Crown and acting on the Crown's behalf. This is because the legal duty is cast upon them personally and no orders given to them by the Crown will be any defence. If therefore the Act requires the Minister to do something, mandamus will lie to compel the Minister to act.

APPLICATION for writs in the nature of mandamus and / or certiorari

Cases referred to :

1. *Dayananda vs Talwatte* (2000) - 2 Sri LR 72
 2. *Senanayke vs Anthonis* 69 NLR 225
 3. *Munasinghe vs Devarajan* 57 NLR 286
 4. *City Motor Transport vs Wijetunga* 63 NLR 157
 5. *Padifield vs Minister of Agriculture, Fisheries & Food* (1968) AC 997
 6. *R vs Secretary Ex.p Phanopakar* (1976) QB 606
- L. C. Seneviratne, P. C. with A. Kodikara and Anuruddha Dharmaratne* for petitioners
- Anil Gooneratne, Deputy Solicitor General with A. R. Ameen, State Counsel* for respondents.

October 18, 2004

S. I. IMAM, J.

This is an application by the Petitioners seeking a Mandate in the nature of a Writ of Mandamus and Certiorari against the Respondents to release the necessary funds to the 1st Respondent for repayment of the balance compensation and interest due in full to the Petitioners. The 1st Petitioner is the legal heir to the estate of the deceased Adamjee Lukmanjee, and the 2nd Petitioner is the Trustee of Taiyabbhai Childrens Trust.

The issue in this case relates to the non payment of a *certain portion* of compensation awarded to the 1st and 2nd Petitioners in respect of an acquisition of land belonging to the Petitioners. The Petitioners do not contest the validity of the acquisition, nor the award of compensation nor the process duly adopted towards the determining of the said *Award* of compensation. A sum of Rs. 30,000,000/- was awarded to Adamjee Lukmanjee by way of compensation and a further sum of Rs. 3,164,000/- was awarded by way of compensation to the Taiyabbhai Childrens Trust, represented respectively by the 1st and 2nd Petitioners to this application. The said compensation was paid in instalments as set out in X4 and X4a together with interest, and a further sum of Rs. 2,333,109/- of the said compensation in accordance with the Award is claimed by the 1st and 2nd Petitioners. Of this sum Rs. 1,838,366/- is claimed by the 1st Petitioner together with interest and the 2nd Petitioner claims a sum of Rs. 394,743/- together with interest. The Petitioners further contend that compensation was paid to them upto 14.12.1993, and that the Respondents *failed and neglected* to make the balance payment, since then to the Petitioners.

The Petitioner's contention is that on the Award (X3 and X3a), the Petitioners are duly entitled to the aforesaid compensation, that the Respondents are *bound* by the said Award, and are obliged in law to make the said payment on the basis of this Award. It is further pointed out by the Petitioners that the Respondents being bound by the Award cannot for any reason detract from the obligation to pay the aforesaid compensation, in accordance with the Award. Under section 17 of the *Land Acquisition Act* the Acquiring Officer is statutorily authorised to supply failures and omissions prior to the making of the Award, and he is even authorised to reopen the inquiry, at any time prior to the making of the Award under section 17, by virtue of section 18 (2) of the said Act.

On perusal of section 29 of the said Act the Acquiring Officer has *no power* to *alter* the payment of compensation after the Award is made.

Section 29 of the Land Acquisition Act states as follows. "Where an award is made under section 17, the Acquiring officer of the district in which the land to which that award relates is situated, shall tender to each person who is entitled to compensation according to that award the amount of compensation allowed to him by that award"

The Petitioners seek that in the event the 1st Respondent fails to act in conformity with the statutory duty cast on him under section 29 of the Land Acquisition Act, this Court is entitled in terms of *Article 140* of the Constitution to issue a Mandate in the nature of a Writ of Mandamus to compel the 1st Respondent to act in accordance with the statutory obligation. The Petitioner's further submit that the payment of the aforesaid balance amount of compensation was withheld by the 3rd Respondent on representations made by the 2nd Respondent, that certain portions of land, the subject matter of the acquisition had been vested in the Commissioner of National Housing and that the Award to the Petitioners included compensation of such lands. The Petitioners contend that they never claimed or received any Award for any land belonging to any other person, and that the Award refers to Lots 1 to 34 in Preliminary Plan No. 6609 (2R5). Compensation awarded was only in respect of the land claimed by the deceased Adamjee Lukmanjee and the Taiyabbahai Childrens Trust. The deceased Adamjee Lukmanjee has since his demise been substituted by his legal heir, namely Murtaza Adamjee Lukmanjee. The Petitioners further state that none of the Respondents including the Commissioner of National Housing nor any other person objected to nor appealed against the said Award, nor sought to have the Award quashed. Contrarily the Respondents acted on the basis that the Award was valid, and further more paid compensation to the Petitioners. The Petitioners further submit that the 1st Respondent by letters (X6 and X7) clearly intimated that the unilateral decision to withhold the payment of compensation from the said Award should not be resorted to, as it could lead to legal complications. Thus the Petitioners seek a Writ of Mandamus directing the 1st Respondent to make payment of the balance compensation together with interest, and a Writ of Certiorari directing the 2nd Respondent to *quash* any *decision* not to make payment of the balance compensation. The Respondents initially took up the position that the relief prayed for in the Petition does not specify the Writs sought for as stipulated by Article 140 of Constitution. *Dayananda vs Talwatte*⁽¹⁾ was referred to by the Respondents who further contended that a relief prayed for in the

prayer to the Petition should specify one of the four Writs, as set out in Article 140 of the Constitution. However what was decided in this case was that an *application* for revision in terms of Article 138 of the Constitution cannot be combined with an application for Writs of Certiorari, Prohibition, Quo Warranto and Mandamus under Article 140 since the relief by way of Revision and Prerogative Writs are two distinct remedies that cannot be combined in one application. Paragraph 17 of the Petition refers to the Writ of Certiorari and/or Mandamus against the Respondents, and prayer C of the Petition refers to a direction to the 1st Respondent by way of Writ to comply with full payment of the award of compensation and the interest due to the Petitioners although the word "Mandamus" has not been referred to. However it is now settled law that strict pleadings are not insisted on, and that the object of the pleadings is that both parties should know what the real issues between them are. This is illustrated in *Senanayake vs Anthonis*.⁽²⁾ It is therefore clear that on a perusal of the averments contained in the Petition, and the relief prayed for, the Petitioners are seeking a Writ of Mandamus for the payment of the balance money due to them on the aforesaid Award.

The Respondents further took up the position that the Petitioners are not entitled to a Writ of Mandamus for the payment of compensation in terms of the Land Acquisition Act against the 1st Respondent since he is acting as a servant/agent of the Government of Sri Lanka. To strengthen their position the Respondents cited (1) *Munasinha vs Devarajan*⁽³⁾ *City Motor Transit Co. vs Wijesinghe*⁽⁴⁾

The rule is based on the equivalent rule in England that a Writ of Mandamus will not issue against the Crown or on a servant acting on behalf of the Crown. However the law relating to administrative law has now developed to a large extent and in Wade, *Administrative Law*, 8th Edition at page 617 states as follows. "On the other hand, where Parliament has imposed a duty on particular persons acting in some particular capacity, Mandamus will issue notwithstanding that those persons are servants of the Crown and acting on the Crown's behalf. This is because the legal duty is cast upon them personally and no orders given to them by the Crown will be any defence. If therefore the Act requires the Minister to do something, Mandamus will lie to compel the Minister to act."

This principle was followed in *Padfield vs Minister of Agriculture, Fisheries and Food*,⁽⁵⁾ and *R vs Secretary ex p. Pihansopakar*⁽⁶⁾ At

page 616 it is stated that "Today Mandamus has largely lost the character of a residual remedy and as noted earlier, it has been the regular remedy for enforcing the statutory duties of public authorities, and its procedure is no longer cumbersome and expensive. Accordingly the courts have grown accustomed to awarding it more freely, even when some other remedy exists."

The Respondents further contend that the Award made in favour of the Petitioners include compensation that should be paid to the *Commissioner of National Housing* as a portion of the land acquired was vested in the aforesaid Commissioner. However this position was never taken up by the Respondent *prior* to the Award being made. The Respondents cannot say that they are unaware of these facts as the notice issued under section 7 of the Land Acquisition Act by the Assistant Government Agent, Colombo district marked X8(b) clearly sets out several allotments of land to be acquired, of which Lots 6, 7, 29, 32 and a part of Lot 40 are stated to be claimed by Adamjee Lukmanjee and Lots 35, 36, 41, 42 and the balance portion of Lot 40 was stated to be claimed by the Taiyabbhai Children Trust. From a persusal of the relevant Documents these are allotments of land the Petitioners claim in respect of which the Award was made.

Although Lots 1-5, 8-28, 30, 31 and 33 was stated to be claimed by the Commissioner of National Housing, it is manifestly clear what allotments were claimed by the Petitioners. There was no dispute as to the Award made to the Petitioners, which clearly shows that the said compensation was awarded to the Petitioners in respect of the portions of land claimed by them which exceeds 6 1/2 Acres in extent out of 8 1/2 Acres of the entirety of the land.

For the aforesaid reasons I allow the application of the Petitioners and order that that this court issues a Writ of Mandamus on the 1st and / or 2nd and / or 3rd Respondents directing that the *balance compensation* due on the Award together with interest be paid to the 1st and 2nd Petitioners. I further issue a Writ of Certiorari against the 2nd Respondent to quash and cancel orders made by the 2nd Respondent to stop payment under the Award if any. No costs.

Application allowed.