

SOMARATNE
v.
MINISTER OF AGRICULTURE, LANDS AND
FORESTRY AND OTHERS

COURT OF APPEAL
JAYASINGHE, J. (P/CA) AND
EDIRISURIYA, J.
MARCH 26,
MAY 06, AND
JUNE 25, 2002

Constitution – 13th Amendment – Land Acquisition Act, sections 2, 4, 5 (1), 6 and 44 – Provincial Councils (Consequential Provision) Act, No. 12 of 1989 section 2 – Acquisition of land – Appropriate Minister – Provincial Council list.

The Divisional Secretary on the direction of the 1st respondent published a section 2 notice. Thereafter, by a section 4 notice objections were called in writing to be sent to Secretary, Ministry of Education. Thereafter, a section 5 notice was published. It was contended that in terms of the 13th Amendment, the subject of Education has been devolved on the Provincial Councils and that according to Item 20 of Appendix III, 9th Schedule, construction and maintenance of educational buildings and playgrounds are matters devolved on the Provincial Councils.

The school concerned was not a National School or a Special School, to come within the Ministry of Education in the Central Government. In terms of section 2 of Act, No. 12 of 1989 the appropriate Secretary should have been the Secretary of the Provincial Ministry, who was in charge of the subject of Education and not the Secretary to the Ministry of Education in the Centre.

Held :

- (1) The subject of acquisition is contained in the concurrent list. Decision to issue notices in terms of sections 2 (1), 4 (1) and 5 (1) of the Land Acquisition Act is made by the Minister of Lands at the Centre.
- (2) There is a duty cast on the appropriate Minister to make a recommendation to the Minister of Lands whether the land should or should not be acquired.

- (3) A Provincial Minister cannot make that recommendation since acquisition of land is not a subject in the Provincial Council list.
- (4) The requirements of the school is a matter entirely left to the discretion of the school.
- (5) Land acquired in terms of the Land Acquisition Act becomes property of the State. It is subsequently vested in a body such as the Provincial Council.
- (6) A decision or a recommendation concerning the acquisition of lands should be taken by the Central Government and not by the Provincial Council.

APPLICATION for a writ of *certiorari*.

Chula Bandara for petitioner.

M. R. Ameen, State Counsel for respondents.

Cur. adv. vult.

January 16, 2003

JAYASINGHE, J. (P/CA)

The 3rd respondent on the directions of the 1st respondent published a notice P2 dated 15. 06. 1995 under section 2 of the Land Acquisition Act informing the petitioner and two others that the land referred to in the said section 2 notice was required for a public purpose. On 13. 05. 1996 the 3rd respondent issued a notice P4 under section 4 of the Land Acquisition Act calling for objections if any in writing to be sent to the Secretary to the Ministry of Education and Higher Education with regard to the proposed land acquisition. On 09. 12. 1996 the petitioner made representation accordingly. On 20. 08. 1997 the 1st respondent caused a notice P6 to be published in the *Gazette* in terms of section 5 of the Land Acquisition Act that land morefully described as Lot D was required for a public purpose and

will be acquired accordingly. The counsel for the petitioner contended that in terms of the 13th Amendment to the Constitution the subject of Education has been devolved on the Provincial Councils and that according to item 20 of Appendix III of the said 9th Schedule "Construction and Maintenance of Educational Buildings, Libraries and Playgrounds" are matters devolved on the Provincial Councils.

The learned counsel submitted that R/Godakumbura Miyanavita Maha Vidyalaya is situated in the Ratnapura District of the Sabaragamuwa Province. Hence, the construction and maintenance of the playgrounds have been devolved on the Sabaragamuwa Provincial Council; that the said school is not a national or a special school for service personnel to come within the administrative ambit of the Ministry of Education and Higher Education of the Central Government.

Section 4 (4) of the Land Acquisition Act provides that –

"Where a notice relating to the intended acquisition of a land or of a servitude over a land is exhibited under subsection (1) and objections to such acquisition are made to the appropriate Secretary by any of the persons interested in the land within the time allowed therefor by the notice, the appropriate Secretary shall consider such objections or direct an officer to consider such objections on his behalf and to make recommendations to him. When such objections are considered every objector shall be given an opportunity of being heard in support thereof. After the consideration of the objections the appropriate Secretary shall make his recommendations on the objections to the Minister in charge of the Ministry specified in the notice (hereafter in this section referred to as the "appropriate Minister"), and such Minister shall, after considering such recommendations, make his own recommendations on the objections to the Minister".

The learned counsel submitted that in terms of the section 4 notice the objection to the proposed acquisition should have been made to the Secretary to the Ministry of Education and Higher Education at the Centre. However, that in terms of section 2 of Provincial Councils (Consequential Provision) Act, No. 12 of 1989 the appropriate Secretary named in the notice should have been the Secretary of the Provincial Ministry which was in charge of the subject of education in the Sabaragamuwa Provincial Council and not the Secretary to the Ministry of Education and Higher Education at the Centre. 50

Similarly, the appropriate Minister should have been the Minister in the Provincial Council and not the Minister at the Centre. Therefore, the failure to obtain the recommendation of the Provincial Minister of Education in terms of section 4 (4) of the Land Acquisition Act renders the decision made by the Minister of Lands to acquire the petitioner's land in terms of section 5 (1) *ultra vires*.

The learned State Counsel submitted that although the subject of construction and maintenance of playgrounds is contained in the Provincial Council list, the subject of acquisition of land is contained in the Concurrent List. The learned State Counsel submitted that 60 "Acquisition and Requisitioning of Property" is contained in paragraph 6 of List III i.e. Concurrent List. That the decision to issue the notices in terms of *inter alia* sections 2 (1), 4 (1) and 5 (1) of the Land Acquisition Act are made by the Minister of Lands at the Centre in terms of item 6 of List III.

The learned State Counsel then submitted that in terms of the Land Acquisition Act a duty is cast on the "appropriate Minister" to make a recommendation to the Minister of Lands whether the land should or should not be acquired. A Provincial Minister cannot make that recommendation since the acquisition of land is not a subject contained 70 in the 'Provincial Council List'.

The argument of the counsel for the petitioner that recommendations under sections 4 (4) and 4 (5) of the Land Acquisition Act read with section 2 of the Provincial Councils (Consequential Provisions) Act, No. 12 of 1989 has not been considered by the 1st respondent prior to the publication of P6 and therefore *ultra vires* cannot succeed.

Mr. Chula Bandara also submitted that the acquisition of Lot D does not meet the requirement of the needs at the school because the request of the Principal of the school was for an extent of $1\frac{1}{2}$ acres; that after inquiry into the question made in terms of section 4, the Inquiring Officer has recommended the acquisition of Lot D only leaving Lots A, B and C. Counsel submitted that the acquisition is bad as the Inquiring Officer has failed to consider the main objective of the proposed acquisition. However, the requirements of the school is a matter entirely left to the discretion of the school and if the acquisition of Lot D meets the requirements of the school, the objections by the petitioner on that ground is not valid.

The learned State Counsel submitted while the Provincial Council could decide as to whether it should construct a playground the decision whether a land should be acquired for the construction of such playground is for the Central Government. This position is supported by the fact that the land acquired in terms of the Land Acquisition Act in the first instance becomes the property of the the Government of Sri Lanka. It is subsequently vested in a body such as the Provincial Council in terms of section 44 (4) of the Land Acquisition Act; that in terms of first paragraph in Appendix II titled "Land Settlement" State land continues to vest in the Central Government. Consequently, a decision or a recommendation concerning the acquisition of lands should be taken by the Central Government and not by the Provincial Council.

The petitioner in his affidavit filed in this proceedings had alleged ¹⁰⁰ that the 1st respondent has been influenced by the local politician supporting the People's Alliance to take over his property and that the proposed acquisition is actuated by political considerations; that there is alternate land available on the western boundary suitable to be developed as a playground. I find that the present administration is yet pursuing the acquisition and therefore the allegation that the acquisition is motivated by extraneous considerations is not valid. I have considered the submissions of counsel. I am of the view that this is not a fit case to grant the petitioner relief. Application for *certiorari* is accordingly dismissed. I make no order for costs. ¹¹⁰

EDIRISURIYA, J. – I agree.

Application dismissed.