IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCALIST REPUBLIC OF SRI LANKA

In the matter of an application under Article 140 of the Constitution for an order in the nature of a writ of Certiorari and Mandamus.

R.H.R. Justin Perera Ranasinghe
Singhagiri,
Minioluwa,
Mirigama.

Petitioner

Case No. CA/Writ/06/2025

Vs.

1. Divisional Secretary
Divisional Secretariat,
Mirigama.

2. District Secretary
Office of the District Secretary,
Colombo Road,
Gampaha.

3. Minister of Lands
Ministry of Lands,
"Mihikatha Medura",
Land Secretariat,
1200/6,
Rajamalwatta Road.
Battaramulla.

4. Commissioner General of Lands
Land Commissioner General's
Department,
"Mihikatha Medura",
Land Secretariat,
1200/6,
Rajamalwatta Road.
Battaramulla.

5. Director Land (Acquisition)
Ministry of Lands,
"Mihikatha Medura",
Land Secretariat,
1200/6,
Rajamalwatta Road,
Battaramulla.

6. Commissioner General of Agrarian
Development,
Department of Agrarian Development,
No.42,
Sir Marcus Fernando Mawatha,
P.O. Box 537,
Colombo 07.

7. Assistant Commissioner of Agrarian
Development
Agrarian Development District Office,
Shri Bodhi Road,
Gampaha.

8. Secretary,
Ministry of Highways,
"Sethsiripaya",

Battaramulla.

9. Project Director
Central Express High Way -Level II,
Sethsiripaya,
Battaramulla.

10. Project Engineer
Central Express High Way - Level II,
Theliyagonna,
Gettuwana.

11. Road Development Authority,
'Maganeguma Mahamedura',
216, Denzil Kobbekaduwa -Mawatha,
Koswatta,
Baththaramulla.

12. Secretary
Mirigama Pradeshiya Sabhawa,
Mirigama.

13. The Honourable Attorney General
The Attorney General's -Department,
Colombo 12.

Respondents

Before : Dhammika Ganepola, J.

Adithya Patabendige, J.

Counsel : Atheek Iman for the Petitioner.

Sehan Soysa SSC for the 1st -11th

Respondents.

Tharanga Perera with Lakdinu

Dheerasekara for the 12th Respondent.

Argued on	:	20.01.2026		
Written Submissions tendered on	:	Petitioner	:	20.02.2026
		Respondents	:	25.02.2026
Decided on	:	27.03.2026		

Dhammika Ganepola, J.

In the instant application the Petitioner seeks inter alia a Writ of Certiorari to quash the vesting Order made under proviso (a) of Section 38 of the Land Acquisition Act No 9 of 1950 (as amended) by the 3rd Respondent published in the Gazette Extraordinary No. 2288/25 dated 15.07.2022, marked P2, and a letter dated 02.01.2025, marked P21, which requires the Petitioner to vacate the land and hand over the possession to the 1st Respondent. Additionally, the Petitioner seeks a Writ of Mandamus compelling the Respondents to utilise or acquire alternative lands described in the Amended Petition and to revoke the impugned vesting Order marked P2.

The Petitioner claims to have received a notice dated 26.10.2021 marked P3 issued by the Divisional Secretary of Mirigama under Section 2 of the Land Acquisition Act stating that the said land, which he asserts as the owner, is required for the construction of a Volleyball Court. Although the Petitioner made objections to such acquisition by his letter dated 04.12.2021 marked P4, the 1st Respondent nevertheless proceeded to acquire the impugned land depicted as Lot A1 and Lot A2 in Advanced Tracing GA/MEE/2021/478 dated 31.01.2022 marked P6 via the Gazette marked P2.

The Petitioner states that there are three deserted Volleyball Courts within a radius of 1km to 2km away from the land to be acquired. In addition to the foregoing, there is a State land that was formerly used as a playground and is now abandoned. Another piece of land situated nearby, owned by the Board of Investment (B.O.I.), could be utilised for the same purpose. Apart from the above State lands, there are sufficient suitable private lands nearby, which could be used for the same purpose with minimal effort and cost. The Petitioner further states that although the urgency of the need for the impugned acquisition is required under proviso (a) of Section 38 of the Land Acquisition Act, no urgency has been established when acquiring the impugned premises.

At the outset, it is significant to note that the Petitioner mainly challenges the order made under proviso (a) of Section 38 of the Land Acquisition Act and the subsequent decision to obtain possession of the subject matter. Proviso (a) of Section 38 stipulates that the Minister may make an Order where it becomes necessary to take immediate possession of any land on the ground of any urgency. Proviso (a) of Section 38 reads as follows.

> *"Provided that the Minister may make an Order under the preceding provisions of this section-*
>
> *(a) where it becomes necessary to take immediate possession of any land on the ground of any urgency, at any time after a notice under section 2 is exhibited for the first time in the area in which that land is situated or at any time after a notice under section 4 is exhibited for the first time on or near that land,"*

The above proviso refers only to the urgency which necessitates taking immediate possession of the land in issue. It is apparent that an order under proviso (a) of Section 38 comes into operation only after an order is made under Section 2 and /or 4 of the Land Acquisition Act, following the requirement of public purpose, which is not referred to in the proviso (a) of Section 38. This proposition has been observed by Samarakoon, C.J. in Fernandopulle v. Minister of Lands and Agriculture 79(2) NLR 115 as follows.

> *"A reading of section 38 reveals that it comes into operation only after an order under section 2 and/or section 4. Both these sections operate on the Minister's decision under these two sections that the land is required for a public purpose. Section 38 nowhere refers to " public purpose ". It only refers to the sections where the need for such purpose has been decided. The only decision it is concerned with is the " urgency" which necessitates " immediate possession " of the land being taken. The Minister's sole power under that section is to decide the question of urgency to meet the need for which an order was made under section 2 and/or section 4, …"*

In the above case, Samarakoon, C.J., continued to demonstrate his dissatisfaction regarding the extensive use of proviso (a) of Section 38, and the difficulty of challenging such Orders, and went on to say, "*No doubt primarily the Minister decided urgency. He it is who is in possession of the facts, and his must be the reasoning. But the Courts have a duty to review the matter.*"

In De Silva v. Atukorale, Minister of Lands, Irrigation and Mahaweli Development, and Another 1993, Vol :1, SLR Page: 283, the Supreme Court, referring to the plethora of jurisprudence and decisions, including Lord Denning, in M.R., in *Breen v Amalgamated Engineering Union (1971) 2 QB 175, 190,* where he said,

> *"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless the decision will be set aside. That is established by Padfield v Minister of Agriculture, Fisheries and Food, which is a landmark in modern administrative law."*

held that,

> *"The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his exercise of his power. In the same way, a private person has an absolute power to release a debtor, or, where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do neither unless it acts reasonably and in good faith and upon the lawful and relevant grounds of public interest. Unfettered discretion is wholly inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good."*

Since the Petitioner is challenging the Order made under Section 38 proviso (a) of the Land Acquisition Act, the concern of the Court should be to see whether there is any urgency in the impugned acquisition to take immediate possession. The discretion is conferred on the Minister under the above proviso only in a situation where a necessity arises to take immediate possession urgently.

In the instant application, there is no dispute on the availability of alternative premises that can be used as Volleyball Courts in the area. The Petitioner claims that there are three other Volleyball Courts within a radius of 1.3 km and an abandoned playground suitable for a Volleyball Court situated 900 meters away from the land in dispute, and the availability of another suitable land belonging to the B.O.I. The Respondents claimed that the necessity to acquire the land in issue in the instant application had arisen due to the existing Volleyball Court available for the youths of the area being taken over by the road widening process for the Highway Project. However, there is no material placed before this Court in respect of the location of the former Volleyball Court that was acquired for the Highway Project. Hence, this Court is not in a position to determine the validity of the said claim.

The Respondents argue that the availability of alternative options for sports enthusiasts living in the respective areas is irrelevant to the issue of the impugned acquisition. While such a need may support the necessity

of impugned acquisition, the availability of similar facilities nearby would, in my view, stand in contradiction of any "urgency" to take immediate possession of the subject matter.

Further, this Court noticed that the District Secretary, Gampaha, in his letter marked P15 to the Secretary, Ministry of Highways, observed that the availability of an alternative Volleyball Court nearby, the availability of well-developed ground, and the relocation of such ground would result in the waste of financial resources which are already expended. The paragraph marked as P15(a) of the said letter reads as follows;

> *"එම ප්‍රදේශයට යාබදව තවත් අත්පන්දු ක්‍රීඩා පිටි පිහිටා තිබීම හා දැනට එම ඉඩම් කොටසට ආසන්නයේම ඉතා යහපත් සංවර්ධිත මට්ටමේ පවතින ක්‍රීඩා පිට්ටනියක් පැවතීම හා එම ක්‍රීඩා පිට්ටනිය එම ස්ථානයෙන් විතැන් කිරීම ඒ වෙනුවෙන් වැය කරන ලද මුල්‍යමය ප්‍රතිපාදන අපතේ යෑමක් සිදු කිරීමක් බව නිරීක්ෂණය වීම."*

Such observation reflected in the letter P15 supports the position of the Petitioner in respect of the lack of urgency in the impugned acquisition. Therefore, there is no substance to the argument before this Court to conclude that the Minister has exercised his discretion based on reasonable grounds when he decided that there is an urgency to take possession of the impugned land.

Given the circumstances, this Court is not satisfied by the reasons provided by the Respondents in respect of the "urgency" to take possession of the disputed land when there are several alternative premises available for enthusiasts in the vicinity to play volleyball. The proviso (a) of Section 38 of the Land Acquisition Act is based on the urgency regarding a proposed acquisition, and therefore, the burden of establishing urgency is on the acquiring authority. (see Horana Plantations Ltd. Vs. Hon. Minister of Agriculture and 7 Others,2012(1)SLR,327).

Since the Respondents have failed to satisfy this Court in respect of "urgency" of such acquisition, I am of the view that there was no urgency per se compelling the Minister to act under proviso (a) of Section 38.

In the Horana Plantations Ltd (supra) case, the Supreme Court held that,

> *"Since the final authority regarding the decision to acquire land under the provisions of the Land Acquisition Act, especially in terms of Clause (a) of the*

proviso to Section 38, is on the Minister, the Minister has a duty to act with care in arriving at such decisions as the discretion conferred on him is not one which is unfettered. Exercise of unfettered discretion could be the subject of challenge. The Minister must endeavour to make proper inquiries and only pursue such acquisitions if no alternative is available, as otherwise such actions would jeopardise the interests of the Public."

In Mahindapala and Others Vs. Minister of Lands and Land Development and Others 2009 (2)SLR 324, it was held that,

"As there was no 'urgency' the authorities should have followed the proper procedure envisaged in the Land Acquisition Act. Had they followed the proper procedure, petitioners would have got an opportunity to air their grievances. Failure on the part of the authorities to follow the procedure deprived the petitioners of that opportunity. One pillar of the doctrine of natural justice is the right to a fair hearing before an administrative authority acts or makes decisions affecting the rights of subjects."

Accordingly, in the absence of any urgency, any acquisition should follow the ordinary procedure laid down in the Land Acquisition Act. Any decision arrived at without following the proper procedure in the absence of urgency is invalid.

Moreover, the Respondents have taken up an objection based on inordinate delay. It is said that the Section 2 notice (P3/1R2) was published on 26.10.2021, and the process culminated in the publication of the Gazette (P2) on 15.07.2022. However, the Petitioner filed this application in 2025 after a substantial lapse of time. The Respondents claim that this amounts to inordinate delay, and acquiescence warrants this Court to refuse the reliefs. Nevertheless, the documents marked P4 to P15 submitted by the Petitioner demonstrate that, throughout the period commencing from 04.12.2021 up to the issuance of the letter dated 02.01.2025 (P21) to hand over the possession of the land, the Petitioner had made several attempts to obtain relief. The instant application was filed immediately after that on 14.01.2025. Therefore, the Petitioner cannot be considered to have slept over his rights. Nevertheless, a blatant error in the process of acquiring the impugned land cannot be disregarded due to an undue delay.

In the aforesaid circumstances, this Court decides to quash the impugned Gazette Notification P2 and the letter marked P21. Reliefs (b) and (c) in the prayer of the Amended Petition are granted. No cost is ordered.

Application is allowed.

Judge of the Court of Appeal

Adithya Patabendige, J.

I agree.

Judge of the Court of Appeal