
**RANAWICKREMA
VS
MINISTER OF AGRICULTURE AND LANDS AND OTHERS**

COURT OF APPEAL
IMAMJ. AND
SRISKANDARAJAH, J.
C.A. (WRIT) 280/2001
MAY 10, 2005

Writ of certiorari - Land Acquisition Act, sections 2,3 and 4(1) - Section 2 Notice - Should the land be identified with precision ? - What is a Section 2 Notice ? - Is it amenable to writ jurisdiction ? - What is the first decisive exercise of discretion by the Minister ?

Held :

- (i) Without identifying a land, if Section 2 Notices are issued on several lands in an area for the purpose of investigation, it will cause inconvenience to the public and at the same time the Acquiring Authority may incur unnecessary liabilities under section 3.
- (ii) The Land Manual has laid down the procedure to be followed in cases of acquisition of land for public purposes. The officers of relevant government departments should conduct a preliminary investigation before identifying a land for the stated purpose. They should compare the lands available in the area and identify a land for the said purpose and after identifying the land only a "request" could be made to the relevant Minister for acquisition. The Minister thereafter issues a direction to the Acquiring Officer of the area, to publish a Section 2 Notice to investigate whether the land identified is suitable for the said public purpose.
- (iii) A Section 2 Notice is a notice to investigate for selecting, a land for a public purpose. The investigation will not necessarily result in a subsequent acquisition of that land. This is not a decisive exercise of discretion by the Minister.

The first decisive exercise of discretion by the Minister, affecting the rights of a person is at the stage of section 4(1). Seeking a writ of certiorari to quash a Section 2 Notice or a writ of prohibition is premature and not ripe for review.

APPLICATION for a writ of certiorari.

Case referred to :

1.D.C. Jayawardena vs. V.P. Silva - 72 NLR 25

Manohara R de Silva for petitioner

Sanjay Rajaratnam, Senior State Counsel for 1-3 Respondents

S.T. Gunawardena for 4th and 5 th respondents.

Cur. adv. vult.

June 30, 2005

SRISKANDARAJAH, J.

The Petitioner in this application has sought a writ of certiorari to quash the order marked P4B made by the 1st Respondent and writ of prohibition restraining and /or prohibiting 1st to the 5th Respondents from taking any steps to acquire any part of the Petitioner's land.

The petitioner is the owner of the property bearing assessment No. 6 Peiris Road, Mt. Lavinia. The petitioner and her family are presently living overseas in the United Kingdom and the said property was rented out until their return to the Island. The Petitioner's husband is 61 years of age and intends to settle down in Sri Lanka with the Petitioner in a few months time after retirement. In the month of November or December 2000 the Petitioner's tenant had received from the 3rd Respondent a registered letter dated 21.11.2000 P4A addressed to the Petitioner. To this letter a notice under Section 2 of the Land Acquisition Act is annexed P4B, informing the Petitioner that the land in the area described in the notice is required for a public purpose namely to join the existing road to Peiris Road through the land which is available in between the buildings bearing Nos. 271 and 273 Galle Road. The said land is in extent of 3.56 Perches a portion of lot 8 depicted in Plan No. 16/95 dated 26.6.1995 marked P5. The Petitioner submits that the whole exercise is to acquire 3.56 Perches of the Petitioners land and not to widen the existing road. She further submits that by this acquisition the benefit will only accrue to premises No. 259/5A and 259/5. The Petitioner submits that these two lands were originally one land owned by the 4th Respondent and these two premises have access from the Galle Road. The purpose of the acquisition of the Petitioner's land is solely to provide the 4th Respondent access to the

Galle Road through Peiris Road and this acquisition has been initiated by the 5th Respondent using his political power to the benefit of his father the 5th Respondent.

The Petitioner further submits that as evident from the said Section 2 notice the Respondent proposes to acquire 3.56 perches of the Petitioner's land purportedly on the basis to connect the road which runs between premises No. 271 and 273 Galle Road, Mt. Lavinia to Peiris Road, But the Plan P5 filed in this case shows that the existing road is to be widened from Galle Road up to Peiris Road. However the Section 2 notice only deals with lot 8 and not lots 1 to 7 depicted in the said plan. This clearly demonstrates that the whole exercise is to acquire 3.56 perches of the Petitioner's land and not to widen the existing road. She further submits that the Section 2 notice that was published describes with precision the portion of the land the state intends to acquire from the Petitioner's land. The said order has taken away the duty vested on the Acquiring Officer in ascertaining the suitability of the land for the intended public purpose. Section 2 notice is published in an area for the purpose of investigating and ascertaining the suitability of the land required for the public purpose and the notice in question had identified the land in question and therefore the said notice is of no force or effect in law and hence the notice of the purported acquisition is unlawful, arbitrary, capricious and *mala fide* and had been made without jurisdiction.

The 4th and 5th Respondents in their objections have stated that the said acquisition is being done in order to expand the width of the present foot path of 3ft. to 10ft. road way for the benefit of the residents of the area and the members of the public. All the residents of the area whose lands are being affected by the proposed road widening have given their consent to the said widening whereas the Petitioner is the only party who has objected to the said road widening and therefore the 3rd Respondent has been forced to take the mandatory step of acquiring a minor portion of the Petitioner's land at the request of the local authority. The petition of the residents of that area P1 and the resolutions passed by the Municipal Council P2, P3 and P4 are annexed to support this contention.

The 1st to the 3rd Respondents submitted that on an application dated 10th March 2000 forwarded by the Ministry of Provincial Councils, the Ministry of Lands initiated action to acquire the land in question. The

predecessor - in - office to the 1st Respondent being satisfied that the purpose of this acquisition being a public one gave directions under Section 2 of the said Act. The 1st Respondent submitted that he was also satisfied that the purpose of this acquisition was to extend the road from Gall Road up to Peiris Road, Mount Lavinia. Hence he directed the 3rd Respondent the acquiring officer to cause a notice in accordance with section 2(2) of the Land Acquisition Act. The 3rd Respondent published the said notice on 22nd November 2000.

The submissions of the 1st to the 3rd Respondents are that the said land is required for widening of the existing road and to connect the same to the Peiris Road. Further the residents who live along the said road have given their consent for the takeover of portions of their land to this purpose. Therefore there is no necessity to acquire lands to widen the said road. But a portion of the Petitioner's land was identified for the purpose of connecting the said road to the Peiris Road for the benefit of the public and that is why steps are being taken to acquire that portion of the land. The Petitioner's contention that the portion of the Petitioner's land acquired is for the benefit of the 4th Respondent was denied by the 1st to the 3rd Respondents.

The Petitioner's submission that the land that has to be acquired for a public purpose should not be identified with precision at the stage of publishing Section 2 notice but it can only be identified after investigating and ascertaining the suitability of the land required for the public purpose cannot be accepted. The Land Manual has laid down the procedure that has to be followed in case of acquisition of land for public purpose. Clause 248 of the Manual provides for the procedure that has to be followed by a Government Department or an Authority that needs a land for a public purpose. It provides that before a Government Department or an Authority make a request for acquisition the officers of the relevant Government Department or Authority should conduct a preliminary investigation before identifying a land for that purpose. These officers should compare the lands available in the area and identify a land for the said purpose keeping in line with the provisions laid down in Clause 248(a) (1) to (12). By this process the officers of the relevant Government Department or an Authority have to first identify a land for the said public purpose and after identifying the land only a request could be made to the Minister of lands for acquisition. The Minister of lands after the receipt of a request issues a direction to the

acquiring officer of the area in which the said land is situated to publish a notice as provided in Section 2 to investigate whether the land identified is suitable for the said public purpose. Without identifying a land, if Section 2 notices are issued on several lands in an area for the purpose of investigation it will cause inconvenience to the public and at the same time the acquiring authority may incur unnecessary liabilities under section 3 of the said Act.

The Petitioner in this application is seeking to quash the order P4B made by the 1st Respondent. The said order is in fact is not an order but a notice under Section 2 of the Land Acquisition Act. This notice is to investigate for selecting a land for public purpose.

In *D. C. Jayawardana vs. V.P Silva*⁽¹⁾ the court held that certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of subjects and, at the same time, has the duty to act judicially when he determines such questions.

Administrative Law by H.W.R.Wade & C.F. Foster, Ninth Edition the authors in pages 611,612 & 613 states :

"As the law has developed, certiorari and prohibition have become general remedies which may be granted in respect of any decisive exercise of discretion by an authority having public functions, individual or collective. The matter in question may be an act rather than a legal decision or determination, such as the grant or refusal of a license, the making of a rating list on wrong principles, taking over of a school, the dismissal of employees who have statutory protection, or the issue of a search warrant. They will lie where there is some preliminary decision, as opposed to a mere recommendation, which is a prescribed step in a statutory process which leads to a decision affecting rights even though the preliminary decision does not immediately affect rights itself"

"If confusion and complication are to be avoided judicial review must be accurately focussed upon the actual existence of power and not upon the mere preliminaries. The House of Lords perhaps appreciated this point in refusing to review letters in which a Minister refused to accept that legislation about unfair dismissal and redundancy pay was sexually discriminate or contrary to European community law. That was a case of prematurity, where the issue was not ripe for review".

In this instant case on an application of the Ministry of Provincial Councils dated 10th March 2000 to the Ministry of Lands, the Minister of Lands, the 1st Respondent decided under section 2 of the Land Acquisition Act that a land in an area specified in the request is needed for a public purpose. A notice was published under section 2(2) of the said Act to investigate a land for selecting a land for the said public purpose. In this instant the decision of the 1st Respondent under section 2 is that a land in a specific area is needed for public purpose. To identify a land in that area for the said public purpose is the function of the requesting Ministry. The Minister of Lands under section 2 directs the acquiring officer to investigate by causing a notice under section 2 whether the land identified is suitable for the said public purpose. The direction of the Minister under section 2 or the act of the acquiring officer under this section is not a decision affecting the rights of a person but an investigation which leads to a recommendation to the Minister that the said land is either suitable or not suitable for the said purpose. The Minister after considering the suitability of the said land as provided in section 4(1) of the said Act makes a preliminary decision to acquire.

The decision that is challenged in this application is P4B, a notice under section 2 of the Land Acquisition Act to investigate a land and this investigation will not necessarily result in a subsequent acquisition of that land. Therefore, this is not a decisive exercise of discretion by the Minister. The first decisive exercise of discretion by the Minister under the Land Acquisition Act affecting the rights of a person is made at the stage of section 4(1) of the said Act. At this stage the person who has an interest in the land could object to the acquisition of the land as provided by that section. Therefore, seeking a writ of certiorari to quash a notice under section 2 of the Land Acquisition Act marked P4B or for a writ of prohibition at this stage from taking any steps to acquire any part of the Petitioner's land is premature and not ripe for review. Therefore the court dismisses this application without costs.

IMAM, J. - I agree,

Application dismissed.

Ed. Note.: The Supreme Court in SC SP CA 166/05 on 04.07.2006 refused Special Leave to the Supreme Court.