

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

*In the matter of an application under Article 140
of the Constitution for Mandates in the nature of
Writs of Certiorari and Prohibition*

Sriraghavan Jebaratnam Christian Kadirgamar
261/18, Poorvarama Road,
Colombo 5.

Petitioner

CA (Writ) Application No:

-Vs-

1. Janaka Bandara Thennakoon,
Minister of Lands and Land Development,
Ministry of Land and Land Development,
Mihikatha Medura,
Rajamalwatta Avenue, Battaramulla
2. A. Sivaswamy,
Land Acquiring Officer – Jaffna District
District Office, District Secretariat,
Jaffna.
3. Land Survey Officer - Jaffna District,
District Office, District Secretariat,
Jaffna.

Respondents

On this ... of July 2013

TO: HIS LORDSHIP THE PRESIDENT AND THEIR LORDSHIPS THE OTHER JUDGES
OF THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

The Petition of the Petitioner above-named appearing by Ms. Lilanthi de silva his Registered
Attorneys state as follows:

1. The Petitioner is citizen of the Republic and is a qualified architect having graduated with a Ba. Hons. Architecture, from the University of Brighton with an Upper Second Class Degree in or about 1990 and has also completed a Postgraduate Diploma in Architecture from the School of Architecture, University of Brighton in or about 1994.
2. The Petitioner has practiced in Sri Lanka, Singapore, India and the United Kingdom. The Petitioner has also served as Consultant / Advisor to the Minister of Urban Development in 2001 and was responsible for the development of the Central Colombo Masterplan which was the winner of the International Master Plan competition for the Colombo Central Business District in 1997. The Petitioner has also served as a Consultant Environmental Designer to the Urban Development Authority in 1995 and was a Visiting Design Tutor at the Sri Lanka Institute of Architects School of Architecture.
3. The Petitioner is the son of the Late Hon. Lakshman Kadirgamar, who served the Republic as its Foreign Minister up until his assassination in August 2005. Several other members of the Petitioner's family have also been great servants of the Republic and illustrious sons of Sri Lanka. They include,
 - a. **Rear Admiral Rajanathan Kadirgamar, MVO, ADC, RCyN** (the Petitioner's uncle) - The second Ceylonese Captain of the Royal Ceylon Navy from 1960 to 1970 and as such the longest serving Commander of the Navy. Member of the Royal Victorian Order (MVO) for service to HM Queen Elizabeth II; awarded Burma Star for war service from 1939–1945. For service in the Royal Ceylon Navy he received the service medals Ceylon Armed Services Long Service Medal, Ceylon Armed Services Inauguration Medal and the Queen Elizabeth II Coronation Medal. He had also served as extra aide-de-camp to three Governor-Generals. He was a working director at Port Cargo Corporation and played a major role in establishing the Ceylon Shipping Corporation;
 - b. **Selvanathan Kadirgamar** (the Petitioner's uncle)- was the youngest Major in the Ceylon Army and served in the 2nd Anti Aircraft Regiment, Ceylon Garrison Artillery;
 - c. **Sam Kadirgamar** (the Petitioner's uncle) – Eminent Queen's Counsel. The Information and Documentation Unit of the Law & Society Trust contains the Sam Kadirgamar Collection, acquired in 1991 consisting of a substantial number of legal texts, Indian, English, South African and Sri Lankan Law Reports;

4. The Petitioner's grandmother, by deed No. 589 dated 30th July 1934 became the owner of a land called "Alvarmalaiyady" situated at Maviddapuram in the Tellipallai Parish of Valikamam North Division of the Jaffna District in extent 16 lms. v.c. and 10 ½ kls. The said land was situated off the Keerimalai Kankesanthurai road and was accessible by a roadway from the main Keerimalai Kankesanthurai road.
5. As hereinafter set forth the land owned by the Petitioner's grandmother was partitioned and the Petitioner, via his father, became the owner of a portion of the aforesaid land called "Alvarmalaiyady".
6. The Petitioner's parcel of land is located within the area described in the notices purporting to be in respect of Section 2 of the Land Acquisition Act which appeared on or about 20th April 2013 on several trees in areas just outside the barricades on the Kankesanthurai Road at Tellipallai.

A photograph of a purported notice under Section 2 of the Land Acquisition Act signed by the 1st Respondent and affixed to a tree is annexed hereto marked 'P1' and pleaded as part and parcel hereof.

7. The Petitioner is directly and personally affected by the said purported notice as the owner of a separate and individual parcel of lands situated within the area described in 'P1'.

Historical Background

8. (a) Originally the Petitioner's paternal grandmother, Edith Rosamund Parimalam, owned the aforesaid single block of land called "Alvarmalaiyady" with ocean/sea frontage, situated in Maviddapuram, Tellippalai.
- (b) The land called "Alvarmalaiyady" consisted of an elevated cliff and in close proximity thereto there were several Hindu places of worship, including a shrine dedicated to Lord Vishnu, and, it is believed that the name "Alvarmalaiyady" is derived thence.
- (c) Upon the death of Edith Rosamund Parimalam, her husband, Samuel Jebaratnam Christian Kadirgamar (the Petitioner's paternal grandfather), became the owner of an undivided half share of the land and the children of Edith Rosamund Parimalam and Samuel Jebaratnam Christian Kadirgamar (i.e. the Petitioner's father, Lakshmanathan Kadirgamar, and his siblings, namely, Samuel Jothinathan Christian Kadirgamar, Iswari Richards, Selvanathan Kadirgamar, Rajanathan Kadirgamar and Thirumalanathan Kadirgamar) became the owner of the balance undivided half share in the land.

- (d) Accordingly, the Petitioner's father and his siblings each became the owner of an undivided 1/12th share of the land.
- (e) Thereafter, Iswari Richards by Deed No. 2052 of 20th February 1942 sold her 1/12th share to her brother Samuel Jothinathan Christian Kadirgamar, who in turn by Deed No. 453 of 7th August 1948 conveyed the same to his father Samuel Jebaratnam Christian Kadirgamar.
- (f) Thirumalanathan Kadirgamar died unmarried and intestate on 29th August 1950 and his undivided 1/12th share devolved on Samuel Jebaratnam Christian Kadirgamar and his children Samuel Jothinathan Christian Kadirgamar, Iswari Richards, Selvanathan Kadirgamar, Rajanathan Kadirgamar and Lakshmanathan Kadirgamar (the Petitioner's father).
- (g) Samuel Jebaratnam Christian Kadirgamar died intestate and his share in the land devolved equally on his surviving children Samuel Jothinathan Christian Kadirgamar, Iswari Richards, Selvanathan Kadirgamar, Rajanathan Kadirgamar and Lakshmanathan Kadirgamar (the Petitioner's father).
- (h) The joint ownership of the land as set out in the above paragraphs being inconvenient and impracticable, action No. P. 1037 was instituted before the District Court of Jaffna and by Final Partition Decree dated 5th May 1968, Lot 5 in plan No. 635A of 30th November 1967, was exclusively allotted to Lakshmanathan Kadirgamar, the Petitioner's father.
- (i) Lot 5, which contained an elevated cliff with ocean/sea frontage, was exclusively allotted to the Petitioner's father, since the Petitioner's mother, Angela Kadirgamar, had great affinity for the ocean, and the eldest of the Petitioner's father's brothers, Sam Kadirgamar QC, at the time of the division of the land ensured that the plot with sea frontage would be in the Petitioner's father's family so that the Petitioner's mother could enjoy the ocean frontage.

A copy of the proceedings in in District Court of Jaffna Case No, P. 1037 is annexed hereto marked 'P2' and pleaded as part and parcel hereof, whilst Plan No. 635A is annexed hereto marked as 'P3' and pleaded as part and parcel hereof.

- (j) Consequent to the untimely death of the Petitioner's father, the Petitioner became the owner of Lot 5 described in 'P3' by virtue of being the sole descendant to the *mudusam* property under the Law of Tesawalamai to which the Petitioner's father and his ancestors and collaterals were and his descendants subject to.

- (k) In this regard the Petitioner executed Deed of Declaration No. 3182 dated 24th June 2010 attested by K. P. Jayawardeene, Notary Public, and the said Deed was registered in the Jaffna Land Registry on 19th September 2011.

A copy of the aforesaid Deed No. 3182 is annexed hereto marked 'P4' and pleaded as part and parcel hereof.

Petitioner visits his land after a long sojourn

9. (a) The Petitioner visited his land in August 2011 and upon producing a plan depicting his land, he was permitted by the Security Forces to examine the land. The Petitioner was also informed that his land fell within a purported 'high security area' but the 'security perimeter' was being rolled back and that the Petitioner would soon be permitted to utilise his land fully.
- (b) The Petitioner also observed that several places of Hindu worship that are situated nearby had been preserved without being properly restored.
- (c) During this visit the Petitioner observed that the ancestral house on a property close by, owned by the Paul Family, and where the Petitioner and his family had stayed in during their trips to the North, was still standing.
- (d) The Petitioner was permitted enter the Paul residence and was informed that it had been utilised as a Petty Officers' Mess.
- (e) Upon entering the Paul residence, the Petitioner recalled fondly several holidays spent at the Paul residence together with his father and the other members of his extended family during their younger days.

Petitioner's second visit

10. (a) Thereafter the Petitioner visited his land in May 2013 and was perturbed to find that construction had commenced in the vicinity of his property. The Petitioner fears that the construction, which in his experience as an architect has progressed for about 9 – 12 months, may well extend to his property as well. The purpose of the construction is not ascertainable.
- (b) The Petitioner also sadly observed that ancestral property of the Paul family, which had been utilised as a Petty Officers' Mess during his previous visit had been totally demolished and the construction appeared to be directly on the Paul property.

- (c) It is in this background that the Petitioner became aware of the purported Notice 'P1'.

The Respondents

11. (a) The 1st Respondent is the Minister for Lands and Land Development, under whose direction the 2nd Respondent is empowered to issue notices under Section 2 of the Land Acquisition Act, and who has issued the purported Order in terms of Proviso [a] to Section 38 of such Act, which also the Petitioner seeks to challenge through the present application. The 2nd Respondent is the Land Acquiring Officer for Jaffna and is principally responsible for issuing the purported notice more fully described hereinafter, and which the Petitioner seeks to challenge through the present application. The 3rd Respondent is the Land Survey Officer, Jaffna District who is empowered by the said notice to carry out certain functions.
- (b) The Petitioner states that the said notice state in Tamil, *inter alia*, that 'one land in the schedule provided hereinbelow is required for a public purpose' and describes the area subject to the purported notice to be 6381 acres, 38.97 perches and goes on to describe the reason for the supposed land requirement as 'Defence Battalion Headquarters [Jaffna] - Regularising handover of area on which High Security Zone [Palaly and Kankesanthurai] is established.'
- (c) The Petitioner states that his land that falls within the area specified in the purported notice 'P1'. The Petitioner was unable to access his land during the war, and after the cessation of hostilities the Petitioner was assured that he would be permitted to enjoy his land fully. However, regrettably, the Petitioner is unlawfully and wrongfully prevented from returning to and enjoying his land, including by the erection of barbed wire fences and barricades manned by armed forces personnel and by the unauthorised construction taking place in the vicinity of the Petitioner's land.
- (d) The Petitioner states that despite the conclusion of the war, the state security forces have continued for many years to remain in possession of the area indicated in 'P1'. The Petitioner is advised and states that such possession is in violation of the law.
- (e) The Petitioner states that on or about 15th May 2013, he became aware that a purported Order in terms of Proviso [a] to section 38 of the Land Acquisition Act [as amended] and in respect of *inter alia* the Petitioner's lands had been issued by the 1st Respondent and was gazetted in Gazette Extraordinary No. 1807/23 of 26th April 2013. The said Gazette indicates that the purported Order was issued on 24th April 2013.

A copy of Gazette Extraordinary No. 1807/23 of 26th April 2013 is annexed hereto marked 'P5' and is pleaded as part and parcel hereof.

- (f) The Petitioner states that whilst the purported Notice 'P1' is dated 27th April 2013, the purported Order under Proviso [a] to section 38 of the Land Acquisition Act ('P5') has been gazetted in the Gazette Extraordinary of 26th April 2013.
- (g) The Petitioner further states that in or about July 2013 the Petitioner became aware that the 1st Respondent had made a purported declaration under section 5 of the Land Acquisition Act. The purported declaration was published in the Gazette Extraordinary No. 1812/10 of 28th May 2013.

A copy of the aforesaid Gazette Extraordinary No. 1812/10 of 28th May 2013 is annexed hereto marked "P6" and pleaded as part and parcel hereof.

12. (a) The Petitioner states that his link to his land in the Northern Province is crucial to his and his family's identity. The Petitioners state that Tamil inhabitants of the Province of Jaffna are governed by Tesawalamai, an ancient and advanced Personal Law which has applied for centuries, to Tamil persons of the Jaffna Province and their families, who have retained their distinct identity within Sri Lanka for generations. The Petitioners state that in fact, the said Tesawalamai ancient system of Personal Laws, has been recognised and implemented by the Courts of Sri Lanka for centuries.
 - (b) The Petitioners state that the said Tesawalamai applies to Tamil persons of the Province of Jaffna and their families, provided they have not given up links to their land in the Jaffna Province. Thus, the Tamil People of the Jaffna Province have proud and inveterate cultural links to their traditional lands, which is reflected in Tesawalamai itself.
 - (c) The Petitioner accordingly yearns to return to and enjoy his ancestral property and entertains a legitimate expectation of being permitted to realise his right to resume and/or enjoy his links to his land. The Petitioner states that in all the relevant circumstances, any programme of action to exclude the Petitioner from his ancestral property to which the Petitioner has not given up the intention of returning, and which he longs to use and enjoy is extremely arbitrary and unreasonable.
13. The Petitioner is advised and states that in the circumstances, the taking of steps to issue a purported notice under Section 2 and/or under Section 38 Proviso [A] of the Land Acquisition Act (as amended) is arbitrary and unreasonable.

14. The Petitioner further states that in order for any steps under Section 2 of the Land Acquisition Act to be 'reasonable', the following steps require to be taken:
- (a) There must be proper and adequate disclosure of the precise reason(s) for such proposed dispossession to be effected, in as much as the purported 'reason' set out in the impugned purported notice under Section 2 of the Land Acquisition Act, so that precise objections thereto could be made by the Petitioner and others similarly affected;
 - (b) The Petitioner and others similarly affected ought to be adequately informed of the reason as to why their ancestral lands is sought to be acquired, particularly in the context of a cessation of armed conflict in the island for many years.
15. The Petitioner states that the failure and/or refusal to properly and adequately inform him of the precise reason for the acquisition of their lands under Section 2 of the Land Acquisition Act, has denied the Petitioner the ability to make proper objections to the purported acquisition of their respective lands.

No Public Purpose

16. The Petitioner states that the purported notices 'P1' are unlawful, in that the said notices refer to "regularising handover of area on which High Security Zone [Palaly and Kankesanthurai] is established" despite the lands within the area specified in the notice not forming part of any High Security Zone recognised by law.
17. The Petitioner states that in any event, with the lapse of the state of emergency in 2011, all previously existing High Security Zones established by Emergency Regulations also ceased to exist.
18. The Petitioner states, therefore, that no public purpose is served by the acquisition of any land in the Jaffna peninsula for regularising "handover of area on which High Security Zone is established," since no such Zones ever existed or continue to exist.

Internal inconsistency and inconsistency with section 4 of the Land Acquisition Act

19. (a) The Petitioner states that while paragraph 1 of the purported notice 'P1' states that the Minister has directed that "a land" in the "area" indicated in the Schedule is necessary for a public purpose, paragraph 3 which sets out the purpose of the intended acquisition states "Defence Battalion Headquarters [Jaffna] - Regularising handover of area on which High Security Zone [Palaly and Kankesanthurai] is established."

- (b) The Petitioner states further that while paragraph 1 of the purported notice ‘P1’ states that the Minister has directed that “a land” in the “area” indicated in the Schedule is necessary for a public purpose, paragraph 2 which contains such Schedule describes the area contained in such schedule as “a land”.
- (c) Thus and otherwise, paragraph 3 of ‘P1’ indicates that the entirety of the land described in the schedule would be acquired for the purposes set out therein.
- (d) Thus, the Petitioner states that paragraph 1 of ‘P1’, which indicates that “a land” within the area indicated in the schedule is necessary for a public purpose, is inconsistent with paragraph 2 of ‘P1’, which identifies the entirety of the area contained in the schedule as “a land”.
- (e) Furthermore, the Petitioner states that paragraph 1 of ‘P1’ which indicates that “a land” within the area indicated in the schedule is necessary for a public purpose, is also inconsistent with paragraph 3 thereof, which indicates a purpose that by necessary implication contemplates the acquisition of the entire area referred to in paragraph 1 and 2, and not merely “a land” within such area.
- (f) Thus and otherwise, the Petitioner is advised to state that ‘P1’ is self-contradictory in nature, and is therefore irrational, unreasonable, arbitrary and capricious.
- (g) The Petitioner states that Section 4 of the Land Acquisition Act contemplates only a “particular land” within the larger area indicated in a Section 2 notice being acquired. Therefore, since paragraphs 2 and 3 of ‘P1’ set out that the entire area indicated in the said notice is to be acquired, the Petitioners are advised to state that these paragraphs – and consequently ‘P1’ in its entirety – are inconsistent with and *ultra vires* Section 4 of the Land Acquisition Act.

Paragraph 4 unreasonable and evidences intention to evade statutory obligation to provide section 4 notices to owners

- 20. (a) The Petitioner states that paragraph 4 of ‘P1’ states “Person claiming ownership over the land: cannot be identified”.
- (b) Without prejudice to the claim that only “a particular land” may be acquired through the process set out in the Land Acquisition Act and not an entire area within which such land is situated, the Petitioner states that there are many thousands of owners – including the Petitioner – of the numerous parcels of land situated within the approximately 6381 acres/25.8 square kilometres specified in paragraph 2 of ‘P1’.

- (c) The Petitioner has repeatedly interacted with State functionaries and is easily identifiable as the owner of the land described as Lot 5 in ‘P3’ and in P4.
- (d) The Petitioner therefore states that it is patently unreasonable for the 2nd Respondent to now claim that all of the owners of the several thousands of plots of land situated within the area specified by the Schedule, and in particular the Petitioner, are unidentifiable.
- (e) The Petitioner states that they reasonably apprehend that the claim in paragraph 4 of ‘P1’ is an attempt to evade the statutory duty imposed by Section 4 of the Land Acquisition Act, which states that:

“Where the Minister considers that a particular land is suitable for a public purpose....he shall direct the acquiring officer of the district in which that land is situated to cause a notice in accordance with subsection (3) to be given to the owner or owners of that land and to be exhibited in some conspicuous places on or near that land”

Non-Compliance With Material Statutory Provisions

21. (a) The Petitioner states that Section 2(2) of the Land Acquisition Act specifies that the notice referred to in subsection (1) shall be in the Sinhala, Tamil and English languages.
- (b) The Petitioner states however that the failure of the 1st Respondent to publish ‘P1’ in all three languages, and only in the Tamil language, amounts to non-compliance with material statutory provisions, and is therefore illegal.
- (c) The Petitioner states that in light of the foregoing, the purported notice under Section 2 of the Land Acquisition Act marked ‘P1’ was occasioned *mala fide*, illegally and for improper considerations; does not evince a public purpose; is internally contradictory and therefore irrational, unreasonable, arbitrary and capricious; is *ultra vires* the Land Acquisition Act; evidences an intention to evade statutory obligations to provide notices to owners under Section 4 of the Land Acquisition Act; and does not comply with material statutory provisions. Thus and otherwise, the purported notice ‘P1’ is illegal, void *ab initio* and of no force or effect in law.
22. The Petitioner further states that the 1st and/or 2nd and/or 3rd Respondents have failed to adhere to the basic directions in the Land Manual and without adherence to which a lawful acquisition for a legitimate public purpose cannot, as a matter of law, take place.

Unlawfulness of ‘P5’ and ‘P6’

23. (a) The Petitioner states that, in light of the above, 'P5' and 'P6' are illegal, void *ab initio*, and of no force or effect in law for the reason that 'P1' is illegal, void *ab initio*, and of no force or effect in law.
- (b) The Petitioner states in addition that an Order under proviso [a] to section 38 of the Land Acquisition Act [as amended] may be made only "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."
- (c) The Petitioner states that the state security forces are already in possession, albeit without lawful authority, of the area specified in the purported Order 'P5'. Therefore, the Petitioners state that as a matter of logical construction and law there can be no necessity for any person to take immediate possession of such lands on behalf of the State, as the State is already in unlawful possession of such lands.
- (d) The Petitioner is advised to state that proviso [a] to section 38 applies in cases where the land or lands concerned are not in the possession of the State. It is thus plainly inapplicable in cases where the State is already in possession of private lands.
- (e) The Petitioner states that the purported Order 'P5' was ostensibly not issued for the reasons permissible by law and that it was in fact issued to deny the Petitioner and others similarly circumstanced, of recourse to rights and protections that are afforded to persons in respect of their lands in cases of land acquisition where proviso [a] to section 38 is not invoked.
- (f) Therefore, the Petitioner states that the purported Order 'P5' is *ultra vires* section 38 of the Land Acquisition Act, and was occasioned by *mala fide* considerations. Thus and otherwise, the purported Order 'P5' and the purported declaration 'P6' are *ultra vires*, unreasonable, offensive of the Principle of Proportionality, preceded by effective disregard for the Principles of Natural Justice, irrational and unfair. It is therefore unlawful, void *ab initio*, and of no force or effect in law.
24. The Petitioner further states that, grave and irreparable loss, harm and damage would be caused to the Petitioner unless the Respondents are restrained from continuing to act upon the purported notice 'P1', purported Order 'P5' and purported declaration 'P6'. The Petitioner further states that implementation of steps on the basis of the said purported notice and the said purported Order and purported declaration will seriously compromise and erode the rule of law and statutory safeguards. Accordingly, the

Petitioner states that unless the interim reliefs prayed for in this Petition are granted, the final reliefs prayed for in this Petition would be rendered nugatory.

25. The Petitioner makes this application on the limited material available by reason of the time constraints imposed by the urgency of seeking the reliefs prayed for. Hence the Petitioner respectfully reserves the right to furnish such further material and/or add such other parties and/or effect such amendments to the Petition as subsequent revelations, disclosures and/or developments may necessitate.
26. The Petitioner has not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
27. The Affidavit of the Petitioner is appended hereto in support of the averments contained herein.

Wherefore the Petitioner respectfully prays that Your Lordships' Court be pleased to grant and issue:

- a) Notice on the Respondents;
- b) An interim order preventing the Respondents, their servants and agents from taking any steps based on or in reliance upon the purported notice "P1" purportedly published under Section 2 of the Land Acquisition Act, as amended, until the hearing and final determination of this application;
- c) An interim order preventing the Respondents, their servants and agents from taking any steps to give effect to and/or act upon the purported Order "P5" purportedly published under Section 38 Proviso A of the Land Acquisition Act, as amended, until the hearing and final determination of this application;
- d) An interim order preventing the Respondents, their servants and agents from taking any steps to give effect to and/or act upon the purported Declaration 'P6' until the hearing and final determination of this application;
- e) A mandate in the nature of a writ of *Certiorari* quashing the purported notice "P1" purportedly published under Section 2 of the Land Acquisition Act [as amended];
- f) A mandate in the nature of a writ of *Certiorari* quashing the purported Order "P5" purportedly published under Section 38 Proviso A of the Land Acquisition Act [as amended];
- g) A mandate in the nature of a writ of *Certiorari* quashing the purported Declaration "P6";

- h) A mandate in the nature of a writ of Prohibition preventing the Respondents from acting under and/or giving effect to the purported notice “P1” purportedly published under Section 2 of the Land Acquisition Act [as amended];
- i) A mandate in the nature of a writ of Prohibition, preventing the Respondents from acting under and/or giving effect to the purported order “P5” purportedly published under Section 38 Proviso A of the Land Acquisition Act as amended;
- j) A mandate in the nature of a writ of Prohibition preventing the Respondents from acting under and/or giving effect to the purported Declaration “P5”;
- k) An order for costs; and
- l) An order for such further and other reliefs as to Your Lordships’ Court shall seem meet.

Registered Attorneys For The Petitioners

Settled by:

Lakshmanan Jeyakumar Esqr.,

J. C. Weliamuna Esqr.,

Attorneys-at-Law