DAYARATNE
vs
RAJITHA SENARATNE, MINISTER OF LANDS AND OTHERS

COURT OF APPEAL,
SALEEM MARSOOF P. C., J (P/CA) AND
SRISKANDARAJAH, J.
C. A. 1790/2003
AUGUST 24, AND
OCTOBER 6, 2004

Land Acquisition Act - Section 2 Notice - Is it amenable to writ jurisdiction ? - Public Officer ceasing to hold office - Without amending the prayer are the

successors in office bound by any order of court ? - Applicability of the Court of Appeal (Appellate Procedure) Rules 1990 - Is the Minister a Public Officer under the Rules ?-Constitution, Articles 136, 140, 141 and 170.

The petitioner sought to quash the Section 2 Notice, The petitioner also made as parties to the application, the persons holding office as the Minister of Lands and the Minister of Highways by name as well as by their respective official designations. When the matter was taken up for argument the respondents took up two preliminary objections that –

(i) the two Ministers who previously held the portfolio of Minister of Lands/ Highways have ceased to hold office, and in the circumstances the application should be dismissed *in limine.*

(ii) that the Section 2 Notice is amenable to writ jurisdiction. The petitioner contended that in terms of Rule 5(4) where a Public Officer ceases to hold office, a writ application could be proceeded as against his successor for the time being in such office and that the application could be proceeded with as it presently stands after the successors have been added as parties and that there is no necessity to amend the petition or prayer thereto.

HELD:

(i) Neither Rule 5(2) nor Rule 5(4) nor Rule 5(4)*(b)* nor Rule 5(4)*(c)* would be applicable.

For Rule 5(5) to apply (a) a Minister should be regarded as a Public Officer within the meaning of Part IV of the Rules and (b) and application should have been filed before the specified date.
As the application was filed after the specified date (31.12.1991) even Rule 5 (5) is not applicable.

***Per* SALEEM MARSOOF, J. (P/CA)**

"In the absence of any definition of the phrase "Public Officer" in the Rules, I have some doubts as to whether a Minister of the Government is caught up by the Rules"

Per SALEEM MARSOOF, J. (P/CA)

"I am inclined to the view that the Court of Appeal (Appellate Procedure) Rules have been formulated and have to be interpreted and applied so as to further the ends of justice rather than to perpetrate injustice. This policy is reflected in Rule 5(3). I am conscious that Rule 5(3) strictly has no application to the present case...... but the policy manifested in the said Rule is universally applicable ; and I would therefore have permitted the petitioners

to add the successors in office and to amend the prayer to the petition as may be appropriate subject to an order for costs had an application been made at least on the occasion when the case was taken up for argument."

Held Further:

1. A Section 2 Notice only facilitates an Authorised Officer to enter into a land and determine whether such a land is suitable for the public purpose for which it is required. A Section 2 Notice by itself does not affect the right of any person, to his land except to the limited extent of the Authorised Officer to enter upon the said land and consider its suitability for acquisition.

2. It (Section 2 Notice) is clearly not a decision or order which has the force of '*proprio vigore*'

APPLICATION for a writ of certiorari/mandamus.

Cases referred to :

1. *Haniffa* vs *Chairman, Urban Council, Nawalapitiya* - 66 NLR 48
2. *Abayadeera* vs *Dr. Stanley Wijesundara* - (1983) 2 Sri LR 267
3. *Kiriwanthe and Another* vs *Nawaratne and Another* - (1990) 2 Sri LR 393
4. *R vs Electricity Commissio(ner's exparte London Electricity Joint Committee Company Ltd.*, –1924) 1 KG 171 at 205
5. *De Mel* vs *De Silva* - 51 NLR 105
6. *Dias* vs *Abeywardena* - 68 NLR 409
7. *Fernando* vs *Jayaratne* –78 NLR 123
8. *G. P. A. Silva and others* vs *Sadique and Others* - (1978-79)1 Sri LR 166
9. *Bandaranayake* vs *Weeraratne* - (1978-79) 2 Sri LR 412
10. *Mendis, Fowzie & Others* vs *Goonawardena & G. P. A. Silva* - (1978-79) 2 Sri LR 322
11. *Gunasekera* vs *Principal, M/R Godagama Anagarika Dharmapala Kanishta Vidyalaya and Others* - CA 388/2000 - CAM 17.07.2002
12. *Lucian Silva* vs *Minister of Lands* - CA 233/81 - CAM 22.07.82
13. *Wickremasinghe* vs *Minister of Lands* - CA 235/81 - CAM 22.07.82
14. *Manel Fernando* vs *Jayaratne* - (2000) 1 Sri LR 112

Ronald Perera with *Dushit Johnthasan* for petitioner
Bimba Jayasinghe - Tillekaratne, Deputy Solicitor General for 3-5 respondents

Cur.adv.vult.

December 16, 2004
SALEEM MARSOOF, J. P /CA

The petitioner who claims to be the owner of the part of a land called "Kurakkanmandiyehena" in extent 1 rood situated in Nugawela, Pannil Pattu, in Atakanal Korale in the Kahawatte Divisional Secretary's Division in the Ratnapura District, has filed this application on or about 16th October 2003 challenging the order or decision said to have been made by the respondents to acquire the petitioner's aforesaid land and the notice dated 27th March 2003 (P15) which was exhibited on the land in terms of Section 2 of the Land Acquisition Act, No. 9 of 1950, as subsequently amended. The petitioner claims that although the ostensible purpose of the said proposed acquisition is to widen the Pelmadulla - Embilipitiya highway, land necessary for the said purpose in the vicinity have already been acquired by the Order made under Section 38 proviso (a) of the Land Acquisition Act published in the Gazette Extraordinary bearing No. 1169/ 11, dated 30th January, 2001 (P3a) after the exhibition of another Section 2 Notice (P2a). The 1st Respondent was the person holding office as the Minister of Lands at the time of filing this application, and the 2nd respondent was the Minister of Defence, Transport, Highways and Civil Aviation at the relevant time, and both these Respondents have been cited by name as well as their respective official designations. The 3rd respondent is the Road Development Authority, the 4th Respondent is the Divisional Secretary and the 5th Respondent is the Project Engineer attached to the Asian Development Bank Project Office of the Road Development Authority. The petitióner seeks *inter alia*-

(i) a writ of *certiorari* quashing the orders/decisions of the 1st and / or 2nd and / or 3rd and / or 4th and / or 5th respondents to acquire the petitioner's land and the notice issued by the 4th respondent under Section 2 of the Land Acquisition Act marked P 15 ;

(ii) a writ of *mandamus* directing the 1st and / or 2nd and / or 3rd and / or 4th and / or 5th respondents to continue the acquisition proceeding commenced with the notice issued under Section 2 of the Land Acquisition Act (P2a) and the order made under Section 38 proviso (a) of that Act and published in the Gazette marked P3a ; and

(iii) interim relief restraining the 1st to the 5th respondents, jointly or severally, from continuing with the impugned acquisition proceeding and taking over any portion of the petitioner's land.

The application was supported by the learned Counsel for the petitioner on 27th October, 2003, and the Court issued notice on the respondents and also granted the interim relief prayed for by the petitioner. The respondents filed their statement of objections in due course and the application was to be mentioned on 18th May, 2004 for the counter affidavit of the petitioner, with the stay order expiring on 19th May, 2004. However, it appears from the docket that when the application was mentioned on 18th May, 2004 before Wijeratne J., there was no appearance for the petitioner nor was the counter affidavit filed. Court had on its own motion granted the petitioner time till 21st June 2004 to file his counter affidavits but the stay order was not extended and it lapsed on 19th May, 2004. When the case was called on 21st June, 2004 before Balapatabendi. J, and Imam, J., learned Counsel for the petitioner informed Court that he will be filing the counter affidavit of the petitioner in the Registry the very next day and moved that the stay order may be restored as he failed to attend Court on 18th May, 2004 owing to a genuine mistake made by him regarding the date. Court made order directing that this matter be mentioned before Wijeratne, J. on 29th June, 2004. Thereafter, the petitioner tendered the counter affidavit of the petitioner with the motion dated 22nd June, 2004 and moved Court to-

(i) re-issue the stay order prayed for ; and

(ii) add the incumbent Minister of Agriculture, Livestock Development, Lands and Irrigation as the 6th respondent and the Prime Minister and Minister of Highways as the 7th respondent since the 1st and 2nd respondents who previously held the portfolios of Minister of Lands and Minister of Highways respectively have ceased to hold office.

Although, there is no record to bear this out in the docket, it may be surmised from the journal entry of 1st July, 2004 that the case was mentioned before Wijeratne, J on 29th June 2004 who in turn had directed that the case be mentioned in the President's Court on 1st July, 2004. On that date, when the case was accordingly mentioned, Court had issued an interim order in the same lines as the interim order issued on 27th

October 2003, and fixed the case for argument on 24th August, 2004. No application was made on that date to add the successors in office to the 1st and 2nd respondents as the 6th and 7th respondents or to amend the prayers to the petition.

When the case was taken up for argument on 24th August, 2004, learned Deputy Solicitor General appearing for the 3rd to 5th respondents took up the following preliminary objections :

(a) Since the 1st and 2nd respondents do not hold office respectively as Minister of Lands and Minister of Highways, can the petitioners seek relief as prayed for in prayers (b), (c), (d) and (e) of the prayer to the petition ?

(b) Is the notice marked P15, a decision or determination amenable to writ of *certiorari* ?

Learned Counsel agreed to the disposal of these preliminary objections by way of written submissions. Learned Counsel for the petitioner reserved his right to support his motion dated 22nd June 2004 to add the 6th and 7th respondents named in the said motion in the event the said preliminary objections are not upheld by Court.

Preliminary objection (a) raises an important question relating to the procedure to be followed in the event of a public officer who is a respondent to a writ application ceasing to hold office during the pendency of the application before this Court. There is no dispute that at the time this application was filed on or about 16th October 2003, the 1st and 2nd respondents did hold the respective portfolios which included the Ministries of Lands and Highways respectively. It is also common ground that after the General Election which was held on the 2nd April 2004, the 1st and 2nd respondents ceased to hold their respective Ministries and the persons now sought to be added as the 6th and 7th respondents took over the said portfolios. Learned Deputy Solicitor General has pointed out that while the petitioner has by his prayers (b), (c), (d) and (e) prayed for certain relief against *inter alia* the 1st and 2nd respondents in terms of the existing pleadings and prayers, It is further submitted by the learned Deputy Solicitor General that premitting the petitioners to amend the caption with a view of adding the present incumbents of the offices of Minister of Lands and Minister of Highways at this late stage respectively as the 6th and 7th respondents would be quite meaningless as the petitioner in the prayer to

the petition does not seek any relief against these persons. It is further submitted by the learned Deputy Solicitor General that the petitioner has prayed for relief against *inter alia* the 1st and 2nd respondents who have now ceased to hold office and do not enjoy any of the powers that were vested in them at the time of the filing of this application. Learned Deputy Solicitior General relies on the decisions in *Haniffa v. Chairman, Urban Council, Nawalapitiya* [1] and *Abayadeera v. Dr. Stanley Wijesundera* [2] for the proposition that the writ of *mandamus* would only be issued agaisnt the officer or authority in whom the power in question is vested by Law. In fact, in the first of these cases, Tambiah J. (with whom Sri Skanda Rajah J. agreed) observed that a *mandamus* can only issue against a natural person, who holds a public office. Learned Deputy Solicitor General submits that to issue a writ of *a mandamus* against a person who does not possess the power would be an exercise in futility.

Learned Deputy Solicitor General has also submitted that in terms of Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990, a party may *with the prior permission of the Court*, amend his pleadings, or file additional pleadings, affidavits or other documents, within two weeks of the grant of such permission, unless the Court otherwise directs The said Rule expressly provides that after notice has been issued in any case, such permission shall not be granted *ex parte*. Learned Deputy Solicitor General has invited the attention of Court to the decision of the Supreme Court in *Kiriwanthe and Another v. Nawaratne and Another*, [3] which has held that the Court has a discretion in allowing any non-compliance or omission in pleadings to be cured upon an application of the party concerned. However, learned Deputy Solicitor General submits that no application has been made to Court by the petitioner praying for the exercise of such discretion, although the petitioner had ample opportunity to do so.

Learned Counsel for the petitioner relies heavily on Rule 5(4)(b) read with Rule 5(5) of the Court of Appeal (Appellate Procedure) Rules 1990 for his submission that where a respondent who has been cited both by reference to his name and his designation ceases to hold office while an application filed against him in terms of Articles 140 or 141 of the Constitution is pending before court, the case can proceed against his successor for the time being in such office, "Without any addition or substitution of respondent afresh, proxy or the issue of any notice, unless the Court considers such addition substitution, proxy or notice to be necessary in the interests of justice".

For the purpose of appreciating the Rules in question, it is necessary to quote in full all sub-rules of Rule 5 of the Court of Appeal (Appellate Procedure) Rules 1990-

"(1) This rule shall apply to applications under Articles 140 and 141 of the Constitution, in which a public officer has been made a respondent in his official capacity, (Whether on account of an act or omission in such official capacity, or to obtain relief against him in such capacity, or otherwise)

(2) A public officer may be made a respondent to any such application by reference to his official designation only (and not by name), and it shall accordingly be sufficient to describe such public officer in the caption by reference to his official designation or the office held by him, omitting reference to his name. If a respondent cannot be sufficiently identified in the manner, it shall be sufficient if his name is disclosed in the averments in the petition.

(3) No such application shall be dismissed on account of any omission, defect or irregularity in regard to the name designation, description, or address of such respondent, if the Court is satisfied that such respondent has been sufficiently identified and described, and has not been misled or prejudiced by such omission, defect or irregularity. The Court may make such order as it thinks fit in the interest of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any such omission, defect or irregularity.

(4)(a) In respect of an act or omission done in official capacity by a public officer who has thereafter ceased to hold such office, such application may be made and proceeded with against his successor, for the time being in such office, such successor being made a respondent by reference to his official designation only, in terms of sub-rule (2)

(b) If such an application has been made against a public officer, who has been made a respondent by reference to his official designation (and not by name) in respect of an act or omission in his official capacity, and such public officer ceases to hold

such office, during the pendency of such application, such application may be proceeded with against his successor, for the time being, in such office, without any addition or substitution of respondent afresh, proxy or the issue of any notice, unless the Court considers such addition, substitution, proxy or notice to be necessary in the interest of justice. Such successor will be bound, in his official capacity, by any order made, or direction given, by the Court against, or in respect of, such original respondent.

(c) Where such an application has been made against a public officer, who has been made a respondent by references to his official designation (and not by name), and such public officer ceases to hold such office after the final determination of such application, but before complying with the order made or direction given therein, his successor, for the time being in such office will be bound by and shall comply with, such order or direction.

(5) The provisions of sub-rules (4)(b) and (4)(c) shall apply to an application under Article 140 and 141 filed before *such date as may be specified by the Chief Justice* by direction, against a public officer, in respect of an act or omission in his official capacity, even if such public officer is described in the caption both by name and by reference to his official designation.

(6) Nothing in this rule shall be construed as imposing any personal liability upon a public officer in respect of the act or omission of any predecessor in office

(7) In this rule, "ceases to hold office 'means' dies, or retires or resigns from, or in any other manner ceases to hold, office" (Emphasis added)

It is the contention of the learned Counsel for the petitioner that in terms of Rule 5(4)(a) where a public officer ceases to hold office, a writ application may be made and proceeded with against his successor for the time being in such office, such successor being made respondent by reference to his official designation only in terms of sub-rule 2. It is

submitted that the 1st and 2nd respondents to this application have admittedly ceased to hold their respective offices, and it is sought to add the 6th and 7th respondents who are their successors in office. Learned Counsel for the petitioners submits that this application of the petitioner can be proceeded with as it presently stands against the 6th and 7th Respondents in place of the 1st and 2nd Respondents after the 6th and 7th respondents have been added as parties to this application. It is submitted by learned Counsel for the petitioner that there is no necessity to amend the petition or the prayer thereto as stated by the learned Counsel for the 1st to 5th respondents.

I have several difficulties in agreeing with this submission made on behalf of the petitioner. Firstly, even assuming that a Minister can be regarded as a "public officer" within the meaning of the phrase as used in Part IV of the Court of Appeal (Appellate Procedure) Rules 1990, neither Rule 5(2) nor Rule 5(4)(a) of these Rules has any relevance to this case as this is not a case where any public officer or successor in office to a public officer has been cited as a respondent by reference to his official designation *only. Secondly, neither Rule 5(4)(b) nor Rule* 5(4)(c) would apply to the instant case as this is not a case where a public officer cited as respondent by his official designation only has ceased to hold office during the pendency of the case or after the judgment but prior to its execution. This is a case where the 1st and 2nd respondent have been described in the caption by name and by reference to their respective official designations. Such a case could attract Rule 5(5) of the aforesaid Rules only if–

(i) A Minister can be regarded as a "public officer" within the meaning of Part IV of the aforesaid Rules ; and

(ii) the application was filed before such date "as may be specified by the Chief Justice by direction."

In the absence of any definition of the phrase "public officer" in the Rules, I have some doubt as to whether a Minister of the Government is caught up by these Rules as the said phrase is defined in Article 170 of the Constitution of the Democratic Socialist Republic of Sri Lanka (in terms of Article 136 of which these Rules have been made) so as to exclude a Minister. Of course, the definition contained in Article 170 will *only apply with respect* to the provisions of the Constitution, and it is possible to argue that the definition is not applicable to the Rules made

under Article 136 of the Constitution. It is also possible to argue that the phrase "public officer" as used in the Rules in question should be broadly interpreted. It is however not necessary to decide those quesiton as this application has been filed on or about 16th October 2003, long after 31st December 1991 which is the date specified by the Chief Justice for the purposes of Rule 5(5) in terms of the notification dated 16th December 1991 published in the Gazette of the Democratic Socialist Republic of Sri Lanka bearing No. 697 and dated 10th January 1992 ; it will follow that Rule 5(5) will not have any application to this case, and accordingly Rule 5(4)(b) too will not have any application to this case.

Had this been an application filed before the "specified date" (31st December 1991) against public officers cited as respondents by reference to their names and designations, the combined effect of Rule 5(4)(b) and Rule 5(5) would have been to permit the continuation of the proceedings against the successors in office of the public officers in question even after they cease to hold office "without any addition or substitution of respondent afresh". That facility may not be available in a case like the present, for two reasons : Firstly, this being an application for *mandamus*, relief can only be obtained against a natural person who holds a public office as was decided by the Supreme Court in *Haniffa v. Chairman, Urban Council, Nawalapitiya*. (*Supra*) Secondly, this is an application that has been instituted after 1st January 1992. Accordingly, it will be necessary in cases such as this to add or substitute the successor in office of any original respondent who has been made a respondent by reference to both his name and his official designation, but as pointed out by learned Deputy Solicitor General it would be quite meaningless to add or substitute the successor in office of the respondent who has ceased to hold office unless the pleadings, and in particular the prayer, is amended to apply to the added or substituted respondent. I note that although the learned Counsel for the petitioner has reserved his right to support his motion dated 22nd June 2004 to add the 6th and 7th respondents named in the said motion in the event the preliminary objections raised in this case are not upheld by Court, no application has ever been made on behalf of the petitioner to amend the prayer to the petition.

However, I am inclined to the view that the Court of Appeal (Appellate Procedure) Rules have been formulated, and have to be interpreted and applied, so as to further the ends of justice rather than to perpetrate

injustice. This policy is reflected in Rule 5(3) which expressly provided that Court may make such order as it thinks fit in the interest of justice, for amendment of pleadings, fresh or further notice, costs, or otherwise, in respect of any ....omission, defect or irregularity. I am conscious that Rule 5(3) strictly has no application to the present case as the 1st and 2nd respondents have been cited as respondents to this application both by reference to name and official designation, but the policy manifested in the said Rule is universally applicable. I would therefore have permitted the Petitioner to add the successors in office to the 1st and 2nd respondents as the 6th and 7th respondents respectively and to amend the prayer to the petition as may be appropriate subject to an order for costs, had an application been made at least on the occasion when the case was taken up for argument.

However, there is an even more formidable obstacle to the maintainability of the application before Court. That obstacle takes the form of preliminary objection (b) that has been raised on behalf of the 3rd to 5th respondents. The said is simply that the notice marked P15 is not a decision or determination amenable to writ of *certiorari*. In this connection, the attention of Court has been invited to the seminal and oft cited speech of Lord Atkin in *R v. Electricity Commissioner ex parte London Electricity Joint Committee Company Ltd*[4] at 205, pronouncing that -

> "Wherever any body of persons having legal authority to *determine questions affecting the rights of subjects*, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division *exercised in these* Writs" [emphasis added]

Learned Deputy Solicitor General has submitted that it is trite law that a writ will issue only where the decision-maker has determined questions affecting the rights of subjects, but the Section 2 notice marked P15 does not contain any such determination. Learned D. S. G. has referred us to certain decisions relating to Commission of Inquiry such as *De Mel v. De Silva*[5], *Dias v. Abeyawardena*[6] *and Fernando v. Jayaratne*[7] holding in essence that only a determination which directly or inevitabley results in the legal rights of a subject being affected is amendable to writ of *certiorari*. In the last of the above mentioned cases, Sharvanada J (as he then was) observed at page 129 of the judgement that-

"The only power that the Commissioner has is to inquire and make a report and embody therein his recommendations. He has no power of adjudication in the sense of passing an order which can be enforced *proprio vigore*, nor does he make a judicial decision. The report of the respondent has no binding force ; it is not a step in consequence of which legally enforceable rights may be created or extinguished."

In *G. P. A. Silva & Others v. Sadique and Others* [(8)], it was held that as the impugned decision had no effect *proprio vigore* no writ shall lie against such a decision. However, in *Bandaranaike v. Weeraratne* [(9)] writ of *certiorari* was issued on the basis that-

"Although, the writs will not *normally* issue to a body having no power to make a binding determination, they have issued to persons and bodies making reports and recommendations that acquire legal force after *adoption or confirmation or other consequential* action by another body" [emphasis added]

The Court reasoned that once the Special Presidential Commission of Inquiry determined that a person was guilty, there was nothing more left to be done than the adoption of that decision by the executive and the legislature, Similarly in *Mendis, Fowzie & Others v. Goonewardena and G. P. A. Silva* [(10)] Vythialingam, J. after an extensive survey of the case law, held that a writ should lie against the decision of the Commission of Inquiry as it had force *proprio vigore.*

In the instant case, the order sought to be quashed by *certiorari* is the notice exhibited under Section 2 of the Land Acquisition Act marked P 15. It is clearly not a decision or order which has force *proprio vigore.* In the scheme of the Land Acquisition Act, a Section 2 notice only facilitates an authorized officer to enter into a land and determine whether such a land is suitable for the public purpose for which the land is required. Thus the Section 2 notice by itself does not affect the right of any person to his land except to the limited extent of permitting the authorised officer to enter upon the said land and consider its suitability for acquisition, which is a very preliminary stage of the entire process. Therefore, if the Minister considers that a particular land is suitable for a public purpose, he directs the acquiring officer in terms of Section 4(1) of the Act to publish a notice

calling for written objections to the intended acquisition, and after considering such objections, if any, and the relevant Minister's observations on such objections, the Minister has to decide in terms of Section 4(5) of the Act whether such land should be acquired or not. It is thereafter that a written declaration that such land is needed for a public purpose is made by the Minister and published in the Gazette as required by Section 5 of the Act. It is for this reason that this Court in *Gunasekara v. The Principal, MR/Godagama Anagarkika Dharmapala Kanishta Vidyalaya and Others*[11] held that an application for a writ of *certiorari* to quash a Section 2 notice under the Land Acquisition Act was premature and thereby upheld the preliminary objections to that effect. As Shiranee Tilakawardena J. observed at page 7 and 8 of her judgment-

> "Another matter that is relevant to this application is that at the time of filing of this application the acquisition proceedings were at an initial stage, and only notice under Section 2 of the Land Acquisition Act had been issued. A notice in terms of Section 2 of the Land Acquisition Act is issued when the Minister decides that the land in any area is needed for any public purpose. The Section 2(1) notice is issued with the objective of making a survey of a land and making boundaries thereon and to determine whether a land would be found within its parameters that would be suitable for the public purpose of the said Act."

Justice Tilakawardene went on to hold in this case that the application for writ of *certiorari* was premature in the circumstances of that case, and should be dismissed *in limine*, Similarly, in *Lucian de Silva v. Minister of Lands*[12] and *Wickremasinghe v. Minister of Lands* [13], it was held that steps taken under Section 2 of the Land Acquisition Act are only investigative in character, and that it is premature to invoke the writ jurisdiction of our courts with a view of quashing a Section 2 notice.

Learned Counsel for the petitioner has in this connection drawn the attention of Court to the judgment of the Supreme Court in *Manel Fernando v. Jayaratne* [14]. That was a fundamental rights application filed in the Supreme Court under Article 126 of the Constitution M. D. H. Fernando J. after carefully analyzing the relevant provisions of the Land Acquisition Act held that the Section 2 notice in that case was bad in law insofar as it did not disclose the particular public purpose for which the land was sought to be acquired. His Lordship observed at page 126-

"Section (2)2 required the notice to state that one or more acts may be done" in order to investigate the suitability of that land for that public purpose" : obviously "that" public purpose cannot be an undisclosed one. This implies that the purpose must be disclosed. From a practical point of view, if an officer acting under Section 2(3)(i) does not know the public purpose, he cannot fulfill his duty of ascertaining whether any particular land is suitable for that purpose.

Likewise, the object of Section 4(3) is to enable the owner to submit his objections which would legitimately include an objection that his land is not suitable for the public purpose which the state has in mind, or that there are other and more suitable lands. That object would be defeated, as there would be no meaningful inquiry into objections, unless the public purpose is disclosed. If the public purpose has to be disclosed at that stage, there is no valid reason why it should not be revealed at the Section 2 stage.

In my view, the scheme of the Act requires a disclosure of the public purpose, and its objects cannot be fully achieved without such disclosure. A Section 2 notice must state the public purpose - although exceptions may perhaps be implied in regard to purposes involving national security and the like."

Although *Manel Fernando's* case (*Supra*) was a fundamental rights application which was not circumscribed by the parameters enunciated by Lord Atkin in the *Electricity Commissioners* case (*Supra*) as developed by our Courts in the decisions mentioned above, I find that the above quoted *dicta* of Fernando, J. support the view that a Section 2 notice is exhibited to facilitate investigation into the suitability of the land, and that it would be premature to challenge a Section 2 notice which sets out the particular public purpose for which the land is needed, at a stage prior to a decision being made by the Minister under Section 4(5) of the Land Acquisition Act that the land in question should be acquired. I am satisfied that the Section 2 notice marked P15 which is sought to be quashed in these proceedings clearly sets out the particular public purpose for which the land is needed, namely for the widening of the Pelmadulla - Embilipiitiya highway, and is therefore not afflicted by the malady that was sought to be remedied in Manel Fernando's case (*Supra*), I therefore uphold preliminary objection (b) raised by the learned Deputy Solicitor General and dismiss

this application. There shall be no order of costs in all the circumstances of this case.

SRISKANDARAJAH, J.— I agree.

Application dismissed.