

**P. U. Rangabandara v. The Mahaweli Authority of Sri Lanka**

RTIC Appeal/55/2017 (*Heard as part of the meeting of the Commission on 14.09.2017*)

**Acting Chairperson:** Ms. Kishali Pinto Jayawardena

**Commission Members:** Mr. S. G. Punchihewa

Dr. Selvy Thiruchandran

**Present:** Director-General Mr. Piyathissa Ranasinghe

**Appellant:** P. U. Rangabandara

**Notice Issued to:** K. G. Perera, Deputy Director General, Mahaweli Authority of Sri Lanka  
(Designated Officer)

**Appearance/ Represented by:** P. U. Rangabandara

G.C. Rajapakse (accompanying Appellant)

Dilumi de Alwis, Attorney-at-Law representing the Appellant

K.G. Perera, Deputy Director General MASL

The Appellant Mr. P. U. Rangabandara was present before the Commission. Ms Dilumi de Alwis an Attorney-at-Law represented the Appellant and Mr G C Rajapakse was also present with the Appellant. The Designated Officer (DO) Mr. K.G. Perera, Deputy Director General of the Public Authority (PA) was present.

The Appeal concerned the land described as follows;

All that divided and defined allotment of Land marked Lot No. Four (4) depicted in Preliminary Plan No. Maha 4011 of the land called Orwelwatte, Inhala Gederawatte and Palamawatte situated in the village of Dewita Yatipiyangla village within the Grama Niladhari Division of Nawa Devita No. 1167 of Divisional Secretariat Division of Udapalatha in Kandukara Ihala Korale of District of Kandy, Central Province and containing in extent 0.734 Hectare, which said Lot 4 is bounded on the;

North by – Lots 02 and 03 No. PP Maha 4011

East by – Atabage Oya Reservation and part of land in acquired PP Maha 2225

South by- Atabage Oya and Oya Reservation

West by- Atabage Oya and Oya Reservation and Main Road Reservation and Main Road

The Appellant had requested the following information, by request dated 15.03.2017, pertaining to this land which was deemed by the PA to be vested/ allegedly vested with them.

1. Is the land more fully described below vested with the MASL under and in terms of any specific provisions of written law?
2. Is such a formal and specific order, if any, still in operation?
3. Please provide a copy of any such operating vesting order, certified as true by you.
4. If no has the MASL acquired ownership of the Land more fully described below under and in terms of any specific provisions of written law?
5. If yes, under which provision of written law did such acquisition take place?

6. A certified copy of the Gazette Notification, if any, in terms of which such acquisition was made.

The Appellant stated that they were carrying out a mini hydro-power project on the said land and that the PA served quit notice on them on the basis that the land belonged to the PA. The ongoing court case seeks to establish among other things in whom the above mentioned land is vested; whether it is with the PA or another agency of the state.

The Information Officer had refused the information stating that the land area on which information is sought is directly related to a court case ongoing in the Gampola Magistrates Court and specifically claimed the exceptions under Sections 5 (1) (f) and 5 (1) (j) of the Right to Information Act No 12 of 2016 (The Act). Section 5 (1)(f) includes information which consists 'of any communication, between a professional and a public authority to whom such professional provides services, which is not permitted to be disclosed under any written law, including any communication between the Attorney General or any officer assisting the Attorney General in the performance of his duties and a public authority' and Section 5(1)(j) includes information which would result 'in contempt of court' or be 'prejudicial to the maintenance of the authority and impartiality of the judiciary;'

The DO stated that he determined that the information requested could be provided to the Appellant and directed the PA accordingly but despite such the relevant officers refused to comply. The DO also furnished a copy of a Gazette Notification No 192/2 dated 10<sup>th</sup> May 1982 published in terms of Section 7 of the Land Acquisition Act No 9 of 1950 relating to three lots of the land (namely lot No. 37, 38 and 39 of PP No. 2203) and in which two lots (namely lot No. 7 ½ and lot No. 7 2/2 in PP No. MAHA 2225) of the land are not contained, to the Appellant. Upon questioning the DO, the DO stated that he has specifically questioned the Director (Lands) as to the release of the information and that the Director (Lands) had stated that the Gazette Notification No. 192/2 dated 10<sup>th</sup> May 1982 can be handed over in response to the information request of the Appellant. Upon further inquiry at the hearing the DO clarified from the Director (Lands) that he is not aware of any such vesting orders in respect of the land in question. The DO himself is not aware of any such vesting order.

**Order:**

The instant matter has been considered in detail. In this case the original information has been refused by the Information Officer (Director HQ Operations/ IO) based on Sections 5 (1)( f) and 5 (1) (j) of the Right to Information Act No 12 of 2016 (The Act) relating to respectively privileged information and contending that release of the information would be 'prejudicial to the maintenance of the authority and impartiality of the judiciary'. However on perusal of the documents and on further questioning the Designated Officer (DO) who was present at the hearing it is apparent that the invocation of these two grounds rests purely on the claim that the information sought relates to a court case that is ongoing in the Gampola Magistrates Court instituted by the Mahaweli Authority of Sri Lanka (the Public Authority- PA). It must be pointed out that the mere institution of a case in court is not specified as a reason for refusing the disclosure of information under and in terms of the Act. Section 5 (1) (f) relating to professional privilege consists of information which is not permitted to be disclosed under any written law. This ground of objection

manifestly does not apply to vesting orders or gazette notifications, which are public documents. It is commendable that the DO accepted that the refusal by the IO was wrong and directed the IO to provide the information. The attention of the PA is drawn to Section 39 (2) of the Act which states that 'any officer whose assistance was sought for by an information officer under Section 23(3) and who fails without reasonable cause to provide such assistance, shall commit an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding ten thousand rupees' and to Section 39 (3) which states that 'a fine imposed for the commission of an offence referred to in subSection (1) or (2) of this Section, shall be in addition to and not in derogation of any disciplinary action that may be taken against such officer by the relevant authority empowered to do so.' It is further noted that in terms of Section 39 (1) (a) every person who 'deliberately obstructs the provision of information or intentionally provides incorrect, incomplete or inaccurate information' or under 39 (1) (e) 'fails or refuses to comply with or give effect to a decision of the Commission commits an offence under this Act and shall on conviction after summary trial by a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.'

Upon further perusing this letter sent on 12.09.2017 by the IO to the DO of the said PA, it becomes apparent that the contents of the said letter bear out the request of the said IO to release the said information on direction of the DO but that there has been no response forthcoming from the Director (Lands) of the said PA. The PA is hereby directed to release the information requested which is a copy of any such operating vesting order pertaining to the aforementioned land, certified as true by the PA. Further the contents of letter dated 12.09.2017 of file No. DL/06/02/146 written by Director (Lands) to (Director HQ operations) clearly indicates that no vesting order has been issued in respect of the said land.

Consequentially the PA is directed to furnish all relevant gazette notifications in respect of the lands in question which are described above (and which is reproduced again below) before the Commission.

All that divided and defined allotment of Land marked Lot No. Four (4) depicted in Preliminary Plan No. Maha 4011 of the land called Orwelwatte, Inhala Gederawatte and Palamawatte situated in the village of Dewita Yatipiyangla village within the Grama Niladhari Division of Nawa Devita No. 1167 of Divisional Secretariat Division of Udapalatha in Kandukara Ihala Korale of District of Kandy, Central Province and containing in extent 0.734 Hectare, which said Lot 4 is bounded on the;

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The DO is also directed to clarify more fully the existence of a vesting order if applicable to the said land in question.

The Appeal is hereby adjourned to be heard on 23<sup>rd</sup> October 2017 at 3.00 p.m.

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