

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

In the matter of an Application for mandates
in the nature of Writs of *Certiorari* and
Prohibition under and in terms of Article 140
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/0473/2019

Mohamed Ismail Noor Faida Kulasuriya,
No.87.
Negombo Road,
Minuwangoda.

Petitioner

Vs.

1. **Palitha Nanayakkara,**
Commissioner of Local
Government of the Western
Province,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
2. **Urban Council,**
Minuwangoda.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Saliya Pieris, P.C. with Sarinda Jayawardena for the Petitioner.

Suranga Wimalasena, D.S.G. for the 1st Respondents.

Rohana Jayasundera, instructed by Lakmini Hangawatta for the
2nd Respondent.

Argued on: Disposed by way of written submissions.

Written Submissions on: 29.08.2024 by the Petitioner
29.08.2024 by the 2nd Respondent

Decided on: 09.12.2024

MOHAMMED LAFFAR, J.

The Petitioner is seeking a mandate, *inter-alia*, in the nature of a Writ of Certiorari quashing the Quit Notice issued under Section 3 of the State Lands (Recovery of Possession) Act No. 7 of 1979 (as amended) compelling the Petitioner to hand over the vacant possession of the subject matter to the Competent Authority. The Petitioner is seeking a Writ of Prohibition preventing the 1st and 2nd Respondents from taking steps under the said Act to eject the Petitioner from the premises in suit.

When the matter was taken up for argument on 19-07-2024, the learned President's Counsel for the Petitioner, the learned DSG for the 1st Respondent and the learned Counsel for the 2nd Respondent consented to dispose of the argument by way of written submissions, and accordingly, on behalf of the Petitioner and the 2nd Respondent, the written submissions are tendered.

It is borne out from the written submissions tendered by the parties, that admittedly, the Competent Authority had instituted proceedings in the Magistrate's Court of Minuwangoda in case bearing No. 68214/Ejection against the Petitioner in terms of the provisions of the said Act, and after inquiry, the learned Magistrate delivered an Order to eject the Petitioner from the said subject matter. Thereafter, in the process of the execution of the writ, the Petitioner has been ejected from the land in dispute.

In those circumstances, it is manifestly clear that the judicial proceedings pertaining to the impugned Quit Notice are concluded before the Magistrate's Court, and therefore, it is futile to issue writs as prayed for in the prayers to the Petition. A writ is considered futile in a case when it would be impractical or would not benefit the Petitioner. In other words, a court will not issue a writ if it would be pointless to do so.

In the case of **Siddeeqe Vs. Jacolyn Seniviratne**¹ the Supreme Court observed that;

“Certiorari being a discretionary remedy will be withheld if the nature of the error does not justify judicial intervention. Certiorari will not issue where the end result will be futility, frustration, injustice and illegality.”

¹ 1984 (1) SLR-p83.

In **P. S. BUS CO., LTD., Vs. MEMBERS AND SECRETARY OF CEYLON TRANSPORT BOARD.**² It was held that;

“A prerogative writ is not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal. A writ, for instance, will not issue where it would be vexatious or futile.”

Be that as it may, the Petitioner is challenging the said Quit Notice on the basis that she is in possession of the subject matter as a lessee. As such, there is no impediment for the Petitioner to invoke the Civil jurisdiction of a District Court to obtain relief. It is provided under Sections 12 and 13 of the said Act, that even after the execution of the writ, the Petitioner is entitled to seek remedies in a civil court.

For the foregoing reasons, I hold that the instant application is liable to be dismissed. Thus, the application is dismissed. No costs.

Application dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

² 61 NLR 491.