

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

In the matter of an application for Orders in the
nature of Writs of Certiorari and Mandamus
under and in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Sirisena Hettiarachchi,
Thotupola Road,
Pitigala.

PETITIONER

C.A. Case No. WRT/0548/25

Vs.

1. Divisional Secretary,
Divisional Secretariat Office,
Niyagama.
2. Director,
Department of Agrarian Services,
Colombo.
3. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : Mahinda Nanayakkara with Wasantha S. Widanage instructed by
Ms. N. Dissanayake, for the Petitioner.

Dilantha Sampath, SC, for the Respondents.

SUPPORTED ON : 24.06.2025

DECIDED ON : 30.06.2025

ORDER

K.M.G.H. KULATUNGA, J

1. The petitioner is seeking to quash the decision/opinion of the 1st respondent dated 21.06.2023, contained in the P-12 Quit Notice, and the application filed in the Magistrate's Court of Elpitiya for eviction under Land Acquisition Act No. 09 of 1950, and to quash the affidavit filed along with the application made to the Magistrate's Court and the relevant decision/opinion contained in P-14 and P-14(a).
2. P-12 is a Quit Notice, dated 21.06.2023 issued under Section 07 of the Land Acquisition Act No. 09 of 1950. P-13 is the application preferred to the Magistrate seeking an Order for Eviction. P-14 is the affidavit which was annexed along with the application made to the Magistrate's Court seeking an Order for Eviction. P-15 contains the journal entries of the said application seeking an Order for Eviction in the Magistrate's Court of Elpitiya case No. 37506. The Order for Eviction has been pronounced and issued on 24.02.2025.
3. The petitioner has not sought any substantive relief against the said Eviction Order P-22, made and issued on 24.02.2025 but only interim relief as prayed for by prayer (e). By the said Eviction Order P-22, the Learned Magistrate has ordered the eviction of the petitioner from Lot B of the plan marked P-20 (a) and the delivery of possession to the relevant authorized officer.

4. When this application was filed on 21.05.2025 the said Eviction Order P-22 issued by the learned Magistrate was in existence. The Eviction Order is now issued. By this application, the petitioner is seeking to quash certain steps taken prior to and made in the run up to the said Eviction Order. As such, the relief sought will be superfluous and futile so long as the eviction order remains unchallenged and in force. The petitioner ought to have challenged the Quit Notice before the issue of the Order for Eviction. A Writ of Mandamus will not be issued if it will be futile and be of no purpose.
5. A court exercising discretionary jurisdiction has the discretion to refuse relief where the order sought is likely to be futile. This is so when the order sought is likely to lack practical effect, have no real consequences or cannot be enforced. Courts may refuse to make such orders. The rationale as I see is *judicial economy* so to say and doing so may have the propensity of undermining the respect for the legal system and the administration of justice. Thus, when a court is called to exercise the discretionary writ jurisdiction it will deny and refuse such an application which evidently has no practical utility and is futile.
6. This principle is settled law and in the case of ***Samastha Lanka Nidahas Grama Niladhari Sangamaya vs. Dissanayake*** (2013) BLR 68, it was held that,

“It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.”

Then Marsoof PC., J., in the case of ***Ratnasiri and others vs. Ellawala*** (2004) SLR 180, and others held that;

“This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right.

*The court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that ‘A writ... will not issue where it would be vexatious or futile.’ See, P.S. **Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board.** (61 NLR 491, 496).”*

Thus, I find that this application is futile and of no practical utility. Accordingly, I see no basis to grant Notice as prayed for.

7. That being so, the main argument advanced in support of this application is that the Quit Notice is in respect of private land. The learned Counsel for the petitioner, Mr. Nanayakkara, submitted that upon a partition action the Petitioner was allotted Lot No. 03 of the Final Partition Plan, bearing No. 1368, marked P-08. His position is that Lot No. D of the said Plan was excluded from the partition action as it was state land. Lot 3 and Lot D, are adjacent and appurtenant land. Mr. Nanayakkara also claims that the respondents are now seeking to evict the petitioner from a portion of the said Lot No. 3 which was allotted to him by the said Partition Decree.
8. The Quit Notice is in respect of Lot ‘B’ of the subdivision plan No. GA/NYG/2019/1089, marked and produced as P-20 (a). The learned State Counsel submitted that Lot B of plan No. GA/NYG/2019/1089, is not within Lot No. 03 of the Final Partition Plan. It was further submitted that the petitioner had encroached and is in possession of Lot B of plan No. GA/NYG/2019/1089 [**P-20 (a)**], which is a portion of the excluded Lot D of the Final Partition Plan, bearing No. 1368, marked P-08 and is State land.
9. Mr. Nanayakkara vehemently submitted that Lot B of Plan P20 (a) is within lot 3 of the Final Partition Plan allotted to him in the Partition Decree. If that be so the only way in which one could ascertain the correct position and resolve this issue is a duly made superimposition. The petitioner has

not submitted any such superimposition, without which this remains a disputed fact. It is settled law that where the facts are in dispute, a writ does not lie. This disentitles the relief sought by way of writ.

10. In **Thajudeen vs. Sri Lanka Tea Board and Another** (1981) 2 SLR 471, Ranasinghe, J., opined thus;

“That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation A. I. R. 1953 Cal. 581., Porraju v. General Manager B. N. Rly. A. I. R. 1952 Cal. 610.” (at page 474).

Then in **Kumudu Samanthi Akmeemana vs. Hatton National Bank and Others**, CA/WRT/72/2020 decided on 30.04.2021, Arjuna Obeyesekere, J., P/CA, held that;

“It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact. Therefore, this Court cannot in these proceedings determine whether the Petitioner has in fact signed the said Deed or not.”

Accordingly, the petitioner is not entitled notice and to relief as sought as the facts are in dispute to that extent.

11. The petitioner, at the time of filing this application was aware and had notice of the Order of Eviction dated 24.02.2025, which was issued and was in existence. For reasons unexplained and best known to the petitioner himself, he makes no challenge of the said Order of Eviction. The relief,

even if granted as prayed for in this application will not affect the said Order of Eviction P-22. Thus, this application is futile. Accordingly, the petitioner cannot have and maintain this application on the basis of futility and as the facts are in dispute. As such, there is no basis in law or otherwise to issue Notice as prayed for.

12. Issuing of Notice is hereby refused and this application is accordingly dismissed without costs.

JUDGE OF THE COURT OF APPEAL