

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

In the matter of an Application for mandate in the nature of Writ of Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Rev. Urulewatte Dhammakiththi Thero,
The Trustee,
Humbuluwa Rajamaha Viharaya,
Alawwa.

PETITIONER

Vs.

**CA Writ Application No:
CA/WRIT/494/23**

01. Commissioner of Buddhist Affairs,
Department of Buddhist Affairs,
Dahampaya,
No: 135, Srimath Anagarika Dharmapala
Mawatha, Colombo 07.

02. Mrs. P.C.D. Sigera,
Commissioner General of Land Settlement,
Department of Land Settlement,

No 1200/6, Mihikatha Medura,
Rajamalwatta Road, Battaramulla,
Sri Lanka.

03. S. Sivanantharajah,
Survey General,
Department of Survey General,
No. 150, Bernard Soysa Road,
Narahenpiya,
Colombo 05.

04. Dammika Ekanayake,
Provincial Survey-General (North-
Western Province),
Provincial Surveyor General Office
North Western Province,
PO Box 98, Udawalpola, Kurunegala.

05. Mrs. R.A.A.S. Unita,
Senior Superintendent of Surveys,
Office of the Senior Superintendent of Surveys,
North Western Province,
PO Box 98, Udawalpola, Kurunegala

06. Mrs. P.D.S.K Gunapala,
Divisional Secretary,
Divisional Secretariat, Alawwa.

07. Chairman
Land Reforms Commission,
No.475 Kaduwela Rd.

Battaramulla.

08. Honorable Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: **S.U.B. Karaliyadda J.
Mayadunne Corea J**

Counsel: Gamini Hettiarachchi for the Petitioner.

Supported on: 15.09.2023

Decided on: 29.11.2023

Mayadunne Corea J

The facts of the case briefly are as follows. The Petitioner who is the trustee of Rajamaha Viharaya Alawwa submits to this Court that the said Rajamaha Viharaya has been offered a “Gamwara” by

King Kirithi Sri Rajasinghe to the extent of 832 acres of land. Accordingly, the Petitioner submits that the said land belongs to the temple. However, it is alleged that various parties have illegally occupied the said land and the Petitioner submits that after several discussions held with the President, Minister, the Department of Buddhist Affair, the Department of Land Settlement, the Attorney General, and the Divisional Secretariate, it is alleged that the parties had agreed to survey the said land and confirm the boundaries and the title.

To demonstrate the title to the land, the Petitioner has tendered a copy of the “Sannasa” and the title Plan Number 95204 and the final village plan 455 marked as (P10, P11). The Petitioner further submits that when an attempt was made to survey the land to settle the lands of the temple, the villagers of the area protested and the survey had to be stopped. It was also submitted that several illegal squatters are now possessing the temple land. The Petitioner has filed a case bearing number 7913/L in the District Courts of Kurunegala. It was brought to the attention of this Court, that the said District Court case was concluded in favour of the Petitioner.

Thereafter, the Petitioner has requested the Department of Land Settlement to do the survey and settle the temple land. However, it is submitted that the 6th Respondent had informed him that the Surveys Department had communicated and informed the said Respondent to get the survey of the temple land done by a private surveyor (P19). The said letter states as follows;

“උක්ත කරුණ සම්බන්ධව මගේ අංක කු/අල/ඉ/ගැ/2/1/32 හා 2023.04.03 දිනැති ලිපි මගින් මිනින්දෝරු දෙපාර්තමේන්තුව වෙත මැණුම් ඉල්ලීමක් යොමු කර ඇත. එම ඉල්ලීමට අනුව මිනින්දෝරු දෙපාර්තමේන්තුවේ අංක 42/1/6/ALW/2023 විවිධ 2023.04.28 දිනැති ලිපියෙන් ලියාපදිංචි බලයලත් මිනින්දෝරුවරයෙකු වෙතින් මැණුම් කටයුතු කර ගන්නා ලෙස දන්වා ඇති බව කාරුණිකව දන්වමි. (එම ලිපියේ පිටපතක් මේ සමඟ අමුණා ඇත.)”

The Petitioner having obtained the relief from the District Court, alleges that the 3rd to 5th Respondents' refusal to survey the said land is an illegal omission of their statutory duties. Hence this Writ Application for a Writ of Mandamus.

At this stage, this Court will consider the judgment that was submitted to this Court by the Petitioner.

The judgment of the District Court.

As per the said judgment that was highlighted by the Petitioner, the Court has come to the conclusion that the title to the land is vested with the temple. It also says that as per P17, the Land Settlement Department has settled the land containing 832 Acres in favour of the temple. The said judgment also states that the Superintendent of Surveys has identified the property as per Plan Number 9204 and has demarcated the boundaries. As per the submission of the learned Counsel for the Petitioner, the Land Settlement Department has settled the land in favour of the Petitioner and also the District Court has come to the conclusion pertaining to the boundaries of the said land. The Petitioner has reproduced the part of the judgment in para 19 of the petition. The relevant part of the said judgment states as follows;

“ඒ අනුව මෙම නඩුවේදී ද පැමිණිල්ලේ සාක්ෂි මගින් පැ2 දරන සන්නය ඉදිරිපත් කර ඇති අතර ජාතික ලේඛනාරක්ෂක දෙපාර්තමේන්තුවේ නිලධාරියාගේ සාක්ෂි අනුව ද එකී සන්නස හුම්බු රජමහා විහාරයට අයත් සාංඝික දේපලක් පිළිබඳව පැමිණිල්ලේ ලේඛනයේ සඳහන් දේපල ද ඇතුළත් වන පරිදි අක්කර 832 ට අදාළ කීතර ශ්රී රාජසිංහ රජතුමා විසින් කරන ලද ප්රධානයක් බව පිළිගත් හැකිය. එම කරුණ වඩාත් තහවුරු වනුයේ පැ17 වශයෙන් පැමිණිල්ල ඉදිරිපත් කරන ලද අංක 9 204 දරන ගම් පිඹුර මගිනි. එහි ඉතා පැහැදිලිව මෙම දේපළ හඳුනා මිනින්දෝරු අධිකාරීවරයා එම දේපලේ සීමා මායිම් සලකුණු කර ඇති අතර, පැ 17 දරණ ඉඩ ගනිමින් නිරවුල් කිරීමේ දෙපාර්තමේන්තුවේ (Land Settlement) අනුව ද ඉහත කී අක්කර 832 ක ඉඩම හුම්බුළුව රජමහා විහාරයට දේපලක් බවට නිරවුල් කර ඇත. ඒ අනුව මෙම නඩුවේ උපලේඛනයේ සඳහන් දේපළ ද ඇතුළුව දේපළ වශයෙන් හුම්බුළුව රජමහා විහාරයේ අක්කර 832 ඉඩම් ප්රමාණය සාංඝික දේපළ වශයෙන් පූජා කර ඇති බව පිළිගත හැකිය.”

The statutory duty of the Respondents.

The Petitioner submits that the 3rd, 4th, and 5th Respondents have failed to perform the statutory duty cast on them to survey the temple land. In view of the said submission, in order to obtain the relief he seeks, it is incumbent for him to demonstrate that there is a statutory duty cast on the 3rd, 4th, and 5th Respondents towards him which the said Respondents have failed to perform.

This Court specifically asked from the learned Counsel for the Petitioner to demonstrate to the Court the provision he relies on which a statutory duty is cast on the Survey General to survey a land that has been settled in favour of the temple. The learned Counsel failed to draw our attention to such a provision.

It is also pertinent to note that the Petitioner has failed to submit to this Court as to whether the said land falls within the area where the Title Registration Act is enforced and whether a cadastral survey should have been conducted. Accordingly, as the Petitioner has failed to submit to this Court the statutory duty that the 3rd, 4th, and 5th Respondents have failed to perform, the Petitioner has failed to establish the alleged statutory duty which he seeks to enforce through this Application.

Is there a refusal to survey the land?

The learned Counsel submitted to this Court that by P18, the Survey General had refused to carry out the survey request of the Divisional Secretary. Paragraph 26 of the Petition too identifies the letter as P18. Document P18 is a letter sent by the Divisional Secretary to the Senior Superintendent of Surveys Kurunegala who has requested to get a survey done pertaining to survey request number 2023/09. The said letter does not carry any refusal. The Survey General has replied to P18 by P20 whereby he has informed the Divisional Secretary that the survey of this particular land must be carried out by a registered licensed surveyor. The said letter explains why the Survey General has stated so. The letter reads as follows,

“මෙම හුම්බුව වර්ෂමහා විහාරස්ථානයට අයත් ඉඩම හිමිකම් පිබුරක් තුළ ඉඩමක් බැවින් විහාරස්ථානයට බදු මුදල් අයකර ගැනීම සඳහා ලියාපදිංචි බලයලත් මිනින්දෝරුවරයන් මගින් සිදුකර ගැනීමට කටයුතු කරන ලෙස පළාත්

සර්වේයර් ජනරාල් (වයඹ) ගේ අංක 2023.04.24 දිනැති ලිපියෙන් මා වෙත දන්වා එවා ඇති බව කාරුණිකව දැනුම් දෙමි.” (*emphasized by me*)

Subsequently, the Divisional Secretary has communicated the contents of this letter to the Petitioner by P19.

This Court also finds that by letter marked P20, the Senior Superintendent of Surveys refers to another letter by the Provincial Survey General dated 24.04.2023. It appears the contents of P20 is a mere communication of the decision of the Provincial Survey General to the Superintendent of Surveys Kurnegala which he in turn has communicated to the Divisional Secretary who was responsible for communicating the same to the Petitioner. However, the said letter of the Provincial Survey General is not before this Court.

This Court is privy only to P20 which the Petitioner relies on to say that the Survey Department has failed to carry out its duty. On a plain reading of P20, we are unable to agree with the submissions of the learned Counsel as there is no refusal depicted in the said letter. It is trite law that in the absence of refusal, a Writ of Mandamus will not lie.

In **Ratnayake and Others v C.D Perera and others (1982) 2 SLR 451 at 456**, it was held, that *“The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by the Superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has a sufficient legal interest.”*

In **S.I. Syndicate V Union of India AIR 1975 Sc 460**, the Supreme Court has adopted the following statement of law in this regard; *“As a general rule the order will not be granted unless the party complained of has known what it was he was required to do so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a*

*distinct demand of that which the party seeking the mandamus desires to enforce and that **that demand was met by a refusal***” (emphasized by me)

It was also held in **Rasammah & another vs A.P.B. Manmperi 65 NLR V 77 at page 331 Walpita, J** quoting **S.A.de Smith** held, “**The general rule is that the applicant before moving for the order, must have addressed a distinct and specific demand or request to the Respondent that *he perform the duty imposed upon him, and the Respondent must have unequivocally manifested his refusal to comply.***”

We also observe that the Petitioner has requested a Writ of Mandamus to direct the 3rd to the 5th Respondents to do a survey of the land belonging to the Rajamaha Viharaya. This Court also observes that in P20, the Senior Superintendent of Surveys of the Districts Surveys office Kurunegala, has informed the Divisional Secretary to obtain the services of a registered licensed Surveyor to survey the land. However, if the said survey has not been conducted, the Petitioner has failed to plead any relief against the person who was told to get the survey conducted. We find that there is no relief prayed against the Divisional Secretary.

Alternate remedy

It is also observed that as per the District Court case, the Petitioner has been granted title to the said land (P15). However, the Petitioner has failed to annex the plaint that corresponds to the judgment. In the absence of the plaint, this Court is unable to ascertain the parties to the said District Court case nor the reliefs that have been prayed.

Furthermore, the Petitioner has failed to submit to this Court whether he has taken any steps pursuant to the said District Court case to secure his rights as per the judgement. If the Petitioner has failed to obtain possession of the land as per the judgment, it is up to the Petitioner to take the necessary steps to execute the judgment and secure his boundaries and title. We observe that when there is an alternative remedy available to the Petitioner, instead of pursuing the said remedy, he

has decided to invoke the Writ jurisdiction of this Court. It is trite law that the Writ Court is reluctant to act where there is an alternative remedy.

The nature of the Writ of Mandamus was clearly articulated in the case of **Thajudeen Vs. Sri Lanka Tea Board and Another (1981) 2 Sri LR 471**. In **Thajudeen**, Justice Ranasinghe, quoting de. Smith's Judicial Review of Administrative Action (4th ed) 540, 561 stated that, 'Mandamus is "pre-eminently a discretionary remedy;" and Mandamus has always been awarded as an extraordinary, residuary and 'suppletory' remedy to be granted only when there is no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the court will decline to exercise its discretion in his favour if a specific alternative remedy equally convenient beneficial and effectual is available'.

In **J. A. L. Cooray on 'Constitutional and Administrative Law of Sri Lanka'** at pages 426 and 427 it states "... Court will not grant these writs where an alternative equally convenient remedy is available."

The Court of Appeal in **Tennakoon Vs. Director-General of Customs 2004 (1) SLR 53** held that "the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction."

Justice Arjuna Obeyesekere in the case of **Wickremasinghe Francis Kulasooriya V. Officer in Charge, Police Station Kirindiwela CA (Writ) Application No. 338/2011**, decided on **22.10.2018**, where it was held; "The question that arises for consideration in this application is what should a Court exercising Writ jurisdiction do, when confronted with an argument that an alternative remedy is available to the Petitioner and that such alternative remedy should be resorted to? This Court is of the view that a rigid principle cannot be laid down and that the appropriate decision would depend on the facts and circumstances of each case.

That said, where the statute provides a specific alternative remedy, a person dissatisfied with a decision of a statutory body should pursue that statutory remedy instead of invoking a discretionary remedy of this Court. That remedy should be equally effective and should be able to prevent an injustice that a Petitioner is seeking to avert. Furthermore, if the Writ jurisdiction is invoked where an equally effective remedy is available, an explanation should be offered as to why that equally effective remedy has not been resorted to.”

This Court having considered the submissions of the learned Counsel, observes that as per the District Court judgment annexed to the Petition and the submissions made, the land the Petitioner is attempting to get surveyed is a land settled under the Land Settlement Ordinance in favour of the Temple. The title to the said land too has been conferred by a “Sannasa” which was accepted by the judgment of the District Court. The District Court has been satisfied with the boundaries referring to a plan and has referred the same in the judgment. The Petitioner has failed to demonstrate to this Court nor to explain why he can't get his property secured when he is possessed with a Judgement from the District Court. The Petitioner has failed to explain why he can't rely on the plan he has submitted to the District Court to obtain judgment in his favour and seeks a new plan to be drawn by the Surveyor General after a survey.

Hence, it is our view that it is up to the Petitioner to get the temple land secured by taking the necessary steps under the Civil Procedure Code.

Accordingly, for the reasons stated above, we are not inclined to issue notices on the Respondents. We dismiss this Application without cost.

Judge of the Court of Appeal

S.U.B. Karaliyadda, J

I agree.

Judge of the Court of Appeal