

**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, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Musthafa Lebbe Rahuma Beevi,
Baduriya Nagar,
Manchola.

PETITIONER

C.A. Case No. WRT/0720/23

Vs.

1. Thanapalasuntharam,
Divisional Secretary,
Divisional Secretariat,
Koralaipattu, Valachennai.
- 1(a). J. Thirucheselvam,
Divisional Secretary,
Divisional Secretariat,
Koralaipattu, Valachennai.
2. V. Thavarasa,
Divisional Secretary,
Divisional Secretariat of Koralaipattu West,
Oddamavadi.

2(a). S.H. Muzammil,
Divisional Secretary,
Divisional Secretariat of Koralaipattu West,
Oddamavadi.

3. Mr. Harin Fernando,
Hon. Minister of Land,
“Mihikatha Medura”, Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

**3(a). Hon. Mr. K.D. Lalkantha,
80/5, “Govijana Mandiraya”,
Rajamalwatta Lane, Battaramulla,
Sri Lanka.**

4. Mr. H.M.B.P. Herath,
Secretary to the Ministry of Land,
“Mihikatha Medura”, Land Secretariat,
No. 1200/6, Rajamalwatta Road,
Battaramulla.

**4(a). Mr. D.P. Wickremasinghe,
80/5, “Govijana Mandiraya”,
Rajamalwatta Lane, Battaramulla,
Sri Lanka.**

5. Hon. Attorney General,
Attorney General’s Department,
Colombo.

RESPONDENTS

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

COUNSEL : Nuwan Bopage with Dinusha Thiranagama for the Petitioner.

Dr. Peshan Gunaratne, SC for the Respondent.

ARGUED ON : 30.07.2025

WRITTEN SUBMISSIONS ON : 15.08.2025 and 21.08.2025

DECIDED ON : 09.09.2025

JUDGEMENT

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

1. The petitioner filed this application seeking a writ of *certiorari* to quash the 1st respondent, Divisional Secretary's decision and/or letter marked as X-7 to evict the petitioner; a writ of *mandamus* directing the respondents to hold an inquiry regarding the title of the petitioner; a writ of *mandamus* directing the respondents to withdraw the action bearing No. MISC/34726/2019; a writ of *prohibition* preventing the respondents from evicting the petitioner; and a declaration that the petitioner and her predecessors in title have been in occupation of the subject matter.
2. The 1st respondent Divisional Secretary instituted proceedings in the Magistrate's Court of Valachchanai under the provisions of Section 5 of the State Lands (Recovery of Possession) Act No. 09 of 1979 to evict the petitioner from the land Lot 1 as described and depicted in plan No. PP/00/2788. The petitioner claims that her father was a holder of a valid permit. However, the petitioner has failed to produce the same and her position is that during the civil war they were displaced and lost all their belongings including the permit. The relevant Divisional Secretariat was also destroyed by fire. As such, the petitioner is unable to tender a copy of said permit but states that the permit number is

5503. In support of which, plan No. PP/09/09 is tendered (X-1), in which there is a reference to an LDO permit No. 5503, that of Vellayar Mustapha. The petitioner claims to be a daughter of the said Mustapha.

3. According to the learned State Counsel, the land referred to in plan X-1 by the petitioner is not the land described in the schedule to the quit notice marked X-7. The said land so referred to is depicted as Lot No. 01 of the Surveyor General's plan No. PP/09/2788 dated 19.10.2015.
4. The petitioner in this application raises two grounds in challenging the impugned quit notice: (1) that the 1st respondent does not have jurisdiction, as the land is situated within the jurisdiction of the 2nd respondent; and (2) that the petitioner is the successor of a former permit holder to the said land. I will consider both these issues together, as they are interconnected. According to the petitioner, she claims that her father, Vellayar Mustapha, was the LDO permit holder of permit No. 5503. The petitioner seeks to support this position by plan X-1, according to which a lot depicted as "D" is said to have been cultivated by the said Mustapha under an LDO permit No. 5503. The said plan bears No. PP/09/09 and was prepared on 09.05.1965 by the Surveyor General (X-1). It is depicted therein that the said land is in Miravodai (Muslim) village, Koralaipattu, Batticaloa District, Eastern Province. However, the quit notice X-7 is in respect of a land in Miravodai (Tamil) village of the Grama Sevaka Division No. 202, as depicted in plan No. PP/09/2788 prepared by the Surveyor General, dated 19.10.2015 (R-1). Thus, according to the Surveyor General's plan prepared in 2015, the said land referred to in the quit notice is within the Miravodai (Tamil) village, in Koralaipattu. In the objections, the respondent has tendered document R-3, which had clarified the issue of the relevant Divisional Secretary under whom this land now is. According to R-3(a), the District Secretary of Batticaloa has confirmed that all matters pertaining to the land depicted as lot 01 and the subject matter of the eviction order have been administered by the Divisional Secretary of Koralaipattu,

Valachchanai (1st respondent). Accordingly, the position taken up by the petitioner that the 1st respondent is not the relevant authority is untenable and misconceived.

5. It is apparent that as at 2015 and there onwards, the land in issue referred to in the quit notice is under the purview of the 1st respondent. Now I will consider if the land referred to in X-1 claimed to have been cultivated by Mustapha on the LDO permit No. 5503 is the same as that referred to in the quit notice and plan R-1. According to X-1, the area cultivated by Mustapha is depicted as “D”. It is described in the Schedule of X-1 as item 17 as being a part of Lot No. 3138 in PP/4778. It is apparent on the face of X-1 that “D” as depicted therein is different and distinct land from Lots 1 of plan R-1. The petitioner now claims that she is in possession of Lots No. 9, 10, and 11 of plan X-1 by virtue of her father’s permit No. 5503. The subject matter of the eviction order X-8 is a portion of Lot No. 1 of plan No. PP/௧௩/2788 (R-1). The land named therein is Muravodai. However, the name of the land in plan X-1 is Kondeyankernikadu. The tenement list annexed to the said plan X-1 bearing No. PP/௧௩/09 confirms the said name of the land. Accordingly, the LDO permit bearing No. 5503, which the petitioner’s father is said to have obtained, is in respect of a portion of the land named Kondeyankernikadu, which is *prima facie* different and distinct from the land named Muravodai. If at all, the said land, Kondeyankernikadu, appears to be in the Miravodai (Muslim) village. However, as per R-1, Lot No. 01 of the land named Muravodai is in Miravodai (Tamil) village in Koralaipattu. The former land referred to and depicted in X-1 may be within the jurisdiction of the 2nd respondent in Koralaipattu West, Oddamavadi. However, the subject matter of the eviction notice, as depicted in plan R-1, is within the jurisdiction of the 1st respondent, the Divisional Secretary of Koralaipattu, Valachchanai.

6. The quit notice X-7, of which the translation is annexed and marked X-8, is dated 20.09.2018. According to the Schedule, the land in respect of which the said quit notice is issued is described as follows:

“In the Batticaloa District, in Meeravodai Tamil GS division within the Koralaipattu DS division, an allotment of land described in the plan No. PPMADA2788 containing in extent.....Acre 02 Rood.....perches.....hectare called Meeravodai [sic.] Muravodai having the following boundaries.

Boundaries:

North: Road

East: Road

South: School grounds road

West: School grounds road”

The said plan is tendered to Court as document R-1. Accordingly, the subject matter of the eviction order X-8 is in respect of the defined and demarcated parcel of land in extent 2 roods, situated in the Eastern end of the northern boundary of the said Lot 01 as depicted in plan No. PP/๓๓/2788 (R-1).

7. Therefore, the said portion of Lot No. 1 of plan R-1 is certainly not the land alienated by the LDO permit No. 5503. On a consideration and comparison of X-1 with R-1 and the petitioner’s pleadings, it is abundantly clear that the petitioner is in occupation of a portion of Lots 9, 10, and 11 of plan X-1, which makes reference to the said LDO permit No. 5503. Even if it is assumed that such a permit did exist, in the above circumstances, the basic argument of the petitioner that the 1st respondent does not have jurisdiction is misconceived and not sustainable.
8. The said impugned quit notice X-7 had been issued on 20.09.2018. Thereafter, the 1st respondent has instituted proceedings in the Magistrate’s Court for the eviction of the petitioner under the provisions of Section 5 of the State Lands (Recovery of Possession) Act as well. The

petitioner, by the instant application, filed on 16.11.2023, is now seeking to quash the quit notice so issued in 2018. This application had been preferred almost 5 years after the impugned quit notice was issued. This, by any standard, is an extremely long period of delay, and the petitioner has not explained the same. Accordingly, the petitioners are certainly guilty of laches or delay. In ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR 368, Sharvananda, J. (as he then was), observed that:

“The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an application of the equitable doctrine that delay defeats equity, and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay.”

Similarly, in ***Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and another*** [1996] 2 SLR 70) it was held as follows:

“A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief.”

Accordingly, in the absence of any satisfactory explanation or reason for the delay, the petitioner will not be entitled to the relief as prayed for by prayer (b).

9. In the first instance, the petitioner ought to have come before this court immediately after the service and receipt of the said quit notice, without delay. Then, the 1st respondent, acting in accordance with the provisions of Section 5 of the State Lands (Recovery of Possession) Act, has instituted proceedings in the Magistrate's Court to obtain an eviction order. This action appears to have been instituted on or about

September, 2019. The matter has proceeded, and the learned Magistrate has, by order dated 07.11.2019, held that the 66 Order is a valid and lawful basis for the occupation. The respondent Divisional Secretary has moved in revision to the Provincial High Court of Batticaloa against the said Order, and the Hon. High Court Judge has revised and set aside the said Order of the learned Magistrate (the said revision application bears the No. HCB/REV/849/2021, of which the judgement is dated 08.08.2024). The said application in the Magistrate's Court for eviction is now pending.

10. Now, I will consider if the petitioner is entitled to have and maintain this application before this Court in the present form. The quit notice X-7/X-8, as stated above is dated 20.09.2018. The petitioner does not deny receiving notice of the same prior to the institution of the Magistrate's Court action bearing No. MIAC/34726/19. An application for eviction is preferred to the Magistrate's Court under Section 5 of the State Lands (Recovery of Possession) Act only upon the occupier failing to vacate and deliver vacant possession upon being so notified. That stage has now passed, and the matter is before a learned Magistrate, who is now required to consider the issue of the eviction order upon considering the application.

11. There are certain limited objections which the respondent can take up at that forum, as prescribed by Section 9 of the Act, which reads thus:

(1) At such inquiry the person on whom summons under section 5 has been served shall not be entitled to contest any of the matters stated in the application under section 5 except that such person may establish that he is in possession or occupation of the land upon a valid permit or other written authority of the State granted in accordance with any written law and that such permit or authority is in force and not revoked or otherwise rendered invalid.

(2) It shall not be competent to the Magistrate's Court to call for any evidence from the competent authority in support of the application under section 5."

The requirement and mandatory nature of tendering such written authority or valid permit was upheld in the cases of **M. R. M. Ramzeen vs. Morgan Engineering (Pvt) Ltd.** (S.C. Appeal 214/12, decided on 27.06.2013) and **Kalimuththu Karuppaiah Padmanadon vs. General Manager, Department of Railway** (CA/MC/REV/28/2016, decided on 20.11.2020). According to which, the existence of a valid permit or authority is a matter which the Magistrate is empowered to consider. According to the petitioner, the learned Magistrate of Valachchanai has considered this issue and made the Order dated 17.06.2020, by which the learned Magistrate did hold that a 66 Order is valid authority for the occupation of the land, as it is an order of a competent court. This has been revised by the Batticaloa Civil Appeals High Court, and now the matter is before the Magistrate to consider the application for eviction and to make a suitable order in accordance with the law.

12. In this context, since the proceedings in the Magistrate's Court are pending, it amounts to an alternate remedy, where the petitioner is entitled to raise several objections as to jurisdiction and the issue of the existence of the permit or authority. To that extent, there is a valid effective alternate remedy which is a ground on which an application of this nature may be refused. K. Sripawan, J. (as his Lordship then was), in **Office Equipment Ltd vs. Urban Development Authority**, C.A. Writ Application No. 1062/2000, decided on 05.09.2003, considering the issue of an alternate remedy, held that:

"Prerogative writs will not issue where there are adequate, convenient and effective remedies available to determine the rights of parties granted where the Petitioner has another adequate and specific legal remedy in the District Court competent to afford relief upon the same subject matter."

13. The learned State Counsel also submitted that the facts of this matter are in dispute and that the petitioner is not entitled to the writs as prayed for. The disputed facts are as follows. Firstly, there is a serious dispute as to whether the land referred to in the quit notice X-7 is the same land as that referred to in plan X-1, which the petitioner claims to be in possession. Then, there is also dispute as to the situation of the land. The petitioner avers that the land she is in occupation is within the jurisdiction of Koralaipattu West of Oddamavadi. As opposed to this, the respondents' position is that the land of which eviction is sought is situated within the area of Koralaipattu, Valachchanai. The name of the land depicted in the quit notice is Muravodai, whereas the land referred to by the petitioner in X-1 is plan No. PP/09/09. To that extent, there is a serious dispute as to the basic facts.

It is settled law that when facts are in dispute, a writ cannot issue. In **Thajudeen vs. Sri Lanka Tea Board and Another** (1981) 2 SLR 471, Ranasinghe, J. (as his Lordship was then), held, citing Choudri on the Law of Writs and Fundamental Rights, as follows:

“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 parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue.” (2nd Ed.), Vol. 2, at page 449).

In **Kumudu Samanthi Akmeemana vs. Hatton National Bank and Others**, CA Writ Application No. 72/2020, decided on 30.04.2021, Arjuna Obeyesekere, J., P/CA (as his Lordship then was), 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.”

14. In the above premises, in view of the delay and the fact that permit No. 5503 is in respect of a different land and the land depicted in R-1 being

within the jurisdiction of the 1st respondent Divisional Secretary of Koralaipattu, Valachchanai, I am of the view that the petitioner is not entitled to the writs as prayed for by prayer (b) of the petition. As for prayers, (c), (d), and (e) are all in respect of various events that have resulted from the issue of the said quit notice and are connected thereto. The respondents, as stated above, have now instituted action in the Magistrate's Court. The petitioner ought to have preferred this application before such action was instituted in the Magistrate's Court. The relief sought by prayer (f) is a declaration, which this court is not empowered to grant in the exercise of its writ jurisdiction. Accordingly, the said relief prayed for are misconceived.

15. The petitioner ought to have come before this Court immediately upon the service of the quit notice, which he had failed to do and thus, is guilty of laches. The substantial grounds of assailing the quit notice are misconceived. The petitioner also has an alternate remedy. In these circumstances, the petitioner has failed to aver or establish any valid ground to establish he is lawfully entitled to the relief as prayed for. Accordingly, I see no reason in law or otherwise to grant the relief as prayed for.
16. The application is accordingly rejected and dismissed. However, I make no order as to costs.

JUDGE OF THE COURT OF APPEAL