

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

**CA Writ Application No: 450/19**

Dinushan Sheranga Wijewardena,  
No. 30/2,  
Rolly Fernando Mawatha,  
Katubadda, Moratuwa.

**PETITIONER**

**-Vs-**

1. Director General,  
Department of Irrigation  
PO Box 1138,  
230, Bauddhaloka Mawatha,  
Colombo 07.
2. National Housing Development Authority,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
3. Chairman,  
Tissamaharama Pradeshiya Sabha,  
Tissamaharama
4. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdorp Street,  
Colombo 12.

**RESPONDENTS**

**Before: M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:**

Dr. Ravindranath Dabare with Ms. Savanthi Ponnampereuma instructed by Nimal Wickramasinghe for the Petitioner.

Ms. Maithree Amarasinghe, SSC for the Respondents.

**Written submissions tendered on:**

10.06.2024 by the Petitioners

**Argued on:** 29.05.2023 and 26.03.2024

**Decided on:** 11.07.2024

**S. U. B. Karalliyadde, J.**

The Petitioner to this Writ Application is the owner of the land depicted as Lot No. 51 in plan No. 5570 dated 12.07.2013 marked as P1 situated at Sandagirigama, Tissamaharama, by virtue of Deed of Transfer No. 3264 dated 22.10.2016 marked as P2. The said Lot is a subdivision of the land depicted as Lot No. 1974 in the Final Plan No. 2 marked as P3 (a)-(b) in the extent of 16.282 hectares. It has been granted to the National Housing Development Authority (the 2<sup>nd</sup> Respondent) by virtue of Grant bearing No. 4/7/4925 dated 07.06.1989 marked as P4 issued under the State Land Ordinance. Later the said Lot 1974 was sold to the residents of the area under the “Udakala Gammuna” concept by way of outright transfer deeds without any encumbrances for development purposes.

The Petitioner submitted an application to Tissamaharama Pradeshiya Sabha (the 3<sup>rd</sup> Respondent) bearing No. 2016/162 along with the Building Plan on or about 29.12.2016

to obtain the approval for the construction of a Villa on his land, and the approval for the said project has been granted on or about 08.02.2017 as per the Development Permit marked as P5 and Approved Plans marked as P6 (a) and (b) and after obtaining the approval the Petitioner commenced the construction of the Villa. The Petitioner obtained a Street Line Certificate and Non-Vesting Certificate as well from the 3<sup>rd</sup> Respondent (marked as P7) for the construction. However, on or about 28.02.2017, the Technical Officer of the Divisional Irrigation Engineer's Office, Tissamaharama visited the construction site and ordered the construction to be stopped claiming that the land claimed by the Petitioner falls within the Reservation of Yodhawewa. Thereafter, on the request made by the Director General of the Department of Irrigation (the 1<sup>st</sup> Respondent) to take action to stop the construction, the 3<sup>rd</sup> Respondent by letter dated 28.02.2017 marked as P9 informed the Petitioner to stop the construction and suspended the Development Permit issued by the letter marked as P10.

In this Writ Application, the Petitioner argues that in terms of Sections 71 and 73 of the State Lands Ordinance, the 1<sup>st</sup> Respondent has no power to demarcate reservations within private lands and the reservation which demarcated upon the Petitioner's land has not been gazetted under the Irrigation Ordinance to date. Further, according to Clause 4.3 of the Irrigation Department Departmental Circular No's: 10/1986 marked as P15(a) and 08/2014 marked as P15(b), if the 1<sup>st</sup> Respondent requires private land to be utilized as a reservation for Yodhawewa, first the land should be acquired under the

provisions of the Land Acquisition Act (as amended), and the owner must be paid adequate compensation at the market rate.

The Petitioner argues that, in the above-mentioned circumstances, the 1<sup>st</sup> Respondent has acted arbitrarily, capriciously, and *ultra vires* in demarcating a reservation over the Petitioner's land which is private land, and requesting the 3<sup>rd</sup> Respondent to suspend the Development Permits abruptly. Further, the Petitioner argues that the suspension of the Development Permits by the 1<sup>st</sup> and 3<sup>rd</sup> Respondents has breached the legitimate expectations of the Petitioner.

In response to the submission of the Petitioner, the 1<sup>st</sup> Respondent has taken up the position that the land claimed by the Petitioner is a part of the reservation of Yodhawewa which is State land, and it falls within lot B in the Advanced Tracing bearing No. H/TTS/2013/557 marked as 1R1 and the Tenement List marked as 1R1(a).

The Petitioner seeks the following substantive reliefs in the Petition,

- a) Issue an order in the nature of a Writ of Certiorari to quash the order of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents suspending the Development Permits containing in the letters marked a P9 and P10;
- b) Issue an order in the nature of a Writ of Mandamus to compel the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to implement the decision referred to in P5 and P6 (a) and (b);
- c) Issue an order in the nature of a Writ of Mandamus compelling the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to pay compensation to the Petitioner amounting to Rupees Two

Million (Rs. 2,000,000/-) in order to compensate for the damages incurred on the Petitioner;

### **Analysis**

The position of the learned Counsel appearing for the Petitioner is that the land in question in this action is private land belonging to him. The position of the 1<sup>st</sup> Respondent is that the land claimed by the Petitioner is the reservation of Yodhawewa which belongs to the State, and it is shown in the Survey General's plan marked as 1R1. However, neither party has taken steps to prepare a superimposed plan. Therefore, the Court is not in a position to decide whether the land in dispute is private land or State land. Furthermore, to decide the said material fact whether it is private land or State land, the Court requires oral and documentary evidence and on affidavit evidence alone it cannot be decided. When the material facts are in dispute, Writ Courts are reluctant to exercise its Writ jurisdiction<sup>1</sup>.

A.S. Choudri in his book titled "Law of Writs and Fundamental Rights" (2<sup>nd</sup> edn, Vol.2) on page 449 states thus;

*"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."*

---

<sup>1</sup> Francis Kulasooriya Vs. OIC-Police Station-Kirindiwela, SC Appeal No. 52/2021, SC Minute of 14.07.2023.

Referring to the above-stated quoting, in the case of *Thajudeen Vs. Sri Lanka Tea Board and Another*<sup>2</sup>, this Court has held 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<sup>3</sup>, Porraju v. General Manager B. N. Rly<sup>4</sup>.”*

In *Dr. Puvanendran and Another Vs. Premasiri and Two Others*<sup>5</sup> Supreme Court held that;

*“The Writ of Mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by the Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and (2) the function that is to be compelled is a public duty with the power to perform such duty.”*

Citing the above-stated decision, it was held in *Wijenayake and others Vs. Minister of Public Administration*<sup>6</sup> that disputed facts cannot be decided by a Writ court.

Further, Laffar J. stated in the case of *Unilever Sri Lanka Limited vs Commissioner General of Labour and 35 Others*<sup>7</sup>, it is not for a Writ Court to resolve the facts at hand

---

<sup>2</sup> (1981) 2 Sri LR 471 at page 474

<sup>3</sup> AIR 1953 CALCUTTA 581.

<sup>4</sup> AIR 1952 CALCUTTA 610.

<sup>5</sup> (2009) 2 SLR 107 at page 112

<sup>6</sup> (2011) 2 SLR 247

<sup>7</sup> CA (Writ) 0557/2021, CA Minutes of 15.12.2023

as that is the role of the Court of first instance, it is the duty of the Writ Court to adjudicate on the law at hand. Under the above-stated circumstances, the Petitioner of the instant Application is not entitled to the reliefs sought in the Petition.

The Petitioner further argues that the suspension of the Development Permit by the 3<sup>rd</sup> Respondent upon the request of the 1<sup>st</sup> Respondent violates the legitimate expectation of the Petitioner since the 1<sup>st</sup> and 3<sup>rd</sup> Respondents do not challenge the validity of the Deed of Transfer in favour of him and the approval granted for the project for the construction in the Petitioner's land is not subject to any restriction, limitation or impediment at the time of issuing the Development Permit. Furthermore, the Petitioner argues that if the State wants to acquire his land or part thereof for the reservation, he should be paid Rs. 2 million as compensation. However, as stated hereinbefore, since the material facts are in dispute, and the Court is not in a position to decide whether the subject matter of this action is private land or State land, the Court is not in a position to decide whether the Petitioner is entitled to compensation. An expectation to be a legitimate one, it must be found upon a promise or practice.

In the case of *Ranasinghe Bandara vs. The Director, District Land Reform Commission and Others*<sup>8</sup>, Janak De Silva J. with reference to Clive Lewis, Judicial Remedies in Public Law, 5<sup>th</sup> Ed, 248 (South Asian Edition) states as follows;

*"Such legitimate expectations may arise where a public authority has made a clear, unqualified, and ambiguous representation to a particular individual that it will act in a particular way. The burden is on the individual to demonstrate that an unqualified and unambiguous representation was made."*

Nevertheless, in the instant action, there is no evidence that the Respondents had made such representations to the Petitioner.

---

<sup>8</sup> CA. (Writ) 233/2017, CA Minutes of 17.06.2019.

Furthermore, this Court is of the view that the Petitioner has the alternative remedy of filing a civil action in a competent court and resolving the land dispute and claim for compensation.

In the case of *Linus Silva Vs. The University Council of the Vidyodaya University*<sup>9</sup>, it was held that,

*“The remedy by way of certiorari is not available where an alternative remedy is open to the petitioner subject to the limitation that the alternative remedy must be an adequate remedy”*

It was held in the case of *Tennakoon Vs. Director General of Customs*<sup>10</sup> that,

*“The petitioner has an alternative 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”*

Shirani Thilakawardena J. in the case of *Ishak Vs. Lakshman Perera Director of Customs and Others*<sup>11</sup> held as follows;

*“Where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a discretionary decision. Where there is a choice of another separate process outside the Courts, a true question for the exercise of discretion exists. For the Court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with the judicial review being properly regarded as being a remedy of last resort. It is important that the process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing*

---

<sup>9</sup> 64 NLR 104.

<sup>10</sup> (2004) 1 SLR 53.

<sup>11</sup> (2003) 3 Sri LR 18.



*an alternative procedure, indicated either expressly or by implication that it intends that procedure to be used, in exercising its discretion the Court will attach importance to the indication of Parliament intention.”*

Since the prerogative Writs are discretionary remedies, the Petitioner of the instant Application is not entitled to invoke the Writ jurisdiction of this Court as there is equally convenient alternative remedy available to him.

Considering all the above-stated facts and circumstances, I hold that the Petitioner is not entitled to the Writs sought in the Petition. Therefore, the Court dismisses the Writ Application. The Petitioner should pay Rs. 50,000/- each as the cost of this Application to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

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

**I agree.**

**JUDGE OF THE COURT OF APPEAL**