

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

In the matter of an application for the mandates in the nature of Writs of Mandamus under and in terms of Article 140 of the Constitution of the Constitution

1. Priyantha Nilmini Manawadu,
2. Shanaka Nalin Priyadarshana,

Both of "Sriyawasa" Mawatha Yaya,
Melsiripura.
3. Gayathri Purnima De Silva
No.58/44 A, 3rd Lane, Soma Thalagala Road,
Mirihana, Nugegoda.
4. Dileshni Chinthaka De Silva
No.11, Weerakoon Gargens.,
Kandy

Petitioners

CA (Writ) Application
No. 234/2018

Vs

1. The Land Reforms Commission,
No.C 82, Hector Kobbekaduwa Mawatha,
Gregory's Road,
Colombo 7.
2. The Janatha Estate Development Board,
No.55/75, Vauxhall Lane,
Colombo 2.
3. Secretary,
Ministry of Agriculture
No.288, D.P.J. Towers,
Sri Jayawardena Mawatha, Rajagiriya.
4. Hon. Mahinda Amaraweera
Hon. Minister of Agriculture,
No.288, D.P.J. Towers,
Sri Jayawardena Mawatha, Rajagiriya
5. Hon. Attorney General

Before: **Dhammika Ganepola, J.**
Damith Thotawatte, J.

Counsel Kumar Dunusinghe instructed by Manouri Herath for the Petitioner
Thisath Wijayagunawardana P,C. with Amrith Edirisuriya instructed by
Vidanapathirana Associates for the 1st Respondent.
Chaya Sri Nammuni , D S G for the 2nd to 5th Respondents

Argued 07-02-2025

Written submissions 21-03-2025 By the 1st, 2nd 3rd and 4th Petitioners
tendered on: 04-04-2025 By the 1st Respondent

Judgement Delivered: 30-04-2025

D. Thotawatte, J

The 1st, 2nd, 3rd and 4th Petitioners are respectively the wife and the children of Nihal De Silva (deceased). Edmund De Silva (deceased) was the father of Nihal De Silva. In 1972, under the Land Reforms Law No. 1 of 1972, Edmund De Silva's holdings exceeding the statutory limit were vested in the Land Reform Commission (LRC).

Edmund De Silva had 11 children. His eldest son, Nihal De Silva, was 19 years old at the date of commencement of the Act, but as he had been taken into custody during the 1971 insurgency and his whereabouts unknown, Edmund De Silva had been prevented from applying for an inter-family transfer within the statutory time limit.

In 1977, following the establishment of an Advisory Board by the then Minister of Agriculture and Lands, Edmund De Silva had submitted an application seeking an inter-family transfer of 50 acres in favour of his eldest son, Nihal De Silva who had by then been released from custody.

Consequent to the above application the Minister by his letter dated 23 August 1979, had ordered the Land Reforms Commission (LRC) to alienate 50 acres of land in favour of Nihal De Silva and accordingly the LRC has written to Edmund De Silva informing him that 50 acres of land from the Muthugala Group Estate Kurunagala had been released for the purpose.

Owing to the failure of the authorities to take administrative action in transferring possession of the land allocated to him, Edmund De Silva had instituted proceedings in this Court under CA/Writ/1537/83, naming LRC as the 1st Respondent and seeking inter alia a writ of mandamus to compel the enforcement of the Minister's order. It was further averred by Edmund De Silva that the said land had been taken over by the LRC from the Janawasa Commission and subsequently entrusted to the Janatha Estate Development Board (JEDB) for management on behalf of the LRC.

The JEDB cited in the petition as the 2nd Respondent but had failed to appear in court to resist the above application. After considering the facts submitted by the Petitioner and the LRC, the Court of Appeal delivering its judgement on 17 July 1987, directed the LRC to execute legal documents alienating the 50 acres to Nihal De Silva and the JEDB to hand over possession of the relevant land.

Despite this judgment, it appears that the execution was delayed due to various administrative reasons. The Petitioners also admit that Edmund De Silva's ill health and Nihal De Silva's death on 22 July 1989, may have contributed to the delay. Edmund De Silva had passed away in November 1991, and thereafter Nihal De Silva's widow and three minor children (the present Petitioners) had informed the LRC of the deaths and submitted documentation to establish their entitlement.

In 2006, the Ministry of Agriculture informed the Petitioners that the allocated land was subject to a claim by the Sri Dalada Maligawa and was being investigated by a Presidential Commission. However, findings of this commission had never been communicated to the Petitioners. Subsequent to an inquiry held during the pendency of the current writ application, the Diyawadana Nilame of the Dalada Maligawa had clarified that they are only claiming compensation and not possession of the said land. As such it appears that the claim of Sri Dalada Maligawa is no longer an impediment to alienating the land.

The Petitioners prior to filing of the present case had expressed willingness to accept alternate land instead of the land allocated and although some suggestions had been made regarding suitable land, this compromise has also failed. The Petitioners have also submitted that after the judgment in CA/Writ/1537/83 Muthugala Estate was handed over by the JEDB to Kurunegala Plantations PLC. The Petitioners have further alleged that the transfer had not been Gazetted and has been done without compliance with proper procedure.

It is the contention of the Petitioners that despite a binding judgment in CA/Writ/1537/83, the 1st and 2nd Respondents:

- Have failed to alienate the original land;
- Have failed to provide any viable alternative;
- Have acted in a manner that is arbitrary, irrational, unlawful, and ultra vires.

Petitioners being unable to trace the case record of CA/Writ/1537/83 (which appears to have been destroyed following the normal procedure regarding old court records) have filed the current writ application (CA/Writ/234/2018) on 13.07.2018 seeking inter alia:

- b) A mandate in the nature of writ of Mandamus directing the Respondents to take steps to alienate an extent of 50 Acres of agricultural land.

Or alternately

- c) A mandate in the nature of a writ of Mandamus to compel the 1st Respondent to take steps to alienate an extent of 50 Acres from the land Heraliyawala Watta or any other agricultural land
- d) A mandate in the nature of writ of Mandamus ordering and/or directing the 1st Respondent to take immediate steps to execute the necessary documents alienating 50 Acres of land in favor of the Petitioners.
- e) A mandate in the nature of writ of Mandamus ordering and/or directing the 1st, 2nd and 3rd Respondents to handover possession of the said land alienated to the petitioners.

In paragraph 47 of the petition in the present case, Petitioners has stated that they had previously invoked the jurisdiction of this court in the case No. CA (WRIT) 1537/83. On perusal of the judgement of No. CA (WRIT) 1537/83, it appears the both cases are emanating from the same issue. However, as the beneficiary of case No. CA (WRIT) 1537/83 Nihal De Silva being deceased, the Petitioners in the present case are seeking essentially the same relief on the grounds that they are the heirs of Nihal De Silva.

I reproduce below portion of the judgement in CA (WRIT) 1537/83 which describe the relief sought by that application

The petitioner seeks writs of mandamus on the 1st respondent, the Land Reform Commission in respect of three matters

- a) to direct the Commission to make a statutory determination in terms of s.19(1)(a) of Law No. 1 of 1972 specifying the portion of agricultural land owned by the statutory lessee, the petitioner which he shall be allowed to retain upon the petitioner's declaration made to the Land Reform Commission under s. 18(1) of the said Law;
- b) to direct the Commission to execute necessary documents alienating 50 acres out of Muthugala Group, Dambadeniya, in favour of the petitioner's elder son Nihal;

- c) to direct the Commission to execute necessary documents alienating 100 acres or 120 acres out of Kuda Oya Estate, Kurunegala District in favour of such other of the petitioner's remaining 10 children who will be entitled to own agricultural property within the ceiling extent.

The petitioner also seeks a writ of mandamus on the 2nd respondent, the Janatha Estates Development Board directing the Board to hand over possession of the said lands to the petitioner forthwith.

At the conclusion of the Judgement, it is stated:

"I allow a mandate in the nature of a writ of mandamus to issue on the 1st respondent to make a statutory determination in the petitioner's favour, specifying the portion of agricultural land owned by the petitioner in compliance with the provisions of Section 19(1)(a) and Section 19(1)(b) of the Land Reform Law No. 1 of 1972.

I allow the application for a mandate in the nature of a writ of mandamus on the 1st respondent and direct him to execute legal documents alienating 50 acres of agricultural land out of Muthugala Group, Dambadeniya, Kurunegala District, to the petitioner's son Nihal Silva. I also allow a mandate in the nature of a writ of mandamus on the Janatha Estates Development Board (2nd respondent) to hand over 50 acres of agricultural land from Muthugala Group, Dambadeniya, Kurunegala District to the petitioner and to his son Nihal Silva through the 1st respondent".

As in the instant application the 1st Respondent and the 2nd Respondent in CA (WRIT) 1537/83 were respectively, LRC and JEDB. By directing the 1st Respondent to alienate 50 acres of agricultural land out of Muthugala Group, Dambadeniya, Kurunegala District, to the petitioner's son Nihal De Silva, The Court has made a clear and binding order. If it was not possible to comply with the directions for whatever reason (at the time the Judgement was delivered), there was no impediment for the Respondents to appeal against the said Judgment. By not contesting the Judgement the Respondents have accepted the obligations without reservation and therefore cannot claim the directions made could not be complied with.

The 2nd Respondent filing a statement of objections to the present application has averred that the JEDB was not aware of the Judgement of CA (WRIT) 1537/83 and as the land known as "Muthugala Division" of Dambadeniya Estate has been handed over to the Kurunegala Plantations it cannot be given to the Petitioners.

Even in the unlikely event that the Judgement of CA (WRIT) 1537/83 had not been communicated to JEDB, the assertion that the 2nd Respondent was not aware of the Judgement

of CA (WRIT) 1537/83 is not plausible considering that the LRC has copied their written communications in this regard to the chairman of JEDB (Annexes X1 and X2). Further, a letter (Annexed as X3) by the Manager of JEDB to the Director (Maximum Extent of Land) dated 14th February 1991, referring to case No. 1537/83 and informing that the Kurunegala branch of the JEDB will be instructed to hand over the said 50 Acres of land from Muthugala Estate, confirms that at least by 14th February 1991 the JEDB was aware of the Judgement.

The 1st Respondent was under a legal duty to expeditiously comply with the writ of mandamus issued by Court, however for more than three decades since the Judgment, the respondents had failed to comply with the directions. The manner in which the 2nd Respondent has acted subsequent to the judgement of CA (WRIT) 1537/83 raises concerns about the sincerity of the 2nd Respondent. By the time the present application was filed, there is no indication that anything meaningful was being done to comply with the said Judgement. Considering various explanations submitted by the 1st Respondent for the extraordinary delay, I am of the view that these matters could have been resolved if the 1st Respondent had acted with due diligence. Subsequent difficulties that arose as a result of the delay cannot be relied upon by the 1st Respondent to evade or frustrate the fulfillment of his legal obligations.

The 1st Respondent has contended that the subject matter underlying the present application has already been adjudicated upon and conclusively determined on its merits in the aforementioned writ application. Upon considering the present application, I find merit in this submission. In the prayer of the instant application the main relief is altered as a mandate in the nature of a writ of Mandamus compelling the 1st Respondent to alienate fifty acres, from any land available instead of confining to the Muthugala Group, Dambadeniya specifically mentioned in the judgement of CA (WRIT) 1537/83.

However, relief sought in the present application is predicated entirely upon the writ of mandamus issued by this Court in CA (Writ) Application No. 1537/83. The Court has considered the facts presented and had given specific directions mandating the alienation of fifty (50) acres of agricultural land to Nihal De Silva. It is well established that a court of coordinate jurisdiction lacks the legal competence to revisit, alter, or vary its own final orders.

Accordingly, while this Court is not empowered to reassess or re-adjudicate the issues determined in CA (Writ) 1537/83, the legal obligation cast upon the Respondents by the writ of mandamus issued in CA (Writ) 1537/83 remains a valid, operative, and undisturbed. The binding nature of that order upon Respondents cited in that matter has not been displaced and must, therefore, be given full effect in accordance with law.

Notwithstanding the fact that the Petitioner in CA (Writ) Application No. 1537/83 and his son Nihal De Silva, had passed away during the intervening period between the said judgment and the present proceedings, this Court is of the view that justice may yet be achieved by ensuring

compliance with the judgement of CA (Writ) Application No. 1537/83. Accordingly, the 1st Respondent is duty bound to take necessary steps to give full effect to the said judgment, by proceeding with the alienation of the land in favour of the lawful heirs of the said Nihal De Silva.

In the circumstances and the reasons given above, the Application of the Petitioners is dismissed without cost.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree

Judge of the Court of Appeal