

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

In the matter of an application for a mandate in the nature of a Writ Mandamus under of Article 140 of the Constitution of Sri Lanka.

Rupahinge Gunarathna, (Deceased)
Ganga Addara Hena, Udakarawita, Ratnapura.

1(a) Rupahinge Nayananda Indrakumara,
2(b) Rupahinge Sarath Chabdra Kumara,

Both of Ganga Addara Hena, Udakarawita,
Ratnapura.

Substituted 1(a) and 2(b) Petitioners

Case No. CA (Writ) 270/2013

Vs.

1. Land Reform Commission
C82, Gregory's Road (Now Hector Kobbakaduwa Mawatha), Colombo 07.
2. The Chairman
C82, Gregory's Road (Now Hector Kobbakaduwa Mawatha), Colombo 07.
3. Hon. Gayantha Karunathilake
The Minister of Lands and Land Development Ministry,
No. 1200/6, Mihikatha Medura,
Rajamalwatta Road, Battaramulla.

Respondents

Before: Janak De Silva J.

K. Priyantha Fernando J.

Counsel:

D.D.P. Dassanayake for the Petitioner

S.S. Sahabandu P.C. with I. Abeysinghe for 1st and 2nd Respondents

Manohara Jayasinghe SSC for the 3rd Respondent

Written Submissions tendered on:

Petitioner on 20.09.2018

1st and 2nd Respondents on 04.10.2018

Decided on: 06.03.2020

Janak De Silva J.

There were three connected cases namely C.A. (Writ) 270/2013, C.A. (Writ) 271/2013 and C.A. (Writ) 272/2013. On 02.04.2019 when all three matters were taken up for argument before this bench parties agreed that the matter can be disposed by way of written submissions filed in C.A. (Writ) 270/2013 and that the parties in C.A. (Writ) 271/2013 and C.A. (Writ) 272/2013 will be bound by that judgment.

On 20.09.2019 when judgment was to be delivered Court was informed that the Petitioner in C.A. (Writ) 270/2013 had passed away a few days earlier. On that day parties in C.A. (Writ) 271/2013 and C.A. (Writ) 272/2013 agreed that judgment can be delivered in C.A. (Writ) 271/2013 and that the parties in C.A. (Writ) 272/2013 will be bound by that judgment.

This judgment is delivered after effecting necessary substitution and based upon the agreement of the parties that the matter can be disposed on the written submissions.

Petitioner claims that the original owner of the land called "Ganga Addara Hena" and "Loka Deniya Hena" containing in extent six acres and six perches (A.6 R.0 P.6) was one C.M.C. Thennakoon and that upon his death the title devolved to his heirs and that later it was owned by the Land Reform Commission the 1st Respondent. He further states that the 1st Respondent has already sold three acres out of the said land to the Petitioner and that based on minor lease agreements granted by the 1st Respondent, the Petitioner and his two sons are in possession of the balance portion of the said land.

The grievance of the Petitioner is that the 1st and 2nd Respondents are wrongfully seeking to transfer the said land to a third party. He seeks the following relief:

- (a) A writ of mandamus to compel the 2nd Respondent to answer Attorney-at-Law Chandana Gunaratne's letter dated 01.08.2013 marked "X11";
- (b) A writ of mandamus to compel 1st and 2nd Respondent's to not to transfer the said land to the third party,

- (c) A writ of mandamus to compel to transfer to the Petitioner who is holding the minor lease agreement marked "X8" according to the provisions of the LRC Circular no. marked as "X10a", "X10b" and "X10c".

The first relief compelling the 2nd Respondent to answer letter marked "X11" must be denied on at least two grounds.

Firstly, the 2nd Respondent is neither a legal nor a natural person.

In *Haniffa v. The Chairman, Urban Council, Nawalapitiya* (66 NLR 48) Thambiah J. stated that mandamus can only issue against a natural person, who holds a public office. In *Samarasinghe v. De Mel and Another* [(1982) 1 Sri.L.R. 123 at 128] this Court quoted with approval *Haniffa's* judgment as follows:

"The petitioner's application is beset with other difficulties as well. The petitioner has made W. L. P. de Mel, Commissioner of Labour, the respondent to his application. It is common ground that he has now ceased to hold this post and is presently the Secretary, Ministry of Trade. The petitioner has not sought to substitute the present holder of the office. A Mandamus can only issue against a natural person, who holds a public office. If such a person fails to perform a duty after he has been ordered by Court, he can be punished for contempt of Court. (See, *Haniffa v. The Chairman, U. C. Nawalapitiya*, 66 NLR 48). **Before this Court issues a Mandamus, it must be satisfied that the respondent will in fact be able to comply with the order and that in the event of non-compliance, the Court is in a position to enforce obedience to its order.** Mandamus will not, in general, issue to compel a respondent to do what is impossible in law or in fact. Thus, it will not issue to require one who is functus officio to do what he was formally obliged to do." (*de Smith*, 2nd Edn. 581). So it seems to me, that even if the petitioner's application succeeded, the issue of a Mandamus would be futile." (emphasis added)

Haniffa's judgment was again quoted with approval by this Court in *Abayadeera and 162 Others v. Dr. Stanely Wijesundera, Vice Chancellor, University of Colombo and Another* [(1983) 2 Sri.L.R. 267]. In *Dayaratne v. Rajitha Senaratne, Minister of Lands and Others* [(2006) 1 Sri.L.R. 7] the Petitioner sought to rely on the Court of Appeal (Appellate Procedure) Rules 1990 to support his argument that an application for writ of mandamus can be maintained against a public office without naming the holder of the office. Marsoof J. (at page 17) disagreed with this contention

and said that “...this being an application for mandamus, relief can only be obtained against a natural person who holds a public office as was decided by the Supreme Court in Haniffa v. Chairman, Urban Council, Nawalapitiya” (emphasis added).

It is also to be noted that the Court of Appeal (Appellate Procedure) Rules 1990 applies to all applications under Articles 140 and 141 of the Constitution and therefore is general in nature. The rule that in an application for a writ of Mandamus the Respondent should be either a natural or a legal person is specific in nature. The difference between the remedies of certiorari and mandamus was adverted to in *Shums v. People's Bank and others* [(1985) 1 Sri.L.R. 197 at 204] by this Court as follows:

“The other cases relied on by learned State Counsel were all cases where writs of Mandamus had been applied for. In *A. C. M. Haniffa v. Chairman, Urban Council, Nawalapitiya* (8), it was held that “A Mandamus can only issue against a natural person who holds a public office: Accordingly in an application for a writ of Mandamus against the Chairman, Urban Council, the petitioner must name the individual person against whom the writ can issue”. The judgment in that case gives a reason why a Mandamus can only issue against a natural person, who holds a public office when it says that “If such a person fails to perform a duty after he has been ordered by Court, he can be punished for contempt of Court”. On the other hand in the case of a writ of Certiorari, what this court does is to bring up a decision or determination of a statutory Tribunal or a functionary and quash it. Once such a decision or determination is quashed, it ceases to exist and a fresh decision or determination would have to be made if the matter is again proceeded with. The tribunal or functionary is not enjoined to do anything or desist from doing anything, the question of non-compliance with such Orders resulting in contempt of court does not arise. Therefore, it would be seen that the remedy by way of writ of Certiorari could not be equated to one of Mandamus as far as the effect on the parties is concerned.”

In *Chandana v. Commissioner General of Examinations and Others* [C.A. (Writ) Application No. 1/2008, C.A.M. 06.06.2014] Nalin Perera J. (as he was then) held that a writ of mandamus will not issue against a person sued *nominee officii*.

The Supreme Court in *Gnanasambanthan v. Rear Admiral Perera and Others* [(1998) 3 Sri.L.R. 169] was called upon to consider the necessary parties to an application for writs of certiorari and mandamus and Amerasinghe J. held (at page 171):

“In any event the question before us is not whether the Chairman of REPIA could be cited *nominee officii*, which perhaps was possible in respect of the application for Certiorari **but not in respect of the application of Mandamus...**” (emphasis added)

A Writ of Mandamus could only issue against a natural person, who holds public office [*Mahanayake v. Ceylon Petroleum Corporation and Others* (2005) 2 Sri.L.R. 193].

Secondly, a writ of mandamus will be issued only if there is a public or statutory duty. [*De Alwis v. De Silva* (71 N.L.R. 108); *Weligama Multi Purpose Cooperative Society Ltd. v. Chandradasa Daluwatta* (1984) 1 Sri.L.R. 195; *Hakmana Multi Purpose Cooperative Society Ltd. v. Ferdinando* (1985) 2 Sri.L.R. 272; *Piyasiri v. People's Bank* (1989) 2 Sri.L.R. 47; *Sannasgala v. University of Kelaniya* (1991) 2 Sri.L.R. 193 and *Samaraweera v. Minister of Public Administration* (2003) 3 Sri.L.R. 64].

The Petitioner has not satisfied Court that there is a public or statutory duty to reply letter marked “X11”.

The second relief namely a writ of mandamus to compel 1st and 2nd Respondent's not to transfer the said land to the third party must also fail. Mandamus lies to compel the performance of a statutory or public duty whereas the second relief is directed at preventing the 1st and 2nd Respondent's from acting in a particular manner which is more akin to what is done by issuing a writ of prohibition preventing a public authority from acting in excess of its power.

The third relief must also fail on at least three grounds.

Firstly, the prayer does not state to whom the writ of mandamus should be issued.

Secondly, all persons who would be affected by the issue of Mandamus shall be made Respondents to the application [*Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* (2011) 2 Sri.L.R. 258]. The letter marked “X11” with the petition indicates that part of the land in dispute was to be transferred to one Migara Jayasundera by the 1st Respondent. He has not been made a party to this application.

Thirdly, parties admit that presently there is a partition case pending in D.C. Ratnapura case no. 15049/P. But the Petitioner has failed to make all parties in the said partition action Respondents to this application although he has prayed for a writ of mandamus to compel to transfer to the Petitioner who is holding the minor lease agreement marked "X8" according to the provisions of the LRC Circular no. marked as "X10a", "X10b" and "X10c".

For all the foregoing reasons, the application is dismissed with costs.

Judge of the Court of Appeal

K. Priyantha Fernando J.

I agree.

Judge of the Court of Appeal