

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

In the matter of an application for a Writs of *quo warranto*, made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Habeebu Lebbe Mohammed Rifan,  
No. 260A, Moulana Road,  
Oddamadi - 01.

**PETITIONER**

**C.A. Case No. WRT/0611/25**

**Vs.**

1. Mohamed Thambi Mohamed Anver,  
131/A, Main Street,  
Valaichenai.
2. Mr. R.M.A.L. Rathnayake,  
Chairman of the Election Commission,
3. Mr. M.A.P.C. Perera,  
Member of the Election Commission,
4. Mr. A.M. Faaiz,  
Member of the Election Commission,
5. Ms. Anusha Sanmuganathan,  
Member of the Election Commission,
6. Prof. D.M.S.S. Lakshman Dissanayake,  
Member of the Election Commission,  
  
All above;  
Election Secretariat, P.O. Box 02,  
Sarana Mawatha, Rajagiriya.

7. Mr. M.B.M. Sufiyan,  
District Returning Officer – Batticaloa and  
Assistant Election Commissioner,  
District Election Office,  
Batticaloa.
8. Koralai-Pattu-West Pradeshiya Sabha,  
Koralai-Pattu-West,  
Oddamavadi.
9. Mr. Ranjith Madduma Bandara,  
Secretary,  
Samagi Jana Balavegaya,  
No. 592, Kotte Road,  
Sri Jayawardenapura Kotte.

**RESPONDENTS**

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

**COUNSEL :** Hejaaz Hisbullah with Shalini Fernando, for the Petitioner.

Rushdhie Habeeb with Hikma Yoosuf, instructed by Devindi Thakshala Dissanayake, for the 1<sup>st</sup> Respondent.

Manohara Jayasinghe, DSG, with Dilantha Sampath, for the Respondents.

**ARGUED ON** : 10.11.2025

**WRITTEN SUBMISSIONS ON** : 20.11.2025 and 21.11.2025

**DECIDED ON** : 25.11.2025

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

1. The petitioner as well as the 1<sup>st</sup> respondent have contested the Local Government Election of the Koralai Pattu West Pradeshiya Sabha held on 06.05.2025. The petitioner had contested from the Sri Lanka Muslim Congress (SLMC), and the 1<sup>st</sup> respondent from the Samagi Jana Balawegaya (SJB). The 1<sup>st</sup> respondent was successful in being elected, whereas the petitioner was not. Upon the 1<sup>st</sup> respondent being declared so elected as a member, the petitioner filed this application on 04.06.2025 seeking a writ of *quo warranto* challenging the “*appointment*” of the 1<sup>st</sup> respondent as a member of the Koralai Pattu West Pradeshiya Sabha.
  
2. The main ground urged by the petitioner is that the 1<sup>st</sup> respondent was not ordinarily resident within the Koralai Pattu West Pradeshiya Sabha electoral area, and as such, he does not qualify and is not entitled to contest or to be elected as a member of the said Pradeshiya Sabha.
  
3. The petitioner alleges that the 1<sup>st</sup> respondent’s ordinary residence is not within the electoral area of Koralai Pattu West Pradeshiya Sabha but is in the village of Valachchenai. In support of which the petitioner has tendered several documents including documents P-6(a) – P-6(j), extracts from the Register of Voters. According to which the 1<sup>st</sup> respondent’s electoral district is Batticaloa and the Grama Seva Division is 206 Valachchenai 04. Both the 1<sup>st</sup> respondent as well as his wife’s names are registered and appear in the said register since 2015. Petitioner avers that this residence is within the electoral area of Koralai Pattu Pradeshiya Sabha and not that of Koralai Pattu **West** Pradeshiya Sabha.
  
4. According to the objections, the 1<sup>st</sup> respondent avers that he was an elected member of the Koralai Pattu West Pradeshiya Sabha during the

previous period and claims that he also ordinarily resides within the said electoral area as well in his parental home, which is in Oddamavadi, and he continues to maintain ordinary residency there as well. Apart from the residency, the 1<sup>st</sup> Respondent also claims to have his business, his Masjidh, land and property, and much of his social activities and social services at Oddamavadi in Koralai Pattu West.

5. Argument of Mr. Rushdhie Habeeb, the counsel for 1<sup>st</sup> respondent, is that a person may and can have two places of ordinary residency simultaneously, and the registration in the voter register one electoral area does not preclude or disentitle the 1<sup>st</sup> respondent from establishing and maintaining second ordinary residency within the Koralai Pattu West Pradeshiya Sabha area at Oddamavadi.

### **Ordinary residency**

6. At the outset, I will consider the statutory provisions that are relevant to this application. Section 4(2) of the Registration of Electors Act, No. 44 of 1980, refers to the qualifying address as follows:

#### **4. Qualifying date for determining residence.**

*(1) The first day of February in any year is hereby prescribed as the qualifying date on which a person should be resident in any electoral district to have his name entered or retained in the register of that electoral district.*

*(2) The address at which a person was ordinarily resident in any electoral district on the first day of February in any year is hereinafter referred to as his “qualifying address”.*

*(3) In the determination of any question as to a person’s residence on the first day of February in any year, particular regard shall be had to the purpose and other circumstances, as well as to the fact, of his presence at, or absence from, the address in question, and in particular his absence from such address in the performance of any duty accruing from or incidental to any office, service or employment, held or undertaken by him.*

According to the Provisions of Section 4(1) of the Registration of Electors Act, No. 44 of 1980, to qualify to enter the name, such person should,

on the 1<sup>st</sup> day of February in any year, be ordinarily resident in such electoral district. Section 4(2) clearly provides that if a person is so resident on such day, that address would be the “*qualifying address*” of such person. Section 4(1) provides for certain matters and attributes relevant to determine the issue of residency. They are,

- a. purpose of residing and other circumstances, and
- b. fact of his presence or absence and if such absence is due to engaging in some duty or incidental thereto.

7. Then Section 8 of the Local Elections Ordinance provides for certain requirements to be satisfied to hold membership of a local authority. Section 8 provides as follows:

*“8. Every person who is not disqualified as provided by Section 9 shall be qualified at any time for election as a member of any local authority if –*

- (a) *He was, on the date of the commencement of the preparation or revision of the parliamentary register for the time being in operation for any electoral district in which that electoral area or any part thereof is situated, qualified to have his name entered in that register; and*
- (b) *He was, on the first day of February in the year of the commencement of the preparation or revision of that register, ordinarily resident in that electoral area.”*

This provides for the general qualification for membership. It is couched in the negative form that a person **not disqualified** under Section 9 is entitled to have his name entered in the electoral register of the electoral district in which such electoral area comes and if such person is *ordinarily resident* in the electoral area.

8. The general disqualification of membership is provided by Section 9 as follows:

*“9(1) No person shall, at any time, be qualified to be elected under this Ordinance, or to sit or to vote, as a member of any local authority, if such person at that time –*

- (a) *is not a citizen of Sri Lanka, or if he is by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to any foreign Power or State;*
- or*

*(b) is less than eighteen years of age; or*

*(d) is –*

- (i) a judicial officer, or*
- (ii) .....*
- (iii) .....*
- (iv) .....*
- (v) .....*
- (vi) .....*

*(dd) is a member of any other local authority; or*

- (e).....*
- (f) .....*
- (g) .....*
- (h) .....*
- (i) .....*
- (j) .....*
- (k) .....*
- (l) .....*
- (m) .....*

*(1A) No person shall be qualified to be elected under this Ordinance or to sit or to vote as a member of any local authority if such person's name appear as a candidate in more than one nomination paper for the same general election.*

*(2) .....*

- (a) .....*
- (b) .....*

*(3).....*

- (a).....*
- (b).....*

*(5).....*

- (a).....*
- (b)..... ”*

*(Irrelevant sub-sections not reproduced; Paragraph (C) was replaced by Section 4 of Act No. 15 of 1965)*

According to which, it does provide that being a member of any other local authority *(dd)* or if his name appears as a candidate in more than one nomination paper for the same election *(1A)* as disqualifications. A person is thus entitled to be elected and be a member if such person is *ordinarily resident* in such electoral area.

## **Residency of the 1<sup>st</sup> Respondent**

9. The 1<sup>st</sup> respondent, upon his marriage, had established his matrimonial home and ordinarily resides at Valachchenai, and is registered as a voter in the Koralai Pattu Pradeshiya Sabha electoral area. But the 1<sup>st</sup> respondent's place of birth, parental house, businesses, and much of his social activities are in Oddamawady, a village within the Koralai Pattu West Pradeshiya Sabha area. As a matter of fact, the 1<sup>st</sup> respondent has been an elected member of the Koralai Pattu West Pradeshiya Sabha during the period from 2018 to 2025. Then, the 1<sup>st</sup> respondent claims that though his marital home and matrimonial residency is in Valachchenai, he has a residence in Oddamawady as well and is ordinarily resident there as well.
10. Thus, the questions for determination and issues of contention are,
- a. if a person could establish and have ordinary residency in two different places; and
  - b. if the 1<sup>st</sup> respondent is 'ordinarily resident' at Moulana Road, Oddamavadi as well.
11. There is a distinction and a difference between the eligibility for Parliamentary and Provincial Council membership as opposed to the Local Government Council membership. As submitted by Mr. Hisbullah, in Parliamentary and Provincial Council elections there can be parachute candidates who are not resident in the respective electoral area. In contrast, there is a residency requirement for local government membership of being an *ordinary resident* of such electoral area.
12. That being so, it is now necessary to understand and ascertain as to what constitutes ordinary residency. In the case of ***Alwis vs. Unanthenna*** 76 NLR 180, it was clearly held that Section 8 of the Local Authorities Election Ordinance as amended by Act No. 15 of 1965 visualises the case of the candidate having more than one residence

and Their Lordships considered the statutory provisions of Section 8 and 9 of the Ordinance and held as follows;

*"In 39 N.L.R. 409, Maartensz, J. in similar circumstances held that there was no law that prevented a person from acquiring a residential qualification in a place other than that where his wife and family reside if the object of his change of residence was to enable him to acquire that residential qualification. Even if there be a strict non-compliance with section 8 in regard to residence, I am of the view that under section 69 of the Ordinance the election was not invalid since it was conducted in accordance with the principles laid down in the Ordinance and the failure did not affect the result of the election." [emphasis added].*

13. Lord Denning, M.R., in **Fox vs. Stirk and Bristol Electoral Registration Officer** [1970] EWCA Civ J0512-1, encapsulated this concept of 'residence' under three principles as follows:

*"The first principle is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. A short stay visitor is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account" [emphasis added].*

14. Then, in **Mohammed vs. Hammersmith and Fulham London Borough Council** [2002] 1 AC 547, Lord Slynn enunciated this as follows:

*"So long as that place where he eats and sleeps is voluntarily accepted by him, the reason why he is there rather than somewhere else does not prevent that place from being his normal residence. He may not like it, he may prefer some other place, but that place is for the relevant time the place where he normally resides."*

The determination of ordinary residency is primarily an issue of fact. The test should mainly be objective. However, the subjective mental intention or the desire to so ordinarily reside is also relevant. 'Ordinary residence' will depend on the context of the legislation. The starting

point is that it is a place where such person in fact resides, eats, sleeps and is voluntarily accepted by him. A man can have two residences.

15. The issue of residency is straightforward and is discernible by the attribute of physical presence at such place. Such *residency*, to become *ordinary residency*, requires certain attributes which is beyond mere physical presence. It may be, for instance, why such person so resides, familial connections; social connections and activities in such area, these will be some of the indicators to determine the ordinariness of the residency. It is a qualitative attribute which would involve a certain degree of subjective consideration of intention or motive. Then also, if a populace of such area consider and accept such person as being a member of the society of such locality, that I would say, is also a further important indicator.
16. The 1<sup>st</sup> respondent in fact claims that he has two ordinary residences. The 1<sup>st</sup> respondent is registered as a voter at his Valaichenai residence, which comes within the Koralai Pattu Pradeshiya Sabha. The existence or the absence of ordinary residence in a locality is a question of fact that, in an application of this nature should be established by the person who asserts or dines the same. Proof of being registered as a voter in an electoral area, when tendered against such party would be *prima facie* evidence that such person is ordinarily resident in such locality. When such material is placed, the respondent who asserts or claims to have a 2<sup>nd</sup> residency is required to satisfy Court of that fact. A person is certainly entitled to have two ordinary residencies [vide ***Alwis vs. Unanthenna*** and ***Fox vs. Stirk*** (supra)].
17. The expression ‘ordinarily resident’ was considered in ***Sundara Banda vs. Pathirana*** 73 NLR 100, and Siva Supramanlam, J., and Samerawickrame, J. opined as follows:

“The expression ‘ordinarily resident’ has been the subject of Judicial interpretation. In the case of ***Gout v. Cimitian*** the Privy Council in considering the proper interpretation to be placed on the

*said expression contained in a provision of an Order in Council which declared that any Ottoman subject who was ordinarily resident and actually present in Cyprus on November 5, 1914 “should be deemed” to have become a British subject, said: “The appellants contended that in construing the Order we ought to apply the same consideration as in determining the case of domicile, but their Lordships are of opinion that the words “ordinarily resident” cannot be interpreted by such considerations and must be given their usual and ordinary meaning.” In S.8 (6) of the Ordinance too the expression “ordinarily resident” is not used in any technical or special sense and should therefore be given its usual and ordinary meaning. The question of “ordinary residence” is primarily one of fact and the “intention” or “motive” with which a person takes up residence is not material. The word “reside” is defined in the Oxford English Dictionary as meaning “to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place.” In **Levene v. Inland Revenue Commissioners**, Viscount Cave L. C. said: “The expression ‘ordinary residence’.....**connotes residence in a place with some degree of continuity and apart from accidental or temporary absences**” [emphasis added].*

18. Then, Lord Denning, M.R., in **Fox vs. Stirk** (supra), held that, “...**a man may have two residences whereas a home is only one place.**” Thus, a person can have two ordinary residencies in separate electoral areas. However, such person is lawfully permitted to be registered as a voter only in of one such electoral areas. Similarly, a person cannot have his name in more than one nomination paper. Therefore, a person who has two ordinary residencies is required to choose and decide where he intends to register as a voter, and also the place of contesting. The candidature or eligibility for Local Government membership is neither premised on nor tied to the electoral area of the voter registration. A person is lawfully able to register in one electoral area for the purposes of voting and be elected as a member in the electoral area of his second ordinary residency. There is no bar or prohibition to so do. Accordingly, I am of the view that a person is lawfully entitled to vote and contest at the Local Government election, in two different local

authorities, provided that the requirement of ordinary residency is satisfied at both electoral areas.

19. Now, I will consider if the 1<sup>st</sup> respondent has satisfied this Court of his ordinary residency at his Moulana Road, Oddamavadi residence. The following attributes have been placed before this Court to establish this fact:

- a. It is his parental home;
- b. He had continued to maintain his social activities and familial links;
- c. He has his business in Oddamavadi;
- d. His Masjidh is in this area (R-4C), and according to R-4C, the President of the Mosque at Main Street, Oddamavadi, confirms that the 1<sup>st</sup> respondent and his family lives, has his business, and participates in all Development Programmes of the mosque.
- e. The address in his Passport is Oddamavadi;
- f. He had been elected to Koralai Pattu West Pradeshiya Sabha in 2018 as well;
- g. The people in the neighbourhood have acknowledged and confirmed that the 1<sup>st</sup> respondent is a neighbour (R-1K and R-1L); and
- h. The Secretary of the New Friends Sports Club at Oddamavadi confirms that the 1<sup>st</sup> respondent is a senior advisor of the said Sports Club, that the 1<sup>st</sup> respondent is from a Muslim family of that area, and that he resides at Moulana Road, Oddamavadi.

20. Considering the above, thought the 1<sup>st</sup> respondent has set up his matrimonial home in Valachchenai, it is apparent that he has certainly continued to actively maintain his residence, presence, and connections, clearly with an intention to so reside at his parental home at Moulana Road, Oddamavadi. What I observe is that apart from the aforesaid attributes, the physical proximity of the two residencies is also a relevant fact. This is for the simple reason that if the two residences

are in close proximity, there is a greater practicality to establishing and maintaining ordinary residency at both those places. In the aforesaid circumstances, I hold that the material placed before this court is sufficient to satisfy and convince that the 1<sup>st</sup> respondent did have a residency of an ordinary nature or was ordinarily resident at Moulana Road, Oddamavadi. Thus, I hold that the petitioner had failed to satisfy any basis or ground that warrants the issue of the writ of *quo warranto* as prayed for.

### **Article 104H of the Constitution**

21. Next argument advanced on behalf of the 1<sup>st</sup> Respondent is that the Petitioner is not entitled to have and maintain this application in view of Article 104H(1) of the Constitution, by which the writ jurisdiction of this Court is vested with the Supreme Court in relation to any matter that may arise in the exercise by the Election Commission. The said Article provides thus:

*“104H. (1) The jurisdiction conferred on the Court of Appeal under Article 140 of the Constitution shall, in relation to any matter that may arise in the exercise by the Commission of the powers conferred on it by the Constitution or by any other law, be exercised by the Supreme Court.”*

Accordingly, the writ jurisdiction vested by Article 140 of the Constitution in this Court is exclusively vested in and is exercisable by the Supreme Court in relation to any matter that may arise in the exercise by the Commission of the powers conferred on it. The basis of this argument is that the names of persons elected to the local authority is published in the Gazette by the Commission under Section 66(2) of the Local Authorities Elections Ordinance, and thus the writ jurisdiction of this Court is not available in respect of the present matter.

22. Now let me consider this objection and argument. The petitioner by this application has sought only a writ of *quo warranto* to “quash the

*appointment of the 1<sup>st</sup> Respondent.*" As far as the 1<sup>st</sup> respondent is concerned, there is no 'appointment' of him as a member, but he is declared elected by the returning officer as a member upon the declaration of results of such election and the publication by the returning officer of such notice under Section 66(1)(a). There after the Commission published the Gazette Notification No. 2438/80, dated 31.05.2025 (P-7), as required by Section 66 of the Local Authorities Elections Ordinance, which reads as follows:

*"(1) Upon the declaration of the candidates elected as members of each ward under section 65 and of those candidates returned under section 65A and section 65AA of this Ordinance in respect of a local authority, the returning officer of the electoral area of such local authority shall :*

- (a) publish a notice specifying the names of all the candidates elected or returned as members of the local authority; and*
- (b) report to the Commissioner the result through the election officer of the district in which the electoral area is situated.*

*(2) The Commissioner shall upon receipt of the report of the result, cause the names of the candidates elected to be members of that local authority, to be published in the Gazette."*

23. According to which, it is the returning officer who declares candidates as elected and also is required to publish a notification specifying the names of such elected candidates. When the returning officer so declares and publishes the notification, such member named therein shall be elected as a member accordingly. Then, the returning officer, by virtue of Section 66(1), is required to report to the Commission the said result. The Commission is then required to cause the names of those candidates elected to be published in the Gazette. Accordingly, the declaration of the members as being elected is in fact made by the returning officer and published under Section 66(1)(a). The subsequent publication in the Gazette by the Commission is, if at all, is a mere ministerial act or an administrative step of formal publication of the names of the already declared elected by the returning officer. This does not constitute any decision, act, or thing done which has the effect of declaring any person to be elected.

24. It is now settled law that acts and decisions of returning officers is amenable to the writ jurisdiction of the Court of Appeal and is not precluded or barred by Article 104H of the Constitution. His Lordship Justice Thurairaja in ***Jeevan Thondaman, Secretary, Ceylon Workers Congress vs. Returning Officer, Maskeliya Pradhesiya Sabha and Others*** (SC Writ Application No. 33/2025, decided on 04.04.2025), considered the five-bench decision in ***Ghany vs. Dayananda Dissanayake, Commissioner of Elections and Others***, [2004] 1 Sri L.R. 17, and opined that acts and decisions of a returning officer are not those of the Commission, and Article 104H does not preclude the Court of Appeal from exercising the writ jurisdiction in respect of such a decision or act. His Lordship held as follows:

*“As it is amply clear from the above judgment, acts of the Commissioner of Elections himself—let alone that of his subordinate officers—are not always referable to the Commission itself. 29. Where the Commissioner or any other officer (such as Returning Officers) exercises powers vested by law in such office they hold, writ jurisdiction in respect of such acts remain with the Court of Appeal, unaffected by the provisions of Article 104H of the Constitution. We see no reason to deviate from this five-judge bench decision of this Court.”*

Accordingly, the returning officer's acts are amenable to the writ jurisdiction of this Court.

25. His Lordship Justice Janak de Silva, in ***Hithamilage Don Oshala Lakmal Anil Herath vs. Hon. Diana Gamage, State Minister of Tourism and Others*** (S.C. Appeal No. 11/2024, decided on 08.05.2024), considered a similar provision in respect of Parliamentary Elections and the decision of the Supreme Court in ***Geetha Samanmali Kumarasinghe and Others vs. N. W. E. Buwaneka Lalitha and Others*** (SC/Appeal/99/2017, decided on 02.11.2017), holding thus:

*“This contention overlooks the basic purpose of the Gazette No. 2188/46 dated 14.08.2020 issued under the hand of the Chairman and Members of the then Election Commission. It is a Declaration made under Article 99A of the Constitution notifying*

*that the persons whose names appear in the schedule thereto, including the 1st Respondent, have been elected as Members of Parliament. This is a ministerial act that must necessarily be made at the conclusion of every General Election to appoint Members of Parliament. No determination is made on the qualification of the persons declared to be elected as Members of Parliament.*

*Such a declaration cannot in any way surpass a subsequent order made by a Court of competent jurisdiction declaring such a person to be disqualified to be a Member of Parliament and is thus not entitled to hold office as a Member of Parliament of the Democratic Socialist Republic of Sri Lanka. In **Buwaneka Lalitha Keembiwela and Others v. Geetha Samanmalee Kumarasinghe and Others** [supra.] Court rejected the contention that the only way to remove a Member of Parliament was by filing an election petition and that Article 140 of the Constitution cannot be invoked to remove a Member of Parliament. It must be borne in mind that the Court of Appeal as well as the Supreme Court exercises the judicial power of the People when exercising the jurisdiction in terms of Article 140 of the Constitution. In this application, the Appellant has sought a Writ of Quo Warranto declaring that the 1st Respondent is disqualified to be a Member of Parliament and is thus not entitled to hold office as a member of Parliament of the Democratic Socialist Republic of Sri Lanka.*

*When a Court issues such a mandate in the nature of a Writ of Quo Warranto, the 1st Respondent ipso facto ceases to be a Member of Parliament. The declaration made by Gazette No. 2188/46 dated 14.08.2020 as an administrative step insofar as pertaining to the 1st Respondent ceases to be operative.*

26. Accordingly, the writ of quo warranto as prayed for, does not relate to or consider a decision or an act of the Election Commission, as the publication is a mere administrative step insofar as it pertains to the 1<sup>st</sup> respondent. It is, if at all, the act and decision of the returning officer that would be affected by the writ of quo warranto, to the extent that the membership was declared and published by the returning officer under Section 66(1)(a).
  
27. The abovementioned cases of **Geetha Samanmalee Kumarasinghe and Others vs. N. W. E. Buwaneka Lalitha and Others** and

***Hitihamilage Don Oshala Lakmal Anil Herath vs. Hon. Diana Gamage, State Minister of Tourism and Others*** are both applications for writs of quo warranto instituted in the Court of Appeal notwithstanding Article 104H of the Constitution. ***Geetha Samanmali Kumarasinghe and Others vs. N. W. E. Buwaneka Lalitha and Others***, a unanimous decision of a bench of five judges of the Supreme Court, considered a similar provision in respect of Parliamentary Elections, where His Lordship Justice Sisira De Abrew, J. held thus:

*“What is quo warranto? Quo warranto is a remedy available to call upon a person who is holding a public office to show the authority under which he claims to hold the office. This view is supported by the following legal literature. In the book titled “Constitutional Law and Administrative Law of Sri Lanka (Ceylon)” by JAL Cooray at page 364 the learned Author says as follows:*

*“Under the law the writ of quo warranto may be granted by the Supreme Court to determine whether the holder of a public office is legally entitled to it.”.... In Sri Lanka in the absence of any procedure under the Local Authorities Elections Ordinance writ of quo warranto lies to question the election of a member of a local government authority who has acted in that office.”*

*At page 365 the learned Author states as follows:*

*“Even if the validity of an election cannot be questioned by a quo warranto, the writ is nevertheless available for the purpose of calling upon a person who is prima facie disqualified from holding a particular office to show upon what authority he claims to hold such office.”*

*In the book titled “Principles of Administrative Law in Sri Lanka” by Sunil F A Cooray at page 445 the learned Author says as follows:*

*“If the office in question is a ‘public office’, for quo warranto to be available it must be shown that the election/appointment of the de facto holder of it is a nullity. On the question whether the election/appointment is a nullity, the relevant facts and the applicable law must be considered in each case. The election/appointment may be a nullity for different reasons, namely, absence of a necessary qualification for the office, presence of a disqualification for the office, incorrect procedure adopted for the election/appointment, or the wrong person or body has held or conducted the election or made the appointment.”*

*In Dilan Perera vs Rajitha Senaratne [2000] 2 SLR 79 at page 100 Justice Yapa observed as follows:*

*"It is to be observed that quo warranto is a remedy available to call upon a person to show by what authority he claims to hold such office. Therefore, the basic purpose of the writ is to determine whether the holder of a public office is legally entitled to that office. If a person is disqualified by law to hold statutory office the writ is available to oust him."*

*"Having considered the above legal literature, I hold that writ of quo warranto is a remedy available to call upon a person to show the authority under which he holds the public office and that if the holder of the public office is not legally entitled to hold the public office, court has the power to grant a writ of quo warranto to oust him."*

28. What is further relevant in this context is that the petitioner has only sought a writ of *quo warranto*. The writ of *quo warranto* questions and calls upon a usurper of office, appointed or elected, to show by what authority such person holds such office. If such office is of a public nature, it is amenable to *quo warranto*. A writ of *quo warranto* is issued against the officeholder, who, if he fails to satisfy court as to by what authority or warrant he holds office, his holding of such office would be in effect declared a nullity.
  
29. In this application, the Petitioner is seeking a writ of *quo warranto* to declare that the 1st Respondent is not qualified to be a Member of the Koralai Pattu West Pradeshiya Sabha and is thus not entitled to hold such office qua member. When a Court issues such a mandate in the nature of a Writ of Quo Warranto, the 1st Respondent *ipso facto* will ceases to be a Member of Pradeshiya Sabah. The publication made by Gazette No. 2438/80, dated 31.05.2025 (P-7) by the Commission being only an administrative step, if at all it is the declaration and publication by the returning officer that will ceases to be operative with the issue of the writ of *quo warranto*.
  
30. To that extent, a writ of *quo warranto* sought in this application would not be in relation to any matter that arises in the exercise by the

Commission of the powers conferred on it by the Constitution or by any other law. Thus, the writ of *quo warranto* as sought in the present application does not come within the provisions of Article 104H of the Constitution. Accordingly, the said objection raised on behalf of the 1<sup>st</sup> respondent is not convincing, and is misconceived and the same is rejected.

### **Conclusion**

31. In the above premises I hold that the 1<sup>st</sup> respondent has established that he is ordinarily resident at both places, namely Oddamawady as well as Valachchanai. The 1<sup>st</sup> respondent is thus ordinary resident in two Local Authority electoral areas. That being so, the 1<sup>st</sup> respondent is entitled to have his voter registration in one such electoral area and vote at such local authority election. Similarly, there is no legal bar or prohibition for the 1<sup>st</sup> respondent to contest and seek membership of the 2<sup>nd</sup> local authority electoral area in which he also has ordinary residency. In the above premises, I see no basis in law or in fact, to allow this application of the petitioner.
32. Accordingly, this application is refused and dismissed. However, I make no order as to costs.

Application is refused and dismissed.

**JUDGE OF THE COURT OF APPEAL**