

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

In the matter of an application for Mandates 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.

Kiriella Pathiranage Jayarathne,
19th Mile Post, Raja Mawatha,
Buttala.

PETITIONER

CA (WRIT)/344/2022

Vs.

1. Hon. Harin Fernando,
The Minister of Lands,
The Ministry of Lands,
No.1200/6, Rajamalwatta Road,
Battaramulla.

1A. Hon. K. D. Lalkantha,
The Minister of Lands,
The Ministry of Agriculture,
Livestock,
Lands and Irrigation.
No.80/5, “Govijana Mandiriya”,
Rajamalwatta Lane,
Battaramulla.

2. Mr. G.D.K. Gamage,
The Commissioner General of Lands,
The Department of the Commissioner
General of Lands,
No.07, Hector Kobbekaduwa Mawatha,
Colombo 7.

2A. Mr. D.D.K. Wickramarachchi,
The Commissioner General of Lands
(Act),
The Department of the Commissioner
General of Lands.
No.07, Hector Kobbekaduwa Mawatha,
Colombo 7.

3. R.M.R.S. Thilakerathne,
The Divisional Secretary,
Divisional Secretariat,
Buttala.

4. G.W.C.S. Priyabashini,
The Provincial Commissioner of Lands
of the Uva Province,
Office of the Provincial Commissioner
of Lands,
Kachcheri Complex,
Badulla.

4A. K. I. Anusha,
The Provincial Commissioner of
Lands
of the Uva Province,
Office of the Provincial Commissioner

of Lands,
Kachcheri Complex,
Badulla.

5. A.H.M.L. Abeyratne,
The Commissioner General of Agrarian
Development,
No.42, Sir Marcus Fernando Mawatha,
Colombo 07.

5A. U.B. Rohana Rajapakjsha,
The Commissioner General of
Agrarian Development,
No. 42, Sir Marcus Fernando
Mawatha.
Colombo 07.

6. K. A. D. S. Gunasekera,
Senior Superintendent of Surveys,
The Office of the Senior
Superintendent of Surveys,
Monaragala.

7. Gonaganara Galapitigalaara,
Agricultural Organization,
19th Mile Post,
Raja Mawatha,
Buttala.

RESPONDENTS

Before:

R. Gurusinghe J.

&

Dr. Sumudu Premachandra J.

Counsel: Rasika Dissanayake instructed by Niluka Dissanayake for the Petitioner.

Nayomi Kahawita, SSC for the State.

Written Submissions: By the Petitioner – Not filed
By the Respondents – Not filed

Argued on : 06/11/2023, 29/05/2024, 24/09/2024, 15/01/2025,
01/08/2025, 17/11/2025

Judgment on : 20/01/2026

Dr. Sumudu Premachandra J.

1] This is an application for mandamus in the nature of Writ of Certiorari and prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka, to quash the survey plan and tenement list marked P12 and/or P13.

2] The backdrop of this case is as follows: The Petitioner has occupied and cultivated the impugned land since 1987 and was issued a formal Grant (marked P1) in 1998 for allotment No. 06P. The core of the complaint is that the 1st through 6th Respondents, including the Minister of Lands and the Divisional Secretary of Buttala, are attempting to alter established boundaries that have been defined and undisputed for decades.

3] The Petitioner alleges that this resurvey is being conducted under "the guise of a resurvey" but is actually an illegal attempt to shift boundaries to benefit neighbouring landowners. Specifically, it is claimed that the 3rd Respondent (Divisional Secretary) acted in collusion with the 7th Respondent (a local agricultural organisation, namely Gonaganara, Galapitaara Govi Sanvidanaya) to facilitate land transfers for "favourites." The Petitioner argues that this process will result in the loss of fertile land, which he has developed over years, in exchange for unfertile allotments, causing irreparable financial loss and "further chaos and uncertainties" in the area.

4] In terms of legal relief, the Petitioner seeks Writs of Certiorari to quash the decision to resurvey and to invalidate the new survey plans and tenement lists (P12 and P13). Additionally, the Petitioner requests a Writ of Prohibition to prevent the authorities from implementing these boundary changes.

5] The Petitioner emphasises that the original Grant was issued by the President and cannot be legally altered or cancelled by the Respondents; thus, the action is ultra vires.

6] In the above premises, the Petitioner prays for the following reliefs;

- a) Issue notices on the 1st to 7th respondents
- b) Issue a mandate in the nature of a Writ of Certiorari to quash the purported decision of the 3rd and/or 6th Respondents to resurvey the lands referred to in the documents marked P3 and/or P11
- c) Issue a mandate in the nature of a Writ of Certiorari to quash the purported plan and tenement list marked P12 and/or P13

- d) Issue a mandate in the nature of Writ of prohibition preventing the 1st to 6th Respondents from implementing and/or giving effect to the said purported decision and/or any subsequent decision to re-fix and/or shift the boundaries of the petitioner's land as reflected in P12 and/or P13
- e) Issue an interim order staying the operation of the said decision contained in the documents marked as P13, P11 as well as taking any further step based on the plan marked P12 and/or Tenement list marked P13 until the hearing and final determination of this application
- f) Grant costs; and
- g) Grant such other and further reliefs as to Your Lordships' Court may seem meet.

7] After supporting the application, on 30/05/2023, formal notices were issued on the Respondents and it is seen only that the 7th Respondent has filed objections. The 7th Respondent, Gonaganara Galapitigalaara Agricultural Organization, denies the material allegations in paragraphs 01–04 of the Petition and puts the Petitioner to strict proof. It contends that the documents relied upon by the Petitioner (P-01 and P-02) were not prepared in accordance with proper surveying standards, as the original land division carried out in 1987 by a Mahaweli Authority Field Officer was based on rough, hand-drawn measurements rather than a technical survey.

8] The Respondent further alleges that the Petitioner forcibly encroached upon approximately ¼ acre of land belonging to another farmer, B. M. Rathnayake, leading to intervention by the Farmers' Organization and a complaint to the Gonaganara Police. It is asserted that the subsequent survey was conducted by

the 3rd Respondent at the request of the farmers and was fair, just, and intended to ensure an equitable distribution of paddy lands among all members.

9] The Respondent maintains that the re-measurement reflected in surveys P-12 and P-13 was lawfully conducted, caused no injustice to any farmer, and was supported by the collective will of the farming community, including the Petitioner's wife, who participated in the relevant meeting and recorded her consent. The Respondent denies any loss or damage suffered by the Petitioner and submits that the application is devoid of merit. Accordingly, the 7th Respondent seeks dismissal of the Petition, a declaration that surveys P-12 and P-13 are lawful and valid, an award of costs, and such further relief as the Court deems just. That is the case for the 7th Gonaganara Galapitigalaara Agricultural Organisation.

10] I now consider the merits of this case. The core of the dispute involves the boundaries and ownership of a specific parcel of paddy land, identified as Allotment No. 06P. The Petitioner asserts that they hold a formal grant for this land issued in 1998, supported by survey plans "P1" and "P2," and claims prescriptive title through continuous and uninterrupted cultivation since 1987.

11] The Petitioner alleges that the 3rd Respondent conducted a resurvey of the land, labelling it as a "pretext" to unlawfully alter established boundaries. The Petitioner claims that the authorities proceeded with the survey and boundary alterations despite formal objections and without conducting a proper inquiry. This conduct is described as "arbitrary, capricious, and ultra vires," and is cited as a direct violation of the principles of natural justice and the Land Development Ordinance.

12] The courts exercise judicial review whenever there is an allegation against administrative authorities of abuse of powers, which is known as the "doctrine of ultra vires"(beyond powers or without powers).In this matter, the 3rd Respondent is the Ground Level Authority for the State Lands. Thus, it is seen that he has fullfleged authority to request an alternative survey to clear the

boundaries. As noted in **The Board of Trustees of the Tamil University Movement vs. F.N. de Silva** [1981] 1 SLR 350), the court in exercising the writ jurisdiction, will not consider whether the decision is right or wrong in the context of the greater benefit of the society or otherwise, but whether the decision is lawful or unlawful in the eyes of the law. We do not see any illegality in having a resurvey to clear the boundaries. It is the State's duty when disposing of the lands under the Land Development Ordinance or the State Lands Ordinance or otherwise, to clear the boundaries as far as to minimise future litigation.

13] It should be noted that judicial review is a discretionary remedy that cannot be claimed as of right. In the case of **Mendis v Land Reform Commission and others** SC Appeal No.90/2009, SC Minutes 12-02-2016, GOONERATNE J. commented on the discretionary nature of the Writ Jurisdiction as follows:

"What has been sought from the Court of Appeal is a Writ of Certiorari/Mandamus. These are discretionary remedies of court. Even if this court as observed above answers the question of law at paragraphs 22 (b), (c) and (d) in the affirmative in favour of the Petitioner, yet the relief sought are discretionary remedies, court is bound to consider whether the Petitioner has satisfied court, as regards the grounds on which a Writ of Certiorari and Mandamus were sought. Even if such grounds to issue a Writ of Certiorari and Mandamus could be established, court has also to consider whether the Petitioners-Petitioners are disentitled to the relief prayed for even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and had on numerous occasions refused to issue prerogative writs if it could be established and Petitioners are guilty of/ and or disentitled to the remedy , based on (a) Laches/undue delay (b) Wilful suppression/misrepresentation of material facts (c) Acquiescence (d) Grave public/administrative inconvenience (e) Futility (f) Availability of alternative remedy (g) Locus standi

Prerogative writs cannot be issued as of right or as a matter of course, due to its discretionary nature. A court has to examine any writ application, having considered the merits of the case and the question of an issuance of a writ."

14] I now consider the conduct and dealings of the Petitioner. It is to be noted that the Petitioner has consented to the impugned survey at the first instance. In P 7, the Petitioner admitted that he consented to the survey. He mentioned in that :

“ගලපිටඳාර වැව් ජලයෙන් වගා කරන කුමුරු ඉඩම් 2021.12.24 වන දින මතින්දේරු දෙපාර්තමේන්තුවේ නිලධාරීන් ලෙස පැමිණි පිරිසක් විසින් පැමිණ මතින්ම කටයුතු සිදු කරන ලද අතර එසේ මතින්ම සිදු කරනු ලබන්නේ දැනට ලබා දී ඇති රජයේ ප්‍රදාන පත්‍ර වෙනුවට සින්නක්කර ඔප්පු ලබා දීමට බව ගලපිටඳාර ගොවී සංවිධානයේ නිලධාරීන් විසින් ගොවීන්ට පවසන ලද බැවින් ගොවීන් ද සමග මා ද එම මතින්මට කැමැත්ත පල කරමින් අන්සන් ලේඛනයක් ද එම නිලධාරීන් වෙන ලබා දෙන ලදී.

එකිනෝ මතින්ම සලකුණු කරන ලද මායිම් අනුව මා විසින් 1987 වසරේ සිට නිශ්චිත මායිම් සහිතව අස්වද්වා බුක්ති විදිමින් සිටින ලද කුමුරු බිමෙන් කොටසක් මට අහිමි වී ර්ව යාබදව තැගෙනහිර දිගාවෙන් ඇති කුමුරට එකතු වී බස්නාහිර දිගාවෙන් ඇති කුමුරෙන් කොටසක් මාගේ කුමුරට එකතු වී ඇත.

මා විසින් වසර ගණනාවක් තිස්සේ වෙහෙස දරා මුදල් වියදම් කර ඉතා උනන්දුවෙන් සකස් කර ඇති මාගේ කුමුරෙන් ඉතා හොඳ අස්වන්නක් මට ලැබෙන අතර පොහොර නොමැතිව මෙම වකවානුවේ රටේ උද්ගතව ඇති තත්ත්වයන් යටතේ වුවද ඉතා වෙහෙසක් දරා කොමිෂ්පේෂ්ට් පොහොර යොදා මෙම කන්නයේද ඉතා සාර්ථකව වගා කර ඇති අතර ඔබගේ මතින් හේතුවෙන් එම කුමුරෙන් කොටසක් මට සදාකාලීකවම අහිමි වනු ඇත. එසේම වෙනත් කෙනෙකු මහන්සි වී වසර ගණනාවක් තිස්සේ සකස් කර ඇති කුමුරු බිමක් මගේ කුමුරට ඇදා ගැනීමට ද මා කැමති නැති බව ද මෙයින් දන්වා සිටිමි.” [Emphasis is added]

15] In P8 he (the Petitioner) further states why he disagrees to P12. P8 shows;

“එම කුඩාරු ඉඩම ද ඇතුළත්ව කුඩාරු යායේ ඇති සියලු කුඩාරු ඉඩම් 2021.12.24 වන දින මිනින්දෝරු දෙපාර්තමේන්තුවේ නිලධාරීන් ලෙස පැමිණි පිරිසක් විසින් පැමිණ මැතිම් කටයුතු සිදු කරන ලද අතර එසේ මැතිම සිදු කරනු ලබන්නේ දැනට ලබා දී ඇති රජයේ ප්‍රදාන පත්‍ර වෙනුවට සින්නක්කර ඔප්පූ ලබා දීමට බව ගලපිටගලආර ගොවී සංවිධානයේ නිලධාරීන් විසින් ගොවින්ට පවසන ලද බැවින් ගොවින් ද සමග මා ද එම මැතිමට කුමැත්ත පල කරමින් අන්සන් ලේඛනයක් ද එම නිලධාරීන් වෙත ලබා දෙන ලදී.

එකී මැතුමෙන් සලකුණු කරන ලද මායිම් අනුව මා විසින් 1987 වසරේ සිට නිශ්චිත මායිම් සහිතව අස්වද්වා බුක්නි විදිමින් සිටින ලද කුඩාරු බිමෙන් කොටසක් මට අහිමි වී ඊට යාබදව නැගෙනහිර දිගාවෙන් ඇති කුඩාරට එකතු වී බස්නාහිර දිගාවෙන් ඇති කුඩාරෙන් කොටසක් මාගේ කුඩාරට එකතු වන පරිදි මායිම් කුඩ්ඩා යොදා ඇත. එසේ යොදන ලද මායිම් අනුව මාගේ කුඩාරෙන් මට අහිමි වූ බිම් ප්‍රමාණයට සාපේක්ෂව ඉනා සූල බිම් ප්‍රමාණයක් මගේ කුඩාරට එකතු වීමට නියමිත බැවින් මෙම නව මායිම් පොලවේ පිහිටුවීම සිදු කළහොත් මට පිරිමැසිය නොහැකි හානියක් හා පාඩුවක් සිදු වේ.” [Emphasis is added]

16] It is clear that he does not dispute the manner in which the survey was done. His land was allocated to another lot, and he was dissatisfied with the survey (P12). The Petitioner sought information from the 3rd Respondent under the Right to Information Act under the questionnaire below;

- “1. 2021.12.24 වන දින ගලපිටආර කුඩාර යාය මැතිම සිදු කරන ලද්දේ මිනින්දෝරු අධිකාරවරයා විසින් ද?
2. එසේ නම් එකී ගලපිටආර කුඩාර යාය මැතිම සඳහා බුන්තල ප්‍රාදේශීය ලේකම් තුමා විසින් මැතුම් නියෝගයක් නිකුත් කරන ලද්දේ ද?

3. එසේ නම් එකි ගලපිටඹර කුමුරු යාය මැනීම සඳහා බුත්තල ප්‍රාදේශීය ලේකම් තුමා විසින් මැණුම් නියෝගයක් නිකුත් කරන ලද්දේ කුමන පදනමක් යටතේ ද?
4. ඉහන කි මැණුම යටතේ දැනට ලබා ඇති රජයේ දීමනා පත්‍ර වෙනුවට සින්නක්කර ඔප්පු ලබා දීමට කටයුතු කරන්නනේ ද?
5. 1987 වසරේ මැණුම්පතනිතුමා විසින් සකසා ඇති ගලපිටඹර කට්ටි කැඩිමේ පිමුරේ වැව් බැමිම සඳහා වෙන් කර ඇති රක්ෂිතය වැව් බැමිමේ සිට කුමුරු යාය දක්වා පලුල කොපමණ ද?
6. 1987 වසරේ සිට නිය්වින මායිම් සහිතව ගොවියන් විසින් දැනටත් නිරවුල්ව බුක්ති විදිමින් සිටින කුමුරු ඉඩම් වල මායිම් එකි මැනීම අනුව වෙනස් කිරීමට බුත්තල ප්‍රාදේශීය ලේකම් තුමා විසින් නිරණය කර ඇත්තේ ද?
7. එසේ දැනට පවතින මායිම් වෙනස් කිරීමට නිරණය කර ඇත්තේ නම් එකි වෙනස් කිරීම සිදු කරනු ලබන්නේ කුමන කාල වකවානුවක ද?”

17] By P6, the following answers were given by the Information Officer of the 3rd Respondent.

- “1. මැණුම් ඉල්ලීම ජේස්ජේ මිනින්දේරු අධිකාරී, මොනරාගල වෙත යොමු කර ඇත.
2. ගෝනගංඡාර ග්‍රාම නිලධාරී වසම තුළ පිහිටි ඉඩම් කට්ටි 14 ක් සඳහා මැණුම් ඉල්ලීමක් යොමු කර ඇත.
3. බලපත්‍රකරුවන්ගේ ඉල්ලීම මත ග්‍රාම නිලධාරී විසින් ලබා දුන් නිරදේශය පදනම්ව මැණුම් ඉල්ලීම යොමු කර ඇත.
4. ඉදිරියේදී දීමනාපත්‍ර ලබා දීමට කටයුතු කරනු ලැබේ.
5. කාර්යාලීය ලේඛන අනුව සෞයා ගත නොහැක. මිණින්දේරු කාර්යාලයෙන් ලබා ගත යුතුයි.
6. ඔව්.

7. නිෂ්චිතව කිව නොහැක. සියලු අවශ්‍යතා සම්පූර්ණ කළ පසු ඉදිරි කටයුතු කරනු ලබයි.”

18] Thus, the survey was done under the request of the 7th Respondent on the following Recommendation of the Grama Niladari of Gonaganara. (vide P10 last Paragraph;

“ගොවී සංවිධානයේ ඉල්ලීම මත දීමනා පත්‍ර හා අවසර පත්‍ර සහිත ඉඩම් කටිවී 43 ක් මැතිම් කටයුතු කිරීම සූද්‍ය බවට **නිරදේශ කර වාර්ථා කරමි.**

මෙයට

ග්‍රාම නිලධාරී

ගෝනගලඇර

බත්තල” [Emphasis is added]

19] Thus, no one can say it was illegal and unlawful as the survey was done at the direction of the 3rd Respondent by the Surveyor General. What transpired after the survey is shown by X7.

“මෙම ප්‍රාදේශීය ලේකම් කොට්ඨාගයේ ගෝනගලඇර ග්‍රාම නිලධාරී වසමෙහි පිහිටා ඇති ගලපිටඇර වැව සහ වැවේ රක්ෂිතය 2020.10.15 දින රජයේ මිනින්දෝරු දෙපාර්තමේන්තුවේ අධික්ෂණය යටතේ ගොවී සංවිධානයේ සහභාගීත්වය ඇතිව මැතුම් කටයුතු සිදු කර ඇති අතර එහිදී, ඔබ විසින් බුක්ති විදින ඉඩම් කොටස ගලපිටඇර වැවේ රක්ෂිතයට අයිති වන බවට මා වෙත වාර්තා වී ඇත.

02. ඒ අනුව වැව සහ වැවේ රක්ෂිතය මැතුම් කටයුතු කර ස්ථීර මායිම් ගල් දමා ඇති බැවින් වහාම ක්‍රියාත්මක වන පරිදි එකී රක්ෂිත සීමාවෙන් ඉවත් වන ලෙසත්, මින් ඉදිරියට එම ඉඩමෙහි කිසිදු සංවර්ධන කටයුත්තක් සිදු නොකරන ලෙසත් මෙයින් කාරුණිකව දන්වමි.”

20] Thus, it is seen that the Petitioner is in unlawful occupation and he had encroached on part of the tank reservation. It should be noted that the Petitioner consented to the impugned survey (P12), and now he cannot disagree with the said survey under the doctrine of approbation and reprobation.

21] The doctrine states that one cannot accept and reject the same instrument. This is a doctrine that is well known in our law. As stated by his Lordship Samarakoon C.J. in **Visuvalingam v. Liyanage** [1983] 1 SLR 203, one “cannot blow hot and cold”.

22] In **Ranasinghe v. Premadharma** [1985] 1 SLR 63, his Lordship Sharvananda C.J., simply explained the doctrine as mentioned below:

“The rationale of the above principle appears to be that a defendant cannot approve and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. Where the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one he cannot afterwards assert the other; he cannot affirm and disaffirm.”

23] Applying the above doctrine to the case in hand, once the Petitioner consented to the survey, he cannot go back after since he got an unfavourable result for him. Though the Petitioner has possessed the piece of land for a long period of time under a grant, he cannot prescribe the land as it is prohibited by section 161 of the Land Development Ordinance. Thus, with regard to the long possession of the Petitioner, law does not give him any more rights because of such possession since section 161 of the Land Development Ordinance prohibits acquisition by prescription. The section states as follows:

“No person shall, by possession of any land alienated on a permit, acquire any prescriptive title thereto against any other person or against the State.”

24] The tank reservation belongs to the State, and the Petitioner cannot acquire a prescriptive title to any piece of land. The only remedy for the Petitioner is strict to the land allocated to him by P12. This principle was assented in **Lebbe v. Umma** [1999] 3 SLR 367 by Wigneswaran, J.

25] As noted in the very outset, judicial review is a discretionary remedy. '**Administrative Law**' by H. W. R. Wade and C. F. Forsyth (p. 426); under the subtopic of '**Relief refused in discretion**' discusses what discretionary is as;

*"Closely akin to the subject of the foregoing paragraphs and overlapping it in some cases, is the question of the court's discretion. The remedies most used in natural justice cases -the quashing order, the prohibiting order, the mandatory order, the injunction and the declaration-are discretionary, so that the court has power to withhold them if it thinks fit; and from time to time the court will do so for some special reason, even though there has been a clear violation of natural justice (*Hoffmann-La Roche vs. Secretary of State for Trade and Industry* (1975) AC 295 at 320 (Lord Denning MR))"*

26] Further, I am guided by "**The Administrative Court Judicial Review Guide 2022**" of England and Wales, where guidelines are laid down in order to refuse permission at the threshold stage of a judicial review application. It says;

"12.9.1 Remedies in judicial review proceedings are in the discretion of the Court.

*12.9.2 Even where a claimant shows that a defendant has acted unlawfully, the Court may refuse to grant a remedy, in particular where (***Baker v Police Appeals Tribunal***, [2013] EWHC 718 (Admin)*

12.9.2.1 the claimant has delayed in filing the application for judicial review and the Court considers that the granting of the remedy sought would be likely to cause substantial hardship to, or would substantially prejudice the rights of any person, or would be detrimental to good administration;

12.9.2.2 the error of law made by the public body was immaterial to its decision;

12.9.2.3 the remedy would serve no useful practical purpose; or 12.9.2.4 the claimant has suffered no harm or prejudice”

27] I am of the view that if the relief was granted, it would be likely to cause substantial hardship to, or would substantially prejudice the rights of persons who cultivate in the paddy field, or would be detrimental to good administration and would be a bad precedent.

28] In view of the aforesaid reason, the application is dismissed, no costs.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL