

Dr. A.De Z. GUNAWARDANA, J. - I agree

*Appeal allowed.*

**JAYASOORIYA**  
**v**  
**RATNAYAKE AND OTHERS**

COURT OF APPEAL  
SRIPAVAN, J.  
CA 1067/99  
FEBRUARY 14, 2003.  
MARCH 17, 2003.  
MAY 19, 2003.

*Writ of certiorari/mandamus – Land Reform Commission Law No. 1 of 1972 – Sections 23,24,25,26,27 – Necessary parties – Mandamus can only be sought against the person who is vested with statutory power and not against others.*

The petitioner sought a writ of *certiorari* to quash the decisions of the 1st, 2nd and or 3rd respondents – All officers of the Land Reform Commission – And a writ of *mandamus* on the same officers to transfer the property in favour of the petitioners.

On a preliminary objection raised,

**Held:**

- (1) The Land Reform Commission (L.R.C.) is a body corporate and can sue and or be sued in its corporate name. Under sections 22-27 the L.R.C. is vested with the statutory powers to alienate the property in question.
- (2) The 1st, 2nd and 3rd respondents are not empowered to alienate properties vested in the L.R.C: the relief sought can only be against the L.R.C.
- (3) Writ of *mandamus* can only be sought against the person who is vested with the statutory power and not against others. The petitioners cannot seek a writ of *mandamus* against the 1st-3rd respondents directing them to transfer the property in question in favour of the petitioners.
- (4) The Land Reform Commission – LRC – is a necessary party.

**APPLICATION** for a *writ of certiorari* and/or *mandamus*.

On a preliminary objection taken.

**Case referred to:**

*Muthusamy Gnanasambanthan v Chairman REPIA and others*  
1998 – 3 Sri LR 169 (SC)

*Ranjan Suwandarathne with Anil Rajakaruna* for petitioner

*M.R. Ameen* SC for 1st - 3rd respondents

June 10, 2003

**SRIPAVAN, J.**

The petitioners in this application are seeking for a *writ of certiorari* to quash the decisions of the 1st and/or 2nd and/or 3rd respondents contained in the documents marked **G1**, **G2** and deeds marked **K1 to K5** and all other alienations effected; and a *writ of mandamus* directing the 1st to 3rd respondents to transfer the property depicted in plan marked **F2** in favour of the petitioners.

On 14.02.2003 learned State Counsel appearing for the 1st to 3rd respondents raised a preliminary objection to the maintainability of the petitioners' application on the basis that the petitioners have failed to make the Land Reform Commission a necessary party to this application. Learned State Counsel submitted that in terms of section 43(2) of the Land Reform Commission Law No. 1 of 1972 as amended, the Land Reform Commission is a body corporate and can sue and be sued in its corporate name. Further, in terms of sections 23,24,25,26 and 27 of the said law the Land Reform Commission is vested with the statutory powers to alienate the property in question. Since the 1st to 3rd respondents are not empowered to alienate properties vested in the Land Reform Commission, the relief in the nature of *writ of mandamus* as prayed for by the petitioners can only be sought against the Land Reform Commission. The *writ of mandamus* can only be sought against the person who is vested with the statutory power and not against others. Thus, I agree with the submission made by the learned State Counsel that the petitioners cannot seek a *writ of mandamus* against the 1st to 3rd respondents directing them to transfer the property in question in favour of the petitioners.

Learned State Counsel heavily relied on the decision made by the Supreme Court in the case of *Muthusamy Gnanasambanthan v Chairman REPIA & Others*<sup>60</sup>. In that case, the petitioner applied to the Court of Appeal for a *writ of certiorari* to quash the divesting order and for a *writ of mandamus* directing the 1st respondent to make order divesting the property to the petitioner. By its letter dated 27.08.1983 the REPIA in the exercise of its powers under the regulation, divested the property to the 2nd and 3rd respondents. The letter was signed by the 1st respondent who was the Chairman of REPIA. The Court of Appeal upheld the preliminary objection raised by the 1st respondent that since REPIA was the authority concerned with the making of divesting orders, the failure to make REPIA a party should lead to the dismissal of the petition.<sup>40</sup> In appeal to the Supreme Court Amerasinghe, J., observed as follows: "in the matter before us the petitioner seeks both a *writ of certiorari* and a *writ of mandamus*, 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 for *mandamus*, but whether REPIA should have been cited as a necessary party, since the decision was one which only REPIA was empowered to make."

It is on the basis of the aforesaid judgment, the learned State Counsel contended that the petitioners in this application cannot seek a *writ of certiorari* to quash the decisions contained in the documents marked **G1** and **G2**. The said decisions have been made on behalf of the Land Reform Commission who could be sued in its name. Accordingly, Counsel urged that the Land Reform Commission is a necessary party to this application in order to pursue the relief of *certiorari*. This court is bound by the decision of the Supreme Court in Gnanasambanthan's case.<sup>50</sup>

For the reasons stated, I hold that the Land Reform Commission is a necessary party to this application and the failure to make it a party is a fatal irregularity. In the result, I uphold the preliminary objection raised by the learned State Counsel and dismiss the petitioners' application without costs.<sup>60</sup>

**SRIPAVAN, J.** - I agree.

*Application dismissed.*