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 Writs of *Certiorari*, *Prohibition* and *Mandamus* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) application No: 179/25

1. Gandari Punsisi Ramanayaka,
   No: 52 C Kadurupokuna Road, Tangalle.

2. Abesing Ratnayaka Indra,
   No: 52 C Kadurupokuna Road, Tangalle.

PETITIONERS

-Vs-

1. Eresha Liyanagama,
   Divisional Secretary,
   The Divisional Secretariat, Tangalle.

2. Kalyani Godakanda,
   The Zonal Director of Education,
   Zonal Education Office, Tangalle.

3. K.D. Lalkantha,
   Hon. Minister of Agriculture, Land,
   Livestock, Irrigation, Fisheries and
   Aquations Resources,
   The Ministry of Agriculture, Land,
   Livestock, Irrigation, Fisheries and Aquatic
   Resources of "Mihikatha Medura"
   No. 1200/6, Rajamalwatta Avenue,
   Battaramulla.

4. Mr. D. P. Wicramasinghe,
   Hon. Secretary to the Ministry of
   Agriculture, Land, Livestock, Irrigation,
   Fisheries and Aquatic Resources of
   "Mihikatha Medura", No: 1200/6,
   Rajamalwatta Avenue, Battaramulla.

5. Channa Upali Weerasekera,
   The Director of Education, Southern
   Province of No. 52, Accountant's Bungalow,
   Kadurupokuna Road, Tangalle presently at
   "Shri Ramya" Kariyamaditthta, Thalawa.

6. Nilmini Priyadari Katuwanaarachchi,
   No: 52, Accountant's Bungalow,
   Kadurupokuna Road, Tangalle presently at
   "Shri Ramya" Kariyamaditthta, Thalawa.

7. Hon. Attorney General,
   The Attorney General's Department,
   Colombo 12.

8. Danusha De Ranawaka,
   Surveyor Superintendent [Public Relations],
   Surveyor General's Office,
   No. 150, Bernard Soysa Mawatha,
   Colombo 05.

9. Dammika B. Hettiarachchi,
   Senior Surveyor Superintendent, the District
   Surveyor General's Office, Hambantota.

10. Surveyor General,
    Surveyor General's Office,
    No. 150, Bernard Soysa Mawatha,
    Colombo 05.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Counsel: Nagitha Wijesekera instructed by A. D. G. Rubasinghe for the Petitioners.

Panchali Witharana, SC for the Respondents.

Supported on: 26.03.2025

Order delivered on: 26.06.2025

S. U. B. Karalliyadde, J.

This Order pertains to the issuance of formal notices of this Writ Application on the Respondents. The Petitioners' case in a nutshell is as follows. The 2nd Petitioner purchased Lot A in the extent of 15.18 perches depicted in the Plan No. 430 (P4) by virtue of a deed of Transfer No. 530 dated 08.01.2000 marked as P3. Thereafter, keeping her life interest, by deed of Gift No. 1416 dated 03.12.2021 marked as P5, the 2nd Petitioner gifted the said land to her daughter, the 1st Petitioner. The Petitioners state that the 5th and 6th Respondents, along with a government surveyor, forcibly entered the land on 25.11.2021 and, notwithstanding the objections of the Petitioners, surveyed the land.

The Petitioners state that thereafter, on two occasions, the 5th and 6th Respondents forcibly entered the subject land and plucked coconuts. On 01.03.2022, the 5th and 6th Respondents, along with several police officers, entered and erected a barbed-wire fence along the western boundary of the subject land, preventing the access of the Petitioners and demolished a hut and a store room belonging to the Petitioners and

started the forcible possession of the subject land. The Petitioners state that, prior to forcibly taking possession, the 1st Respondent, by the letter dated 10.12.2021 marked as P7, informed the 2nd Petitioner to participate in a survey of the land on 22.12.2021. Thereafter, by the letter dated 22.12.2021 marked as P8, the 2nd Respondent informed the 2nd Petitioner to remove all the unauthorised structures erected in the subject land before 27.12.2021. On 01.03.2022, the 2nd Petitioner made a complaint to the Police (P9) against the forcible acts of the 5th and 6th Respondents. The Petitioners thereafter filed a Section 66 action under the Primary Courts' Procedure Act, No. 44 of 1979, in the Tangalle Magistrate's Court. The learned Magistrate, by his Order dated 31.05.2024 marked as P10, decided that the 5th and 6th Respondents are entitled to the possession of the subject land. Being aggrieved by the said Order, the Petitioners filed a revision application, which is still pending in the Provincial High Court of Tangalle.

The Petitioners state that, by the letter dated 06.11.2024 marked as P11, permission has been granted by the 1st Respondent to the Chief Engineer of the Ceylon Electricity Board to install a power line over the subject land and even before the permission was granted it had been acquired by the State for the purpose of building an official bungalow for the Department of Education. Under such circumstances, the 2nd Petitioner by letter dated 02.12.2024 marked as P12, informed the Chief Engineer of the Ceylon Electricity Board, that the subject land is her private land and the 1st Respondent, using fraudulent documents, claims that it is State land. The Petitioners state that later they came to know that the 1st Respondent had issued a certificate of

acquisition dated 13.08.2024 marked as P14 without complying with the land acquisition procedural laws.

The Petitioners state that after the 5th and 6th Respondents forcibly entered the subject land and carried out the survey on 25.11.2021, the Surveyor has issued the survey report marked as P19. The Petitioners state that they reside in Lot 5C, which is the adjacent lot to the western boundary of the subject land, which they claim, and the survey report marked as P19 contains wrong information as it depicts the western boundary of the State land extends beyond Lot 5C, where the Petitioners reside. The Petitioners allege that the Respondents have not identified the state land correctly. Petitioners state that in terms of the acquisition certificate marked as P14, the order for the acquisition has been made according to the Gazette Notification No. 623/5 dated 14.08.1990 marked as P20 to acquire the land shown on plan No. 91 dated 13.12.1989 marked as P21 in the extent of 0.200 Hectares. The Petitioners argue that the subject land falls outside the boundaries depicted in the plan marked as P21 and that there is no evidence to show that the subject land has been acquired by the State.

Now the Court will consider whether the Petitioners have pleaded any grounds warranting the issuance of prerogative writs. It is trite law that prerogative writs are discretionary remedies. In the case of *P. S. Bus Co., Ltd. v Members and Secretary of Ceylon Transport Board,*[1] it was held that prerogative writs will not be issued as a matter of routine, as a matter of course or as a matter of right. Lord Diplock, defining

[1] [1958] 61 NLR 491.

the grounds of judicial review in *Council of Civil Service Unions v Minister for the Civil Service,*[2] listed three grounds for courts to consider when issuing prerogative writs, namely, illegality, irrationality and procedural impropriety.

Referring to the above case, in *Regina v Hull University Visitor, Ex parte PAGE,*[3] the court observed that,

> *"Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully"*

In the first part of the Petition, the Petitioners only state how they had acquired title and possession of the subject land, and thereafter the 1st, 2nd, 5th and 6th Respondents had interrupted their possession of it. In averment number 20, the Petitioners claim that the

[2] (1985) AC 374 (HL).

[3] (1993) AC 682 at page 701.

2nd Respondent and/or his predecessors in office had unlawfully informed the Petitioners by way of the letter marked as P8 to vacate their private land. Then the Petitioners in the averment 37 state that the instant Application for writs has been filed as the acquisition certificate marked as P14 affects the title of the Petitioners in the subject land, as P14 has been registered subsequent to the registration of title deeds marked as P2 and P5. The Petitioners further in averment 42 allege that the 5th and 6th Respondents forcibly took over the possession of the Petitioners' land, and the 1st, 2nd, 8th and 9th Respondents have justified those illegal acts. However, the Petitioners have failed to satisfy this Court how the 1st, 2nd, 8th and 9th Respondents have justified those illegal acts of the 5th and 6th Respondents. Throughout the Petition, the Petitioners' claims revolve around their title, possession of the subject land and the registration of documents in the Land Registry. It is the view of this Court that disputes relating to the title, possession, and land registry entries of a land and the surveys done by the Surveyors should be addressed by adducing evidence before a proper forum and not before a Writ court. Even though the Petitioners argue that the 2nd Respondent does not have the power to inform them to vacate the land, to survey the land or to permit the installation of a power line over the subject land, nowhere in the Petition the Petitioners have stated how the Respondents have acted beyond their powers. Therefore, when considering all the above-stated facts and circumstances, it is the view of this Court that the Petitioners have failed to satisfy this Court of any of the grounds to seek judicial review.

The Petitioners state that the subject land is Lot A of the southern portion of Lot 6 of the land called Gurupokunewatta alias Aralugahakoratuwa situated in Tangalle bounded by North the Northern portion of Lot 06 claimed by Saman Kumara, East by a portion of the said lot 06 claimed by the State and lot 07 of the same land where the official bungalow belongs to the State stands, South by the main road from Kadurupokuna to Tangalle and on the West by Lot 5C of the same land. As per the acquisition certificate marked as P14, the order for the acquisition under the Gazette marked as P20 has been made to acquire the land depicted on the plan marked as P21. According to the plan marked as P21, the proposed land to be acquired is shown as assessment No. 50 of the land called Gurupokunewatta. The Petitioners themselves argue that the subject land falls outside the boundaries shown on the plan marked as P21. Though it seems that the land depicted in P21 is the same land called Gurupokunewatta, it is the view of this Court that there is an issue of identifying the subject land. The Petitioners have admitted that the identification of the subject land is in issue. The Petitioners are praying for *inter alia* a Writ of Mandamus directing the 10th Respondent to resurvey and demarcate the correct boundaries of the subject land. It is evident from the above-stated facts that there is an uncertainty regarding the identification of the subject land. When facts are in dispute, the courts are reluctant to grant a remedy by way of writs. A.S. Choudri in his book titled 'Law of Writs and Fundamental Rights' (2nd edn, Vol 2)[4] states thus;

[4] at page 449

"Where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue."

In the case of *Thajudeen v Sri Lanka Tea Board and Another*[5], referring to the above quotation, this Court has held that,

"That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of Ghosh v. Damodar Valley Corporation, Porraju v. General Manager B. N. Rly."

In *Francis Kulasooriya v OIC-Police Station-Kirindiwela*,[6] the Supreme Court observed that,

"Courts are reluctant to grant orders in the nature of writs when the matters on which the relief is claimed are in dispute or in other words, when the facts are in dispute."

[5] (1981) 2 Sri LR 471 at page 474.

[6] SC Appeal No. 52/2021, SC Minute of 14.07.2023.

Supreme Court in *Dr. Puvanendran and Another v Premasiri and Two Others*[7] held that,

> *"The writ of mandamus is principally a discretionary remedy - a legal tool for the dispensation of justice when no other remedy is available. Given the power of such a remedy, the Common Law surrounding this remedy requires multiple conditions that must be met prior to the issuance of a writ by Court. The Court will issue a writ only if (1) the major facts are not in dispute and the legal result of the facts are not subject to controversy and*
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> *(2) the function that is to be compelled is a public duty with the power to perform such duty."*

Citing the above case, it was held in *Wijenayake and others v Minister of Public Administration*[8] that disputed facts cannot be decided by a writ court.

It is clear from the above-stated facts and circumstances that there is a clear dispute in identifying the subject land. The Petitioners themselves have prayed for a Mandamus for resurvey and demarcation of the subject land, which this Court cannot decide upon, only the affidavit evidence present before this Court. Therefore, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court on disputed material facts.

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[7] (2009) 2 SLR 107 at page 112.

[8] (2011) 2 SLR 247.

Therefore, considering all the above-stated facts and circumstances, the Court refuses to issue formal notices on the Respondents. The Application is dismissed. No cost ordered.

Application dismissed

JUDGE OF THE COURT OF APPEAL