

**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 *Writ of Mandamus* under
article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka**

Makavitage Gerard Perera,
No. 2/7, Thambiligasmulla Junction,
Makola North, Makola.

PETITIONER

CA/WRIT/248/2015

Vs,

1. R.P.R. Rajapaksha,
Land Commissioner General,
Land Commissioner General's
Department,
"Mihikatha Madura"
Land Secretarial, 1200/6,
Rajamalwatta Road,
Battaramulla.

And 7 others

RESPONDENTS

1. Rev. Makola Mangala Thero,
Chief Incumbent of
Sri Sudarshanarama Purana Viharaya,
Kiribathgoda.

And 2 others

INTERVENIENT-PETITIONER

**Before: Vijith K. Malalgoda PC J (P/CA) &
P. Padman Surasena J**

Counsel: Ronald Perera PC with Anslam Kaluarachchi for the Petitioner
Manohara de Silva PC with Hirosh Munasinghe for the Intervenient Petitioner
A.A.T.S Amaratunga for the 8th Respondent
Zhuri Zain SSC for the AG

Written Submissions on: 31.10.2016, 18.11.2016

Order on: 20.01.2017

Order

Vijith K. Malalgoda PC J

Rev. Makola Mangala Thero of Sri Sudarshanarama Purana Viharaya, Kiribathgoda and two others have come before this court as Intervenient Petitioners to intervene in the present application. When the matter was fixed for inquiry in to the intervention, parties agreed to dispose the question of intervention on written submissions.

Petitioner to the present application Makavitage Gerard Perera had complained of a Land Acquisition took place pursuant to public notices dated 20.02.1999 and 28.01.2000 for a Public Purpose of Constructing a Bus Terminus and not making use of the said land for the public purpose to which it was acquired. In support of his position the Petitioner has submitted before this court a document produced marked P-9 a letter sent by Director (lands) R.D.A to the Divisional Secretary, Kelaniya dated 31.07.2008.

The Petitioner had made several attempts to obtain a long lease to the said land since he had already received compensation to the land so acquired. Even though he had received some favourable replies from the authorities, he had later received some information that the said land has been earmarked for

another project and therefore he had come before this court against the said decision making those who were responsible as Respondents to the present application.

Whilst the application filed by the Petitioner is pending before this court for objections by the Respondents including the 6th and the 7th Respondents Special Commissioner and the Kelaniya Pradeshiya Sabawa, the three Interventient Petitioners, the chief incumbent, the President of Dayaka Sabawa and the Secretary of the Dayaka Sabawa of Sudarshanarama Purana Viharaya Kiribathgoda had come before this court seeking intervention to the present application.

In the papers filed before this court the Interventient Petitioners have submitted that there is a resolution adopted by the Kelaniya Pradeshiya Saba to divest the subject matter to the present application for the purpose of town development in the Kiribathgoda town including the construction of a Multipurpose Building with a Public Library Complex.

As submitted by the Petitioners, the decision to include the Public Library Complex to the proposed Multipurpose Building was a result of the representations made by the Petitioners with the Pradeshiya Saba and therefore submitted that the Interventient Petitioners have an interest in the application before this court.

In this regard this court is mindful of the fact that the Pradeshiya Saba Kelaniya and its Secretary are parties to the present application as 6th and 7th Respondents and the said Respondents are yet to file objections before this court.

This court, in several occasions had considered the question of intervention when parties sought intervention and intervention was allowed in limited circumstances when the parties establish that the said party was a necessary party for the court to reach the correct conclusion in those instances.

However this position was considered before a divisional branch of this court in the case of *Weerakoon and another V. Bandaragama Pradeshiya Saba (CA Writ 580/2007) 2012 BLR 310* and

Ranjith Silva J after considering several decisions of this court including *Harold Peter Fernando V. The Divisional Secretary Hanguranketha and two others 2005 BLR 120 and Tyre House (Pvt) Limited V. Director General Customs CA application 730/95 CA minute dated 05.06.1996*, held that intervention cannot be allowed in writ applications in the absence of specific rules formulated by the Supreme Court providing for the procedure permitting third parties to intervene in writ applications.

This court in the case of *Dilmi Kasundara Malshani Suriyarachchi V. Sri Lanka Medical Council and Others CA 187/ 2016 CA minute dated 05.10.2016* decided to follow the decision of the Divisional Bench and therefore refused intervention by several parties who sought intervention in the said case.

When considering the merits of the applications by the intervenient parties, other than the fact that the intervenient parties have an interest in this matter, the parties failed to establish that they are a necessary party to the applications. As we further observe, the parties necessary for the application, as submitted by the Intervenient Petitioners themselves, i.e. the Secretary and the Kelaniya Pradeshiya Sabawa have been made as Respondents to the present application as 6th and 7th Respondents. In the said circumstances this court sees no merit in the application of the Intervenient Petitioners.

For the foregoing reasons we decide to refuse the application for intervention made by the Intervenient Petitioners

Application for intervention is refused.

President of the Court of Appeal

P. Padman Surasena J

I agree,

Judge of the Court of Appeal