

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

In the matter of an Application for Orders in the nature of Writs of Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 431/2016

1. K. Gunapalan,
Village President, Paddiruppu.
2. K. Selvarajah,
President Rural Development Society,
Paddiruppu.
3. R. Thillayampalam,
President Sri Sithivinayagar Board of
Trustees, Paddiruppu.
4. D. Nithiyanantharajah,
President, Blue Diamond Sports Club,
Paddiruppu.

PETITIONERS

Vs.

1. Hon. Minister Rural Economic Affairs,
CWE Secretariat Building,
No. 27, Vauxhall Street, Colombo 2.
2. The Secretary,
Ministry of Public Administration
and Home Affairs,
Independence Square, Colombo 7.
- 2(a) The Secretary,
Ministry of Home Affairs,
Independence Square, Colombo 7.

3. Mrs. P.S.M. Charles,
Government Agent, Batticaloa.
4. M. Gopalaratnam,
Divisional Secretary,
Manmunai South and Eravur Pattu.
Batticaloa.
- 4(a) S.Ranganathan,
Divisional Secretary,
M.S and E.P. Batticaloa.
5. Hon. M.S.S Ameer Ali M.P.,
Attorney-at-Law, Deputy Minister of
District Economic Affairs,
Paddiruppu.
6. Hon. S. Ganesharajah,
Former Minister and UNP Organiser,
Paddiruppu.

RESPONDENTS

Before:	Mahinda Samayawardhena, J Arjuna Obeyesekere, J
Counsel:	S. Mandaleswaran with S. Abinaya for the Petitioner Vikum De Abrew, Senior Deputy Solicitor General with Ms. Indumini Randeny, State Counsel for the Respondents
Written Submissions:	Tendered on behalf of the Petitioner on 23 rd September 2019 Tendered on behalf of the Respondents on 26 th May 2020 and 31 st August 2020
Decided on:	25 th September 2020

Arjuna Obeyesekere, J

The 1st Petitioner is the President of the Village Society, Paddiruppu while the 2nd Petitioner is the President of the Rural Development Society, Paddiruppu. The Petitioners state that the village of Paddiruppu had a bus stand which had been known as the *Paddiruppu Kaluwanchikudi bus stand*. Re-construction work of the bus stand had commenced in July 2015. The work having been completed in December 2015, it had been ceremonially opened by the Deputy Minister of Economic Affairs in April 2016. The Petitioners state that at the time of the opening, the bus stand had been re-named as the *Kaluwanchikudi Bus Stand* as opposed to its previous name, *Paddiruppu Kaluwanchikudi bus stand*. The Petitioners state that the land on which the bus stand is situated falls within the village of Paddiruppu, and that naming the said bus stand by any other name is a violation of the rights of the people of Paddiruppu.

Having complained about the above change of name and not having received a favourable response, the Petitioners filed this application, seeking *inter alia* the following relief:

- (a) *“Make order compelling the 1st and/or the 2nd Respondent or any other person or authority named by Your Lordship’s Court, to hold an inquiry into the claim or dispute of the Petitioners morefully set out in the petition;*
- (b) *Make order granting the reliefs prayed for by the Petitioners in the petition, namely:*
 - (i) *Change the name ‘Kaluwanchikudi Bus stand’ to ‘Paddiruppu Kaluwanchikudi Bus Stand’;*
 - (ii) *Demarcate and define the boundaries of Paddiruppu with meets and bounds;*
 - (iii) *Make order preventing or restraining any Government authorities from naming any institution, wit hospitals, schools etc. put up by them other than with the name of Paddiruppu.”*

The learned Senior Deputy Solicitor General for the Respondents submitted that even though the Petitioners claim in the caption that this is an application filed in terms of Article 140 of the Constitution for Writs of Mandamus, the prayer does not specifically state that what is sought are Writs of Mandamus. For this reason, he submitted that this application is misconceived in law, as this Court cannot grant relief that has not been prayed for. Having considered the manner in which the aforementioned relief sought by the Petitioners has been couched, I am in agreement with the said submission of the learned Senior Deputy Solicitor General that the Petitioners have not specifically sought a Writ.

The learned Senior Deputy Solicitor General drew the attention of this Court to the judgment in Dayananda vs Thalwatte¹ where a situation similar to what has occurred in this application had arisen. In that case, the petitioner had sought (a) to quash the decision of the 1st respondent to institute proceedings in terms of the State Lands (Recovery of Possession) Act, and (b) to declare that the quit notice dated 08th April 1997 is of no force or avail, without specifying the Writ that was being sought. Upon an objection being taken that (a) the Petitioner has failed to identify the writ he has sought from this Court, and (b) that the prayer is misconceived and unknown to the law and therefore neither relief could be granted, this Court held as follows:

"It is necessary for the Petitioner to specify the writ he is seeking supported by specific averments why such relief is sought. Even though the Petitioner has set out in the caption that "In the matter of an application ... for writ of quo warranto and prohibition" there is no supporting averment specifying the writ and there is no prayer as regards the writ that is being prayed for. The failure to specify the writ therefore renders the application bad in law."

Although it is apparent from the pleadings that the Petitioners are only seeking an order directing the Respondents to inquire into this matter, I am in agreement with the learned Senior Deputy Solicitor General that this Court cannot grant a Writ in the complete absence of a prayer to that effect. An application in such a situation is misconceived in law. This situation must however be distinguished from a situation

¹ (2001) 2 Sri LR 73.

where there is a specific prayer for a Writ, and the power of this Court to issue the said Writ, albeit in a modified form.

The learned Senior Deputy Solicitor General has also submitted that the relief sought by the Petitioners is broad and vague. The order sought in paragraph (a) above is not limited to the 1st and 2nd Respondents but is directed at '*any other person or authority named*' by this Court. Similarly, the relief sought in paragraph (b)(iii) above is directed at *any Government authority* which demonstrates that the Petitioners themselves do not know who has the power to name roads etc. This Court, in **Sipkaduwa Anthony Danawathie Wimalasuriya vs Commissioner General of Lands and Others**² held that, "*This Court cannot issue writs in such vague terms against an array of Government Officials. This application, filed seeking vague reliefs, shall, in my view, be dismissed in limine on that basis.*"

In the above circumstances, this Court upholds the above legal objections raised by the learned Senior Deputy Solicitor General, with the consequence being that this application is liable to be dismissed *in limine*.

However, for purposes of completeness, this Court would assume that the principal relief sought by the Petitioners is a Writ of Mandamus, and consider whether this Court is in a position to grant that relief.

The Petitioners have submitted that Paddiruppu is a small village which has approximately 250 families. While it has its own Grama Niladhari division, several public institutions such as the Paddiruppu National School, Paddiruppu Zonal Education Office etc are situated within Paddiruppu. The argument of the Petitioners is that the said bus stand is situated wholly within the village of Paddiruppu, and therefore naming the bus stand as the *Kaluwanchikudi bus stand* is in violation of the rights of the people of Paddiruppu.

The 4th Respondent, the Divisional Secretary, Manmunai South and Eruvil Pattu in his Statement of Objections has admitted that Paddiruppu is situated within Kaluwanchikudi. He has stated that the Paddiruppu Grama Niladhari division was established in 2007, and is one of the six Grama Niladhari divisions coming within the

² CA (Writ) Application No. 47/2014; CA Minutes of 29th July 2018(9).

ward of Kaluwanchikudi. He has stated further that the bus stand that existed prior to the re-construction work that was carried out in 2015 was known as the *Kaluwanchikudi bus stand*. It appears from the sketch of the Paddiruppu town submitted by the 4th Respondent marked '4R2' and the photographs that have been filed by the party that sought to intervene, that several public institutions in the area, such as the Base Hospital, the Circuit Magistrate's Court, the Police Station, the Post Office etc carry the name Kaluwanchikudi. Thus, it appears that public institutions have been referred to by either of the two names.

The learned Senior Deputy Solicitor General has drawn the attention of this Court to the decision of the Supreme Court in **Ratnayake and Others vs C.D.Perera and others**³ where it was held as follows:

“The general rule of Mandamus is that its function is to compel a public authority to do its duty. The essence of Mandamus is that it is a command issued by the superior Court for the performance of public legal duty. Where officials have a public duty to perform and have refused to perform, Mandamus will lie to secure the performance of the public duty, in the performance of which the applicant has sufficient legal interest. It is only granted to compel the performance of duties of a public nature, and not merely of private character that is to say for the enforcement of a mere private right, stemming from a contract of the parties.”

The above position has been reiterated in **Jayawardena vs. People's Bank**⁴ where it was held that:

“Courts will always be ready and willing to apply the constitutional remedy of mandamus in the appropriate case. The appropriate case must necessarily be a situation where there is a public duty. In the absence of a public duty an intrusion by this Court by way of mandamus into an area where remedial measures are available in private law would be to redefine the availability of a prerogative writ.”

³ [1982] 2 Sri LR 451.

⁴ [2002] 3 Sri LR 17.

In **Rajeswari Nadaraja v. M. Najeeb Abdul Majeed, Minister of Industries and Commerce and Others**⁵ Aluwihare, J held that, *“In an application for a writ of mandamus, the first matter to be settled is whether or not the officer or authority in question has in law and in fact the power which he or she refused to exercise. As a question of law, it is one of interpreting the empowering statutory provisions. As a question of fact, it must be shown that the factual situation envisaged by the empowering statute in reality exists.”*

The Petitioners have not submitted any material to this Court that set out the procedure that is followed when naming public places such as bus stands, nor have the Petitioners submitted any material to establish that the Respondents are under a legal duty to name the re-constructed bus stand as the Paddiruppu-Kaluwanchikudi bus stand. In the absence of any public or legal duty owed to the Petitioners by the Respondents, the question of issuing a Writ of Mandamus does not arise.

I am therefore of the view that this application is misconceived in fact and in law. Accordingly, I dismiss this application, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal

⁵ SC Appeal No. 177/15; SC Minutes of 31st August 2018.