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

CA/ Writ Application No: 591/25

Wakf Board of Sri Lanka

Case No. WB/10197/2025

1. **Board of Management of the Muslim Ladies**
   Arabic College, Kal- Eliya Managing Society,
   Abdul Cader Mawatha
   Kal-Eliya.

2. **Mr. M. F. Saleem**
   No. 10, Davidson Road
   Colombo 06.

3. **Mr. N. G. Saabir Sawaad**
   No. 58/ 26A,
   D. M. Colombage Mawatha
   Kirulappona
   Colombo 05.

PETITIONERS

Vs.

1. **Mr. M. L. M. H. M. Mohaideen Hassan**
   Chairman

And 23 Others

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J (President C/A)- Acting.**
K. P. FERNANDO, J.

Counsel: S. Gnanaraj with Bishan Iqbal and Sandun Batapola for the Petitioner.

Heejaz Hizbullah with S. Maharoof instructed by W. Bandara for the 6th Respondent.

Rushdie Habeeb with W. Akram and Shanney Fareed instructed by Shafeena Maharoof for the 9th to 22nd Respondents.

Supported on: 30. 05. 2025

Decided on: 16. 06. 2025

MOHAMMED LAFFAR, J. (President of The Court of Appeal- Acting)

The Petitioners are members of the Board of Management of the Muslim Ladies Arabic College, Kalleliya. The Petitioners are seeking, *inter alia*, a Writ of Certiorari to quash the impugned Order of the Wakf Board dated 30.04.2025, issued in case bearing No. WB/10197/2025 and marked as P15. The Petitioners are also seeking a Writ of Prohibition, prohibiting the Respondents from taking any steps to implement the said Order.

We heard the learned counsel for the Petitioners in support of this application. We heard the learned Deputy Solicitor General for the 8th and 10th Respondents and the learned counsel for the rest of the Respondents.

In the impugned order of the Wakf Board marked as P15, the Petitioners are, *inter alia*, directed to submit all documents pertaining to the said Arabic College within four weeks from 30.04.2025. Furthermore, the Board has decided to proceed with the registration of the said Arabic College based on the documents currently available. When the matter was taken up for support, the learned Counsel for the Respondents raised preliminary legal objections as to the maintainability of this application. Let me take up the significant preliminary objections as follows,

ALTERNATIVE REMEDIES

It is a well settled principle that the writ jurisdiction of this Court under Article 140 of the Constitution is discretionary and will not ordinarily be exercised where there exists an adequate and efficacious alternative remedy. Courts have consistently held that where a statutory remedy exists, it must be resorted to unless exceptional circumstances are demonstrated.

In this context, I am guided by the reasoning adopted by the Supreme Court of India in ***Whirlpool Corporation v. Registrar of Trademarks, Mumbai***[1], where it was held:

> *"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.*
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> *However, the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely: (i) where the writ petition has been filed for the enforcement of any of the fundamental rights; (ii) where there has been a violation of the principles of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

Similarly, in ***Harbanslal Sahnia v. Indian Oil Corporation Ltd.***[2], the Indian Supreme Court held:

> *"In an appropriate case, in spite of the availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is a failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged."*

Our own jurisprudence has echoed this principle of judicial restraint in the face of available alternative remedies. In ***Somasunderam Vanniasingham v. Forbes and Others***[3]**,** Bandaranayake, J. observed:

> *"As I have said, there is no rule requiring alternative administrative remedies to be first exhausted without which access to review is denied. A Court is expected to*

[1] [(1998) 8 SCC 1]
[2] [(2003) 2 SCC 107]
[3] [1993 (2) SLR 362]

satisfy itself that any administrative relief provided for by statute is a satisfactory substitute to review before withholding relief by way of review."

Similarly, in ***Ishak v. Laxman Perera***[4], it was held that:

"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy, the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so, the Court is coming to a discretionary decision."

The underlying rationale for this approach is not merely procedural, it is grounded in respect for legislative intent and administrative autonomy. Requiring litigants to first exhaust the statutory remedies promotes judicial economy and prevents the extraordinary jurisdiction of this Court from being invoked in matters that fall squarely within the purview of specialized forums established by statute.

However, it must be emphasised that the existence of an alternative remedy does not constitute an absolute bar to invoking the writ jurisdiction of this Court. But where such remedy is available, two preconditions must be satisfied before this Court may exercise its discretion to intervene:

1. The Petitioner must provide cogent and satisfactory reasons for failing to exhaust the alternative remedy; and
2. The Petitioner must establish that the alternative remedy is not equally efficacious or adequate.

Unless these two thresholds are met, the Court will not be inclined to exercise its extraordinary jurisdiction in favour of the Petitioner.

In the present matter, the Petitioners have failed to invoke or exhaust the alternative remedies provided under the Muslim Mosques and Charitable Trusts or Wakfs Act No. 51 of 1956. Under Section 9H(2)(a)(b) of the said Act, the Petitioners are entitled to invoke the appellate jurisdiction of the Wakf Tribunal, and the Petitioners have failed to do so and not provided sufficient reasoning as to why.

FACTS ARE IN DISPUTES

[4] [2003 (3) SLR 18]

It is trite law that when the facts are in disputes those disputed facts are to be established before a trial court where the parties can be cross examined and the genuine of the oral and documentary can be testified. In such a situation the writ court will not exercise discretionary jurisdiction of writs.

In this regard, I am guided by the decision in ***Thajudeen v. Sri Lanka Tea Board***[5], where the Court of Appeal held that:

> *"Where the major facts are in dispute and the legal result of the facts is subject to controversy and it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining the witnesses so that the Court would be better able to judge which version is correct, a Writ will not issue. Mandamus is pre-eminently a discretionary remedy… to be granted only when there are no other means of obtaining justice."*

Similarly, in ***Francis Kulasooriya v. OIC, Police Station Kirindiwela***[6], the Supreme Court reiterated:

> *"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."*

The Supreme Court in ***Dr. Puvanendran v. Premasiri***[7] also affirmed this principle, holding that:

> *"The writ of mandamus is principally a discretionary remedy… 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 (2) the function that is to be compelled is a public duty with the power to perform such duty."*

Applying these principles to the present case, I am of the view that the disputed and nature of the material facts dictates against the grant of prerogative relief. The proper forum for resolving such disputes, especially those requiring the testing of credibility through cross examination, is by way of regular civil action.

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[5] ([1981] 2 Sri LR 471)
[6] (SC Appeal No. 52/2021, SC Minutes of 14.07.2023)
[7] (SC Appeal No. 120/2013)

The central issue to be determined in this application is as to whether the subject matter is a Wakf property or not. The Petitioners claim that this is a private property and whereas the Wakf Board determines that this is a Wakf property. This disputed fact has to established which strong and cogent evidence before the Wakf tribunal under section 9H 2(a)(b) of the Muslim Mosques and Charitable Trust or Wakf Ordinance No. 51 of 1956 which reads thus

> *(1) Any person aggrieved by any order or decision made by the board may within thirty days of the date of such, order or decision appeal in writing to the Tribunal against such order or decision.*
> *(2) For the purpose of hearing and deter mining any appeal made under subsection (1), the Tribunal shall have the following powers:*
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> > *(a) to call for the record of any proceedings before the board and any documents in the possession of the board; and*
> > *(b) to make such inquiries as may be necessary for the purpose of the appeal and, if it thinks fit, to admit or call for any evidence, whether oral or documentary.*
>
> *(3) After the hearing of an appeal, the Tribunal shall make order confirming, setting aside or varying the order or decision of the board, or make such other order thereon as it may think fit.*

For the foregoing reasons, the preliminary objections are upheld. Accordingly, the notices are refused and the application is dismissed.

Application dismissed. No cost.

President of the Court of Appeal (Actg)

K. P. Fernando, J.

I agree.

Judge of the Court of Appeal