

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

In the matter of an application for order 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.
219/2019**

A. D. P. Hemanthi Perera,
No. 310, Bambarakele,
Nuwara Eliya.

PETITIONER

Vs.

1. Land Survey Council,
Surveyor General's Office,
No. 150, Bernard Soyza Mawatha,
Narahenpita,
Colombo 05.

And 14 Others.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. (ACT. P/CA)**
K. P. FERNANDO, J.

Counsel: Sawani Rajakaruna for the Petitioner.

Pulina Jayasuriya, S. C. for the 1st - 12th and 15th Respondents.

R. Wimalarathna for the 13th and 14th Respondents.

Argued on : 28.03.2025

Decided on : 04.06.2025

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

The Petitioner claims to be the lawful holder of a long term lease holder in a State land described as Lot 1 in Plan No. 2757 dated 09.08.2011, prepared by the Survey General and marked as P1. The land was originally granted under the provisions of the State Lands Ordinance, No. 8 of 1947, to one Athaudage Don Silman Siripathi Perera and was subsequently transferred to the Petitioner, his daughter, by Deed No. 5437 dated 21.08.2014, attested by Notary Public H.P.D. Nanayakkara.

According to the Petitioner, the said Lot 1 is bounded on its western side by a reservation adjoining a road maintained by the Road Development Authority. In or around January 2017, the 13th and 14th Respondents are alleged to have entered upon and excavated a portion of this reservation, which lies adjacent to the Petitioner's land, with a view to leveling it and constructing a retention wall. The Petitioner states that complaints regarding this conduct were made to the Municipal Commissioner and the Divisional Secretary and the Petitioner's husband, brought the matter to the attention of the Nuwara Eliya Police Station and the Urban Development Authority (UDA). The Engineer of the UDA is said to have issued a letter dated 01.02.2017 instructing the 14th Respondent to restore the land to its original condition.

Despite these interventions, the Petitioner alleges that the 13th and 14th Respondents continued their activities, including the leveling of land and construction of a retention wall in a manner said to be detrimental to the Petitioner's property and the adjoining road. In response, the Petitioner and her husband reportedly took further action by sending a letter through an Attorney-at-Law to the Provincial Director of the UDA on 27.02.2017, making additional complaints to the Municipal Commissioner on 10.03.2017, and lodging another police complaint on 20.04.2017.

Subsequently, by letter dated 29.08.2017, the Divisional Secretary of Nuwara Eliya is said to have directed the Municipal Commissioner to instruct the 13th Respondent to suspend construction activities pending a re-survey of the land. Correspondence among officials continued in the following months regarding the conduct of a fresh survey to determine the proper boundaries.

A subsequent survey was undertaken, resulting in the preparation of Preliminary Plan No. 3096 by the 9th, 10th, and 11th Respondents. The Petitioner objects to this plan on several grounds, stating that it inaccurately extends the boundaries of the land occupied by the 13th and 14th Respondents to include parts of the road reservation, thereby altering the earlier reservation reflected in Plan No. 2757. The Petitioner further contends that this plan facilitated the inclusion of unauthorised construction into Lot 2 and Lot 3, thereby enabling

the possible alienation of such land through State grants in contravention of governing laws.

Complaints concerning the preparation of Plan No. 3096 were lodged with the Senior Superintendent of Surveys and the Survey Council in 2018. The Survey Council subsequently summoned the Petitioner to an inquiry and later communicated, in a letter dated 08.03.2019, the outcome of its findings. According to the letter, the boundary descriptions in the State grant were found to be inconclusive, Plan No. 3096 was deemed not to be erroneous, and it was noted that no part of Plan No. 2757 was included in Plan No. 3096.

Be that as it may, the material facts in this application are clearly in dispute. It is evident that the central issue concerns the alleged encroachment of State land or reservation by the 13th and 14th Respondents. In proceedings invoking the Writ jurisdiction of this Court, it is well established that when major facts are in dispute, the Court will not exercise its prerogative powers.

The determination of such issues requires a thorough examination of oral and documentary evidence, including title deeds, grant instruments, and survey plans. In particular, the Petitioner's claimed title and the correctness of the respective survey plans, specifically Plan No. 2757 and the later Plan No. 3096, must be scrutinized through evidence, compare technical details, and resolve questions of fact through cross examination. All these procedures are to be followed not in a Writ Court but in a trial Court.

In the judgment of ***Thajudeen Vs. Sri-Lanka Tea Board***¹ where this court 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. It is an extraordinary, residuary and suppletory remedy to be granted only when there are no other means of obtaining justice. Even though all other requirements for securing the remedy have been satisfied by the applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy like a regular action equally convenient, beneficial, and effective is available.”

The Supreme Court in ***Francis Kulasooriya Vs. OIC- Police Station- Kirindiwela***² observed that;

¹ [1981] 2 Sri LR 471

“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.”

Thus, having scrutinized the Petition, affidavit, documents, written submissions and the submissions of both Counsel, on the foregoing reasons, I hold that the application is liable to be dismissed.

Application is dismissed. No costs

President of the Court of Appeal (Actg)

K. P. Fernando, J.

I agree.

Judge of the Court of Appeal

² SC Appeal No. 52/2021. SC Minute of 14-07-2023