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

In the matter of an Application under Article 140 of the Constitution for a mandate in the nature of Writ of *Mandamus*.

Ganingedara Somawathi,
Yaya 30/21, Aththankadawela.

PETITIONER

Vs.

Court of Appeal Case No:
CA/WRIT/191/2022

1. Sri Lanka Mahaweli Authority,
   No. 500, T.B. Jayah Mawatha,
   Colombo 10.

2. A.G.T. Hemantha Jayasinghe,
   Resident Project Manager,

3. Deputy Resident Project Manager,

   Both of:
   Office of the Resident Project Manager,
   Sri Lanka Mahaweli Authority,
   Moragahakanda Zone,
   Bakamuna.

4. S.I. Warnakulasuriya,
   Block Manager,

5. B.Y. Sarath Gunananda,
   Land Officer,
   Sri Lanka Mahaweli Authority,
   Office of the Block Manager,
   Attanakandawela.

6. M.W.R. Nishantha Delpot,
   Information Officer,
   Director (Human Resources and Administration),

7. D.M.P.B. Dissanayake,
   Assistant Director (Land),

   Both of:
   Sri Lanka Mahaweli Authority,
   No. 500, T.B. Jayah Mawatha,
   Colombo 10.

8. M.G. Wasantha Sampath,
   Yaya, 30/2 R, Attankadawela.

9. R.M. Anura,
   President,
   Bedum Ela Govi Sanvidanaya,
   Yaya, 30/31, Attankadawela.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Prinath Fernando for the Petitioner.
Shemanthi Dunuwille, S.C. for the 1st to 7th Respondents.
Nishadi Wickramasinghe for the 8th Respondents.

Argued on: 14.10.2025.

Written Submissions: For the Petitioner on 19.11.2025.
For the 8th Respondent on 18.11.2025.

Decided on: 30.01.2026.

Mayadunne Corea J

The Petitioner sought the following reliefs:

> "*(f) grant a mandate in the nature of writ of mandamus directing the 1st to 7th Respondents to issue a permit or grant in terms of Land Development Ordinance to the portion left out of the land in P7 from Lot 41 in P1(b) or to issue a preferential lease to said land (portion of land left out of P7 from Lot 41 in P1(b)) in terms of State Land Ordinance to her*."

The facts of the case briefly are as follows. The Petitioner's father had obtained a grant for a land in extent of 4A 2R 8P (P1(a)) in the year 1984. The said lot is depicted as lot 46 in plan no F.C.P. 30 by the surveyor general. It is alleged that the Petitioner's father thereafter had encroached into lot 41, the adjoining lot and had cultivated the same. On the demise of the father the Petitioner's mother is alleged to have succeeded to grant P1 and subsequently succeeded by the Petitioner. It is further alleged that the Petitioner's mother and thereafter the Petitioner too had continued with unauthorized cultivation of the said lot 41. Thereafter, the Petitioner has managed to obtain a permit under section 19(2) of the Land Development Ordinance, No. 19 of 1935 (hereinafter referred to as 'LDO') to a part of lot 41 to the extent of 1A 1R (P7). However, curiously the said permit does not disclose a date. It is alleged that subsequently the 8th Respondent had also been informed to get a further 1.5A of lot 41 (P16). The lot 41 is in the extent of 4A. The receipt of the letter marked as P16 caused the Petitioner to file this writ application.

The Petitioner's contention

The Petitioner contends that she has obtained a permit to part of the lot 41 in addition to the 4A 2R and 3P that had been given to her father, by P7 (lot 46) she has obtained a permit for 1A 1R out of 4A of lot 41. It is the contention of the Petitioner that the 8th Respondent had encroached on the rest of the lot 41 and has attempted to obtain a permit for 1.5A from lot 41, the Petitioner claims she is entitled under section 205 of the Regulations to obtain a preferential lease to the balance portion of the lot 41. Further, it is argued that the Petitioner has a legitimate expectation to regularize the unauthorized occupation of lot 41.

The Respondents objections

The Respondents took several objections to the maintainability of this Application which are among others:

- Misrepresentation of material facts
- The Petitioners application is misconceived in law
- The Petitioner has misinterpreted and misapplied the law in seeking the reliefs in this application
- The Petitioner is guilty of laches
- Necessary parties are not before court
- Suppression of material facts and lack of uberrima fides.
- The Petitioner has failed to urge any legal ground to obtain a writ of mandamus and sought the writ application to be dismissed.

Now I will consider the Petitioners contention and the Respondents objections.

It is common ground that the Petitioner's father has been the grantee of the grant P1 to the extent thereon. To establish this fact the Petitioner is relying on a copy of a surveyor report that has been filed in the case 6529L, whereby the surveyor has made an observation to state that one G.G. Somawathi and one G.G. Wimlawathi had engaged in unauthorized cultivation of lot 41. It is pertinent to note that none of the parties to the said land case are parties in the instant case before me. Further, the said case was filed for what reason and what reliefs had been prayed or what happened to the said case was not disclosed to this Court by the Petitioner.

It is also pertinent to note that by P7 the Petitioner had been given a part of lot 41 to the extent of 1A 1R by P7, whereby the Petitioner's occupation to the said extent of land had been legalised. The Petitioner submits that though she has received a permit for only 1A 1R she had been cultivating lot 41 in its entirety. To establish this the Petitioner marked and tendered documents P4a to P4h to demonstrate that she had paid the acreage tax for lot 41. However, this court observes that the said acreage taxes has not been paid by the Petitioner but by her mother G.G. Karunawathi. Further, the said receipts other than P4(a) and (b) does not disclose to which lot the payments are made for. The Petitioner also tendered P5(a-e) to demonstrate that she has obtained manure for the said lot. These documents too do not disclose a lot number pertaining to which the manure had been issued. In my view, the Petitioner has failed to establish that these receipts are pertaining to the entire lot 41 as by this time the Petitioner was anyway in possession of lot 46 by virtue of P1(a), the grant given to the Petitioner's father. The

Petitioner also marked and tendered document P6(b-j) to demonstrate that she had been cultivating the land and was a member of the govi sanvidanya. It is once again observed the said receipts almost in its entirety is issued to Petitioner's mother and not to the Petitioner, further the said receipts do not disclose a lot no. Hence, whether the receipts are pertaining to lot 41 or to lot 46 which the Petitioner's father had been granted is not clear.

It is not contested that the Petitioner nor the father has received a permit to occupy or cultivate lot 41 until P7 was issued to the Petitioner, that too only for an extent of 1A. Though the Petitioner had pleaded that she had been issued with the permit in P7 in the year 2012 this has not been established by tendering any ledgers or registry extracts. This situation is further complicated as the permit P7 does not disclose a date of issue. Though the Petitioner had pleaded that she had requested to obtain a permit for the whole land (lot 41) and the predecessor to the 2nd Respondent had informed that the said permit can be given to the Petitioner once she reached the age of majority. The Petitioner failed to establish the said contention with any documentary evidence. The Petitioner also tendered a document marked P8 to establish that her mother had written to the unit manager requesting that lot 41 be given to the Petitioner on the demise of the mother. However, the 1-7th Respondents submitted that the author of the letter, the mother of the Petitioner has not been issued with a permit to lot 41 to make such a request. However, in considering the mother's request the said Respondents had issued P7 to part of the lot 41 in favour of the Petitioner.

Let me now consider whether the Petitioner had a legitimate expectation to obtain a permit or a lease for lot 41.

Legitimate expectation to obtain a lease

As I have stated above in this judgment, in my view, the Petitioner has failed to establish that the Petitioner was in possession of the entirety of lot 41 through any independent evidence. The Petitioner could easily have established this fact through an affidavit by the gramasevaka or the unit manager, but for reasons best known to her she has failed to do so. This becomes important as the 8th Respondent too staked a claim for part of the said lot 41 on the basis of cultivating the said lot. Hence whether the rest of lot 41 was cultivated by the Petitioner or the 8th Respondent becomes a disputed fact. It is trite law that when material facts are in dispute the Writ Court will be reluctant to exercise it discretionary power of Writ jurisdiction. In coming to this conclusion, I have considered the case of ***Kumudu Akmeemana v. Hatton National Bank & others*** **CA Writ 72/2020, decided on 30.04.2021** where it was held,

"*The jurisdiction of this Court under Article 140 of the Constitution is to examine whether a statutory authority has acted within the four corners of its enabling legislation. It is not competent for this Court in the exercise of its jurisdiction to issue writs, to investigate disputed questions of fact.*"

Has the Petitioner sought to legitimize her unauthorized cultivation by obtaining a permit?

It is not disputed by the parties that the initial step to obtain a permit for a land is to seek the same at a land kachcheri. In this instance I am inclined to consider the provisions contained in section 20 of the LDO which states as follows:

"*20.*

The selection of persons to whom state land shall be alienated under tic Ordinance shall be made at a Land Kachcheri

Provided that such selection may be made otherwise than at a Land Kaeheheri in the following cases:

(a) where the Commissioner-General of Lands is satisfied that immediate alienation of any land under this Ordinance is desirable in the interests of an applicant and that there are no other interests in the land in question which are likely to be prejudiced Provided, however, that no land exceeding eight acres in extent shall be alienated under this paragraph and

(b) *where the Minister so directs in any particular case or class of cases if it is in the public interest to do so*."

While the 8th Respondent argued that before 2018, he had applied to the land kachcheri to obtain a permit to lot 41, upon inquiry the Counsel for the Petitioner conceded that the Petitioner has not pleaded in her pleadings nor has tendered any document pertaining to applying for a land kachcheri to obtain a permit for the rest of lot 41. In my view, in order for the Petitioner to have a legitimate expectation to obtain a permit for the rest of the land in lot 41, the first thing she should have done was to make an application for the same to a land kachcheri, which she has failed to do in the instant case before me.

It is also pertinent to note that the Petitioner has failed to tender any document to establish that a person in authority had made a representation to her, to be given the rest of lot 41 by way of a permit or even on a lease. It is also pertinent to note there is no material tendered to court to demonstrate that the Petitioner had even requested to get

possession of lot 41 through A lease agreement. A Petitioner cannot expect the state to offer the Petitioner the possession of state land through a lease agreement without a request.

As per the provisions of the LDO, pursuant to a land kachcheri, upon the receipt of an application, the said application is assessed and section 23 provides how the power under section 23 should be exercised. In the absence of an application under section 20, the Petitioner has failed to demonstrate any right for her to be considered to obtain a permit under the LDO for the remainder of lot 41.

In ***Ariyarathne and others v Inspector General of Police and others*** **(2019) 1 SLR 100**, it was stated that

> "*The doctrine of legitimate expectation envisages that a court may, in appropriate circumstances and where the public interest does not require otherwise, enforce a "legitimate expectation" (as distinct from a personal or proprietary right) of a person that a public authority will act as it has promised or held out. The doctrine of legitimate expectation operates where an aggrieved person does not have a proprietary or personal right stricto sensu which gives him the locus standi to challenge a decision of a public authority under the other grounds recognised by administrative law*."
>
> It was further held that:
>
> "*A mere wish, a desire or a hope cannot found a legitimate expectation which will be protected by the court. The Petitioners had at best a wish, a desire or a hope ... That does not help the Petitioners to establish the substantive legitimate expectation they claim in this case."*

Hence in my view, the Petitioner's contention on legitimate expectation is not tenable.

This takes me to the next ground I wish to examine, that is, whether the Petitioner has a right to obtain a Writ of Mandamus as sought in her prayer.

The Petitioner also contended that she was entitled to a preferential lease pursuant to Regulation 205 made in terms of the State Lands Ordinance. Let me now consider the said contention.

Regulation 205

For a better understanding of this argument, I will reproduce regulation 205 which reads as follows;

> "205. *අනවසරයෙන් අල්ලා ගත් රජයේ ඉඩම් නියමානුකූල කිරීම සඳහා නිකුත් කෙරෙන වරණීය බුදුකර. –*
>
> *(1) අනවසරයෙන් ඉඩමර් අල්ලාගත් පුද්ගලයන් එයින් ඉවත් කළ නොහැකි හෝ ඔවුන් එසේ ඉවත් කිරීම ප්‍රායෝගික නොවන අවස්ථාවන්හි දී, ඇතැම් විට වරණීය බදු කර නිකුත් කරනු ලැබේ.*
>
> (2) *අනවසරයෙන් රජයේ ඉඩමක් අල්ලා ගෙන ඇති පුද්ගලයෙකුට ඉඩම වරණීය පදනමක් පිට බයු දීමෙන් එම අනවසර අල්ලා ගැනීම නියමානුකූල කළ යුතු යයි දිසාපති නිදේශ කරන අවස්ථාවන්හිදී ඒ සම්බන්ධයෙන් ඔහු ඉදිරිපත් කරන වාතර්ාව මෙහි දක්වා ඇති 18 වැනි පරිශිෂ්ඨයට අනුකූලව ඉඩව කොමසාරිස් වෙත ඉදිරිපත් කළ යුතුය"*

However, it is pertinent to note that section 111 of the State Lands Ordinance states as follows:

> (1) "*Nothing in this Ordinance shall affect the provisions of-*
> *(a) the Forest Ordinance,*
> *(b) the Irrigation Ordinance, and*
> ***(c) the Land Development Ordinance."***

Hence, it is clear that the provisions of the LDO will prevail over the provisions of the State Lands Ordinance.

The learned State Counsel in reply contended that regulation 205 as it stands will not help the Petitioner as in the first instance there is no evidence to demonstrate that the Petitioner is in occupation of the lot 41 in its entirety. It is also pertinent to note that the Petitioner has failed to establish any ground stipulated in regulation 205 to obtain a lease was in existence. Especially the Petitioner has failed to demonstrate that she falls within the stipulated grounds enumerated under regulation 205 that entails her to obtain a lease.

The Petitioner's right to a Writ

According to Dr. Sunil F.A. Cooray in his book titled '*Principles of Administrative Law in Sri Lanka*', a Writ of Mandamus is available in the following instances:

"*although we have called upon some officer or authority to exercise power vested in him or it by law, there has been an express or implied refusal to exercise such power, and such failure to exercise power prejudices us. In such cases too, the remedy is to seek an order in the nature of a writ of mandamus to compel such officer or authority to validly exercise that power*."[1]

Further, in the case of ***Weerasekara v. Director General of Pensions and others*** **2021 (3) SLR 516**, it was held that:

"*By a Writ of Mandamus, a Court commands some officer, authority or inferior Court to exercise or appropriately perform some power which it has, either refused to do or invalidly exercised. Accordingly, this Court should consider whether there are sufficient grounds for this Court to issue a Writ of Mandamus.*"

Let me now consider whether the Petitioner has any legal ground to obtain a Writ of Mandamus as prayed for in prayer (f).

It is trite law that a Petitioner seeking a Writ of Mandamus should demonstrate that the Petitioner has a legal right to obtain the relief prayed for and the said right has been demanded by the Petitioner but refused by the person in authority against whom the Writ is sought. In coming to this conclusion, I have considered the case of ***Kaluarachchi v. Ceylon petroleum Corporation and others*** **SC/Appeal 43/2013, S.C. Minutes 19.06.2019** where reference was made to the judgment of ***Credit Information Bureau of Sri Lanka v. M/S Jafferjee and Jafferjee*** **(Pvt) Ltd 2005 (1) SLR 89** where it was held:

"*There is a rich and profuse case law on mandamus, on the conditions to be satisfied by the applicant. Some of the conditions precedent to the issue of mandamus appear to be: a) The applicant must have a legal right to the performance of a legal duty by the parties against whom the mandamus is sought… The foundation of mandamus is the existence of a legal right. b) The right to be enforced must be a "public right" and the duty sought to be enforced must be of a public nature*…"

In the absence of her failure to make an application to a land kachcheri in my view the Petitioner has failed to establish the legal right the Petitioner has, to obtain the relief pertaining to the rest of the land in lot 41 other than what is mentioned in P7. As I have mentioned above though in paragraph 4 of the Petition the Petitioner has pleaded that

[1] Sunil F.A. Cooray, *Principles of Administrative Law in Sri Lanka*, vol 2 (4th edn, self-published 2020) 975

her father had unauthorizedly cultivated lot 41 she has failed to establish this contention with independent evidence. Further, she has failed to demonstrate whether her contention was that the father had cultivated the lot 41 in its entirety or only a part of lot 41 was cultivated. This situation is aggravated when she further pleads that the 5th respondent had informed her about the nonexistence of a ledger pertain to lot 41. Hence, in the absence of the Petitioner providing any independent evidence about her right to obtain a permit over the rest of the land in lot 41 only conclusion the court can come is that the Petitioner has failed to establish a legal right to the relief she has prayed for.

The next aspect the Petitioner should establish to obtain her relief prayed is that there is a public duty owed to her by the Respondents and despite her request it has not been granted.

In the case of ***Ratnayake and others v. C. D. Perera and others*** **(1982) 2 SLR at page 456** it was held:

> "*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*."

In this instance the Petitioner has failed to establish nor even to plead the public duty the Respondents owe to her which has not been satisfied. I come to this conclusion especially after considering the fact that the Petitioner has failed to request for a land kachcheri and has failed to establish that she was in exclusive possession of the rest of lot 41 before the dispatch of the document marked and tendered as P16, nor has she established that she had requested for a … under regulation 205 which had been refused.

Let me now consider the objection that was raised by the respondents.

<u>Misrepresentation and suppression of material facts</u>

As per the pleadings of the Respondents and the submissions of the Counsel, the 8th Respondent is alleged to have been adopted by the Petitioner's mother G.G. Karunawathi. He had been living in the same premises with Karunawathi and the

Petitioner. This is amply demonstrated by the documents marked and tendered as 8R1, 8R3. Further, as submitted by the Counsel the 8th Respondent had been cultivating a part of lot 41 from the year 2002. This is established by the same farmers organization that has issued document marked by the Petitioner as P9, when they issued a letter marked and tendered as 8R4 to the 8th Respondent confirming his possession and cultivation of 1.5A of land from lot 41. Further, the said letter also states that while the Petitioners mother was alive, she had obtained the manure and given a part to the 8th Respondent for cultivation till her demise. This practice ceased upon the demise of the Petitioner's mother, after which the Petitioner had discontinued providing manure to the 8th Respondent, which resulted in the 8th Respondent seeking and obtaining fertilizer separately from the same farmer organization. This revelation creates a doubt as to who is in possession of the rest of lot 41 and makes the possession and cultivation of the said lot, a disputed fact. The Petitioner has failed to disclose this material fact for reasons best known to her. In my view, this nondisclosure amounts to a serious suppression of facts and also creates a doubt on the Petitioner's *uberrima fides.* It is trite law that when a Petitioner is seeking the prerogative discretionary remedies of writ jurisdiction it is incumbent on the Petitioner to invoke the jurisdiction of this court with clean hands. In my view, the Petitioner has failed to do so and I hold, the Petitioner has misrepresented and suppressed material facts from this Court as elaborated above, which disentitles her from obtaining the remedies sought. In coming to this conclusion, I have considered the case of ***Namunukula Plantations Limited v. Minister of Lands and others*** **(2012) 1 SLR 376** it was, *inter alia*, held that:

> *"It is settled law that a person approaches the Court for grant of discretionary relief, to which category and application for a writ of certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material facts within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence*."

It is also pertinent to note according to the objections of the 1st to 7th Respondents in 2012 the Petitioner had obtained P7 a grant for part of lot 41. If the Petitioner was interested in obtaining a permit for the rest of the land, she could have done so since 2012. However, the Petitioner waited until 2022 to file this Application. The Petitioner failed to give any explanation for this delay. In the case of ***Biso Menika v. Cyril de Alwis*** **1982 (1) SLR 368**, it was held that:

> "*The proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleep over his rights without any*

reasonable excuse the chances of his success in a writ application dwindle and the court may reject a writ application on the ground of unexplained delay…"

Conclusion

I have considered the submissions made and the material submitted. I have also considered the written submissions tendered. However, for the reasons stated above, I am not inclined to grant the reliefs sought by the Petitioner. I would further state that by failing to come with clean hands and by the suppression of material facts the Petitioner had anyway disentitled herself from obtaining the reliefs sought. Accordingly, for the aforesaid reasons, I refuse to grant the reliefs sought and proceed to dismiss this Application**.** The parties are to bear their own costs.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal