

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

(Amended Caption)

In the matter of an application for mandates
in the nature of Writs of *Mandamus* and
Certiorari under and in terms of Article 140 of
the Constitution.

**Court of Appeal Case No.
CA/WRT/0553/2021**

Gamendra Isurujith Abegunawardhana,
No.75, D. S. Senanayake Street,
Ampara.

Petitioner

Vs.

1. **Hon. S. M. Chandrasena,**
Minister of Lands
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

1(A) **Hon. Harin Fernando,**
Minister of Tourism and Lands
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

1(B) **K. D. Lalkantha,**
Minister of Agriculture, Livestock, Land
and Irrigation
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

2. **Mr. N.P.K. Ranaweera,**
Director General,
Urban Development Authority,

"Sethsiripaya", 6th, 7th, 9th Floors,
Baththaramulla.

3. **Mr. R. A. A. K. Ranawake**,
Secretary to the Minister of Lands,
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

3(A) **Mr. I. H. K. Mahanama**,
Secretary to the Minister of Tourism and
Lands,
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

3 (B) **D. P. Wickramasinghe**,
Secretary to the Minister of Agriculture,
Livestock, Land and Irrigation
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

4. **Mr. G. D. Keerthi Gamage**,
Land Commissioner General,
Land Commissioner General's
Department,
Secretary to the Minister of Lands,
"Mihikatha Madura" Land Secretariat,
No. 1200/16, Rajamalwaththa Rd,
Baththaramulla.

4(A) **R. A. Chandana Saman Ranaweera
Arachchi**,
Land Commissioner General,
Land Commissioner General's
Department,
Secretary to the Minister of Lands,
"Mihikatha Madura" Land Secretariat,
No. 1200/ 16, Rajamalwaththa Rd,
Baththaramulla.

5. **Miss. A. L. I. Bhanu,**
Land Commissioner (inter Provincial)
Land Commissioner General's Department
Regional Office,
Ampara.
6. **Mr. Sadaruwan Anurudda Piyadasa,**
Divisional Secretary - Ampara,
Divisional Secretary's Office,
Ampara.
- 6(A) **Thilina Wickramarathne,**
Acting Divisional Secretary Ampara
Divisional Secretary's Office,
Ampara.
7. **Miss. W. Shanika Dilhani,**
Grama Niladari
Saddhathissapura Gramasewa Division
Ampara.
- 7(A) **Mrs. H. A. O. Jayathilake,**
No. 4, In front of Hospital,
Ampara.
8. **Executive Engineer (Ampara),**
Road Development Authority's Provincial
Office,
Ampara.
9. **W. G. C. Perera,**
No. 392/D, Kalmunai Road,
Ampara.
10. **D. S. Ariyawansa,**
Kalmunai Road,
Ampara.
11. **N. S. Abesooriya,**
Kalmunai Road,
Ampara.

Respondents

Before: **K. M. S. DISSANAYAKE, J.**

Counsel: Dilini Premasiri for the Petitioner.

Dilantha Sampath, SC for the 1st to 8th Respondents.

Nisala Fernando for the 9th Respondent.

Written Submissions
of the Petitioner
tendered on : 11.03.2025

Written Submissions
of the 1st to 8th and
10th to 11th Respondents
tendered on : Not tendered

Written Submissions
of the 9th Respondent
tendered on : 21.04.2025

Decided on : 07.08.2025

K. M. S. DISSANAYAKE, J.

When this matter came on before a bench of two Justices of this Court comprising of His Lordship, the then, Acting President of the Court of Appeal Hon. Justice Mohammed Laffar Thahir and Justice K. M. S. Dissanayake on 11.02.2025, the learned Counsel for the 9th Respondent had raised a preliminary legal objection as to the maintainability of the instant application and the order thereon was reserved for 27.06.2025 on which day His Lordship Justice Mohammed Laffar Thahir had gone on retirement. Under those circumstances, Counsel on all side consented to the order of this case being pronounced by His Lordship Justice K. M. S. Dissanayake notwithstanding the retirement of His Lordship Justice Mohammed Laffar Thahir rather than going into re-argument. Accordingly, His Lordship Justice Dissanayake being the remaining member of the bench before whom the preliminary legal objection was raised, is now, proceeding to the order thereon as consented by Counsel on the strength of the written submissions

as urged by them.

Instant application had been instituted by the petitioner seeking *inter-alia*, a mandate in the nature of writ of *certiorari* quashing the decision which was taken by one or more or all respondents to hold/suspend/prevent the procedure regarding leasing out the state land described in schedule 1 to the petition together with writs of *mandamus* directing one or more or all respondents to forthwith take steps according to law to lease the state land described in schedule 1 to the petition for the purpose of the proposed investment from such date as is determined by this Court and to give the possession of the said state land described in the schedule 1 to the petition for the proposed investment.

It is common ground that the settlement proposed by the learned State Counsel for the 1st to 8th respondents from the very inception of the instant application had eventually, been fully, assented by the petitioner as well as the 9th respondent and thus, materialised with the consent of the petitioner as well as the 9th respondent and as a result, a joint motion dated 22.01.2024 containing the terms of settlement so mutually and voluntarily agreed upon by each of those parties, had been filed in this Court signifying their unequivocal and unconditional consent thereto by all those parties by placing signature of all the Attorneys-At-Law for the petitioner, the 1st to 8th Respondents and the 9th respondent thereto and this Court had while giving its assent thereto, directed the parties to the said settlement to comply with the said terms of settlement as being a part and parcel of the judgement of this Court that had been entered by it on the strength of the terms of settlement so mutually and voluntarily agreed upon and entered into by and between the petitioner, the 1st to 8th respondents and the 9th respondent.

In the result, the proceedings in the instant application had been terminated by this Court by its order dated 24.01.2024 as manifest from the minutes of court pertaining thereto and thus, this Court had now, become *funtus* except for the entering of the consent decree on the strength of the judgement so entered by this Court on the strength of the terms of settlement mutually and

voluntarily agreed upon by the petitioner as well as the 1st to 8th respondents and the 9th respondent for; it appears from the record that the consent decree had not been entered as yet, by this Court.

It was under those circumstances, the petitioner had on a day subsequent to the termination of the proceedings of the instant application on 24.01.2024, filed a motion dated 22.05.2024, thereby bringing to our notice that the 1st to 8th respondents had failed to take steps to give effect to the said terms of settlement for the reasons stated therein and moved Court that the instant application be re-listed and mentioned in Court on any of the three dates mentioned therein, and this Court had in pursuant to the application made to it by the said motion by the petitioner, directed the motion to be supported on 05.06.2024 on which day the petitioner, the 1st to 8th respondents and 9th respondent were duly represented by respective Counsel in Court and the learned State Counsel had sought two weeks' time to tender the observation from the Divisional Secretary of Amapara with regard to the issue raised therein by the learned Counsel for the petitioner as to the terms of settlement that had already been entered before this Court and directed this matter to be mentioned on 03.07.2024 and thereafter, a number of dates had been granted by this Court for settlement as urged by learned State Counsel for the 1st to 8th respondents.

However, when this matter had come up before us on 13.11.2024, Court had by an inadvertence or by an oversight, directed this matter to be fixed for argument finally, or settlement for 11.02.2025 since, it appeared to this Court that there was no settlement, on which day the learned Counsel for the 9th respondent had indicated to Court that he had intended to raise preliminary legal objections as to the maintainability of this instant application and the matter was then, reserved for order thereon on the strength of the written submissions as urged by Counsel.

It is, however, to be observed that the motion dated 22.05.2024 filed by the petitioner had not been supported as yet by him though, this Court had made order directing the petitioner to support it on 06.06.2024 as evident from the

minutes of this Court pertaining thereto, and therefore, the said motion is yet to be supported before this Court by the petitioner as directed by this Court.

Moreover, the said motion had been filed by the petitioner at a time when this Court had become *funtus* by reason of its proceedings being terminated by it in pursuant to entering of the judgement on the strength of the terms of settlement so mutually, and voluntarily agreed upon by and between the petitioner, the 1st to 8th respondents and the 9th respondent.

Furthermore, the 9th respondent had raised such preliminary legal objections as morefully, set out in his written submissions tendered to this Court by him on 21.04.2025 at a time when this Court had become *funtus* by reason of its proceedings being terminated by it in pursuant to entering of the judgement on the strength of the terms of settlement so mutually, and voluntarily agreed upon by and between the petitioner, the 1st to 8th respondents and the 9th respondent.

Hence, it manifestly, appears to me that the 9th respondent had raised preliminary legal objections as such, at a time when the instant application had been finally, disposed of by this Court by its judgement entered by it on the strength of the terms of settlement so mutually, and voluntarily agreed upon by and between the petitioner, the 1st to 8th respondents and the 9th respondent.

In the circumstances, the pivotal question that would now, arise for our consideration and determination is whether the 9th respondent is entitled to raise preliminary legal objections as such as to the maintainability of the instant application at a time when this Court had become *funtus* by reason of the fact that the proceedings pertaining to the instant application had already, been terminated by this Court in view of its entering a judgement thereby, finally, disposing of the instant application on the strength of the terms of settlement so mutually, and voluntarily agreed upon by and between the petitioner, the 1st to 8th respondents and the 9th respondent.

I would think this question ought to be answered in the negative and against the 9th respondent for; there had been no case before us for him to raise preliminary legal objections as such as to its maintainability inasmuch as at the stage of the preliminary legal objections as such being preferred to this Court by the 9th respondent, this Court had become *funtus* by reason of the fact that the proceedings pertaining to the instant application had already, been terminated by this Court in view of its entering of a judgement on the strength of the terms of settlement so mutually, and voluntarily agreed upon by and between the petitioner, the 1st to 8th respondents and the 9th respondent which finally, disposed of the instant application.

Besides, settlement is a process which would render justice to all the parties concerned; and that once an action is settled, terms of settlement ought to be strictly, adhered to by all the parties concerned; and that the Court should at any time, not allow any party to a settlement to abuse the process of Court or to take undue advantage thereof; and that its due compliance should be compelled by Court.

Hence, the 9th respondent who had fully, assented to the terms of settlement by clearly, and unequivocally signifying to it by placing the signature of his registered Attorney-At-Law to the said consent motion filed before this Court, had nevertheless, made undue, and futile, attempt to resile therefrom in an indirect manner in the guise of raising preliminary legal objections as such as to the maintainability of the instant action of the petitioner at a time this Court had become *funtus* upon entering of a judgment on the strength of the terms of settlement so mutually and voluntarily agreed upon not only by and between the petitioner and the 1st to 8th respondents but also by and between the petitioner, 1st to 8th respondents and the 9th respondent as well, with a view to clearly, abusing the process of this Court in order to frustrate and nullify the legal effect of the consent decree so entered by this Court on the strength of the terms of settlement.

As a matter of law, a preliminary legal objection should be raised at the earliest available opportunity and he who fails so to do, is deemed to have

waived his right to raise it.

In the instant application, the 9th respondent had submitted himself to the jurisdiction of this Court by giving his full assent to the terms of settlement on the strength of which judgement was entered by this Court in the instant application and therefore, the 9th respondent is deemed in law, to have waived his right to raise any objections to the maintainability of the instant application at a later stage of the instant application.

Under the circumstances set out above, I would take the view that, the law does not in any manner, permit the 9th respondent to raise the preliminary legal objections as such at a time when this Court had become *funtus* in view of the proceedings of the instant application being terminated by this Court following the entering of a judgement on the strength of the terms of settlement.

Hence, I would hold that, the 9th respondent is not entitled to raise the preliminary legal objections as such at a time when this Court had become *funtus* in view of the proceedings of the instant application being terminated by this Court following the entering of a judgement on the strength of the terms of settlement.

I would, therefore, hold that the preliminary legal objections so raised by the 9th respondent in his written submissions, namely; the instant application cannot have and maintain for; the application and prayers to the petition are misconceived in law; laches on the part of the petitioner; and the petitioner has failed to comply with the mandatory rules of this Court; cannot in any manner, sustain in law and as such, they should be rejected *in-limine*.

In the result, I would proceed to reject the preliminary legal objections so raised in his written submissions by the 9th respondent as to the maintainability of the instant application, with costs payable by 9th respondent only to the petitioner.

JUDGE OF THE COURT OF APPEAL