

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

**Court of Appeal Case No:  
CA(PHC)0065/2017**

**PHC KANDY Case No:  
WRIT 02/2014**

**Upali Mahalekam,**  
No. 44/B, Jasmine Watte,  
Peradeniya.

**Petitioner**

**Vs.**

1. **Viraj Perera,**  
Provincial Commissioner of Housing,  
Provincial Department of Housing of the  
Central Province, No. 109, Yatinuwara  
Weediya, Kandy.
2. **M.M. Nazar,**  
No. 157, Peradeniya,  
Peradeniya.
3. **Malani Dandeniya,**  
No. 27, Daulagala Road,  
Peradeniya.

**Respondents**

**AND NOW BETWEEN**

**M.M. Nazar,**  
No. 157, Peradeniya,  
Peradeniya.

**2<sup>nd</sup> Respondent-Appellant**

**Vs**

**Upali Mahalekam,**  
No. 44/B, Jasmine Watte,  
Peradeniya.(now deceased)

**(Deceased)Petitioner-Respondent**

**1A. Chandramalee Muthuhewa Arachchi Mahalekam,**

**2A. Deshan Mahendra Mahalekam,**  
**3A. Nadeesha Dushyanthi Mahalekam,**

All of:

No. 44/B,  
Jasmine Watte,  
Peradeniya

**1A, 2A, AND 3A Substituted Petitioners-Respondents**

**Viraj Perera,**  
Provincial Commissioner of Housing,  
Provincial Department of Housing of the  
Central Province, No. 109, Yatinuwara  
Weediya, Kandy.

**1<sup>st</sup> Respondent- Respondent**

**Malani Dandeniya,**  
No. 27, Daulagala Road,  
Peradeniya.

**3<sup>rd</sup> Respondent- Respondent**

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

Counsel : Ikram Mohammed, PC with R.

Hettiarachchi and Harish Balakrishnan  
for the 2<sup>nd</sup> Respondent-Appellant.

Panchali Witharana, SC for the 1<sup>st</sup>  
Respondent-Respondent.

Lal Wijenayake with P.D.A.J. Liyanage for  
the 1A, 2A and 3A Substituted-Petitioners-  
Respondents.

3<sup>rd</sup> Respondent-Respondent is absent and  
unrepresented.

Written Submissions  
of the 2<sup>nd</sup> Respondent  
-Appellant  
tendered on

: 22.02.2022 and 25.09.2025

Written Submissions  
of the  
Petitioner  
-Respondent  
tendered on

: 12.12.2022

Written Submissions  
of the 1<sup>st</sup>  
Respondent-Respondent  
tendered on

: 16.08.2022

Decided on

: 11.02.2026

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

Instant appeal which was preferred to this Court by the 2<sup>nd</sup> Respondent-Appellant (hereinafter called and referred to as ‘the Appellant’) arises from an order dated 31.03.2017 made by the learned High Court Judge of the Central Province holden at Kandy(hereinafter called and referred to as ‘the Order’) wherein, the learned High Court Judge had issued a mandate in the nature of a

writ of *certiorari* quashing a decision dated, 14.11.2013 made pursuant to an application made to him by the Appellant under section 18A of the Rent Act as amended, by the 1<sup>st</sup> Respondent-Respondent (hereinafter called and referred to as ‘the 1<sup>st</sup> Respondent’) granting the Appellant the approval sought in the said application to demolish the residential premises bearing assessment No. 27, Daulagala Road, Panideniya Peradeniya (hereinafter called and referred to as ‘the residential premises’) and re-construct it in which the 3<sup>rd</sup> Respondent-Respondent (hereinafter called and referred to as ‘the 3<sup>rd</sup> Respondent’) had been the tenant.

During the pendency of the instant appeal, Petitioner-Respondent had died and substitution had been effected substituting 1A, 2A and 3A Substituted-Petitioners-Respondents in the place of the deceased

When the instant appeal came on for hearing before us on 15.09.2025, learned Counsel for the 1A, 2A and 3A Substituted-Petitioners-Respondents informed Court that he has no instructions from them and this Court then, fixed this matter for Judgement directing the parties to file further written submissions within two weeks from that day in the registry if any. Hence, I would proceed to the judgement on the strength of the written submissions furnished to Court by the respective parties as enumerated above as urged and agreed by them.

It was *inter-alia*, contented by the learned President’s Counsel for the Appellant at the hearing of this appeal before us in support thereof by way of written submissions that, the learned High Court Judge had failed to appreciate that the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy and therefore, order cannot sustain in law and as such it ought to be set aside. In support thereof, the learned President’s Counsel sought to rely on the decisions in **Thajudeen v. Sri Lanka Tea Board 1981 [2] Sri LR 471, Puvendran v. Premasiri 2009 [2] Sri LR 1071, Sherlin v. Commissioner of Ayurvedic and Others [CA Writ 721/2009, decided on 12.12.2013, Javasooriva v. N.M. Gunawathie and**

**Others [CA Writ 63/2015, decided on 26.09.2019], Wickramasuriva v. Hon. Tilak Marapana and Others [SC Appeal 26/2021, decided on 29.10.2021] and Namunukula Plantations PLC v. Land Reform Commission and Others [CA Writ 223/2020, decided on 05.04.2022).**

Before, I venture to examine the contention so advanced by the learned President's Counsel for the Appellant, let me briefly, set out the facts relevant to the instant appeal.

The Appellant had under and in terms of section 18A of the Rent Act, made an application to the 1<sup>st</sup> Respondent-Provincial Commissioner of Housing of the Central Province, seeking approval thereunder to demolish the residential premises in which the 3<sup>rd</sup> Respondent had been the tenant; and that the 1<sup>st</sup> Respondent had having held an inquiry thereto, made order granting approval to demolish the residential premises in which the 3<sup>rd</sup> Respondent had been the tenant; and that being aggrieved by the decision of the 1<sup>st</sup> Respondent, the Petitioner-Respondent had preferred to the High Court of the Central Province holden at Kandy an application seeking a mandate in the nature of a writ of *certiorari* to quash the said order of the 1<sup>st</sup> Respondent; and that the learned High Court judge had having inquired into the application, made order granting a writ of *certiorari* to quash the decision of the 1<sup>st</sup> Respondent. It is this order that the Appellant now, seeks to impugn before us in the instant appeal.

It is not in dispute, that the decision of the 1<sup>st</sup> Respondent is primarily, based on the facts; and that the Petitioner-Respondent had by way of a writ of *certiorari*, sought before the High Court to challenge the *vires* of the said decision of the 1<sup>st</sup> Respondent primarily, based on the facts.

The principal relief sought in the High Court by the Petitioner-Respondent in his application for a writ of *certiorari* was for the issuance of a writ of *certiorari* to quash the decision of the 1<sup>st</sup> Respondent dated 14.11.2013 granting approval to the Appellant to demolish the residential premises and re-construct it subject to the terms and conditions stipulated therein, on the basis of the determination

made by him at the said inquiry into the application so made to him by the Appellant under section 18A of the Rent Act as amended that **a)** the residential premises-the subject matter of the inquiry before the 1<sup>st</sup> Respondent was the residential premises bearing assessment No. 27, Daulagala Road, Panideniya Peradeniya; and **b)** that the Appellant was the owner thereof.

It is thus, manifest that the Petitioner-Respondent had in his application in the High Court, sought by way of a writ of *certiorari*, to quash the decision of the 1<sup>st</sup> Respondent which was primarily, based on the facts adduced before him by the Appellant at the inquiry into the application made by the Appellant under section 18A of the Rent Act as amended, that the Appellant was the owner thereof; on the premise that the Appellant was not the owner of the residential premises as determined by the 1<sup>st</sup> Respondent at the said inquiry but, the Petitioner-Respondent in terms of the chain of title recited in paragraphs 18,19 and 20 of the petition furnished by him to the High Court and therefore, the decision of the 1<sup>st</sup> Respondent was arbitrary, against the weight of the evidence, capricious, contrary to law and *ultra vires*.

Hence, the Petitioner-Respondent had in his application filed in the High Court, sought to refute the decision of the 1<sup>st</sup> Respondent, which was primarily based on the facts adduced before him by the Appellant that **the Appellant was the owner of the residential premises.** [Emphasis is mine]

However, it is significant to observe that the position so adverted to by the Petitioner-Respondent in his application before the High Court was not only, vehemently, denied by the Appellant in paragraph 2 of his statement of objections filed in the High Court that the Petitioner-Respondent is the owner of the residential premises as claimed by him, but also he had therein, set up his own title to the residential premises in terms of the chain of title recited in the paragraphs 6(b),(c),(d),(e),(f),(g) and (h) of his statement of objections furnished by him to the High Court, and the matters further pleaded therein, thereby supporting the decision of the 1<sup>st</sup> Respondent.

The main argument advanced by the learned Counsel for the Petitioner Respondent at the hearing before the High Court as observed by the learned High Court Judge of Kandy is that the Appellant had failed to establish that he is the owner of the residential premises for which the demolition order was made and further that, the Petitioner-Respondent is the owner of the said premises. It is to be observed that, the contention so advanced by the Petitioner-Respondent was vehemently, controverted and refuted by the Appellant who in turn, argued that he is the owner of the residential premises in terms of the chain of title so recited in his statement of objections.

Hence, the major facts pertaining to the ownership of the residential premises were substantially, in dispute before the High Court of Kandy. Nevertheless, the learned High Court Judge of Kandy had endeavoured to consider and analyse the major facts relating to the ownership of the residential premises which were substantially, in dispute and held that the Petitioner-Respondent is the owner of the residential premises and the determination of the 1<sup>st</sup> Respondent that the owner of the residential premises is the Appellant is therefore, against the evidence at the inquiry.

It is in this context I would think it appropriate and expedient at this juncture to examine the law governing an application for a mandate in the nature of a writ of *certiorari* where major facts are in dispute.

It is well settled principle of law as laid down by Court in a plethora of decisions namely; **Thajudeen v. Sri Lanka Tea Board 1981 [2] Sri LR 471, Puvendran v. Premasiri 2009 [2] Sri LR 1071, Sherlin v. Commissioner of Ayurvedic and Others [CA Writ 721/2009, decided on 12.12.2013, Javasooriva v. N.M. Gunawathie and Others [CA Writ 63/2015, decided on 26.09.2019], Wickramasuriva v. Hon. Tilak Marapana and Others [SC Appeal 26/2021, decided on 29.10.2021], and Namunukula Plantations PLC v. Land Reform Commission and Others [CA Writ 223/2020, decided on 05.04.2022), that**

**the Court will issue a writ only if the major facts are not in dispute and the legal result of the facts are not subject to controversy.**[Emphasis is mine]

A careful comparison of the respective positions so taken up by the Petitioner-Respondent and the Appellant unmistakably, and unequivocally, shows that the claim of the Petitioner-Respondent that he is the owner of the residential premises in terms of the chain of title recited in his petition filed in the High Court as enumerated above, is vehemently, denied by the Appellant who had in turn, set up his own title to the residential premises in terms of the chain of title recited in his statement of objections furnished by him to the High Court as enumerated above; and that such denial is not at all, based only upon questions of law alone.

Hence, the Appellant disputes the ownership of the Petitioner-Respondent to the residential premises. The very foundation of fact which the Petitioner-Respondent must establish to prove that he is the owner of the residential premises, is totally, denied by the Appellant and therefore, not only not admitted by the Appellant but also very strenuously, denied and disputed by him. The basic and fundamental issues of fact the proof of which is essential to the claim for the relief, that the Petitioner-Respondent seeks in proceedings before the High Court, have in the first instance, to be established by the Petitioner. In the absence of incontrovertible proof or an admission by the Appellant of such matters of fact, the Petitioner-Respondent's claim of the ownership to the residential premises cannot be maintained in the proceedings before the High Court. All such disputed matters of fact must be resolved before mandatory order, such as is claimed by the Petitioner-Respondent in the proceedings before the High Court of Kandy, goes out from the High Court of Kandy. The issuance of such an order carries with it the implication that the High Court is satisfied that the Petitioner-Respondent is indeed, the owner of the residential premises; and that there is no question about the basic primary questions of fact upon which the Petitioner-Respondent's claim is founded. When, however, such questions of fact are in dispute, they can and must only be settled by a regular

action between the disputants before a Court of competent civil jurisdiction. Such questions, the decision of which calls for the leading of evidence, both oral and documentary and the cross examination of witnesses are all questions which can be best decided by way of regular procedure falling within the ordinary jurisdiction of the Courts of first instance as laid down by this Court in **Thajudeen v. Sri Lanka Tea Board (Supra)**.

Having regard to both the nature of the Petitioner-Respondent's claim and the position taken up by the Appellant as enumerated above, it clearly, appears to me that the Petitioner-Respondent's is a claim that can, not only be conveniently, decided by way of a regular action in the District Court but also that, that is the most appropriate form of action in which it should be decided for; where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, a writ will not issue, as stated by **Choudri** in his book on **the Law of Writs and Fundamental Rights (2<sup>nd</sup> Edition) Vol 2 at page 449**.

That, the remedy by way of an application for a writ is not a proper substitute for a remedy by way of a suit, specially, where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity to examine their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian Cases of **Ghosh V. Damodar Valley Corporation AIR. 1953 Cal 581** and **Parraju Vs. General Manager B. N. Rly. AIR. 1952 Cal. 610**.

In view of the above, it clearly, appears to me that, as the major questions of fact, upon which the Petitioner-Respondent's claim for the ownership to the residential premises are founded, are being disputed by the Appellant as enumerated above, and, as the most appropriate procedure for the settlement of such a dispute is an action by way of regular procedure before the appropriate

Court of First Instance, and such an action by way of regular procedure also constitutes an “equally convenient, beneficial and effective” remedy, the learned High Court Judge of the Central Province holden at Kandy ought to have in the exercise of his discretion, refused the Petitioner-Respondent's application for a mandate in the nature of a writ of *certiorari* to quash the determination of the 1<sup>st</sup> Respondent, namely; that **a)** the residential premises-the subject matter of the inquiry before the 1<sup>st</sup> Respondent was the residential premises bearing assessment No. 27, Daulagala Road, Panideniya Peradeniya; and **b)** that the Appellant was the owner thereof. as rightly, contended by the learned President’s Counsel for the Appellant before us at the hearing of this appeal.

I would therefore, hold that the contention so advanced by the learned President’s Counsel for the Appellant is entitled to succeed both in fact and law.

It was next, contented by the learned President’s Counsel for the Appellant at the hearing of this appeal before us in support thereof by way of written submissions that, the learned High Court Judge of Kandy was obliged in law to have dismissed the application of the Petitioner-Respondent for; he had an effective alternative remedy, and therefore, order cannot sustain in law and as such it ought to be set aside. In support thereof, the learned President’s Counsel sought to rely on the decisions in **Ishak v. Lakshman Perera 2003 3 Sri LR 18 at 231, Tennakoon v. Director General Customs [2004 1 Sri LR 53 at 571. N. Seelanatha Holdings (Pvt) Ltd v. Colombo Lotus Tower Management Co (Pvt) Ltd and Others [CA Writ 85/2025, decided on 04.04.2025** wherein, it was laid down 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.”.....“Where there is a choice of another separate process outside the Courts, a true question for the exercise of discretion exists. For the Court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with judicial review being properly regarded as being a remedy of last resort. It is important that the

process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing an alternative procedure, indicated either expressly or by implication-that it intends that procedure to be used. In exercising its discretion the Court will attach importance to the indication of Parliament's intention".

Applying the principle of law laid down by Court in the aforesaid decisions to the facts of the instant action, having regard to both the nature of the Petitioner-Respondent's claim and the position adverted to by the Appellant in the High Court of Kandy with regard to the question of the ownership of residential premises, it clearly, appears to me that the Petitioner-Respondent's is a claim which can not only, be conveniently, decided by way of a regular action in the District Court but also that, that is the most appropriate form of action in which it should be decided.

In this view of the matter, it clearly, appears to me that, as the major questions of fact, upon which the Petitioner-Respondent's claim for the ownership to the residential premises are founded, are being disputed by the Appellant as enumerated above, and, as the most appropriate procedure for the settlement of such a dispute is an action by way of regular procedure before the appropriate Court of First Instance, and such an action by way of regular procedure also constitutes an "equally convenient, beneficial and effective" remedy, the learned High Court Judge of the Central Province holden at Kandy ought to have in the exercise of his discretion, refused the Petitioner-Respondent's application for a mandate in the nature of a writ of *certiorari* to quash the determination of the 1<sup>st</sup> Respondent, namely; that **a)** the residential premises-the subject matter of the inquiry before the 1<sup>st</sup> Respondent was the residential premises bearing assessment No. 27, Daulagala Road, Panideniya Peradeniya; and **b)** that the Appellant was the owner thereof. as rightly, contended by the learned President's Counsel for the Appellant before us at the hearing of this appeal.

Hence, I would hold that the next contention so advanced by the learned President's Counsel for the Appellant is entitled to succeed both in fact and law.

With regard to the further contention advanced by the learned President's Counsel for the Appellant at the hearing of this appeal before us in relation to the *locus standi* of the Petitioner-Respondent to invoke the writ jurisdiction of the High Court of the Central Province holden at Kandy, in view of the position adverted to, by the Petitioner-Respondent in the High Court that he is the owner of the residential premises in terms of the chain of title recited in the Petition tendered to the High Court along with his application for a mandate in the nature of a writ of *certiorari* as enumerated above, that the Petitioner-Respondent has I would think, sufficient interest in the matter in dispute as held by this Court in a plethora of decisions, namely; **Environmental Foundation Ltd. Vs. Minister of Public Administration and Six Others 1997 [2] SLR 306**, **Consumers Association of Sri Lanka Vs. Telecommunications Regulatory Commission of Sri Lanka and Others 2006 [1] SLR 174** and **Wanasinghe and Others (Citizens Movement for Good Governance) Vs. University of Colombo and Others 2006 [3] SLR 322** and therefore, the further contention so advanced by the learned President's Counsel for the Appellant is not entitled to succeed both in fact and law and as such it should be rejected.

In view of my aforesaid findings, It is my considered view that it would not be necessary to consider any further, the further contention so advanced by the learned President's Counsel for the Appellant in paragraph 34(D) of the written submissions dated 25.09.2025.

In view of all the above circumstances, I would hold that the order cannot sustain both in fact and law.

In the result, I would set aside the order.

I would therefore, hold that appeal is entitled to succeed both in fact and law.

I would thus, allow the appeal with costs of this Court and below payable to the Appellant by the Substituted-Petitioner-Respondents only.

***JUDGE OF THE COURT OF APPEAL***

**D. THOTAWATTA, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***