

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

CA (PHC) 146/2019

Kegalle Provincial High Court Case
No. 5182/2017 Writ

Inquiry No of the Commissioner of
housing of the Sabaragamuwa
Province CM/AD/18/1/12

In the matter of an application for a Writ of
certiorari and a Writ of mandamus under
Section 154(P) 4 (B) II of the Constitution of
the Republic of Sri Lanka.

1. M.M.M. Musammil of No.276,
Kottawaththa, Mawanella.

Applicant

Vs.

1. Kuruppu Mudiyansele Dayarathne of
"Sinhagiri", Aranayaka Road, Godagama,
Mawanella.

Respondent

AND BETWEEN

Kuruppu Mudiyansele Dayarathne of
"Sinhagiri", Aranayaka Road, Godagama,
Mawanella.

Respondent- Petitioner

Vs.

1. M.M.M. Musammil of No.276,
Kottawaththa, Mawanella.

Applicant-Respondent

2. Commissioner of Housing of the Province of
Sabaragamuwa, Chief Ministry,
Sabaragamuwa Provincial Council, Ratnapura

2nd Respondent

3. Attorney General, Attorney General's
Department, Colombo 12.

3rd Respondent

AND NOW BETWEEN

Kuruppu Mudiyansele Dayarathne of
"Sinhagiri", Aranayaka Road, Godagama,
Mawanella.

Respondent- Petitioner-Appellant

Vs.

1. M.M.M. Musammil of No.276,
Kottawaththa, Mawanella.

Applicant-Respondent-Respondent

2. Commissioner of Housing of the Province of
Sabaragamuwa, Chief Ministry,
Sabaragamuwa Provincial Council, Ratnapura

2nd Respondent-Respondent

3. Attorney General, Attorney General's
Department, Colombo 12.

3rd Respondent-Respondent

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsels: D.D.P. Dassanayaka with Dilrukshi Perera and Thamaranga
Harshanath instructed by D. Athugala for the Respondent-Petitioner-
Appellant.

Faisza Marker, PC instructed by Sanjeewa Kaluarachchi for the
Applicant-Respondent-Respondent.

Argued: 22.10.2025

Written submissions 28.12.2023 by Respondent-Petitioner- Appellant.
tendered on: 17.05.2024 by Applicant- Respondent – Respondent.

Judgement:
Delivered: 03.02.2026

Thotawatte, J.

Background and Factual Matrix

The dispute giving rise to the present proceedings originated from an application made by the Applicant-Respondent-Respondent (hereinafter sometimes referred to as the “Respondent”) before the Commissioner of Housing of the Province of Sabaragamuwa under Section 18A of the Rent Act No.7 of 1972 (as amended), seeking approval to demolish and reconstruct the premises where the Respondent- Petitioner-Appellant (hereinafter sometimes referred to as the “Appellant”) was a long-standing tenant.

Upon receipt of the application, the Commissioner of Housing assuming jurisdiction under the Rent Act, had issued notice on the parties, and conducted a series of inquiries at which both the landlord and the tenant were present and heard. Following such inquiry, the Commissioner made an order dated 22.03.2017, granting approval for the proposed demolition and reconstruction, while at the same time directing that only a reduced extent of the premises be restored to the tenant upon completion of the new construction.

The Appellant, being aggrieved by the said order, contended that the Commissioner had acted *ultra vires*, misdirected himself on the applicable statutory criteria, and had unlawfully deprived the tenant of the full extent of the premises previously enjoyed for several decades. On that basis, the Appellant invoked the writ jurisdiction of the Provincial High Court of Kegalle, seeking *inter alia*:

- a **writ of certiorari** to quash the order of the Commissioner dated 22.03.2017; and
- a **writ of mandamus** directing the Commissioner to conduct a fresh inquiry according to law.

At the threshold of the proceedings before the Provincial High Court, a preliminary objection was raised on behalf of the Commissioner of Housing and the Attorney General to the effect that the application was not maintainable in law, on the ground that the Commissioner of Housing of the Province of Sabaragamuwa was neither a natural person nor a juristic person, and that writs of *certiorari* and *mandamus* could not therefore issue against such an entity.

Accepting this objection, by his order dated 14.06.2019, the learned Judge of the Provincial High Court dismissed the application *in limine*, without entering into the merits of the impugned order. It is this dismissal on a pure question of amenability to writ jurisdiction,

rather than the substantive legality of the Commissioner's order, that has given rise to the present appeal before this Court.

Issue Arising for Determination

In the light of the preliminary objection upheld by the Provincial High Court, the sole issue that arises for determination at this stage is whether a writ of certiorari and/or a writ of mandamus may issue against the Commissioner of Housing of the Province of Sabaragamuwa, cited by official designation, notwithstanding that such Commissioner is neither a natural person nor a juristic person.

Nature of the Office of the Commissioner of Housing

It is not in dispute that the Commissioner of Housing of the Province of Sabaragamuwa is not constituted as a body corporate by statute, nor does the enabling provincial legislation confer upon the office any independent legal personality.

Equally, it is self-evident that the designation refers not to a named individual, but to a statutory office, the holder of which may change from time to time.

The Commissioner therefore falls into the well-recognised category of a statutory public officer exercising delegated administrative power, acting *nomine officii*.

The Objection Based on *Haniffa v Chairman, Urban Council, Nawalapitiya*

The learned Judge of the Provincial High Court accepted the objection founded on the decision in *Haniffa v Chairman, Urban Council, Nawalapitiya*¹, wherein it was stated that a writ of mandamus could issue only against a natural person holding public office.

However, the decision in "*Haniffa*" must be understood in the context of the legal framework prevailing at the time it was decided. That decision predated the present Constitution and the establishment of the present Court of Appeal and the adoption of procedural rules permitting the reference to public officers by official designation. Subsequent decisions of this Court, delivered within the modern constitutional framework,

¹ 66 NLR 48, S.C 315-63 SCM 20.12.1963

have clarified how writ jurisdiction is to be exercised in respect of statutory office-holders. The later authorities of this Court have expressly reconsidered and clarified this position.

Evolution of the Law on Mandamus against Public Authorities

The restrictive approach articulated in *Haniffa v Chairman, Urban Council, Nawalapitiya*² has been revisited and clarified in a series of later decisions of this Court, rendered within the modern constitutional and procedural framework governing writ jurisdiction.

In *Methodist Trust Association of Ceylon v Divisional Director of Education, Galle*³, the Court of Appeal rejected a preliminary objection identical to that raised in the present appeal, namely that a writ of mandamus could issue only against a natural person and not against a public officer cited by designation. The respondents in that case were provincial and ministerial authorities cited by official capacity alone.

Rejecting the above objection, His Lordship Justice Samayawardhena undertook a careful reconsideration of “*Haniffa*” and observed that the insistence on naming a natural person was neither principled nor workable in modern public law. His Lordship stated:

*“Even though in Haniffa’s case it was decided that “A Mandamus can only issue against a natural person, who holds a public office”, in Abayadeera v. Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo*⁴, *this Court did not agree with it and took the view that mandamus can be issued against any person, corporation, tribunal and public body.”*

And further...

“When a writ of mandamus is issued against a juristic person the parties who must obey it are those in control of the affairs of the juristic person, and in case of a violation, they can be dealt with for contempt.”

In “*Methodist Trust Association*” His Lordship further emphasised the practical and conceptual error underlying the objection derived from “*Haniffa*”, pointing out that writs are, in reality, issued against offices and complied with by the incumbents for the time being, and that to insist on naming individuals would result in endless substitutions and

² *supra*

³ [2019] 2 SLR 38 CA Writ 192/2015, CAM 08.01.2019

⁴ [1983] 2 Sri LR 267

procedural delay. This reasoning reflects a clear shift from a formalistic focus on the identity of the respondent to a substantive focus on the performance of public duty.

That doctrinal development was thereafter authoritatively affirmed by a Divisional Bench of this Court in *Ven. K. Wacheeswara Thero and others v. Dharmasena Dissanayaka, Chairman, The Public Service Commission and others*⁵, which was constituted specifically to resolve the apparent conflict between “*Haniffa*” and the later line of authority. After an extensive survey of Sri Lankan and comparative jurisprudence on mandamus, the Divisional Bench unequivocally held that writ jurisdiction is concerned with the control of public power rather than the technical legal personality of the respondent.

His Lordship justice Rajakaruna, delivering the judgment of Court, has quoted the following passage from *M. P. Jain & S. N. Jain, Principles of Administrative Law*⁶,

“Mandamus is a command issued by a court to an authority directing it to perform a public duty belonging to its office; Mandamus is issued to enforce performance of public duties by authorities of all kinds; Mandamus is available against any public authority including administrative and local bodies.” It is further observed that a Mandamus can be issued to any kind of authority in respect of any type of function-administrative, legislative, quasi-judicial, judicial and only when (a) a legal duty is imposed on the authority in question and it does not perform the same; and (b) the petitioner has a legal right to compel performance of this duty.”

Addressing directly the objection founded on “*Haniffa*”, the Divisional Bench explained that the obligation created by mandamus runs with the office, and that neither the citation of a respondent by designation nor the cessation of office by a particular incumbent affects the enforceability of the Court’s order. The Bench thus made it clear that designation-based reference is both permissible and sufficient, and that substitution of office-holders is unnecessary because the duty is institutional, and not personal. Writs issued in the exercise of this Court’s jurisdiction under Article 140 are directed to the office and the public duty attached thereto, and not to the individual who happens to hold that office at the time the impugned decision is made.

Accordingly, a writ of *mandamus* or *certiorari* binds the incumbent for the time being and remains enforceable notwithstanding any change in office-holder. As explained in

⁵ CA Writ 45/2019, CAM 30.03.2023

⁶ ‘Principles of Administrative Law’, 9th Edition (2022), LexisNexis, at p.2440

*Methodist Trust Association of Ceylon v. Divisional Director of Education, Galle*⁷ and authoritatively affirmed by the Divisional Bench in *Ven. K. Wacheeswara Thero and others v. Dharmasena Dissanayaka, Chairman, The Public Service Commission and others*⁸, the obligation created by a writ runs with the office itself, rendering substitution of successors unnecessary and precluding technical objections founded either on changes of office or on the absence of juristic personality. Read together, these decisions reflect a settled and coherent modern position of this Court, namely that writs of mandamus, and by parity of reasoning certiorari, are directed against public authorities and statutory office-holders in respect of the powers and duties of their offices, and are not defeated by the fact that the respondent is cited by official designation.

Applicability with regard to the instant matter

In the context of the instant case, the objection upheld by the Provincial High Court proceeds on the assumption that writ relief cannot be granted against the Commissioner of Housing of the Province of Sabaragamuwa because the impugned order was made by a public officer cited by designation and not by name. However, as correctly submitted on behalf of the Appellant, this Court has, in a consistent line of authority, recognised that writs issued under Article 140 are directed to the office and the public duty attached thereto, rather than to the individual who may, from time to time, hold that office. The necessary consequence is that a writ of certiorari or mandamus, if otherwise justified, operates against the incumbent for the time being, and does not lose its efficacy by reason only of a subsequent change in the office-holder. This position was clearly articulated in *Methodist Trust Association of Ceylon v. Divisional Director of Education, Galle*⁹ and was thereafter affirmed by the Divisional Bench in *Ven. K. Wacheeswara Thero and others v Dharmasena Dissanayaka, Chairman, The Public Service Commission and others*¹⁰. In that light, the technical objection founded on the absence of juristic personality or on the need to substitute successors in office cannot be sustained, and could not, in law, justify the dismissal of the Appellant's application *in limine*.

⁷ *supra*

⁸ *supra*

⁹ *supra*

¹⁰ *supra*

Conclusion

The Commissioner of Housing of the Province of Sabaragamuwa, though neither a natural person nor a juristic person, is a statutory public officer exercising administrative and quasi-judicial power and is amenable to the writ jurisdiction of this Court. Both writs of certiorari and mandamus are available against such Commissioner cited by official designation.

The order of the Provincial High Court of Kegalle dated 14.06.2019 is hereby set aside. The application is remitted to the Provincial High Court of Kegalle for hearing and determination on the merits, and the learned Judge is directed to hear and conclude the matter expeditiously, having regard to the age of the proceedings. There shall be no order as to costs.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal