

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

In the matter of an Application for writs in the nature of writ of *Certiorari* and *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) application No: 612/2025

Peduru Arachige Tharaka Prabath Kulasooriya,
“Kumudu mali”, Hospital Avenue,
New Town, Embilipitiya.

PETITIONER

-Vs-

1. Rathnapitiya Gedara Achintha Supun
Banadara,
Unit Manager, Mahapelessa,
Chandrikawewa, Block Manager’s Office,
Mahaweli Authority, Embilipitiya
2. Eng. E. K. D. Tennakoon
Residential Project Manager (Walawa),
Mahaweli Authority,
Embilipitiya
3. Regional Manager,
Regional Office,
Timber Corporation,
New Town, Embilipitiya
4. Kapugama Geeganage Upul Chandana
Kumara,
Block Manager, Block Manager’s Office,
Chandrikawewa 2-7
Mahaweli Authority,
Embilipitiya

5. H. M. J. K. Herath,
Director General,
Mahaweli Authority
No.500, T. B. Jayah Mawatha,
Colombo 10
6. The Divisional Secretary,
Divisional Secretary's Office,
Embilipitiya.

RESPONDENTS

Before: S. U. B. Karalliyadde, J.

Dr. D. F. H. Gunawardhana, J.

Counsel: W. Dayaratne, PC with Ranjika Jayawardene for the Petitioner.

Indumini Randeny, SC for the Respondents.

Supported on: 24.09.2025

Order delivered on: 23.10.2025

S. U. B. Karalliyadde, J.

This Order pertains to the issuance of formal notices of this Writ Application on the Respondents. The Petitioner submits that he became the owner of the land called Athhondagala in the extent of five Acres by virtue of a Deed of transfer bearing No. 50 dated 18.7.2016 marked as P11. The Petitioner thereafter transferred the said land to one Ivan Gunasiri by a Deed of Transfer bearing No. 13 dated 10.02.2025 marked P15. Before transferring the subject land, the Petitioner has entered into an agreement dated

05.02.2025 marked as P16 to sell the teak trees in the subject land to one Hewa Nammuni Arachchige Priyantha. Pursuant to the said agreement, the Petitioner has cut down 600 teak trees and has applied to the Divisional Secretary of Embilipitiya (the 6th Respondent) for a permit to transport the timber (P17). The Petitioner states that in the application marked as P17, the Gramaniladari of the area has recommended issuing a permit to the applicant of the permit. Before the transport permit was issued by the 6th Respondent, the Unit Manager of the Mahaweli Authority, the 1st Respondent, complained to the police that he received anonymous complaints alleging that the Petitioner had fallen teak trees in a land belonging to the State (P18). Subsequently, the Block Manager of the Mahaweli Authority (the 4th Respondent), by the letter dated 19.02.2025 marked as P20, informed the 6th Respondent not to issue a permit to the Petitioner on the ground that it is a State land.

Thereafter, the Residential Project Manager (Walawa) of the Mahaweli Authority, the 2nd Respondent, by the letter dated 14.03.2025 marked as P21, requested the Regional Manager of the Timber Corporation (the 3rd Respondent) to prevent the Petitioner from removing the timber from the subject land until an inquiry is held to ascertain as to whether the trees fallen by the Petitioner was in fact on a State land. Thereafter, by the letter marked as P22, the 2nd Respondent informed the 3rd Respondent that it was found at the inquiry that the Petitioner had fallen trees on a State land and directed the 3rd Respondent to take possession of the logs of the trees.

By the letter marked as P25, the 2nd Respondent informed Ivan Gunasiri, to whom the Petitioner sold the subject land by P15, that the land dealt with that deed is State land and a complaint has been made by the 1st Respondent to the Embilipitiya Police Station against the Petitioner for the illegal felling of timber on the subject land. Consequently, the Petitioner was compelled to repurchase the land from Ivan Gunasiri (P26).

The Petitioner has invoked the writ jurisdiction of this Court seeking the following substantive reliefs, *inter alia*,

- b. Issue a Mandate in the nature of Writ of Certiorari quashing the order of the 4th Respondent marked as P20 directing the 6th Respondent to suspend the issue of Transport Permit to the applicant,*
- c. Issue a Mandate in the nature Writ of Certiorari Quashing the letter produced marked P25 sent by the 2nd Respondent to W. A. Ivan Gunasiri stating that the deed by which he purchased the land is fraudulent and had been prepared for the State Land,*
- d. Issue a mandate in the nature of Writ of Prohibition against the 3rd Respondent from accepting the above cut Teak Trees to the Timber Corporation, valuing or removing from the Land as directed to him by the 2nd Respondent by letters produced marked P21 and P22,*
- e. Issue a Writ of Mandamus against the 6th Respondent directing her to issue the said Transport Permit to the Applicant Priyantha forthwith as the said Trees*

which were cut in February 2025 are subject to elements and started decaying and as the respective buyers they are unable to remove the said trees from the Petitioner's land,

f. Declare that the Petitioner's Title Deeds, undisturbed and interrupted possession has clearly established it is a Private Property and it is not a State Land for the 1st to 6th Respondents to deprive the Petitioner's legal right to the said property,

g. Issue a Stay Order against the 1st to 4th Respondents from removing the said Teak trees from the land threatening the Petitioner, his servants, agents occupying the house situated in the Land and treating other plantation, and enjoying the produce until the final determination of this application.

The Petitioner has submitted to the Court that he purchased the subject land by Deed marked P11 from the wife and the heirs of one Gan Ethie Dissanayake, to whom the land was transferred by one Vijitha Bandara by Deed marked P4. Due to a dispute that arose between Gan Ethie Dissanayake and Vijitha Bandara over the land, Gan Ethie instituted an action in the District Court of Embilipitiya seeking a declaration of title to the subject land, wherein a settlement was entered into declaring Gan Ethie Dissanayake as the lawful owner of the subject land (P7). Accordingly, the Petitioner asserts that, in light of the said settlement, he is the lawful owner of the land, and the 1st to 6th Respondents, acting arbitrarily and unlawfully disputing the Petitioner's title to the land, depriving him of selling the timber.

When this matter was taken up for support, the learned State Counsel appearing for the Respondents argued that the material facts in the action are in dispute. The learned State Counsel submitted that the subject matter of this Application is a part of a larger land which is depicted as Lot 6 in F.V.P. 776 supplement 26 in the extent of 1110 Acres that has been declared as State land by the Land Settlement Order No. 524 published in the Gazette No. 14,703 dated 08.07.1966 marked as X1. Therefore, there is a dispute regarding whether the corpus is privately owned land or State land. Furthermore, the learned State Counsel argued that by prayer (f) to the Petition, the Petitioner is seeking a declaration of title from this Court, which is a matter that falls within the jurisdiction of the District Court.

After careful consideration of the submissions and the documents produced, this Court agrees with the contention of the learned State Counsel that in this action a material fact is in dispute. This Court is of the view that the question whether the Respondents had acted arbitrarily or illegally by not issuing the permit to the applicant, entirely depends on the determination of whether the subject land is State land or private land. Whether the subject land is State land or not is a material fact that is in dispute, and when the material facts are in dispute, the Writ Courts are reluctant to exercise its Writ jurisdiction. In the case of *Thajudeen v. Sri Lanka Tea Board and Another*¹, this Court has held thus;

¹ (1981) 2 Sri LR 471 at page 474.

“That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, especially 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 examining 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, Porraju v. General Manager B. N. Rly.”

In the case of *Francis Kulasooriya v. OIC-Police Station-Kirindiwela*,² the Supreme Court observed that,

“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.”

In *Wijenayake and others v. Minister of Public Administration*,³ it was also held that disputed facts cannot be decided by a writ court.

Furthermore, this Court is of the view that this matter cannot be suitably decided in a Writ application by way of affidavit evidence, and this matter is well-suited to be argued

² SC Appeal No. 52/2021, SC Minute of 14.07.2023.

³ (2011) 2 SLR 247.

before a District Court by adducing evidence. In “Administrative Law”, by H. W. R. Wade and C.F. Forsyth (9th edn),⁴ it has been stated that,

“Although the contrast between questions which do and do not go to jurisdiction was in principle clear-cut, it was softened by the court's unwillingness to enter upon disputed questions of fact in proceedings for judicial review. Evidence of facts is normally given on affidavit: and although the rules of the court made provision for cross-examination, interrogatories, and discovery of documents, and for the trial of issues of fact, the court did not often order them. The procedure was well adapted for trying disputed facts. If the inferior tribunal had to self-try them, the court will not interfere except upon very strong grounds. There has to be a clear excess of jurisdiction' without the trial of disputed facts de novo. The questions of law and questions of facts were therefore to be distinguished, as was explained by Devlin J. (R. v Fulham etc. Rent Tribunal exp. Zerek).

Where the question of jurisdiction turns solely on a disputed point of law, it is obviously convenient that the court should determine it then and there. But where the dispute turns to a question of fact, about which there is a conflict of evidence, the court will generally decline to interfere. Lord Wilberforce (R v

⁴ At page 260

Home Secretary Zamir) similarly described the position of the court, which hears applications for judicial review:

It considers the case on affidavit evidence, as to which cross-examination, though allowable does not take place in practice. It is, as this case will exemplify, not in a position to find out the truth between conflicting statements.

In case of conflict of evidence, the court will not interfere in the decision, where there is evidence to justify a reasonable tribunal reaching the same conclusion.”

Considering all the above-stated facts and circumstances, this Court is of the view that the Petitioner is not entitled to the reliefs sought in the Petition. Accordingly, this Court refuses to issue formal notices on the Respondents. The Application dismissed. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Dr. D. F. H. Gunawardhana, J.

I agree.

JUDGE OF THE COURT OF APPEAL